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OR/AND
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OR/AND
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OR/AND
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 - (i) You acknowledge that the concurrent license is restricted to the number of licenses (e.g., agent licenses) that have been purchased or contracted for;
 - (ii) to simultaneously use less than or equal to the number of licenses that You have purchased or contracted for; and

- (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;
OR/AND
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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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5.2 Notwithstanding anything to the contrary contained in the Agreement, including Section 5.1 above, neither Mitel (which for purposes of this Section 5.2 includes its affiliates, subsidiaries and related companies, and their respective officers, directors, employees and agents) nor any of its suppliers makes any warranty of non-infringement or otherwise, and Mitel and its suppliers will have no obligation to defend or indemnify You for any claims, demands, losses, damages, legal costs, or expenses made against or incurred by You for infringement of any third party patent, including contributory infringement and inducement to infringe, with respect to Your use of the Software and any associated services where such claims of alleged infringement arise from: (a) the sale or use of the Software pursuant to this Agreement or the provision of any service provided by Mitel in combination with any product or service not owned and developed by Mitel, including without limiting the generality of the foregoing, the following: (i) call entitlement features restricting access, or toll free access, to a call centre, or portion thereof, on the basis of total duration, number or nature of previous calls; (ii) credit card toll billing for call access; (iii) synthesized disconnect signals; (iv) calling party assigned identification numbers, especially DTMF entry of identification numbers; (v) recording history of caller DTMF keystrokes; (vi) preventing menu repetition; and (vii) segregating calls made to both 800 and 900 (or like) numbers and subsequently billing those calls made to such number(s); (b) Your alteration or modification of the Software; (c) Your failure to implement corrections or modifications provided by Mitel if implementation would prevent the infringement; (d) Mitel's implementation of a software design provided by You; (e) connection or operation of the Software with or in conjunction with hardware, software, or services not provided or authorized by Mitel; or (f) Your noncompliance with the provisions of Section 5.5.

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.

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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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6.2 In the event that during the Warranty Period the Software fails to perform substantially in accordance with the Documentation and materially affects service and/or prevents beneficial use of the Software, Mitel will use commercially reasonable efforts to correct the problem within a reasonable period of time. If Mitel is unable to resolve the problem, Mitel will in its sole discretion, either: (a) replace the Software, (b) install a new release of the Software when it becomes generally available, or (c) return the Software to a prior release. The foregoing is Mitel's entire liability and Your sole and exclusive remedy under the above limited warranty.

6.3 The limited Software warranties provided to You under this Agreement shall become void if one of the following occurs: (a) the Software is not used properly in accordance with the Documentation or is otherwise abused, damaged, or negligently serviced or maintained by anyone other than Mitel, (b) maintenance is performed on the Software by anyone not authorized by Mitel, (c) the Software is not properly installed, integrated or used in combination with products that are not approved by Mitel, or (d) You breach a material term of this Agreement.

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7.1 IN NO EVENT WILL MITEL OR ITS SUPPLIERS BE LIABLE TO YOU FOR ANY LOSS OF DATA, LOSS OF PROFITS OR SAVINGS, LOSS OF BUSINESS, LOSS OF REPUTATION OR GOODWILL OR ANY ECONOMIC LOSS OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES

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7.2 Some jurisdictions do not allow limitation or exclusion of incidental or consequential damages in certain circumstances involving certain types of customer classes, so that the above limitation or exclusion may not apply to You to the extent that liability is by law incapable of exclusion or restriction.

7.3 IN NO EVENT SHALL MITEL'S TOTAL AGGREGATE LIABILITY, DIRECT OR INDIRECT, ARISING FROM OR IN CONNECTION WITH THE SOFTWARE, DOCUMENTATION, OR THIS AGREEMENT EXCEED THE LESSER OF: (i) LICENSE FEES PAID BY YOU FOR THE SOFTWARE AND DOCUMENTATION; OR (ii) SERVICE FEES PAID IN THE TWELVE (12) MONTHS PRIOR TO THE CLAIM FOR THE CLOUD/HOSTED APPLICATION, REGARDLESS OF THE BASIS OF THE CLAIM FOR WHICH SUCH LIABILITY ARISES FROM.

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.

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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.

12.0 Authorized Mitel Dealer Sublicense Requirement

12.1 To the extent that this Software is first utilized, and/or configured or programmed by an authorized Mitel dealer, distributor, or system integrator and not an end user customer, then the dealer, distributor or system integrator understands and agrees that it has the duty to obtain an acceptable sub-license from the end user or notify the end user of the terms of this Agreement prior to end user's use of the Software.

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

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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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APPENDIX A TO FOLLOW – GLOBAL TERMS OF SERVICE

APPENDIX A TO END USER LICENSE AGREEMENT GLOBAL TERMS OF SERVICE

Before using our Cloud Services (as defined below), please read these Global Terms of Service including without limitation the Emergency Services limitations set in Section 10 (“Terms”). Pursuant to these Terms, you and your Users will be provided access to the cloud-hosted functions of the Software in accordance with your Service Order. Unless otherwise indicated on your Service Order, your Cloud Service Entitlements include our SIP Services.

1. DEFINITIONS. As used herein: “**Acceptable Use Policy**” means Mitel’s Acceptable Use Policy for Entitlements found at: <https://www.mitel.com/legal/end-user-license-agreements>. “**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 hosted functions of the Software provided under this Agreement. “**Customer**”, “**you**” or “**your**” means the entity identified as the “Customer” in the Service Order. “**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. “**Entitlement(s)**” means a right to access and use specific Cloud Services (e.g., on a “named user” or “concurrent user” basis, or as may be included with a valid software assurance contract). “**Fair Use Policy**” means Mitel’s Fair Use Policy for Entitlements found at: <https://www.mitel.com/legal/end-user-license-agreements>. “**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. “**Provisioning Information**” means information provided by you to us about a User which is used to provide/provision the Entitlement or 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 and Implementation Services fees, software assurance fees, and any other charges and fees which you have agreed to in a Service Order or SOW. “**Service Order**” means an ordering document submitted by you to us or one of our Authorized Partners, detailing the Entitlements 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. “**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/end-user-license-agreements>. “**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.

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 not for any form of redistribution, time sharing, service bureau or resale) in accordance with this Agreement and the Entitlements set out in your Service Order. You may use and reproduce the Documentation solely as necessary to support your and your User’s use of the Cloud Services.

2.3 Service Levels. Where applicable, we will deliver the Cloud Services in accordance with the SLA.

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.

2.5 Performance. You acknowledge and agree that the quality, performance and available features of the Cloud Services 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. CUSTOMER RESPONSIBILITIES & RESTRICTIONS

3.1 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 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.

3.2 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.

3.3 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.

4. CUSTOMER DATA

4.1 Instructions. You instruct us to process Customer Data and Use Records in accordance with the terms and conditions of this Agreement. We will only use and disclose Customer Data and Use Records to provide, bill, optimize, improve, support, troubleshoot, and maintain the Cloud Services 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 4 (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 4.3 (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 4.3 (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.

4.2 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.

4.3 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.

4.4 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, any data controlled by the U.S. International Traffic in Arms Regulations and as personal information under the Children's Online Privacy Protection Act (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.

5. TERM, TERMINATION AND SUSPENSION

5.1 Term. This Agreement takes effect upon execution of the Service Order and subject to Section 5.3, continues so long as your Entitlements are valid.

5.2 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.

5.3 Termination by Mitel. In addition to our suspension rights set out in Section 5.2 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; (ii) with immediate effect if any legal or regulatory change is introduced which affects our ability to provide the Cloud Services, 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, or (iv) failure to maintain a valid software assurance contract.

5.4 Effect of Termination. Termination of the Agreement (including failure to maintain a valid software assurance contract), 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.

6. WARRANTIES & DISCLAIMERS

6.1 Disclaimer of Warranties. Notwithstanding anything to the contrary in this Agreement, except as expressly provided in this Appendix, (i) You acknowledge and agree that the Cloud Services 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 will meet your or User requirements or that the operation of the Cloud Services will be uninterrupted or error-free; (b) the Cloud Services will prevent toll fraud, unauthorized access, loss or theft of electronic data, or invasion of privacy; (c) all errors in the Cloud Services (d) Customer Data will not be lost or corrupted; or (e) 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.

7. INDEMNIFICATION

7.1 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; (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.

8. GENERAL

8.1 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.

8.2 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/end-user-license-agreements>. 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 will relieve you of payment of any already incurred Service Fees.

8.3 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.

8.4 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.

8.5 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.

8.6 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.

9. JURISDICTION SPECIFIC TERMS

9.1 **Australia.**

The following shall apply in respect of Cloud Services intended for use in Australia (as set out in your Service Order): (i) You may report unwelcome communication complaints to us; (ii) in addition to the permitted uses and disclosures set out in Section 4.1, 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); (iii) if you have are being billed for your Cloud Services in Australia and have you less than twenty full time employees and an annual turnover of less than AUD \$3,000,000: and (a) 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. If your complaint is resolved in accordance with our Complaints Code of Practice within eight (8) weeks, you may be able to refer your complaint to the Telecommunications Industry Ombudsman, our approved alternative dispute resolution provider, who may review your complaint for free; and (b) our Small Business Critical Information Summary and credit management practice are available upon request.

9.2 **Belgium.**

Where your Cloud Services intended for use in Belgium (as set out in your Service Order) an alternative dispute resolution scheme may be available free of charge for disputes you are unable to resolve with us. Details of the scheme are available upon request.

9.3 **Canada.**

The following shall apply in respect of Cloud Services intended for use in Canada (as set out in your Service Order): (i) Customer Data and Use Records may be stored in the United States and may be accessed by the courts, law enforcement and national security authorities of the United States in accordance with Applicable Law; and (ii) You will not use our network or the Cloud Services to export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside of Canada or the U.S. without first complying with all export control laws and regulations which may be imposed by the Canadian and U.S. Government and any country or organization of nations to whose jurisdiction Customer is subject.

9.4 Europe.

In addition to the relevant country specific provisions set out in this Section 9, the following shall apply in respect of Cloud Services intended for use in the European Economic Area (as set out in your Service Order): (i) the parties agree to comply with the terms of the Data Processing Agreement ("DPA") available at www.mitel.com/legal/gdpr irrespective of whether such agreement has been signed by both parties. In the event of any conflict between the DPA and this Agreement, the DPA shall prevail; and (ii) 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 9.

9.5 Germany.

The following shall apply in respect of Cloud Services intended for use in Germany (as set out in your Service Order): (i) For clarity, if we do not accept your Service Order with one month of providing it to us, you may revoke your 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 and the amounts we received from you (or from your Authorized Reseller) for the Entitlements in the twelve (12) month period immediately prior to the incident giving rise to the liability are less than 12 500 euro, the amounts received may be deemed to 12 500 euro's.; and (iii) An alternative dispute resolution scheme may be available free of charge for disputes you are unable to resolve with us. Details of the scheme are available upon request.

9.6 South Africa.

The following shall apply in respect of Cloud Services intended for use in South Africa (as set out in your Service Order): (i) You agree that Section 8.2 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 Entitlements purchased directly from us are available at: <https://www.mitel.com/legal/end-user-license-agreements>; (iii) an alternative dispute resolution scheme may be available free of charge for disputes you are unable to resolve with us. Details of the scheme are available upon request.

9.7 Switzerland.

The following shall apply in respect of Cloud Services intended for use in Switzerland (as set out in your Service Order): (i) if you have a complaint with the Cloud Services may be able to refer your complaint to the Ombudscom. You acknowledge and agree that while we will comply with any request for information which the Ombudscom may make, we are not legally bound by any conclusion drawn by Ombudscom.

9.8 United Kingdom.

The following shall apply in respect of Cloud Services intended for use in United Kingdom (as set out in your Service Order): (i) 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; (ii) 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; (iii) Mitel Networks Limited is authorized to do business in the UK; (iv) 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. (v) If you are a small business, an alternative dispute resolution scheme may be available free of charge for disputes you are unable to resolve with us. Details of the scheme are available upon request.

10. Emergency Services.

The following additional terms apply in cases where the Cloud Services include Mitel-provided voice and/or SMS services:

1) **Additional Definitions.** **"SIP Services"** the session initiation protocol services over which voice communications are connected to the public switched telephone network and delivered to you. **"Emergency Services"** as used herein 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).

2) **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) **Emergency Services Devices and Initiation:** Emergency services will only function if your User(s) are using an approved device, equipment, or software and after your Service Order has been processed and you have received an emergency service confirmation. If your 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.

4) **Emergency Services Registration.** You acknowledge and agree that it may not be possible for emergency operators and authorities to identify the actual location of a User(s) who dials Emergency Services through the Cloud Services. Where you purchase Cloud Services that include our SIP Services, we will register the following as the addresses where your 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) if an online portal is made available with the Cloud Services, the address(es) entered in the online portal. It is your responsibility to ensure that such default address(es) are accurate and, if changed, that you notify us of such changes either through our online portal, where available, or by contacting our support organization at least ten (10) days in advance. If emergency addresses registered are not accurate, emergency personnel (e.g., police, fire, ambulance) may be sent to the wrong address. 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. Regardless of whether an emergency address has been registered, 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. If the User's registered address is different than the User's actual location, delays in handling of Customer's emergency call may be introduced and, consequently, result in fire, police or emergency personnel either not being able to find a User(s) location or significantly delay response time. Finally, you may incur additional costs, fines or other penalties, including service provider charges, resulting from improper dispatch of Emergency Services or calls to emergency service dispatchers where you and/or your Users have failed to update us with the User's correct address.

5) **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 your 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 your Cloud Services do not include our SIP Services, failure or disconnection of third party SIP Services. Following a power outage, you or your Users may need to reset or reconfigure your 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 your 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.

6) **Emergency Notifications.** Where you purchase Cloud Services that include our SIP Services for use in the United States 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 you are solely responsible for (i) selecting 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 your Users across multiple Sites and you select 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 train your Users 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.

7) **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.

8) **Additional Disclaimer of Warranties.** We do not warrant that (a) 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 (b) enhanced Emergency Services, if available, will not revert back to traditional Emergency Services. It is your sole responsibility to back up Customer Data.

9) **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 vary 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 your 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.

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

11) **User Consent.** You agree to ensure all Users (and potential Users) are aware of (and expressly consent to) the limitations of Emergency Services using the Cloud Services prior to their use of the Cloud Services.

12) **Customer Data.** Notwithstanding anything in Section 4 (Customer Data), we reserve the right to use, and to disclose Customer Data and Use Records to third parties if we determine, in our reasonable judgement, that such use or disclosure is necessary to provide an emergency warning.

10.1 JURISDICTION SPECIFIC TERMS FOR EMERGENCY SERVICES

1) **Australia.** The following shall apply in respect of Cloud Services intended for use in Australia (as set out in your 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 must not do anything that would be inconsistent with the Telecommunications Numbering Plan or that would adversely affect our ability to comply. Customer acknowledges that: (a) you have no ownership, interest or goodwill in any telephone numbers issued to you; (b) termination of the Cloud Services for any reason will result in immediate loss of all telephone numbers associated with a Service unless they are ported to another service provider prior to termination of the Service; and (c) if we provide Customer with an out-of-area number, you may not be able to port that number to another service provider in the future, and calls to and from the number will be charged as if you are located in the area identified by the number; and (ii) we will provide reasonable assistance to you if you have purchased a smart number from ACMA and request that it is connected to the Cloud Services.

2) **Belgium.** The following shall apply in respect of Cloud Services intended for use in Belgium (as set out in your Service Order): 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.

3) **Canada.** The following shall apply in respect of Cloud Services intended for use in Canada (as set out in your Service Order): VoIP 9-1-1 service has certain limitations relative to Enhanced 9-1-1 service that is available on most traditional telephone service. Mitel may disclose to the CRTC that you have acknowledged the E911 Disclosure by virtue of Customer having accepted this Agreement.

4) **Europe.** The following country specific Emergency Services terms apply generally to Cloud Services intended for use in the EEA In countries where directories are mandated by Applicable Law, we will provide directory providers with basic directory information in relation to you unless you elect not to be included in directories when you subscribe to the Services. You consent to our use of traffic and/or location data contained in Use Records for billing purposes.

5) **United Kingdom.** The following shall apply in respect of Cloud Services intended for use in United Kingdom (as set out in your Service Order): (i) subject to the emergency service terms, Emergency Services calls can be made within England, Wales, Scotland, and Northern Ireland, 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. 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.

6) **United States.** The following shall apply in respect of Cloud Services intended for use in United States (as set out in the Service Order): 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 this Agreement, you understand and agree that you must provide us with a dispatchable location for each fixed device used with the Cloud Services. For purposes of this Section: **"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; **“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.

11. Number Porting. If your 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 your jurisdiction provided that your 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.