

## MITEL SERVICES SUPPLEMENTAL TERMS

Before purchasing Services (as defined below), please read these Services Supplemental Terms ("**Service Terms**"). These Services Terms, and all documents referred to in them, and any amendment or addendum referencing these Terms entered into by the parties in combination with your Service Order and statement of work ("**SOW**") and/or service specification, form a binding agreement between you and us ("**Agreement**"). Pursuant to this Agreement, you and users will be provided with the Services.

### 1 Services

- 1.1 Mitel shall provide the services set forth in the applicable statement of work or service specification, including the provision of any Deliverable set out therein (the "**Services**"). Customer shall provide any assistance and cooperation necessary or convenient to facilitate the Services. Nothing in these Service Terms shall prevent Customer from performing for itself or acquiring from other providers the same or similar services, nor prevent Mitel from providing the same or similar services to other customers (subject to confidentiality and intellectual property obligations set forth below). "**Deliverable(s)**" means any work product resulting required to be delivered by Mitel to Customer pursuant to a SOW or service description.
- 1.2 Mitel may perform the Services on a global basis. In doing so, Mitel may employ subcontractors, but Mitel will be responsible and liable for such subcontractors' acts and omissions related to these Service Terms.

### 2 Service Standard

- 2.1 The Services will be performed: (a) in a professional and workmanlike manner; (b) using personnel of required skill, experience, licenses, and qualifications; (c) in accordance with the terms and subject to the conditions set forth in these Service Terms; (e) in accordance with generally recognized industry standards in Mitel's field. Deliverables, if applicable, will conform to the specifications set forth in the applicable SOW or service description for a period of six 6 months following Acceptance.
- 2.2 In the event of a breach of this subsection 2.1, Mitel, at its own expense, shall: (i) promptly re-perform the Services or repair and redeliver the Deliverable in question, or (ii) terminate the affected portion of the SOW and provide a refund to Customer for the non-conforming Services or Deliverable. If a Deliverable is non-conforming, and a refund is provided, Customer's license to any such Deliverable shall immediately terminate. The preceding sentence, in conjunction with Customer's right to terminate these Service Terms for breach where applicable, states Customer's sole remedy and Mitel's entire liability for breach of this Section 2 (Service Standard).

### 3 Completion of Services

- 3.1 One-time, non-recurring, services ("**One-Time Services**") such as implementation services shall be considered complete upon Customer's acceptance of the final Deliverable. If there are no Deliverables, One-Time Services will be considered complete when Mitel completes all work set out in the SOW or service description.
- 3.2 Recurring services such as subscription based "managed services" shall be performed during the term set out in the Service Order.

### 4 Deliverables and Acceptance

- 4.0 Customer will review the Deliverables, if any, according to the acceptance criteria and procedures set out in the SOW or service description. Customer may reject a Deliverable output only in accordance with the acceptance procedure therein, and in the event that it does not materially conform to the acceptance criteria including a material deviation from the specifications and requirements listed in the SOW, and only via written notice setting forth the nature of such deviation.
  - 4.1 Deliverables will be considered accepted ("**Acceptance**") upon the earlier of: (i) Customer providing Mitel written notice of acceptance, (ii) Customer making use of the Deliverable in a production environment, or (ii) 15 calendar days after delivery, if Customer has not first provided Mitel with written notice of rejection.
  - 4.2 In the event of a rejection, Mitel shall (i) use commercially reasonable efforts to re-perform the Services and repair and redeliver the Deliverable; or (ii) terminate the affected portion of the SOW or service description and provide a prorated refund to Customer for the applicable non-conforming Deliverable.
  - 4.3 After redelivery pursuant to the previous paragraph, the parties shall re-execute the acceptance procedures set forth in the SOW or service description.

- 4.4 Effective upon Acceptance of each Deliverable, and subject to full and final payment of the associated Service Order, Mitel grants Customer a nonexclusive, fully paid, royalty-free license to reproduce, modify, and use such Deliverable as necessary for Customer's internal business purposes.
- 4.5 Customer receives no right, title, or interest in or to Deliverables except as specifically set forth in Subsection 4.4 above.
- 4.6 This section 4, in conjunction with Customer's right to terminate for material breach where applicable, sets forth Customer's only remedy and Mitel's only liability for Deliverables which are not accepted.

## **5 Customer Obligations**

- 5.1 Customer shall: (a) at no charge and in a timely manner provide Mitel with access to Customer's premises and other facilities (including network access), and make available to Mitel all technical data, computer facilities, programs, files, documentation, test data, sample output, services, equipment, or other resources as may reasonably be required by Mitel for the purposes of performing the Services; (b) respond promptly to any Mitel request for information or approvals, subject to Customer's reasonable discretion, that Mitel requires to perform the Services. In the event that Customer fails to meet its obligations in this section 5.1 or in Section 1.1 above, Mitel shall be permitted to invoice Customer for any costs Mitel incurs as a result of such failure and Customer agrees to pay the same.

## **6 Service Level Commitments.**

- 6.1 If service level objectives and/or commitments (e.g. availability, support response or resolution) including service level credits are applicable, the particulars of any such commitments and/or credits will be set out in the SOW or services description. Customer's sole remedy, and Mitel's sole liability, for failure to meet any such objectives or commitments, as the case may be, will be the service level credits and/or other remedies, if any, set out in the applicable SOW or services description. Credits issued, if any, will only be applied against future Service Fees. In no event will Mitel be required to issue refunds for, or to make payments against, such credits.

## **7 Representations and Warranties and Indemnification**

- 7.1 Each party represents and warrants that it has the full right and authority to enter into, execute, and perform its obligations under these Service Terms, and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by these Service Terms.
- 7.2 Customer represents, warrants, and covenants that it has all rights and consents (and has made all requisite disclosures) necessary for Mitel to process any Customer data necessary for the Services; and ii) for Mitel to provide any such data to its affiliates and third-party service providers as necessary for the performance of the services on a global basis.
- 7.3 Customer shall defend, indemnify and hold harmless Mitel and its affiliates against any third-party claim related to the representations and warranties set out in Sections 7.1. and 7.2 arising out of or connected to Mitel's performance of these Services.

## **8 Disclaimer**

- 8.1 Except as set forth above in Section 7, MITEL PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

## **9 LIMITATION, EXCLUSION AND APPLICATION**

- 9.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (I) IN NO EVENT SHALL MITEL BE LIABLE FOR THE FOLLOWING DAMAGES DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THESE SERVICE TERMS, THE SERVICES, OR CUSTOMER DATA: (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 IMPLEMENTATION 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 THESE SERVICE TERMS, THE SERVICES OR CUSTOMER DATA, EXCEED THE AMOUNTS RECEIVED BY MITEL FROM YOU (OR FROM YOUR

MITEL AUTHORIZED RESELLER) FOR THE SERVICE; AND (III) THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET OUT IN THESE SERVICE TERMS 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.

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

9.3 It is Customer's sole responsibility to determine based on the information provided by Mitel whether the Services and Deliverables meet the Customer's needs. Customer shall determine before ordering, if these Services and Deliverables meet Customer's needs.

## 10 Termination

10.1 Either party may terminate the Services, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party (a) materially breaches these Service Terms, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach; (b) becomes insolvent; (c) admits its inability to pay its debts generally as they become due; (d) becomes subject to any bankruptcy proceeding which is not dismissed or vacated within 30 days after filing; (e) is dissolved or liquidated; (f) makes a general assignment for the benefit of creditors; or (g) has a receiver, trustee, custodian, or similar agent appointed by court order to take charge of or sell any material portion of its property or business.

11 **Unexpected Costs.** In the event that Mitel's costs of providing the Services are higher than Mitel reasonably expected, Mitel reserves the right to increase Service Fees by up to 10% upon written notice to Customer.

12 **Change Management Process.** Upon signature of the Service Order, the parties shall agree on a change management process upon signature. Without limiting the foregoing, changes to statements of work shall be made using change order form as set out in the statement of work.

## 13 Conflicts

13.1 In the event of any conflict among of these Service Terms, the Service Order and the SOW, the following order of precedence will govern, with lower numbers governing over higher ones: (1) these Service Terms; (2) any SOW and the Service Order