

MITEL MIGRATION TOOL GLOBAL TERMS OF SERVICE

Before using our Cloud Services (as defined below), please read these **Mitel Migration Tool** Global Terms of Service ("Terms"). These Terms, and all documents referred to in them, and any amendment or addendum referencing these Terms entered into by the parties, form a binding agreement between you and us ("Agreement").

DEFINITIONS. As used herein: "Cloud Services" means the Migration Tool available through MiAccess to Mitel Authorized Partners in good standing by enabling a migration opportunity. "Destination Platform" means MiVoice Business. "Input Data" means data about the customer's Source Platform implementation including customer configuration, if any. "Migrating" means transitioning customers from a Source Platform to a Destination Platform. "Mitel" "we", "our" or "us" has the meaning set out in Section 9.1 (Mitel Entity). "Source Platform" means the Migrating customer's current Supported Platform. "Supported Platform" means MiVoice Business, MiVoice Connect, and MiVoice Office 250. "Output Data" means the normalized database capturing the Source Platform configuration information. "Output Documentation" means high level and low-level detailed descriptions of the Source Platform. "User" means any individual who uses the Cloud Services on your behalf or through your account or passwords, whether authorized or not. "you" or "your" means the entity whose MiAccess account is being used to access the Cloud Services.

1. THE SERVICE AND USE OF THE SERVICE IN GENERAL

1.1 Use of the Service. During the Service Term (as defined in Section 5.1), you and your Users may use the Cloud Services, and accompanying documentation, in accordance with this Agreement for the sole purpose of Migrating customers for which you are the Mitel partner of record (and not for any form of redistribution, time sharing, service bureau or resale).

1.2 Service Limitation. You acknowledge and agree that the Cloud Services only provide a preliminary conversion of Input Data to Output Documentation. IT IS YOUR AND YOUR USERS' SOLE RESPONSIBILITY TO REVIEW THE OUTPUT DOCUMENTATION INCLUDING ANY WARNINGS OR UNSUPPORTED FEATURES IDENTIFIED THEREIN FOR CORRECTNESS AND ACCURACY.

1.3 Service Revisions. During the Service Term, we may add, reduce, eliminate or revise Cloud Services features and functionality at any time without prior notice.

2. Partner RESPONSIBILITIES & RESTRICTIONS

2.1 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 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. You agree to provide a single point of contact to work with us on Incidents, and fully cooperate with us (and any regulator) to address same. At our request, you will document any actions taken in response to Incidents and provide us with a copy of such documentation.

3. CUSTOMER DATA

3.1 Instructions. You instruct us to process Input Data in accordance with the terms and conditions of this Agreement. We warrant that we will only use and disclose Input Data to provide, bill for, optimize, improve, support, troubleshoot, and maintain the Cloud Services, including without limitation to create Output Data which is subsequently used to create Output Documentation, 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 Input Data, Output Data and Output Documentation on a global basis. You represent, warrant and covenant that you and the Users each have obtained all rights and consents (and have made all requisite disclosures) necessary: i) for

us to process Input Data and create Output Data and Output Documentation for the purposes set forth in this Agreement; and ii) for us to provide Input Data, Output Data, and Output Documentation to our affiliates and third-party service providers as necessary for the performance of this Agreement on a global basis.

3.2 Accuracy & Retention. You are solely responsible for Input Data provided to us. We warrant that we will only retain Input Data for as long as reasonably necessary to provide the Cloud Services, and to comply with Applicable Law and that we will promptly, but in no event later than fifteen (15) business days after its use, delete (or put beyond practicable use) Input Data. Output Documentation can be downloaded upon creation and is not persisted by us. Output Data is stored for ninety (90) days after creation at which point it is deleted (or put beyond practicable use).

3.3 Excluded Data. Only Input Data is permitted in the Cloud Services. You represent, warrant and covenant that you, and will require that Users, have not and shall not upload or transmit to the Cloud Services, any Input Data which is specifically regulated other than by general application data privacy laws ("Excluded Data").

4. TERM, TERMINATION AND SUSPENSION

4.1 Term. This Agreement takes effect upon your first use of the Cloud Services and unless otherwise terminated, continues for as long as you remain a Mitel Authorized Partner in good standing and authorize Mitel to allow your users access to the Cloud Services ("Service Term").

4.2 Service Suspension. You acknowledge and agree that the Cloud Services are provided for convenience only. Except to the extent precluded by applicable law, we may at our sole discretion, and without prior notice to you, at any time suspend your (or any Users') Cloud Services for any or no reason without liability to you.

4.3 Termination by Mitel. We may terminate this Agreement at any time for any or no reason upon notice.

4.4 Termination by Customer. You may terminate this Agreement at any time for any reason or no reason by providing written notice.

4.5 Effect of Termination. 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 Cloud Services documentation in your or their possession or control.

5. IP & FEEDBACK

Ownership. Subject to the limited rights expressly granted hereunder, we reserve all right, title and interest in and to: (i) the Cloud Services including the format of the Output Data and Output Documentation and the process used to create same; (ii) any and all documentation and any of our confidential information provided or disclosed to you and Users; (iii) any and all derivatives, enhancements or improvements of the foregoing (i) or (ii); and (iv) any and all intellectual property rights contained in the foregoing (i), (ii), and (iii). No rights are granted to you except as expressly set out in this Agreement.

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



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6. WARRANTIES & DISCLAIMERS

6.1 Disclaimer of Warranties. Except as expressly provided herein, (i) You acknowledge and agree that the Cloud Services, the Output Data and the Output Documentation 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 THE CLOUD SERVICES, THE OUTPUT DATA OR THE OUTPUT DOCUMENTATION WILL MEET YOUR, YOUR USER’S, OR YOUR CUSTOMER’S REQUIREMENTS INCLUDING CORRECT IMPORTATION INTO THE DESTINATION PLATFORM OR THAT THE OPERATION OF THE CLOUD SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

7. LIMITATION OF LIABILITY

7.1 LIMITATION, EXCLUSION AND APPLICATION. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (I) IN NO EVENT SHALL WE BE LIABLE FOR THE FOLLOWING DAMAGES DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE CUSTOMER DATA, OUTPUT DATA, OUTPUT DOCUMENTATION, OR THE CLOUD SERVICES: (A) ALL INDIRECT, ECONOMIC, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL AND PUNITIVE DAMAGES; AND (B) ALL DAMAGES FOR LOST PROFITS, REVENUE OR EARNINGS, LOST, HACKED OR CORRUPTED DATA, UNAUTHORIZED ACCESS TO DATA OR THE CLOUD SERVICES, DELAYS OR FAILURE TO TRANSMIT OR RECEIVE ANY DATA, BUSINESS INTERRUPTION, FAILURE TO REALIZE EXPECTED SAVINGS AND COST OF SUBSTITUTE SOFTWARE, HARDWARE OR SERVICES; (II) IN NO EVENT SHALL OUR TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE INPUT DATA, OUTPUT DATA, OUTPUT DOCUMENTATION OR THE CLOUD SERVICES EXCEED THE AMOUNTS RECEIVED BY US FROM YOU FOR THE CLOUD SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO THE LIABILITY; AND (III) THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET OUT IN THIS AGREEMENT SHALL APPLY: (A) WHETHER AN ACTION, CLAIM OR DEMAND ARISES FROM A BREACH OF WARRANTY OR CONDITION, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTORY LIABILITY OR ANY OTHER THEORY OF LIABILITY; (B) WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR POSSIBILITY HAS BEEN DISCLOSED TO US; AND (C) TO US, OUR AFFILIATES, AND THEIR RESPECTIVE SERVICE PROVIDERS AND SUPPLIERS, SUCCESSORS AND ASSIGNS AND (D) EVEN IF YOUR REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

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

8. INDEMNIFICATION

8.1 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; (iii) your or a User’s use of the Cloud Services; (v) your, or any User’s, breach of Applicable Law; and (vi) Input Data, Output Data, Output Documentation. If we have requested you to defend a claim, and we, at any time, have a reasonable basis to believe that you cannot or may not be able to fulfill your obligations under this Section 13, then, without limiting your obligations under this Section 13, we shall be entitled to provide you notice that we have decided to become the defending party, and thereafter to assume control of the defense and/or settlement of any such claim. Once we have notified you that we will be seeking an indemnity, unless otherwise expressly agreed in writing, all communications (including the notice) will be deemed our confidential information, which you may not disclose to any third party, other than your legal advisors, without our prior express written permission, and in addition, all communications in respect of any such claim shall be subject to common interest privilege.

9. GENERAL

9.1 Mitel Entity. “Mitel”, “we”, our and “us” means Mitel Cloud Services, Inc. with registered office is at 1146 North Alma School Rd, Mesa, AZ 85201.

9.2 Affiliates. We may use (and disclose Input Data, Output Data and/or Output Documentation to) one or more global affiliate(s), partners and/or service providers to provide the Cloud Services.

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

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

9.5 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 using the Cloud Services, in standard marketing materials, including press releases, corporate presentations and digital properties and/or other marketing vehicles as we may deem appropriate.

9.6 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.

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

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

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

Applicable Law and Dispute Resolution. This Agreement is to be governed by and construed under the laws of the State of Arizona, United States excluding any body of law governing conflicts of laws and the 1980 United Nations Convention on Contracts for the International Sale of Goods.. The courts of the State of Arizona will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement and the Parties hereby agree to submit to the jurisdiction of the courts of the State of Arizona.



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9.10 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.

9.11 Entire Agreement. This Agreement is the complete agreement and understanding of the parties with respect to the subject matter hereof and supersedes any other agreement or understanding, written or oral, between the parties with respect to the subject matter hereof. Neither party has entered into this Agreement in reliance upon (and shall have no liability in respect of) any term or representation other than those expressly set out in this Agreement (provided that nothing in this Agreement shall limit either party's liability for fraudulent misrepresentation). Both parties represent and warrant that they have full corporate power and authority to execute this Agreement and to perform their obligations hereunder.

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