

## MITEL CLOUD SERVICES – GLOBAL TERMS OF SERVICE

*NOTE: The following sections of these Terms do not apply to you if you: (i) have purchased your Entitlements from an Authorized Partner on a non-Mitel Service Order (you are a “Wholesale User”), or (ii) are an Authorized Partner who we have permitted under your partner agreement with Mitel to resell our Cloud Services pursuant to your own terms, provide Entitlements directly to Users and add your own value-added services (a “Wholesale Provider”): 4 (Fees & Reimbursements), 7.2 (Renewals) 7.3 (Add-Ons), 7.7 (Termination by Customer for Convenience), 8 (Hardware), 10 (Confidentiality), 11.1 (Hardware Warranty) and 14.1 (Customer Support). In addition, if you have purchased your Entitlements from an Authorized Partner on a non-Mitel Service Order, Section 2.3 (Service Levels) does not apply to you.*

Before using our Cloud Services (as defined below), please read these Global Terms of Service (“**Terms**”). These Terms, and all documents referred to in them, and any amendment or addendum referencing these Terms entered into by the parties, form a binding agreement between you and us (“**Agreement**”). Pursuant to these Terms, you and Users will be provided with access to the Mitel Cloud Services in accordance with your Service Order or as may otherwise be ordered by you under this Agreement.

**1. DEFINITIONS.** As used herein: “**Acceptable Use Policy**” means Mitel’s Acceptable Use Policy found at: <https://www.mitel.com/legal/mitel-cloud-services-terms-and-conditions>. “**Applicable Law**” means all applicable laws, treaties, regulations, and conventions related to use of the Cloud Services, including without limitation those related to data privacy, call recording, unsolicited advertisements and telephone calls, international communications, and the exportation of technical or personal data. “**Authorized Partner**” means a third party we have authorized as a reseller of Entitlements, and who may also be a Customer. “**Cloud Services**” means any cloud services provided under this Agreement and, unless otherwise stated in the Service Order, includes SIP Services. “**Customer**”, “**you**” or “**your**” means the entity that purchases Entitlements from Mitel. “**Customer Data**” means data in electronic form managed, transmitted, stored, or otherwise processed by the Cloud Services on behalf of Customer, or its Users, including without limitation Provisioning Information and User Content. Customer Data does not include Metadata or Confidential Information. “**Documentation**” means training, marketing, and demonstration materials, diagrams, test plans, and work flows provided by us in support of the Cloud Services. “**Early Termination Fee**” means an amount equal to all monthly recurring Service Fees for the terminated Cloud Services or Entitlements, multiplied by the number of months remaining in the Service Term, and if requested by us, the dollar value of any promotional credit awarded to you by us as set forth in any special promotions document, plus all applicable taxes. “**Emergency Services**” means an outbound voice call to the applicable public safety departments or emergency dispatch call centers in the User’s jurisdiction (e.g., dialing “911” in North America, or “112” or “999” in Europe). “**Entitlement(s)**” means a right to access and use specific Cloud Services (e.g. on a “named user” or “concurrent user” basis). “**Fair Use Policy**” means Mitel’s Fair Use Policy found at: <https://www.mitel.com/legal/mitel-cloud-services-terms-and-conditions>. “**Hardware**” means hardware detailed on your Service Order. “**Implementation Services**” means any Cloud Services-related software or hardware installation, implementation, configuration or customization services, or any other professional services set out in a Service Order you have submitted directly to us. “**Initial Service Term**” means the initial period specified in the Service Order. “**Metadata**” means non-personally identifiable data or information that provides information about the use of the Cloud Services, Customer Data and/or Use Records. “**Mitel**” “**we**”, “**our**” or “**us**” has the meaning set out in Section 15.1 (Mitel Entity). “**Provisioning Information**” means information provided by you to us about a User which is used to provide/provision the User (e.g. first name, last name, user-name, IP address, phone number, phone extension, e-mail address). “**Service Activation Date**” means the date on which an Entitlement is first made available to you for use. In the event a Service Order includes multiple Sites and/or multiple Entitlements, the Service Activation Date will be the date the first Entitlement is available at a Site. Each Entitlement will be considered to have been “first made available to you for use” when a user profile has been provided to you. Entitlements added following activation of a profile will be considered to have been “first made available to you for use” as of the date added to your account. “**Service Fees**” means all monthly recurring service fees, non-recurring fees, set-up fees, usage including overage based fees, rental fees, Hardware costs and Implementation Services fees and any other charges and fees which you have agreed to in a Service Order or SOW. “**Service Order**” means an ordering document signed and submitted by you to us or one of our Authorized Partners, detailing the Entitlements, Hardware and Implementation Services which you have ordered

from us or our Authorized Partner, as applicable. “**Service Term**” means the Initial Service Term and Service Renewal Terms (as defined below), if any. “**SIP Services**” the session initiation protocol services over which voice communications are connected to the public switched telephone network and delivered. “**Site**” means a physical location associated to a specific street address where Services are being provided. “**SLA**” means our standard Service Level Agreement for the Cloud Services available at: <https://www.mitel.com/legal/mitel-cloud-services-terms-and-conditions>. “**SOW**” means a statement of work which we may agree to perform for you from time to time. “**User(s)**” means users who have been assigned Entitlements and the associated logins and passwords and are either (i) Customer’s employees, consultants, contractors or agents; or (ii) where the Entitlements have been purchased for resale, that Authorized Partner’s customer’s employees, contractors, agents and consultants. “**User Content**” means the information shared amongst Users or transmitted/received by a User(s) to/from a third party(s), via the Cloud Services (e.g. chats, files, voicemails). “**Use Records**” means records pertaining to User’s use of the Cloud Services (e.g. call or chat logs, shared files, presence history).

## **2. THE SERVICE AND USE OF THE SERVICE IN GENERAL**

**2.1 Initiation and Services.** Provisioning of the Cloud Services will begin only after we receive and accept your Service Order. We will provide any Implementation Services set out in the Service Order and/or any SOW. You agree that your purchase of the Entitlements is neither contingent upon our delivery of any future functionality or features, nor dependent upon any discussions, oral or written public comments made by us with respect to future functionality or features. Subject to Section 7.3, additional Entitlements can be added by you through the issuance of a new Service Order or self-provisioning, where available. You can also change the type of your Entitlements through the issuance of change orders, which for the avoidance of doubt must be agreed to (and signed) by both you and Mitel.

**2.2 Use of the Service.** During the Service Term, you and Users may use the Cloud Services and Documentation solely for internal business operations (and, unless you are doing so as an Authorized Partner, not for any form of redistribution, time sharing, service bureau or resale) in accordance with this Agreement. Notwithstanding the foregoing, where permitted by us, you may (i) in a given month, increase the number of Users above and beyond the number of Users set out in your Service Order provided that you pay us in arrears (as set out below) for such additional Users at our then current rate for Entitlements, and (ii) add additional Entitlements on a term coterminous with the Service Term in effect at the time. You may use and reproduce the Documentation solely as necessary to support use of the Cloud Services.

**2.3 Service Levels.** We will deliver the Cloud Services in accordance with the SLA. In the event of a disruption or outage to the Cloud Services during the Service Term, your sole remedy, and our sole obligation, will be the service level credits and/or remedies, if any, set out in the SLA. Credits issued pursuant to the SLA will only be applied against future Service Fees. In no event will we be required to issue refunds for, or to make payments against, such credits.

**2.4 Service Revisions.** During the Service Term, we may add, reduce, eliminate or revise Cloud Services features and functionality (or upgrade the underlying platform used to provide the Cloud Services) at any time without prior notice. Notwithstanding the foregoing where, in our sole opinion, a change will cause a material detrimental impact on use of the Cloud Services (a “**Detrimental Change**”), we will provide thirty (30) days prior written notice (email or if an online portal is made available with the Cloud Services, posting notice at the portal to suffice). In the event of a Detrimental Change, you may, at no cost, terminate the affected Cloud Services by providing us with written notice of termination within thirty (30) days of receiving your notice of the Detrimental



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Change. If we do not receive notice of termination within thirty (30) days, you will be deemed to have accepted the change and/or charge.

**2.5 Performance.** You acknowledge and agree that the quality, performance and available features of the Cloud Services including Emergency Services and any Hardware may be affected, impaired and/or disrupted by the quality, speed and usage of a broadband connection and/or third-party networks and will not function in the event of a power failure.

### **3. Emergency Services**

**3.1 Limitations Relative to Enhanced Emergency Services; Cost.** You acknowledge and agree that the Emergency Services provided hereunder have limitations relative to the enhanced (or similar) emergency services that are available on most traditional telephone services. Subject to the limitations set out in this Agreement, Emergency Services can be accessed, free of charge.

**3.2 Emergency Services Devices and Initiation:** Emergency Services will only function if User(s) are using an approved device, equipment or software following the processing of your Service Order and after receipt of an emergency service confirmation. If Users use non-approved equipment or software or attempt to call Emergency Services prior to confirmation, the Emergency Services may fail or may be forwarded to a non-public, backup emergency answering service.

**3.3 Emergency Services Registration.** This Section 3.3 takes effect on the earlier of your Cloud Services' Dynamic Location functionality, where applicable, becoming available, or January 6, 2022. Until this time, Section 3.3 of the prior version of the Agreement shall remain in effect. You acknowledge and agree that it may not be possible for emergency operators and authorities to identify the actual location of a User who dials Emergency Services through the Cloud Services.

**3.3(a) MiCloud Connect, MiCloud Flex Only.** Where you purchase Cloud Services that include our SIP Services, we will register the following as the addresses where Users will use Cloud Services and to which Emergency Services should be dispatched by default: (i) the address(es) listed on your Service Order, and (ii) the address(es) entered in the online portal:

- (A) if your Users are in the United States: (a) where technically feasible, and you have provided us all information required to obtain automated dispatchable location (e.g. office/campus map), we will transmit automated dispatchable location with your 911 calls; (b) where automated dispatchable location is not technically feasible (including because you did not provide the required information, or in the case of MiCloud Connect, enable the feature): (i) Emergency Services will be dispatched according to the address(es) registered in the online portal, or (ii) if there is no emergency address registered in the online portal or the address in the portal is known to be incorrect, then the call will be routed to a national emergency center. You acknowledge and agree that while we may assist Users in keeping addresses up to date where automated dispatchable location is not technically feasible (e.g., by prompting an address query when the Cloud Services detects that a device has moved to an unknown address), it is yours and the Users' sole responsibility to ensure that registered emergency address(es) are accurate at all times.

Should you: (I) not enable the MiCloud Connect Dynamic Location functionality which allows us to prompt Users using a desk phone to update emergency address when we know it is not up to date; (II) not update desk phone firmware to a version supporting Dynamic Location; or (III) not provide the information required to provide automated dispatchable location (and or enable such functionality, if required); you agree to indemnify, hold us harmless and if requested by us, defend us against any loss, damage or costs (including reasonable legal fees) incurred in connection with a third party Claim made or brought against us arising from or relating to such decision.

- (B) if your MiCloud Connect Users are in Canada, all emergency calls will be sent to a national emergency call center. If technically feasible, and you have provided all information required for the Cloud Services to

automatically detect emergency calling location (e.g., office/campus map), we will do so and send such location with the call. Where automatic location detection is not technically feasible (including because you did not provide the required information or enable the feature), we will: (i) send the address registered in the online portal with the emergency call, or (ii) if there is no emergency address registered in the online portal or the address in the portal is known to be incorrect, send the emergency call without an address. You acknowledge and agree that while we may assist Users in keeping addresses up to date where automatic location is not technically feasible (e.g., by prompting an address query when the Cloud Services detects that a device has moved to an unknown address), it is yours and the Users' sole responsibility to ensure that registered emergency address(es) are accurate at all times.

- (C) if your Users are outside of Canada and the United States, or are MiCloud Flex Global Users in Canada, it is your responsibility to ensure that default address(es) are accurate and, if changed, that you notify us of such changes. If you do so by contacting our support organization, you must do so at least ten (10) days in advance.

**3.3(b) ShoreTel Sky, MiCloud Office Only.** You acknowledge and agree that while your Cloud Services are capable of providing a dispatchable location, the Cloud Services cannot detect when a phone changes location and automatically update its address or prompt the User to do so. For this reason, starting Jan 6, 2022, all 911 calls will be routed to a national emergency call center and will no longer use the existing 911 address database. You, at your sole discretion, may direct Mitel to route 911 calls initiated on a desk phone using registered address. Should you do so: (A) you acknowledge that, depending on your circumstances, registered addresses may not constitute automated dispatchable location under 47 CFR part 9, (B) you agree to indemnify, defend and hold Mitel harmless from any 3<sup>rd</sup> party Claim resulting from this direction, and (C) you represent, warrant and covenant that your Users will update emergency location information any time such information changes to ensure accurateness. Mitel recommends you seek independent legal advice prior to directing Mitel to route 911 calls using registered address. For greater certainty, softphone 911 call behavior cannot be overridden and softphone 911 calls will always route to a national call center.

**3.3(c) MiCloud Business Only.** If technically feasible, and you have provided us all information required to deliver automated dispatchable location (e.g., office/campus map), we will transmit automated dispatchable location with 911 calls. Where automated dispatchable location is not technically feasible (including because you didn't provide the required information), MiCloud Business cannot determine if a registered address is valid at the time of the 911 call and as of January 6, 2022 will route the call to a national emergency center. You, at your sole discretion, may direct Mitel to route 911 calls initiated on desk phones using a registered address. Should you do so: (A) you acknowledge that depending on your circumstances, registered address may not constitute automated dispatchable location under 47 CFR part 9, (B) you agree to indemnify, defend and hold Mitel harmless from any 3<sup>rd</sup> party Claim resulting from your direction, and (C) you represent, warrant and covenant that your Users will update their emergency location information any time such information changes to ensure accurateness. Mitel recommends you seek independent legal advice prior to directing Mitel to route 911 calls using registered address. For greater certainty, softphone 911 call behavior cannot be overridden, and softphone 911 calls will always route to a national call center. Additionally, if you do not provide the information required to provide automated dispatchable location, where technically feasible, you agree to indemnify, hold us harmless and if requested by us, defend us against any loss, damage or costs (including reasonable legal fees) incurred in connection with a third-party Claim made or brought against us arising from or relating to such decision.

**3.3(d) General.** Users dialing Emergency Services should always be prepared to state their location and phone number promptly and clearly to ensure that emergency operators have complete and accurate information. Where the User's emergency calling location cannot be automatically detected, if the User's registered address, where applicable, is incorrect (i.e., different than the User's actual location, or missing), the result may be (a) fire, police or emergency personnel not being able to find a User's location and/or (b) the User



experiencing a delay in response times. You acknowledge and agree that you are responsible for any additional costs, fines or other penalties, including service provider charges, that result from improper dispatch of Emergency Services or calls to emergency service dispatchers where you and/or the Users have failed to update the User's address or otherwise provided Mitel with incorrect information including office/campus maps. Users who dial emergency services, including by accident, should always stay on the line and speak with the operator. In certain limited cases, an Emergency Services call may be routed to a wireless telephone emergency dispatch center that may not normally receive Emergency Services calls from the User's registered location instead of a "traditional" wireline Emergency Services dispatch center. In this case, emergency personnel will not have the User's registered location and/or phone number on file.

**3.4 Emergency Service Limitations:** Emergency Services will not function if (a) a VoIP device fails or is not configured properly, (b) the Cloud Services are not working for any reason including without limitation a power outage, broadband service outage, network congestion, suspension or disconnection of the Cloud Services, broadband connection failure, use of a non-native telephone number, electrical power loss, or your failure to meet our minimum technical service requirements, if applicable, or (c) where the Cloud Services do not include our SIP Services, failure or disconnection of third party SIP Services. Following a power outage, Users may need to reset or reconfigure their equipment prior to being able to use the Cloud Services, including dialing Emergency Services. Emergency operators and/or authorities may be unable to identify a User's phone number in order to call them back if (i) their call is unable to be completed, is dropped or is disconnected, (ii) the User is unable to communicate their phone number, or (iii) the Cloud Services are not operational for any reason. In such circumstances, and provided the Cloud Services are available, the User should redial Emergency Services. When calling Emergency Services, Users should not hang up until told to do so by emergency operators as emergency operators and authorities may also be unable to hold the line open in the event the User hangs up. You further acknowledge and agree (and you will cause Users to do same) that we do not have any control over whether, or the manner in which, emergency calls using the Cloud Services are answered or addressed by any local emergency response center and we rely on third parties to assist us in routing emergency calls to local emergency response centers. Emergency services are available only within the jurisdiction in which the User is registered and the Cloud Services cannot be used to make emergency calls outside of same.

**3.5 Emergency Notifications.** Where you purchase Cloud Services that include our SIP Services for use in the United States and Canada and such Cloud Services are capable of being configured to provide a notification to another person or location that 911 has been dialed, without an improvement to the hardware or software of the Cloud Services, we will configure the Cloud Services to provide such a notification to the User(s)/Site(s) which you identify and provide to us. You acknowledge and agree that, in consultation with Users, you are solely responsible for (i) identifying the User(s)/Site(s) to receive such emergency notifications, (ii) ensuring that such User(s)/Site(s) remain accurate, and (iii) notifying us of required changes to the User(s)/Site(s) either through our online portal, where available, or by contacting our support organization at least ten (10) days in advance. If the Cloud Services are being configured for use by Users across multiple Sites and you identify Users at multiple Sites to receive emergency phone alerts, you acknowledge and agree that it is possible that an emergency phone alert may be answered by a User at a different Site than the caller. You represent, warrant and covenant that you will ensure that Users have access to training on how to handle emergency events including without limitation by creating and maintaining robust policies and procedures to ensure that an appropriate person at the Site where each emergency call is initiated is made aware of the call regardless of where the alert is answered. Should you request that we disable such notifications, you agree to indemnify, hold harmless and if requested by us, defend us against any loss, damage or costs (including reasonable legal fees) incurred in connection with a third-party Claim made or brought against us arising from or relating to us having disabled such notifications.

**3.6 Third Party Disclaimer.** We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center, as well as any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result.

**3.7 Acceptance of Limitations.** By accepting this Agreement, you acknowledge that: you have received and understand the information regarding the limitations of our Emergency Services; you are required to ensure Users are made aware of these limitations and expressly consent to them prior to access to the Cloud Services; and you each assume the risks associated with such limitations. Where your Cloud Services do not include our SIP Services, you should consult your SIP Services provider to further understand Emergency Service limitations.

#### **4. FEES & REIMBURSEMENTS**

**4.1 Service Fees, Invoicing and Payment.** As of the Service Activation Date, you agree to pay all Service Fees for Cloud Services made available to you and Users during the Service Term. You will be invoiced in advance for non-usage-based Service Fees and in arrears at the end of each month for usage-based Service Fees. Entitlements added to the Service Order during the Service Term will be invoiced in the month following the Service Activation Date for same on a pro-rated basis for the remainder of the Service Term, unless otherwise agreed by us. Service Fees are due on the date set out in your invoice and are payable in the currency specified on your Service Order. Invoices will be deemed correct and binding on you unless we receive a dispute of charges, in writing, within thirty (30) days of an invoice being issued. To the extent you dispute, in good faith, any amount included in our invoice, the parties shall use reasonable efforts to resolve and settle such dispute within thirty (30) days of your written notice to us. Upon request of the other, each party will promptly provide full supporting documentation concerning any disputed amount, including as it relates to Users. For clarity, you shall pay all undisputed amounts in our invoice but will have no obligation to make any payment of disputed charges on the invoice during the time it is subject to a good-faith dispute. Based on our reasonable determination, once the dispute is resolved you will pay the resulting agreed upon amount. We reserve the right to change (e.g. increase or decrease) Service Fees upon renewal of your entitlements and will provide notice of any proposed change in such charges no later than sixty (60) days before the end of the Initial Term or then-current Renewal Term, and any such change will be effective on the first day of the next Renewal Term. For additional clarity, (A) we reserve the right to at our sole discretion reduce your Service Fees in whole or part at any time during your Service Term, and (B) in the event we reduce your Service Fees, we may reinstate such Service Fees to the pre-reduction rate at any time upon notice.

**4.2 Taxes and Fees.** Unless otherwise stated in the Service Order, all Service Fees are exclusive of all taxes, fees and surcharges ("**Taxes**"), as they may change from time to time. Unless you provide us a valid tax exemption form prior to us invoicing you, you shall pay all Taxes arising from or based on your purchase under this Agreement (excluding taxes on our net income). You acknowledge and agree that in the event any governmental agency revises or imposes Taxes of any kind, including without limitation, emergency service access fees and universal service fees on the Cloud Services or Hardware provided hereunder, that we reserve the right to bill all such Taxes to you without notice, and you agree to pay all such charges billed. Customer shall also be responsible for payment of any regulatory or other cost recovery charges billed by Mitel, including, but not limited to line items billed for recovery of certain federal and state regulatory fees and associated legal and administrative costs, carrier costs, 911 and/or other costs related to the provisioning of Services to Customer

**4.3 Credit Worthiness.** Subject to credit review, you may be required, upon our request, to make an advance payment or deposit to us for Service Fees.

#### **5. CUSTOMER RESPONSIBILITIES & RESTRICTIONS**

**5.1 Service Rules of Use.** You will obtain all permits, licenses and authorizations or certificates that may be required in connection with your activities and User's use under this Agreement. You will require that Users comply with the Acceptable Use Policy, Fair Use Policy, Documentation and Applicable Law. You will not, and you will ensure Users are aware that Users cannot: (i) provide Cloud Services passwords or other log-in information to any third parties other than Users; (ii) share non-public Cloud Services features or content with any third party; (iii) access the Cloud Services in order to build a similar or competitive product or service; (iv) take any action(s) that could result in harm or damage to our (or any third party's) network or premises, or to any of our other customers or end users; and (v) use our network or Cloud Services to



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export, re-export, transfer or make available, whether directly or indirectly, any regulated file, item or information without first complying with all applicable export control laws and regulations, trade and economic sanctions, government export exclusions lists, embargos and terrorist controls.

**5.2 Number Porting.** If Cloud Services include our SIP Services, number portability may be available. In cases where number portability is available, we will take commercially reasonable steps to transfer the number in accordance with standard porting procedures between communications providers in the jurisdiction provided that the applicable account contains accurate and complete information and is in good standing, including payment for all Service Fees. For clarity, porting a number to another service provider shall not release you of any fees otherwise due under this agreement.

**5.3 Unauthorized Access and Investigations.** You will, and you will require that Users, take all reasonable steps to prevent (i) unauthorized access to, or improper or fraudulent use of, accounts provided in connection with Agreement, the Hardware or the Cloud Services, and (ii) a breach of security (each an "Incident"). You will immediately notify us of any known or suspected Incident and will use best efforts to stop an Incident and will require Users to notify you of such. If we suspect, or become aware of, an Incident, we may investigate, and you will and will require Users to cooperate in any such investigation. We reserve the right to inform any applicable government of the investigation. We shall not be liable to you or Users for any damages whatsoever resulting from an Incident. Further, in order to investigate, monitor and limit illegal calls, we may, in compliance with law: (i) perform checks of calls originating from User telephone numbers against known or suspected robocallers and robocall characteristics, and (ii) from time to time, including where required by a regulator, traceback certain User calls to determine the origin. You agree to provide a single point of contact to work with us on Incidents or alleged illegal calls, including tracebacks, and fully cooperate with us (and any regulator) to address same. At our request, you will document any actions taken in response to Incidents or alleged illegal call(s) and provide us with a copy of such documentation.

**5.4 Customer Responsibilities/Liabilities.** You are responsible for: (i) any customer responsibility requirements detailed in a Service Order; (ii) ensuring that the configuration of the Cloud Services, including any roles and permissions assigned therein, meet your and the Users requirements and all applicable security, legal, regulatory and compliance requirements; (iii) Customer Data; and (iv) use of accounts provided in connection with this Agreement, whether authorized or not.

## **6. CUSTOMER DATA**

**6.1 Instructions.** You instruct us to process Customer Data and Use Records in accordance with the terms and conditions of this Agreement. We warrant that we will only use and disclose Customer Data and Use Records to provide, bill, optimize, improve, support, troubleshoot, and maintain the Cloud Services and/or Hardware and to comply with Applicable Law, or a binding order of a court or governmental body (or other legal process). In doing so, you acknowledge and agree that we may process Customer Data and Use Records on a global basis. Notwithstanding anything in this Section 6 (Customer Data), we reserve the right to use, and to disclose Customer Data (excluding User Content) and Use Records to third parties: (i) if we determine, in our reasonable judgement, that such use or disclosure is necessary (a) to protect the safety of a customer, a user, or a third party; (b) to provide an emergency warning; (c) for the provision of Emergency Services; (d) to investigate suspected fraud or other illegal activity; (e) subject to Section 6.3 (Court Orders, Subpoenas and Additional Disclosures), as a result of a legal or governmental demand including without limitation by a criminal enforcement agency or regulatory body; or (ii) if you have provided consent. With respect to User Content, we reserve the right to use and to disclose User Content to third parties where (i) we determine, in our reasonable judgement, that such use or disclosure is necessary, subject to Section 6.3 (Court Orders, Subpoenas and Additional Disclosures), as a result of a legal or governmental demand including without limitation by a criminal enforcement agency or regulatory body; or (ii) if you have provided consent. You represent, warrant and covenant that you and the Users each have all rights and consents (and have made all requisite disclosures) necessary: i) for us to process Customer Data and Use Records for the purposes set forth in this Agreement; and ii) for us

to provide Customer Data and Use Records to our affiliates and third-party service providers as necessary for the performance of this Agreement on a global basis. You further acknowledge and agree that we may aggregate Customer Data and Use Records with data from other customers, and at our sole discretion use, disclose and commercially exploit such aggregated data in an anonymized form.

**6.2 Accuracy & Retention.** You are solely responsible for Customer Data provided to us and represent and warrant that all information provided to us will be true to the best of your knowledge. You acknowledge and agree that: (i) the Cloud Services provide a passive conduit for User Content and you and Users (and not us) are solely responsible for such User Content; and (ii) the Cloud Services are not intended for long-term storage of Customer Data. We warrant that we will only retain Customer Data and Use Records for as long as reasonably necessary to provide the Cloud Services and to comply with Applicable Law and will delete (or put beyond practicable use) in accordance with our data retention policy. Subject to any data retention requirements under Applicable Law and any written data retention commitment we make to you, we reserve the right to periodically permanently delete Customer Data and Use Records from the Cloud Services including without limitation where your account is delinquent, suspended, or has been terminated for more than thirty (30) days. Notwithstanding anything herein, should we become aware of any User Content which violates this Agreement, we reserve the right to delete such User Content immediately and without notice.

**6.3 Court Orders, Subpoenas and Additional Disclosures.** Unless prohibited by Applicable Law, we will give you reasonable notice of any legal or governmental demand for disclosure or movement of Customer Data or Use Records, or redirect any such demand to you, to allow you to seek a protective order or otherwise to contest such required disclosure or movement at your sole expense, prior to making any disclosure or movement.

**6.4 Excluded Data.** Except where we have provided you with express written authorization, you represent, warrant and covenant that you, and require that Users, have not and shall not upload or transmit to the Cloud Services, any data which is specifically regulated other than by general application data privacy laws ("Excluded Data") including without limitation as a "special category" of personal data under the EU General Data Protection Regulation 2016, as protected health information under the Health Insurance Portability and Accountability Act of 1996, as personally identifiable financial information under the Gramm-Leach-Bliley Act, as data controlled by the U.S. International Traffic in Arms Regulations, as personal information under the Children's Online Privacy Protection Act and as "Core and/or Important Data" under the laws of the People's Republic of China (to the extent to which such laws relate to Excluded Data, the "Excluded Data Laws"). YOU ACKNOWLEDGE AND AGREE THAT: (A) WE HAVE NO LIABILITY FOR ANY FAILURE TO PROVIDE PROTECTIONS SET FORTH IN THE EXCLUDED DATA LAWS OR OTHERWISE TO PROTECT EXCLUDED DATA; AND (B) OUR SYSTEMS ARE NOT INTENDED FOR MANAGEMENT OR PROTECTION OF EXCLUDED DATA AND MAY NOT PROVIDE ADEQUATE OR LEGALLY REQUIRED SECURITY FOR EXCLUDED DATA.

**6.5 HIPAA Data.** Notwithstanding any prior express written authorization which we may have provided to you, including any Business Associated Agreement, effective October 1, 2024, protected health information under the Health Insurance Portability and Accountability Act of 1996 is no longer permitted in the Cloud Services. You represent, warrant and covenant that you and your Users shall not upload or transmit personal health information to the Cloud Services on or after October 1, 2024. You further acknowledge and agree that you are required to remove all protected health information from the Cloud Services prior to October 1, 2024. Failure to remove protected health information prior to October 1, 2024, shall be considered a material breach of the Agreement.

## **7. TERM, TERMINATION AND SUSPENSION**

**7.1 Term.** This Agreement takes effect upon execution of the Service Order and continues until termination of the Service Term. The Initial Service Term shall begin on the Service Activation Date.

**7.2 Renewals.** Following the Initial Service Term or any renewal, unless either party notifies the other party (in writing at least forty-five (45) days prior to the



expiration of the then current Service Term) that it does not wish to renew your Entitlements, the Entitlements (including any Entitlements added or changed and in effect at the time of renewal) shall automatically renew for an additional twelve (12) month term (each, a **"Service Renewal Term"**). Upon receipt of your written notification of non-renewal, as part of Mitel's disconnect process, we may reach out to you for additional information, including information used in support of account closure.

**7.3 Add-Ons or Changes.** If, during the Service Term, you add any Entitlements (including without limitation services at a different Site) or change the types of your Cloud Services, the amount of your monthly recurring charges shall be adjusted accordingly. The Service Term for any additions or changes shall be coterminous with the Initial Service Term, or any Service Renewal Term in effect at the time, and the terms of this Agreement shall apply. For the avoidance of doubt, notwithstanding anything to the contrary in your Service Order, any mid-Service Term reduction of your Entitlements, whether through a change order or by self-provisioning or otherwise, will result in Early Termination Fees per Section 7.7.

**7.4 Service Suspension.** Except to the extent precluded by applicable law, we may at our sole discretion, and without prior notice to you, suspend (or any Users') Cloud Services without liability if: (i) we reasonably conclude that you or a User(s) has conducted itself in a way: (a) that is not consistent with our Acceptable Use Policy, Fair Use Policy, the Documentation or Applicable Law; (b) that subjects us to potential liability or interferes with our other customer's use of the Cloud Services; or (c) that breaches the Agreement; (ii) we deem it reasonably necessary to do so to respond to any actual or potential security concern; (iii) any underlying arrangement with our operators or suppliers is terminated or suspended for whatever reason; (iv) you fail to cooperate with any investigation; (v) we are conducting scheduled or emergency maintenance; (vi) it is necessary to protect our networks or customers; or (vii) it is necessary to comply with Applicable Law.

**7.5 Termination by Mitel.** In addition to our suspension rights set out in Section 7.4 above, we may terminate this Agreement: (i) upon thirty (30) days' prior written notice if: (a) you (or any User) breach the Agreement and such breach remains uncured at the expiration of such period; or (b) you become the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; (ii) with immediate effect if any legal or regulatory change is introduced which affects our ability to provide the Cloud Services or Hardware, including but not limited to any new authorization or license becoming necessary or any existing authorization or license under which we operate expiring or being revoked, and (iii) with immediate effect if your account is suspended and such suspension is not your first suspension. In the event Mitel terminates in accordance with (i) or (iii) above, we will close your account and you agree to pay us, within thirty (30) days of the effective date of termination, all outstanding amounts and the Early Termination Fee. The parties agree that the Early Termination Fees are a reasonable estimate of anticipated actual damages and not a penalty.

**7.6 Termination by Customer for Breach.** You may terminate this Agreement upon thirty (30) days' prior written notice if we materially breach the Agreement and such breach remains uncured at the expiration of such period.

**7.7 Termination by Customer for Convenience.** You may terminate this Agreement, or a portion of Entitlements, for your convenience prior to the expiration of this Agreement provided: (i) you (through a representative authorized to bind Customer) request such termination by phone: (a) to Mitel at 1-800-418-2215, where your Primary Jurisdiction is in Canada or the United States of America, or (b) to your Mitel designated standard Customer support number for all other Primary Jurisdictions; (ii) following such phone call to Mitel, you provide written notice to Mitel confirming termination in accordance with Section 15.5; and (iii) you pay us, within thirty (30) days of the effective date of termination, the Early Termination Fees. The parties agree that the Early Termination Fees are a reasonable estimate of anticipated actual damages and not a penalty. For clarity, if you terminate the Agreement, all of your Entitlements will be deemed to have been also terminated by you.

**7.8 Effect of Termination.** Termination of the Agreement will result in termination of the Service Term. Upon termination of the Agreement, Users shall

cease all use of the applicable Cloud Services and delete, destroy, or return to us all copies of the applicable Documentation in your or their possession or control. Except as required by law, we will promptly, and in any event in no less than ninety (90) days, delete (i.e. putting beyond practicable use) Customer Data and Use Records. We may retain billing records (and breakdowns) for at least twelve (12) months following termination. You shall immediately return, at your cost, all rental Hardware to us in accordance with the directions we provide to you.

## **8. HARDWARE**

**8.1 Delivery.** Where applicable, we will deliver Hardware FCA (Incoterms 2010) shipping point on the date mutually agreed between us and you. Unless stated otherwise herein, we may substitute Hardware, or any component thereof, listed in your Service Order with comparable new equipment of equivalent functionality.

**8.2 Title, Risk of Loss and Security Interest.** Where you purchase Hardware from us without third party financing: (i) title and risk of loss to the Hardware will pass to you upon shipment, and (ii) you grant to us a security interest in the Hardware until you have paid us in full for it (and you authorize us and shall assist us, as necessary, to file any forms necessary for us to perfect our security interest in the Hardware.) In the event you elect to finance your purchase using a third-party financier, title shall pass to such third-party financier upon payment in full for the Hardware, unless the parties agree otherwise. If Hardware rental is available in your jurisdiction and you rent Hardware as part of your Service Fee, title to the Hardware shall remain with us, except as set out herein. You agree to maintain adequate commercial general liability insurance to reimburse us for the replacement cost (i.e. non-depreciated cost) of any Hardware lost, damaged or destroyed while in your control and you agree to furnish a copy of your insurance to us on request. We reserve the right to provide rental Hardware which is new or is remanufactured and certified to meet Hardware specifications. In no event will you export rented Hardware (or use rented Hardware) outside of the jurisdiction the rental Hardware is intended to be used in as specified on your Service Order.

## **9. IP & FEEDBACK**

**9.1 Ownership.** Subject to the limited rights expressly granted hereunder, we reserve all right, title and interest in and to: (i) the Cloud Services; (ii) any and all Documentation and any of our Confidential Information provided or disclosed to you and Users; (iii) any and all derivatives, enhancements or improvements of the foregoing (i) or (ii); and (iv) any and all intellectual property rights contained in the foregoing (i), (ii), and (iii). No rights are granted to you except as expressly set out in this Agreement. You acknowledge that: (a) you and Users have no ownership, interest or goodwill in any telephone numbers issued in support of this Agreement; and (b) termination of the Cloud Services for any reason will result in immediate loss of all telephone numbers associated with the Cloud Services unless they are ported to another service provider prior to termination of those services.

**9.2 Feedback.** You and Users may provide us with feedback on, and/or suggestions for improvements (or other changes) to, the Cloud Services, Documentation, Confidential Information or other Mitel technology (individually and collectively **"Feedback"**). Even if you designate such Feedback as confidential or proprietary information, we will not be bound by any confidentiality obligations in respect of such Feedback. You hereby grant us a worldwide, irrevocable, perpetual, sublicensable license to use, and commercially exploit, Feedback in any manner. You will not knowingly provide us Feedback that is subject to third party intellectual property rights or confidentiality restrictions.

## **10. CONFIDENTIALITY**

**10.1 Confidentiality.** As used herein, **"Confidential Information"** means all confidential or proprietary information of a party (**"Disclosing Party"**) disclosed to the other party (**"Receiving Party"**) that is designated in writing as confidential or that in the circumstances is, or ought to be known, to be confidential or proprietary. Confidential Information shall not include Customer Data, Use Records, or information which: (i) is known publicly; (ii) is generally known in the industry before disclosure; (iii) has become known publicly,

without fault of the Receiving Party, subsequent to disclosure by the Disclosing Party; or (iv) 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 the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. The Receiving Party agrees that monetary damages for breach of confidentiality may not be adequate and that, if necessary, Disclosing Party shall be further entitled to seek injunctive relief.

## **11. WARRANTIES & DISCLAIMERS**

**11.1 Hardware Warranty.** All Hardware components will be free from defects in material and workmanship under normal use and will perform in substantial compliance with the manufacturer's specifications for the applicable warranty period. The exclusive remedy and recourse for you under this Hardware warranty is for us, at our election, to repair, replace or modify the defective parts. We may utilize remanufactured, certified parts that meet the specifications. Such replacement parts will be covered for the remainder of the existing Hardware warranty. Any part removed shall become our property. For Hardware you purchase, the Hardware warranty set out in this Section 11.1 shall be valid for a period of twelve (12) months following shipment of the Hardware to you. For Hardware you rent, the Hardware warranty shall be valid during the Service Term. The foregoing Hardware warranty shall become void if one of the following occurs: (i) the Hardware is not used properly in accordance with the manufacturer's specifications and operating instructions or otherwise is abused, damaged, or negligently serviced or maintained by anyone other than us or our authorized dealer; (ii) work is performed on the Hardware by anyone not authorized by us; (iii) the Hardware is installed or used in combination or in assembly with products that are either not approved by us or not compatible with the Cloud Services. The Hardware warranty excludes parts you have supplied and expendable or personal use items such as batteries, headsets, paper, cabling or non-Mitel telephone sets. Warranties are predicated on us receiving timely written notice of any nonconformity with as much specificity as is known and as soon as you become aware of such nonconformity, but in any event prior to the expiration of the relevant warranty period. We shall have the right to inspect and test the Hardware and the associated local area network and communications infrastructure to determine, in our reasonable discretion, whether the nonconformity is covered under the applicable warranty.

**11.2 Disclaimer of Warranties.** Except as expressly provided herein, (i) You acknowledge and agree that the Cloud Services and Hardware are provided on an "as is", and "as available" basis; and (ii) we expressly exclude all implied warranties, terms and conditions including but not limited to fitness for purpose, satisfactory quality or non-infringement of title to the maximum extent permitted by law. We do not warrant that (a) the Cloud Services or the Hardware will meet your or User requirements or that the operation of the Cloud Services and the Hardware will be uninterrupted or error-free; (b) the Cloud Services or the Hardware will prevent toll fraud, unauthorized access, loss or theft of electronic data, or invasion of privacy; (c) all errors in the Cloud Services and Hardware can be corrected; (iv) Customer Data will not be lost or corrupted; (d) Emergency Services will not fail, including but not limited to, in those circumstances in which you are using call forwarding, call redirection or blocking services, where the call fails to be delivered or is dropped for any reason where there is network congestion, device misconfiguration, power loss, broadband outages, third-party interference, where you have not paid your bill, and/or when the emergency callback number is configured to ring a phone at a different location than the User's VoIP device; or (e) enhanced Emergency Services, if available, will not revert back to traditional Emergency Services. It is your sole responsibility to back up Customer Data and to ensure that all information required to deliver automated dispatchable location (e.g., office/campus map) and/or other information required to identify Users' precise

locations is and remains accurate.

**11.3 No Hazardous Environments.** You acknowledge and agree that neither the Cloud Services nor the Hardware are sufficiently fault-tolerant for life-safety operations and neither is designed, manufactured or intended for use in or in conjunction with control equipment in hazardous environments, including without limitation the operation of nuclear facilities, aircraft navigation or critical communications systems, air traffic control, life support devices or transportation control. You will not and will require that Users will not use the Cloud Services or Hardware for any purpose listed in this Section 11.3 and we will have no liability as a result of any attempt to do so.

## **12. LIMITATION OF LIABILITY**

**12.1 LIMITATION, EXCLUSION AND APPLICATION.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (I) IN NO EVENT SHALL WE BE LIABLE FOR THE FOLLOWING DAMAGES DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE IMPLEMENTATION SERVICES, THE CUSTOMER DATA, THE CLOUD SERVICES INCLUDING WITHOUT LIMITATION USE AND/OR FAILURE OF EMERGENCY SERVICES OR THE CONDUCT OF ANY LOCAL EMERGENCY RESPONSE SERVICE CENTER OR NATIONAL EMERGENCY RESPONSE SERVICE CENTER, OR HARDWARE: (A) ALL INDIRECT, ECONOMIC, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL AND PUNITIVE DAMAGES; AND (B) ALL DAMAGES FOR LOST PROFITS, REVENUE OR EARNINGS, LOST, HACKED OR CORRUPTED DATA, UNAUTHORIZED ACCESS TO DATA OR THE CLOUD SERVICES, DELAYS OR FAILURE TO TRANSMIT OR RECEIVE ANY DATA, BUSINESS INTERRUPTION, FAILURE TO REALIZE EXPECTED SAVINGS AND COST OF SUBSTITUTE SOFTWARE, HARDWARE OR SERVICES; (II) IN NO EVENT SHALL OUR TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE IMPLEMENTATION SERVICES, THE CUSTOMER DATA, THE CLOUD SERVICES INCLUDING WITHOUT LIMITATION USE AND/OR FAILURE OF EMERGENCY SERVICES OR THE CONDUCT OF ANY LOCAL EMERGENCY RESPONSE SERVICE CENTER OR NATIONAL EMERGENCY RESPONSE SERVICE CENTER, AND ANY HARDWARE EXCEED THE AMOUNTS RECEIVED BY MITEL FROM YOU (OR FROM YOUR MITEL AUTHORIZED RESELLER) FOR THE APPLICABLE ENTITLEMENTS IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO THE LIABILITY; AND (III) THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET OUT IN THIS AGREEMENT SHALL APPLY: (A) WHETHER AN ACTION, CLAIM OR DEMAND ARISES FROM A BREACH OF WARRANTY OR CONDITION, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTORY LIABILITY OR ANY OTHER THEORY OF LIABILITY; (B) WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR POSSIBILITY HAS BEEN DISCLOSED TO US; AND (C) TO US, OUR AFFILIATES, AND THEIR RESPECTIVE SERVICE PROVIDERS AND SUPPLIERS, SUCCESSORS AND ASSIGNS AND (D) EVEN IF YOUR REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

**12.2 Time Limit.** No action arising out of this Agreement may be brought by Customer more than eighteen (18) months after the cause of action has arisen.

## **13. INDEMNIFICATION**

**13.1 Our Indemnification Obligations.** Subject to 13.2, we will indemnify, hold harmless and defend you against any loss, damage or cost (including reasonable legal fees) incurred in connection with claims, actions, demands, suits, or proceedings (each a "Claim") made or brought against you by a third party alleging that the Cloud Services and/or the Documentation infringes a valid United States, Canadian, United Kingdom or European intellectual property right other than a patent reading on a standard (e.g. IEEE) whether essential or not. This section 13.1 shall not apply to any Claim resulting from: (a) the combination of the Cloud Services with any hardware, software, system, or service which is not owned, supplied, and/or developed directly by us; (b) our implementation of any design you or Users provide to us; (c) your or Users failure to implement corrections or modifications provided by us if implementation would prevent the infringement, or (d) your or Users alteration or modification of the Cloud Services. This Section 13.1 states our sole liability and your exclusive remedy for any Claims covered under this Section 13.1. In the event of an intellectual property right Claim, we may in our sole option and without further obligation to you either (a) obtain the right for continued use of the Cloud Services and Documentation; (b) replace or modify the Cloud Services and

Documentation so that it becomes non-infringing; or (c) if such remedies are not reasonably available, terminate this Agreement.

**13.2 Customer's Indemnification of Mitel.** You agree to indemnify, hold harmless and if requested by us, defend us against any loss, damage or costs (including reasonable legal fees) incurred in connection with a third party Claim made or brought against us arising from or relating to: (i) any act, error, omission, fault, negligence, or misconduct by you or any User; (ii) your or any User's breach of the Agreement including without limitation the Acceptable Use Policy and Fair Use Policy; (iii) your or a User's use of the Cloud Services or Hardware; (v) your, or any User's, breach of Applicable Law; (vi) Customer Data and (vii) your failure to properly inform Users of the applicable obligations under this Agreement in advance of and during the provision of services, including, but not limited to, those with respect to the Cloud Services' emergency service limitations.

**13.3 Mutual Provisions.** Each party's indemnity obligations are subject to the following: (i) the indemnified party promptly notifying the indemnifier in writing of the Claim provided that any failure by the indemnified party to promptly notify the indemnifying party will not relieve the indemnifying party of its obligations except to the extent that indemnifying party is materially prejudiced by the delay; (ii) the defending party shall have sole control of the defense and all related settlement negotiations with respect to the Claim (provided that except to the extent we are defending a claim against us, the defending party may not settle any Claim unless it unconditionally releases the aggrieved party of all liability and obligation; and (iii) the indemnified party, at the indemnifier's cost, providing reasonable assist in the defense of such Claim. If we have requested you to defend a claim, and we, at any time, have a reasonable basis to believe that you cannot or may not be able to fulfill your obligations under this Section 13, then, without limiting your obligations under this Section 13, we shall be entitled to provide you notice that we have decided to become the defending party, and thereafter to assume control of the defense and/or settlement of any such claim. Once we have notified you that we will be seeking an indemnity, unless otherwise expressly agreed in writing, all communications (including the notice) will be deemed our confidential information, which you may not disclose to any third party, other than your legal advisors, without our prior express written permission, and in addition, all communications in respect of any such claim shall be subject to common interest privilege.

## 14. CUSTOMER SUPPORT

**14.1 Customer Support.** Support may vary depending on the Cloud Services ordered. We will provide support as described, as updated from time to time, at <https://www.mitel.com/legal/mitel-cloud-services-terms-and-conditions>.

## 15. GENERAL

**15.1 Mitel Entity.** "Mitel", "we", our and "us" means the following, where your Primary Jurisdiction is in: (i) **Canada or the United States of America:** Mitel Cloud Services, Inc. with registered office is at 2160 W. Broadway, Suite 103, Mesa, AZ 85202; (ii) **United Kingdom, Australia or Europe (with the exception of France and Germany):** Mitel Networks Limited, with registered office is at Castlegate Business Park, Caldicot, Monmouthshire, Wales NP26 5YR; (iii) **France:** Mitel France SAS, with registered office is a 1 rue Arnold Schoenberg, 78286 Guyancourt Cedex, France; or (iv) **Germany:** Mitel Deutschland GmbH, with registered office is at Zeughofstrasse 1, 10997 Berlin, Germany.

**15.2 Affiliates.** We may use (and disclose Customer Data and Use Records to) one or more global affiliate(s), partners and/or service providers in order to perform our obligations under this Agreement.

**15.3 Changes.** We may make changes to this Agreement and any document referred herein from time to time by posting a new version at <https://www.mitel.com/legal/mitel-cloud-services-terms-and-conditions>. The changes are effective and deemed accepted by you on the date the new version is posted. However, if we modify the Agreement in a manner which, in our sole opinion, is likely to cause a material detrimental impact on you or Users (e.g. if we significantly reduce rights or increase obligations) and our change is not in response to a change in legal or regulatory requirements, or a material change in our business, the changes will become effective thirty (30) days after we

provide you written notice (by invoice, email or, if an online portal is made available with the Cloud Services, posting notice at the portal). If during the thirty (30) day notice period, you provide us with a written objection directly or through your Authorized Partner, the changes will not become effective until the beginning of your next Service Renewal Term. Nothing in this Section 15.3 will relieve you of payment of any already incurred Service Fees.

**15.4 Use Outside of Primary Market.** While Cloud Services are intended for use within the jurisdiction identified on your Service Order (your "Primary Jurisdiction"), cloud services are nomadic by nature and may be globally accessible via a broadband Internet connection. You acknowledge that i) regulation of IP-based telephony services varies significantly from jurisdiction to jurisdiction, ii) certain internet service providers (ISPs) may impose contractual restrictions on the use of their services for IP-based telephony, and iii) Emergency Services may not operate outside of the Primary Jurisdiction. Before using our Cloud Services in a jurisdiction outside your Primary Jurisdiction, you should consult with local counsel for advice regarding use of such. You shall be solely responsible and liable for any violation of local law or breach of third-party contract terms resulting from such use, regardless of whether we have consented to such use.

**15.5 Notices.** Except as otherwise set out in this Agreement, any notice provided hereunder shall be in writing and delivered by hand or sent by registered mail or courier to the address set out below and will be effective and deemed delivered upon receipt. Notwithstanding the foregoing, we may send you notice by electronic means, such as .pdf, email, which shall be deemed delivered on the business day following the day on which it was sent. If to us, the address set out in Section 15.1 with a copy to our legal department at 4000 Innovation Drive, Kanata, ON, K2K 3K1. If to you, the address will be the address set out in your Service Order or the online portal, where available.

**15.6 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 you agree that we may profile you, or disclose that you are our customer, in standard marketing materials, including press releases, corporate presentations and digital properties and/or other marketing vehicles as we may deem appropriate.

**15.7 Force Majeure** We will not be liable for any failure or delay in our performance under the Agreement, due to any cause beyond our 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 our reasonable control.

**15.8 Assignment.** You may not assign your rights or delegate your duties under the Agreement either in whole or in part without our prior written consent, which will not be unreasonably withheld. The Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

**15.9 Severance.** To the extent that any portion or provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that portion or provision shall be deemed not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that portion or provision in any other jurisdiction.

**15.10 No Waiver.** No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or otherwise.

**15.11 Applicable Law and Dispute Resolution.** This Agreement is to be governed by and construed under the laws specified below, excluding any body of law governing conflicts of laws and the 1980 United Nations Convention on Contracts for the International Sale of Goods, and disputes arising out of or in connection with this agreement are to be resolved in accordance with the following: (i) where your Primary Jurisdiction is in Canada, the laws of the Province of Ontario,

Canada. The courts of the Province of Ontario will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement and the Parties hereby agree to submit to the jurisdiction of the courts of Province of Ontario; (ii) where your Primary Jurisdiction is in the United States of America (including its territories, protectorates or overseas regions), the laws of the State of Arizona, United States. The courts of the State of Arizona will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement and the Parties hereby agree to submit to the jurisdiction of the courts of State of Arizona. (iii) Where your Primary Jurisdiction is in Europe or Australia, the laws of England and Wales. The courts of England will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement and the Parties hereby agree to submit to the jurisdiction of the courts of England.

**15.12 No Jury Trial.** The Parties specifically agree that disputes shall not be resolved by jury trial and hereby waive all rights to a trial by jury in any matter related to or arising from this Agreement. No dispute between the Parties, or involving any person but you, may be joined or combined together, without our prior written consent.

**15.13 Entire Agreement.** This Agreement is the complete agreement and understanding of the parties with respect to the subject matter hereof and supersedes any other agreement or understanding, written or oral, between the parties with respect to the subject matter hereof. Neither party has entered into this Agreement in reliance upon (and shall have no liability in respect of) any term or representation other than those expressly set out in this Agreement (provided that nothing in this Agreement shall limit either party's liability for fraudulent misrepresentation). Additional terms and conditions may be presented to you by a Mitel authorized partner. Without limiting the generality of the foregoing, you acknowledge and agree that any additional terms provided by a Mitel authorized partner do not form part of this Agreement and do not bind us in any way, including terms for services provided directly by such partner or any terms that purport to modify this Agreement. In the event of an inconsistency between these Terms and the Service Order, these Terms shall govern. Both parties represent and warrant that they have full corporate power and authority to execute this Agreement and to perform their obligations hereunder and that each person whose signature appears and any Service Order (and the Terms (if applicable)) is duly authorized to execute such document on behalf of the respective party.

**15.14 Surviving Provisions.** The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the performance hereof shall so survive the completion of performance, cancellation or termination of this Agreement. Without limiting the generality of the foregoing, the parties agree that any limitations of liability, exclusions, and disclaimers of warranties and indemnification obligations are essential to the parties' entering into this Agreement and will survive the termination of the Agreement and will apply even if the Agreement is found to have failed of its essential purpose.

## **16. JURISDICTION SPECIFIC TERMS**

**16.1 Australia.** The following shall apply in respect of Cloud Services intended for use in Australia (as set out in the Service Order): (i) the Telecommunications Numbering Plan sets out rules for issuing, transferring and changing telephone numbers. We must comply with the Telecommunications Number Plan. In using the Cloud Services, you and Users must not do anything that would be inconsistent with the Telecommunications Numbering Plan or that would adversely affect our ability to comply. You acknowledge that if we provide an out-of-area number, that number may not be able to be ported to another service provider in the future, and calls to and from the number will be charged as if located in the area identified by the number; (ii) you may report unwelcome communication complaints to us; (iii) we will provide reasonable assistance to support connecting smart numbers from ACMA to the Cloud Services; (iv) in addition to the permitted uses and disclosures set out in Section 5.1, we reserve the right to use and disclose Customer Data and Use Records to third parties if we determine, in our reasonable judgement, that disclosure relates to information contained in the Integrated Public Number Database or other disclosure permitted pursuant to Part 13 of the Telco Act the Telecommunications Act 1997 (Cth); (v) if you are being billed for Cloud Services in Australia and the User's employer has less than twenty full-time employees and an

annual turnover of less than AUD\$3,000,000: (a) for complaints with the Cloud Services, you should contact us using the details set out in the Complaints Code of Practice available upon request. If your complaint is resolved in accordance with our Complaints Code of Practice within eight (8) weeks, you can refer the complaint to the Telecommunications Industry Ombudsman, our approved alternative dispute resolution provider, who will review your complaint for free; and (b) our Small Business Critical Information Summary and credit management practices are available upon request and (vi) where neither party provides notice of its' intent not to renew your Entitlements prior to the end of the Initial Service Term, or a 12 month Service Renewal Term, in accordance with Section 7.2, notwithstanding Section 7.2, your Entitlements (including any Entitlements added or changed and in effect at the time of renewal) shall automatically renew on a month-to-month basis. Once your Service Renewal Term renews on a month-to-month basis, notwithstanding Section 7.2, either party may provide notice of non-renewal by providing notice on, or before, the last day of the month prior to the desired last month of service (for example, if a customer on a month-to-month Service Renewal Term wants to terminate service on July 30<sup>th</sup>, 2023, they must provide written notice by June 30<sup>th</sup> 2023).

**16.2 Belgium.** In addition to the provisions set out in Section 16.4, the following shall apply in respect of Cloud Services intended for use in Belgium (as set out in the Service Order): (i) where the Service Order includes five or fewer Belgian phone numbers, and you terminate this Agreement or a portion of your Entitlements for convenience pursuant to Section 7.7 (Termination by Customer for Convenience) within the first six (6) months of the Initial Service Term, you will be entitled to pay a reduced early termination fee equal to six (6) of the monthly recurring Service Fees less what you have already paid during the initial six (6) months of that Service Order. Following that first six (6) month period, the Early Termination Fees shall apply; (ii) an alternative dispute resolution scheme is available free of charge for disputes you are unable to resolve with us. Details of the scheme are available upon request; and (iii) due to Belgian law, we are required to block Emergency Services within Belgium. You warrant that you will inform Users that Emergency Services are not available prior to their first use. You agree to indemnify, hold harmless and if requested by us, defend us against any loss, damage or costs (including reasonable legal fees) incurred in connection with a Claim made or brought against us arising from or relating to your failure to notify Users that Emergency Services are blocked.

**16.3 Canada.** The following shall apply in respect of Cloud Services intended for use in Canada (as set out in the Service Order): (i) Customer Data and Use Records may be processed and/or stored in the United States; (ii) may be accessed by the courts, law enforcement and national security authorities, including, but not limited to, those of the United States, in accordance with Applicable Law; (iii) VoIP 9-1-1 service has certain limitations relative to Enhanced 9-1-1 service that is available on most traditional telephone service; (iv) Mitel may disclose to the CRTC that you and Users have acknowledged the E911 disclosure by virtue of you having accepted this Agreement, and (v) in line with the CRTC's MLTS Best Practice Guidelines which can be found at <https://crtc.gc.ca/eng/phone/911/multi.htm>, Mitel recommends that you configure your MiCloud Connect environment to take advantage of the automatic location detection and emergency notification features described in Section 3.3 and 3.5 respectively. Without limiting Section 4.1, we reserve the right to increase Service Fees at any time during the Service Term upon no less than sixty (60) days' notice in advance of the effective date of such increase, and any such increase will be effective as described in the applicable notice. Notwithstanding Section 7.2 of these Terms, Mitel reserves the right to terminate your Service Term (including this Agreement), on no less than ninety (90) days notice to you, in the event that Mitel terminates substantially all Canadian customer contracts for the platform which delivers your Cloud Services (e.g. Mitel provides an end of life notice for a cloud services platform). In the event Mitel terminates in accordance with this section, we will close your account and you agree to pay us, within thirty (30) days of the effective date of termination any unpaid Service Fees accrued up to the date of termination.

**16.4 Europe and UK.** In addition to the relevant country specific provisions set out in this Section 16, the following shall apply in respect of Cloud Services intended for use in the European Economic Area and the UK (as set out in the Service Order): (i) You consent to our use of traffic and/or location data contained in Use Records for billing purposes; (ii) in countries where directories



are mandated by Applicable Law, we will provide directory providers with basic directory information in relation to Users unless we have been advised in writing not to do so; and (iii) alternative dispute resolution arrangements with independent third parties are available in a number of European countries. Details of the relevant schemes are listed in the country specific terms in this Section 16. If you have less than 10 personnel, you may be a 'microenterprise or small enterprise customer' or a 'not-for-profit customer' in which case you waive the right to: (i) have this contract or a contract summary provided in a durable medium; (ii) be notified when your usage of any Cloud Services based on volume or time limits reaches the limit of your tariff plan; and (iii) be notified thirty (30) days prior to expiration of the Service Term.

**16.5 Germany.** In addition to the provisions set out in Section 16.4, the following shall apply in respect of Cloud Services intended for use in Germany (as set out in the Service Order): (i) if we do not accept the Service Order within one month of it being provided to us, you may revoke the Service Order and it shall be null and void; (ii) in the event that you make a claim against us for pecuniary losses resulting from our unintentional acts then any resultant claim made will be limited to the amounts we received from you (or from your Authorized Reseller) for the Cloud Services in the twelve (12) month period immediately prior to the incident giving rise to the liability, provided however, that where such amounts are less than €12,500, the amounts received shall be deemed to be €12,500; and (iii) an alternative dispute resolution scheme is available free of charge for disputes you are unable to resolve with us. Details of the scheme are available upon request.

**16.6 South Africa.** The following shall apply in respect of Cloud Services intended for use in South Africa (as set out in the Service Order): (i) you agree that Section 15.3 provides you with notice of a change to this Agreement within a fair and reasonable period; (ii) details of our standard fees and charges for Cloud Services purchased directly from us are available upon request; and (iii) an alternative dispute resolution scheme is available free of charge for disputes you are unable to resolve with us. Details of the scheme are available upon request.

**16.7 Switzerland.** In addition to the provisions set out in Section 16.4, the following shall apply in respect of Cloud Services intended for use in Switzerland (as set out in the Service Order): If you have a complaint with the Cloud Services, you can refer your complaint to Ombudscm. You acknowledge and agree that while we will comply with any request for information which Ombudscm may make, we are not legally bound by any conclusion drawn by Ombudscm.

**16.8 United Kingdom.** The following shall apply in respect of Cloud Services intended for use in United Kingdom (as set out in the Service Order): (i) subject to the emergency service terms, Emergency Services calls can be made within England, Wales, Scotland and Northern Ireland; (ii) you acknowledge that the quality of calls via the Cloud Services depends on the specification and availability of the underlying broadband and/or telecommunications services used by each party to the call; (iii) nothing in this Agreement excludes or limits our liability for fraud, death or personal injury caused by our negligence, or for any liability that cannot be excluded or limited by law; (iv) no express term of this Agreement nor any term implied under it is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it; (v) Mitel Networks Limited is authorized to do business in the United Kingdom; (vi) if you are billed for your Cloud Services within the United Kingdom and the User's employer has less than ten (10) employees (including contract employees) that employer will be considered a "microenterprise or small enterprise customer" or "not-for-profit-customer" and notwithstanding anything to the contrary in the Service Order, the automatic renewal set out in Section 7.2 shall not apply. If the Initial Service Term is more than two years, you expressly waive your right to a shorter committed period; (vii) if you have a complaint with the Cloud Services, you should contact us using the details set out in the Complaints Code of Practice available upon request; (viii) if you are a microenterprise or small enterprise customer or a not-for-profit customer, an alternative dispute resolution scheme is available free of charge for disputes you are unable to resolve with us. Details of the scheme are available upon request; (ix) details of our standard fees and charges for Cloud Services purchased directly from us with in the United Kingdom are available upon request; (x) details of our standard fees and charges for number porting purchased are available upon request. Our porting obligations under Section 5.1 shall apply in relation to all Cloud Services

which involve the use of a number from the UK national numbering plan and we will comply with the number porting laws and regulations; and (xi) we will take reasonable steps to ensure that the transfer of numbers and subsequent activation is completed as soon as reasonably practicable in accordance with Applicable Law. You acknowledge that the timing of any such transfer can be impacted by certain technical and procedural requirements in relation to number transfers, including where we need to secure an agreement with another communications provider relating to number transfers. You may be entitled to claim compensation for delays caused by us in transferring numbers; and (xii) we will provide you with notice of any changes to these Terms (unless they are required by a change in laws or are purely administrative with no negative impact on you) and you may terminate this Agreement in writing without having to pay any Early Termination Fees provided that such notice is served within one month after our notification of the changes to these Terms. Without limiting Section 4.1, we reserve the right to increase Service Fees at any time during the Service Term upon no less than sixty (60) days notice in advance of the effective date of such increase, and any such increase will be effective as described in the applicable notice. Notwithstanding Section 7.2 of these Terms, Mitel reserves the right to terminate your Service Term (including this Agreement), in the event that Mitel terminates substantially all United Kingdom customer contracts for the platform which delivers your Cloud Services (e.g. Mitel provides an end of life notice for a cloud services platform) provided that: (a) Mitel will provide you with at least 60 days' written notice of termination; and (b) you will not be liable for any Service Fees in respect of any period after the date of termination and, to the extent that you have prepaid any Service Fees in respect to any period after the termination date, Mitel will refund you the Service Fees paid by you in respect of such period.

**16.9 United States.** The following shall apply in respect of Cloud Services intended for use in United States (as set out in the Service Order): (A) Mitel may disclose to the FCC that you and Users have acknowledged the E911 Disclosure by virtue of Customer having accepted this Agreement. Without limiting any of your obligations under Section 3, you understand and agree that you must provide us with a dispatchable location for each fixed device used with the Cloud Services; and (B) You have a right to have your CPNI protected, and we have a duty to protect your CPNI. You also have the right to restrict use of, disclosure of, and access to your CPNI, consistent with Federal Law. Under the Communications Act of 1934, as amended, and the FCC's rules, Mitel may use your CPNI: (i) for any of the purposes set out in 47 U.S.C. § 222(c) & (d) and 47 C.F.R. § 64.2005, without customer approval; or (ii) for other purposes, with appropriate customer approval. For purposes of this Section 16.9: "CPNI" has the same meaning given to such term in 47 U.S.C. § 222(h)(1); "**dispatchable location**" means a location that consists of a validated street address, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the device; and "**fixed device**" means a device which cannot be moved by a User without administrative intervention (e.g. an analog (or digital) phone plugged into a traditional telephone jack which, through fixed in-building wiring (e.g. within floors, ceilings, walls etc.), uses an analog telephone adapter or similar device, to connect to the Cloud Services.) The following devices are not fixed devices: (i) internet protocol ("IP") phones which can connect to the Cloud Services through any office ethernet jack or wireless network, (ii) teleworker enabled IP phones, and (iii) softphones operating on desktop, laptop or mobile devices. Without limiting Section 4.1, we reserve the right to increase Service Fees at any time during the Service Term upon no less than sixty (60) days' notice in advance of the effective date of such increase, and any such increase will be effective as described in the applicable notice. Notwithstanding Section 7.2 of these Terms, Mitel reserves the right to terminate your Service Term (including this Agreement), on no less than ninety (90) days notice to you, in the event that Mitel terminates substantially all United States customer contracts for the platform which delivers your Cloud Services (e.g. Mitel provides an end of life notice for a cloud services platform). In the event Mitel terminates in accordance with this section, we will close your account and you agree to pay us, within thirty (30) days of the effective date of termination any unpaid Service Fees accrued up to the date of termination.

## **17. SPECIFIC TERMS FOR CERTAIN AUTHORIZED PARTNERS**



Powering connections

**17.1** Where, as an Authorized Partner, you are permitted under your partner agreement with Mitel to resell our Cloud Services to your customers pursuant to your own terms, provide Entitlements directly to Users and add your own value-added services, the following additional terms apply: (i) you are the Customer under this Agreement; and (ii) you must ensure that each of your customers and their associated Users agree to be bound by these Terms to the extent they are applicable to such customers and Users. In addition, you agree to make us a beneficial third party entitled to enforce such terms and conditions which, for the avoidance of doubt, includes all policies referenced herein; (iii) in addition to the requirements regarding Users specified in Section 3.7, you are required to ensure your customers and their Users provide you with a specific acknowledgement with respect to the Emergency Services limitations; (iv) where required by law, you agree to file a declaration of your intention, or obtain a license, to provide communication services prior to providing service to Users and maintain compliance with such declaration or license as required by the governing regulatory body. If you become aware of any User(s) breach of these Terms, you will immediately notify us and suspend the User(s) use of the services until otherwise agreed by us.

**17.2** With respect to the subject matter of these Terms, in the event there is conflict between these Terms and your partner agreement with us, precedence shall follow in that order.

## **18. WHOLESALE.**

**18.1 Wholesale Provider Emergency Services Requirements.** If you are a Wholesale Provider, you are the manager and operator of your Cloud Services, and as such, responsible to configure your Cloud Services for, and fully implement, automated dispatchable location, where technically feasible, such that service you provide to your customers is compliant with US federal law, specifically the FCC's rules found in 47 CFR Part 9 ("US Law"). We encourage you to reach out to experienced telecom counsel in relation to US Law.

**18.2 Wholesale User Emergency Services.** If you are a Wholesale User, your Wholesale Provider, as the manager and operator of your Cloud Services is responsible to configure your Cloud Services for, and fully implement, automated dispatchable location, where technically feasible. You should contact your Wholesale Provider in respect of your emergency services.