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OR/AND
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OR/AND
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  - (iii) if at any time Your usage exceeds the number of purchased concurrent licenses, Mitel may consider this a violation of its rights; You acknowledge and accept that Mitel, in its discretion, may take immediate action;  
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2.3 Except as expressly permitted in this Agreement, and/or to the extent that Mitel is not legally able to restrict You under the applicable law or third party license and then with notice to Mitel, You will not Yourself or allow anyone else to: (a) disassemble, reverse engineer, decompile or otherwise attempt to discover the source code or structural framework of the Software; (b) translate, modify, or create any derivative work of the Software or Documentation; (c) disclose, publish, sublicense, lend, rent, or lease the Software or Documentation; (d) copy the Software onto any public or distributed network; (e) use the Software to operate in or as a time-sharing, outsourcing, service bureau, application service provider or managed service provider environment; (f) copy or reproduce the Software or Documentation; or (g) dispose of the Software by any means whatsoever such that You are no longer directly using the Software, unless such disposal is expressly granted in writing by Mitel or by law and is subject to this Agreement or the then-current terms as provided by Mitel. Any violation of this Section results in immediate termination of license and will constitute an immediate cause of action under all applicable claims for Mitel and any entity affected.

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5.3 Mitel will not be responsible for determining whether You require a license to any third-party patents, or obtaining any such license on Your behalf, or paying any fees relating to any such license.

5.4. THIS SECTION 5 STATES THE ENTIRE LIABILITY OF EITHER YOU OR MITEL (AND ITS SUPPLIERS) FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS COVERED UNDER THIS AGREEMENT.

5.5 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 Mitel is defending a claim against itself, 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 Mitel has requested You to defend a claim, and at any time, Mitel has a reasonable basis to believe that You cannot or may not be able to fulfill Your obligations under this Section, then, without limiting Your obligations under this Section, Mitel shall be entitled to provide You notice to that it has decided to become the defending party, and thereafter to assume control of the defense and/or settlement of any such claim. Once Mitel has notified You that it will be seeking an indemnity, unless otherwise expressly agreed in writing, all communications (including the notice) will be deemed Mitel's confidential information, which You may not disclose to any third party, other than your legal advisors, without Mitel's prior express written permission, and in addition, all communications in respect of any such claim shall be subject to common interest privilege.

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6.1 Mitel warrants that: (a) for the Warranty Period, the Software, as supplied by Mitel, if properly installed, will perform substantially in conformance with the Documentation; and (b) if the media on which the Software is stored is provided by Mitel, or an authorized distributor for Mitel, it will be free from defects in material and workmanship under normal use and service for a period of 90 days from delivery. Mitel does not warrant that the Software will be uninterrupted or error-free or that defects will be corrected.

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7.4 To the extent permitted by applicable law, no action arising out of this Agreement may be brought by You more than eighteen (18) months after the cause of action has arisen.

7.5 The installation, configuration, and use of the Software may have legal implications. Customer acknowledges and agrees that customer (and not Mitel) is solely responsible to ensure its installation, configuration and use of the Software including any features therein (e.g., call recording) is compliant with all applicable law, rule and regulation. You agree to indemnify and, if requested by Mitel, defend Mitel against any claim or action filed against Mitel to the extent that it is based on your failure to comply with all applicable laws, rules, and/or regulations.

## **8.0 Allocation of Risk**

8.1 Provisions of this Agreement such as the warranty limitations, exclusive remedies, and limitations of liability are unrelated, independent allocations of risks between You and Mitel. Unenforceability of any such allocations shall not affect the enforceability of other such allocations. The fees paid by You for the Software reflects the allocations of risk contained in this Agreement.

## **9.0 Export Controls**

9.1 You agree to comply fully with all relevant export laws and regulations of Canada, United States, and Europe and any other applicable export laws and regulations to ensure that the Software is not exported directly, or indirectly, in violation of such laws.

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## **11.0 Entire Agreement, Governing Law and Venue, Data Collection**

11.1 YOU AGREE THAT THIS AGREEMENT IS THE COMPLETE, FINAL AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND MITEL AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT OR ANY OTHER COMMUNICATIONS RELATING TO THE USE OF THE SOFTWARE AND SERVICES OR ANY OF THE DOCUMENTATION.

11.2 No amendment, modification or waiver of this Agreement will be valid unless set forth in a written instrument signed by both parties. This Agreement shall be governed by, and construed in accordance with, the laws in force in the Province of Ontario, Canada, exclusive of its conflict of laws provisions. In no event shall this Agreement be construed or enforced under the provisions of the United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, the application of which are expressly excluded. Each of the parties acknowledges and hereby submits to the exclusive jurisdiction of the Courts located in the City of Ottawa, Ontario, Canada. Mitel and its suppliers are deemed to be third party beneficiaries of this Agreement.

11.3 In the event of any conflict between the terms of this Agreement and a separate agreement for the Software that You have signed with Mitel (the "Executed Agreement"), the terms and provisions of the Executed Agreement will govern.

11.4 Mitel may collect personal and non-personal data from Your use of the Software and You hereby agree to the collection. By way of example, and not intended to be limiting, non-personal data which may be collected by Mitel include device type, usage metrics, OS version, crash/issue types and counters, that helps improve the stability of the software. The collection of personal and non-personal data is for Mitel's internal purposes only and will be used for quality improvement of hardware and software. The collected data will not be disclosed or shared with any third parties, except in cases where Mitel has engaged the services of third parties for the purpose of improvement of the Software or development of new software, and Mitel agrees to include provisions for the protection of the collected data.

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## **13.0 Miscellaneous Provisions**

13.1 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.

13.2 This Agreement is personal to You and You may not assign your rights or delegate Your duties under the Agreement either in whole or in part without Mitel's prior written consent. Mitel may assign its rights and duties at any time for any reason. The Agreement will bind and inure to the benefit of each party's

successors and permitted assigns.

13.3 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.

13.4 Except as otherwise set out in this Agreement, any notice provided hereunder shall be in writing and delivered by hand, registered mail or courier, or email to the Mitel address set out above and will be effective and deemed delivered upon receipt. Notwithstanding the foregoing, Mitel 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.

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