

END USER LICENSE AGREEMENT
MiVoice Call Recording Suite, Release 9.2 or higher

CAREFULLY READ THE FOLLOWING AGREEMENT. INSTALLATION AND USE OF THE SOFTWARE CONSTITUTES YOUR ACCEPTANCE OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT PROMPTLY REMOVE THE SOFTWARE AND ALL COPIES FROM YOUR SERVER OR DEVICE. LAWFUL USE OF THE SOFTWARE IS CONDITIONAL UPON YOUR COMPLIANCE WITH THE TERMS OF THIS AGREEMENT.

1.0 Definitions

"Agreement" means this End User License Agreement.

"Documentation" means the end user reference and operating manuals that MITEL and its suppliers publish relating to the Software, excluding documentation subject to the GNU Free Documentation License or other free documentation license that permits reproduction.

"Mitel" means Mitel Networks Corporation, on its own behalf and on behalf of its subsidiaries, divisions, affiliates and/or other authorized entities, 350 Legget Drive, Ottawa, Ontario, Canada K2K2W7; CMG@mitel.com.

"Open Source Software" means any software components which are subject to the GNU General Public License or other open source licenses that is provided or downloaded with the Software (which may also be identified in one or more of the installed software directory, through a url link, on the software kit, Documentation or applicable web site of Mitel), and any and all copies, modifications, upgrades, enhancements, and new releases made or acquired by You. Any software components that are not expressly identified as open source software by Mitel is Software.

"Software" means the **MITEL MIVOICE CALL RECORDING SUITE, OASYS CALL RECORDING SUITE, TALKUMENT®, TRACER, MIVOICE CALL RECORDING, Release 9.2 or higher ("MiVCR")**, all MiVCR, all setup, installation, and configuration software, together with any related software, such as integration software applications, (i) downloaded by You including through the Mitel Networks Application Management Center (the "Mitel AMC") or other similar Mitel service, and/or (ii) accessing cloud/hosted applications and/or services, and includes any and all copies, modifications, updates, upgrades, firmware, enhancements, and new releases of the Software. Software excludes any Open Source Software.

"Software License Key" means a string of characters that must be input into the Software when it is installed, or prior to being downloaded by You in order to activate it for use with a specific system configuration and which needs to be entered whenever the Software (or software accompanying the installation) is installed, upgraded or moved to a new platform.

"Warranty Period" means ninety (90) days from the earlier of the date (a) You purchase the license for the Software or (b) the Software is Delivered to You. "Delivered" means, (a) for Software provided to You that is stored on CD-ROM, DVD, portable memory stick or device, flash drive, or on any other portable "hard" media device ("Media"), from the date on which the Media on which the Software is stored is delivered to You, and (b) for Software that is downloaded by You or on Your behalf from a Mitel authorized site, the date on which the Software is downloaded.

"You" and "Your" refers to the original and first user ("user" includes a business entity for this definition) that lawfully acquires the Software or Documentation directly from Mitel or indirectly from Mitel through an entity authorized Mitel.

2.0 Grant of License

2.1 Upon payment(s) of the applicable license fee or reoccurring fees of the Software, Mitel grants to You a non-exclusive, non-transferable license to use the Software and Documentation solely for the following purposes:

- (1) if for server install: to install and operate the Software on one server only for use by: (i) the number of managed systems for which licenses have been paid; and (ii) the number and type of applications and features for which application and feature licenses have been paid;
OR/AND
- (2) if for client install:
 - (i) to install and use the Software on either a desktop or laptop computer, including a workstation terminal;
 - (ii) to make one copy of the Software for back-up purposes;
 - (iii) to make a reasonable number of copies of the Documentation for Your personal use; and
 - (iv) only in connection with Mitel or authorized third-party products;OR/AND
- (3) if for virtual server install: to install and operate a single instance of the Software in a virtual environment only for use by the number and type of applications and features for which application and feature licenses have been paid;
OR/AND
- (4) if for concurrent licenses:
 - (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
- (5) if for cloud/hosted applications and/or services: to access and use the Software in accordance with the terms of Your order, which may be set forth on additional documentation, for example, Terms of Service, Service Order, Purchase Order, etc.

2.2 Use of the Software may be subject to the issuance of a Software License Key, which will be conveyed to You upon payment of the applicable license fees for the Software or accompanying software, including any extensions thereof. If You choose not to purchase or accept the Software License Key from Mitel, Mitel

cannot ensure the Software, accompanying software, and/or system configuration will operate as intended.

- 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.

- 2.4 This license will terminate automatically: (a) if You use or permit the use of the Software or Documentation in any manner not permitted by this Agreement; (b) if a bankruptcy or insolvency proceeding is filed by or against You; (c) if You make an assignment for the benefit of creditors; (d) an event or proceeding analogous to those set out at paragraphs (b) and (c) above occurs or takes place in any jurisdiction; (e) payment of license fees, including any agreed-upon reoccurring fees, are not timely paid; or (f) if for cloud/hosted applications and/or services, upon expiration of the time-based term. Upon termination, You will immediately, as directed by Mitel, either return the Software and Documentation and all copies You have made, including without limitation modifications and merged portions in any form, to Mitel or destroy all copies of the Software and Documentation and upon request, certify such destruction in writing to Mitel.

3.0 Proprietary Rights

- 3.1 The Software and Documentation comprises valuable patent, copyright, trade secret, trademark, mask work and other proprietary rights of Mitel and its suppliers. Mitel and its suppliers reserve all such rights. No title to or ownership of the Software or Documentation or any right therein other than expressly set out herein is transferred to You. You will not infringe any proprietary right of Mitel or its suppliers and will take appropriate steps for the protection of such rights. You will not remove, obscure or alter any notice of patent, copyright, mask work, trademark, trade secret or other proprietary rights relating to or appearing anywhere on any of the Software or Documentation, irrespective of whether any of the foregoing is registered or unregistered. You must

reproduce all copyright notices on any copy of the Software and Documentation. The Software and Documentation is copyrighted by Mitel Networks Corporation © 2005-2018, All Rights Reserved. This Software product may also contain copyright material licensed from third parties - all rights to such copyright material rest with the copyright owner. You shall hold the Software and Documentation in confidence and protect them from disclosure to persons other than your employees to whom disclosure is required on a "need to know basis". Your confidentiality obligations do not extend to any information relating to the Software or Documentation which is now available to the general public or becomes so available by reason of any acts or omissions not attributable to You.

4.0 Open Source Software

- 4.1 Open Source Software is free software. You can redistribute it and/or modify it under the terms of the applicable GNU General Public License as published by the Free Software Foundation (either version 2 of the license, or (at Your option) any later version) or, if the Open Source Software is distributed under the terms of an open source license other than the GNU General Public License, You can redistribute it and/or modify it under the terms of the respective open source license.

- 4.2 Open Source Software that is subject to the GNU General Public License is distributed free of charge to You in the hope that it will be useful but WITHOUT ANY WARRANTY (EXPRESS OR IMPLIED); without even the implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. You should have received a copy of the GNU General Public License along with the Open Source Software; if not, see <http://www.gnu.org/licenses/>.

- 4.3 This Software may include Open Source Software. If You would like a copy of the Open Source Software in this Software, Mitel will provide this to You upon written request to gplrequest@mitel.com or legal@mitel.com.

5.0 Intellectual Property Rights Indemnification

- 5.1 Subject to Section 5.2 and 5.3 of this Agreement, in the event of a third party claim or action filed against You based solely on Your use of the Software and/or Documentation in strict adherence to the terms of this Agreement, to the extent that it is based on a claim that the Software infringes a valid United States, Canadian or European intellectual property right, Mitel may at its sole option and without further obligation to You either (a) obtain the right for You to continue using the Software and/or Documentation, (b) replace or modify the Software and/or Documentation so that it becomes non-infringing, or (c) if such remedies are not reasonably available, to require return of the Software and/or Documentation including all copies thereof. You agree to indemnify and defend Mitel against any claim or action filed against Mitel to the extent that it is based on a claim that Your design, integration, specification,

- instruction, combination, connection, operation, or particular use infringes a valid U.S., Canadian, or European intellectual property right.
- 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; or (e) connection or operation of the Software with or in conjunction with hardware or software not provided or authorized by Mitel.
- 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.
- 6.0 Limited Warranties**
- 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.
- 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.
- 6.4 The limited Software warranties provided under this Agreement are subject to Mitel 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 Warranty Period. Mitel shall have the right to inspect and test the Software to determine, in its reasonable opinion, whether the nonconformity is covered under the Software warranty.
- 6.5 YOU ASSUME FULL RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE TO ACHIEVE YOUR INTENDED PURPOSES, FOR THE PROPER INSTALLATION AND USE OF THE SOFTWARE AND FOR VERIFYING THE RESULTS OBTAINED FROM USE OF THE SOFTWARE. MITEL MAKES NO REPRESENTATION OR WARRANTY THAT THE SOFTWARE OR DOCUMENTATION WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE INTERRUPTION OR ERROR FREE.
- 6.6 TO THE FULL EXTENT PERMITTED BY LAW, MITEL AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, TERMS AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT AND THIS IS SO ACKNOWLEDGED BY YOU.
- 6.7 THE SOFTWARE IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

6.8 IMPORTANT NOTE: Nothing in this Agreement is intended to or shall be construed as excluding or modifying any statutory rights, warranties or conditions which may be applicable to this Agreement, the Software or Documentation, and which by virtue of any national or state fair trade or other consumer legislation may not be modified or excluded. To the extent such legislation is applicable to Your license of the Software or is required by such legislation, any required warranty is limited in duration to ninety (90) days from the date of installation and Mitel and its suppliers' liability for any breach of any such warranty or condition shall be and is hereby limited to either: (a) the replacement of such Software; or (b) the correction of any defect in such Software or Documentation as Mitel, at its sole discretion, may determine to be necessary to correct the defect. All limited warranties are void if failure of the Software has resulted from Acts of God, accident, abuse, misapplication or electrical surge or any other cause beyond Mitel's control.

6.9 Mitel does not warrant or represent that the Software is immune from fraudulent or unauthorised intrusion or use (including its use to interconnect to long distance networks, computer virus and/or other malicious code of whatever nature). The Software has risks inherent to all software applications and, as such to the extent permitted by law or Mitel's contractual obligations, Mitel disclaims and will not be liable for any loss, damage, injury or non-performance, cost or expense directly or indirectly occasioned thereby. You are advised that the operation of E-911, its equivalent or other emergency service, requires accurate information contained in Your database, which You are solely responsible for creating and managing.

7.0 Limitations of Liability

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 ARISING OUT OF OR IN CONNECTION WITH YOUR LICENSE, USE OR INABILITY TO USE THE SOFTWARE, DOCUMENTATION, OR THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION IN CONNECTION WITH THE SOFTWARE, DOCUMENTATION, AND THIS AGREEMENT EVEN IF MITEL OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE NATURE OF THE CAUSE OF ACTION OR THEORY ASSERTED REGARDING SUCH DAMAGES.

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 LICENSE FEES PAID BY YOU FOR THE SOFTWARE AND DOCUMENTATION,

REGARDLESS OF THE BASIS OF THE CLAIM FOR WHICH SUCH LIABILITY ARISES FROM.

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. If any part of this Agreement is held to be unenforceable, it shall not affect any other part. If any part of this Agreement is held to be unenforceable as written, it shall be enforced to the maximum extent allowed by applicable law. 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.

10.0 U.S. Government Restricted Rights

10.1 The U.S. Government accepts the Software and Documentation as commercial computer software and/or commercial computer software documentation in accordance with the license terms set forth in this Agreement, subject to the requirements of FAR 52.227-19 Commercial Computer Software-Restricted Rights (June 1987) or DFAR 227.7202-3 "Rights in commercial computer software or commercial computer software documentation, (effective 6/30/95). For uses with the U.S. Government, the Contractor/Manufacturer is Mitel Networks, Inc., 1146 N. Alma School Road, Mesa, Arizona 85201.

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 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. No personal data will be collected. The collection of 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 confidentiality 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.

Copyright © 2005-2018 Mitel Networks Corporation, All Rights Reserved.