



Powering connections

## End User Terms of Service

**Activation Date**” for a Customer shall be either the Initial

**BEFORE USING THE SERVICES PLEASE READ THESE END USER TERMS OF SERVICE (THESE “TERMS”). THESE TERMS ARE INCORPORATED BY REFERENCE INTO THE ORDER FORM EXECUTED BY THE COMPANY OR ENTITY IDENTIFIED AS THE “CUSTOMER” IN THE ORDER FORM (“CUSTOMER”). PURSUANT TO THESE TERMS, CUSTOMER SHALL HAVE THE RIGHT TO USE THESE SERVICES. THESE TERMS AND THE ORDER FORM TOGETHER FORM A BINDING AND EXECUTED WRITTEN AGREEMENT BETWEEN CUSTOMER AND MITEL CLOUD SERVICES, INC., ITS AFFILIATES AND SUBSIDIARIES, A SUBSIDIARY OF MITEL (THE “COMPANY” or “WE” or “US”) EFFECTIVE AS OF THE DATE OF CUSTOMER’S EXECUTION OF THE ORDER FORM. CUSTOMER IS ADVISED TO READ SECTION 7 CAREFULLY BEFORE USING THE SERVICE. THIS SECTION EXPLAINS THE OPERATION AND LIMITATIONS OF VOIP E911 EMERGENCY CALLS.**

These Terms of Service govern and apply to Customer’s use of the Services and Equipment provided by us as well as Customer’s access to our website (the “**Website**”).

**1.1 Installation, Initiation and Service.** We will begin installation, initiation and Service only after we receive and accept the following: (1) a duly executed Order Form; and (2) any amounts payable in advance in accordance with the applicable Order Form. Customer agrees that its purchase of the Services is neither contingent upon the delivery of any future functionality or features nor dependent upon any discussions, oral or written public comments made by the Company with respect to future functionality or features. The Company’s system will not auto configure and activate add-on services, which is the responsibility of the Customer to activate.

**1.2 Service Fees.** Customer agrees to pay all monthly service charges, installation charges, set-up charges, usage-based charges, rental fees and other charges and fees (collectively, “**Service Fees**”) agreed to in each Order Form in the manner indicated therein.

**1.3 Invoicing.** Customer will be invoiced a month in advance for non-usage-based charges and in arrears for all usage-based charges unless otherwise indicated in the Order Form. We will begin charging for all of the Services on the Final Activation Date (as defined in the Order Form), except that if some or all of the Services are activated on an earlier date, then we will begin charging for those activated Services on the date they are activated (the “**Initial Activation Date**”). If any Services are activated between the Initial Activation Date (if any) and the Final Activation Date, we will begin charging for those Services on the date of activation of those Services. We will begin charging for all Services on the Order Form no later than the Final Activation Date. The “**Service**

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Activation Date (if any) or the Final Activation Date. Services shall be deemed accepted by Customer on the Service Activation Date. We will notify Customer in accordance with the information provided by Customer or in our website Customer Portal. We will begin charging for any Services added to the Order Form after the Final Invoicing Date as they are activated. If an ordered circuit is not available for use on the Final Activation Date and this unavailability is not due to Customer's action or inaction or failure to provide required information, and Customer and we have agreed that Customer does not wish to start using the Services without using such circuit, then we may delay the Final Activation Date until such circuit is delivered and available for use. In addition, for certain Services, we retain the right to delay the Final Activation Date in accordance with our normal business practices.

**1.4 Payment.** Unless otherwise stated in the Order Form, Service Fees are due 30 days from the date of the invoice. All Service Fees are quoted in United States currency and are based on Services ordered. Any payment not received from the Customer by the due date shall accrue (except with respect to charges then under reasonable and good faith dispute), at the lower of 1.5% or the maximum rate permitted by law of the outstanding balance per month from the date such payment is due until the date paid. Customers are responsible for reviewing invoices for accuracy. To dispute a charge, Customer shall open a case with our Support team within ninety (90) days of the date of invoice containing the disputed charge, setting forth the amount and the basis of the dispute in reasonable detail. Failure to so dispute a charge within such 90-day period shall constitute an irrevocable waiver of Customer's right to dispute the charge.

**1.5 Suspension of Service.** If any Customer account is thirty (30) days or more overdue (except with respect to charges then under reasonable and good faith dispute) We reserve the right to suspend or disable the Services, after providing notice to Customer without liability to us, until such account is paid in full.

**1.6 Taxes and Regulatory Fees.** Unless otherwise stated in the Order Form, Customer shall be responsible for all sales, use, value added, withholding or other taxes or duties, other than the Company's income taxes, with respect to the Services ordered. In addition to any taxes imposed by the government or regulatory agencies, we reserve the right to charge other authorized regulatory fees, including, without limitation, E911 service fees, universal service fees, and regulatory recovery fees ("Fees"). Any imposition, modification or increases in Fees by a government or regulatory agency or that are intended to recover costs associated with government or regulatory programs shall become effective upon prior notice to Customer.

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**2. Other Networks; Approval and Usage.** The Services require the ability to transmit data through third party networks and carriers, public and private (“**Third Party Networks**”). Customer acknowledges that use of or presence of Third Party Networks may require approval of the owners or operators of such Third Party Networks, and will be subject to the terms and conditions of such Third Party Networks. Customer understands that the Company does not own or control the Third Party Networks, and agrees that the Company shall not be responsible or liable for the performance or non-performance of the Third Party Networks, or within interconnection points between the Service and the Third Party Networks.

**3.1. Term of the Agreement.** This Agreement commences on the date of execution of the Order Form by Customer and continues until all Services expire or this Agreement is mutually terminated by the parties.

**3.2 Term of the Services.** The Services are offered for the Term of Service specified in the Order Form (the “**Initial Term**”). The Initial Term shall begin on the date of the first invoice that includes monthly recurring charges for Services. Following the Initial Term, Services shall automatically renew for additional terms equal to the Term of Service at the New Service Monthly Commitment (as such term is defined below) in effect at the time of renewal (each, a “**Renewal Term**”) unless and until either party notifies the other party in writing (which may be via e-mail) at least thirty (30) days prior to the expiration of the Term in effect at the time that it does not wish to renew the Services (the Initial Term and any Renewal Term collectively referred to as the “**Term**”). If a written termination notice is received by us on or before the 15th of a month, billing and Services (except for any final usage invoice) will terminate at the end of the currently billed month. For example, a customer’s term ends at the end of June and the customer provides notice of termination before May 15. In that case, the last invoice for Monthly Services covers Services until end of June and Services terminate at the end of June. If a written termination notice is received by us after the 15th of a month, billing and Services (except for any final usage invoice) will terminate at the end of the month following the currently billed month. For example, a customer’s term ends at the end of June and the customer provides notice of termination after May 15. In that case, the last invoice for Monthly Services covers Services until the end of July and Services terminate at the end of July.

FOR AVOIDANCE OF DOUBT, if Customer does not provide a termination notice or if a notice is not timely (*i.e.*, notice is provided less than 30 days before the end of the Term), Customer’s Term of Service shall auto-renew and Section 3.4 shall apply.

In addition, after termination of Services, Customer will be sent a final invoice with charges for usage incurred through the end of the Services. If, during the Initial Term or any Renewal Term, Customer adds any additional services to its use of the Service or upgrades or downgrades Profiles, the amount of Customer’s monthly recurring charges shall increase the sum set forth in the original Customer Service Order Form (the “**New Service Monthly Commitment**”). And, the Term for any such additional Services or amendments for add-on locations shall be coterminous with the Initial Term or any Renewal Term in effect at the time.

**3.3 Termination of the Agreement.** This Agreement and any Services may be terminated by either party for cause: (a) upon thirty (30) days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (b) if either party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**3.4 Early Termination.** If Customer wishes to terminate the Services under this Agreement prior to the expiration of the current Term and such termination is not due to our breach, the greater of (a) all recurring charges on the most current invoice and (b) the New Services Monthly Commitment in either case multiplied by the number of months remaining through the end of the Term in effect at the time, including all applicable taxes and any outstanding amounts (“**Early Termination Fee**”) shall be due and payable within thirty (30) days of the effective date of termination. The parties agree that this Early Termination Fee is a reasonable estimate of anticipated actual damages and not a penalty.

**4. Rules of Use.** Customer must at all times comply with our *Rules of Use* found at <https://www.shoretel.com/RoU>. If we become aware of Customer’s violation of the *Rules of Use* or illegal use of the Services, facilities, network or third party networks accessed through our network (including, in any case and without limitation, any use contrary to the Digital Millennium Copyright Act of 1998, 17 U.S.C. 512), or we otherwise receive notice or have reason to believe such use may be occurring, then Customer will cooperate in any resulting investigation by us or government authorities. Any

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government determinations will be binding on Customer. If Customer fails to cooperate with any such investigation or determination, or fails to immediately rectify any violation of the *Rules of Use* or illegal use, we may immediately suspend the Service without further liability to us. Further, upon notice to Customer, we may modify or suspend the Service as necessary to protect its networks, customers or comply with any law or regulation. Under no circumstances will Customer take any actions in connection with its use of the Service that could result in any harm or damage to the network, any third party network(s), our premises, any of our equipment or any other Company customer.

**5. Fraud.** Customer agrees to notify us promptly if it becomes aware of any fraudulent or unauthorized use of its account, Service, or Equipment. The Company shall not be liable for any damages whatsoever resulting from fraudulent or unauthorized use of Customer's account and the payment of all charges to Customer's account shall be and remain the responsibility of Customer.

**6. Service Levels.** We will use commercially reasonable efforts to minimize service disruptions and outages. In the event of service disruptions or outages, Customer's sole remedy, and our sole obligation, shall be to provide the service level credits and/or remedies for the applicable Service in accordance with the Service Level Agreement set forth on our customer support web site at: <https://www.shoretel.com/SLA>. We may update the Service Level Agreement from time to time upon notice to Customer.

**7. E911 Service.** By use of the Service, Customer acknowledges the limitations of E911 service as described in the E911 Policy found at: <https://www.shoretel.com/911-service>. Customer agrees and acknowledges that while some individual services offer access to E911 service, others may not. Customer is advised to thoroughly understand the Service and the options available. By accepting this Agreement, Customer acknowledges that it has received the information regarding the limitations of E911 services, understands them, and assumes the risks associated with the E911 limitations. We may disclose to the FCC that Customer has acknowledged the E911 Disclosure by virtue of Customer having accepted this Agreement. We may update the E911 Policy from time to time upon notice to Customer.

**8. Equipment.** If so indicated on any Order Form, we may rent or sell certain equipment to Customer. Such equipment shall be listed on the Order Form and/or on any other form signed by Customer (such rented equipment the "Equipment"). Any Equipment rental or

purchase shall be subject to the terms and conditions set forth in the Equipment Policy posted on our web site at: <https://www.shoretel.com/ERP>. Customer shall be solely responsible and liable for user's compliance with this Agreement and the proper use of the Equipment and the Services.

**9. Confidentiality.** As used herein, "Confidential Information" means all confidential information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party") that is designated in writing as confidential as well as the terms and conditions of this Agreement. Confidential Information shall not include information which: (a) is known publicly; (b) is

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generally known in the industry before disclosure; (c) has become known publicly, without fault of the Receiving Party, subsequent to disclosure by the Disclosing Party; or (d) has been otherwise lawfully known or received by the Receiving Party. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms, except with the Disclosing Party's prior written permission. The Receiving Party agrees to keep confidential all Confidential Information disclosed to it by the Disclosing Party, and to protect the confidentiality thereof in the same manner as it protects the confidentiality of its own (at all times exercising at least a reasonable degree of care in the protection of Confidential Information). If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. The Receiving Party agrees that monetary damages for breach of confidentiality hereunder may not be adequate and that, if necessary, the Disclosing Party shall be further entitled to seek injunctive relief.

**10. Privacy Policy.** Customer acknowledges and agrees that we will provide the Services in accordance with the Privacy Policy posted on our website at [www.mitel.com/policies](http://www.mitel.com/policies).

**11. Resale.** Customer represents and warrants that it will be the end user of the Services. Customer shall not in any way resell, license or permit or suffer any third party to use the Services without receiving our prior written consent.

**12. Disclaimer of Warranties.** Except as expressly provided herein, Customer acknowledges and agrees that the Services are provided on an "As Is", as available basis. Other than as expressly provided herein, THE COMPANY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR, NON-INFRINGEMENT OR TITLE TO THE MAXIMUM EXTENT PERMITTED BY LAW. We do not warrant that the Services will meet the Customer's requirements or that the operation of the Services will be uninterrupted or error-free. Further, we do not warrant that all errors in the Services can be corrected.

**12.1 Disclaimer of Third Party Actions and Control.** Customer acknowledges and agrees that we do not and cannot control the flow of data between our network and Third Party Networks. Such flow depends on the performance of Third Party Networks and the services provided or controlled by third parties. Action or inactions caused by these Third Party Networks can produce situations in which customer connections

may be impaired or disrupted. Although we will use commercially reasonable efforts to remedy and avoid such events, we cannot issue any warranties over these Third Party Networks or any disruptions that may occur. THEREFORE, WITHOUT LIMITING THE GENERALITY OF SECTION 12 ABOVE, THE COMPANY DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO THE PERFORMANCE, NONPERFORMANCE OR INCORRECT PERFORMANCE OF THIRD PARTY NETWORKS.

**13. Limitation of Liability** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, LOST PROFITS OR REVENUE. UNDER NO CIRCUMSTANCES WILL THE COMPANY BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN. THE COMPANY'S AGGREGATE LIABILITY FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE TOTAL AMOUNT OF SERVICE FEES PAID AND/OR DUE BY THE CUSTOMER DURING THE PREVIOUS 12 MONTHS. Because some states and jurisdictions do not allow limitation of liability in certain instances, portions of the above limitation set forth in this section may not apply to Customer. However and notwithstanding the provisions of this Section 13, the parties agree that neither party will be liable for breach-of-contract damages that the breaching party could not reasonably have foreseen on entry into this Agreement. No action against either party arising out of these Terms may be brought by the other party more than one year after the cause of action has arisen.

**14 The Company's Indemnification of Customer.** The Company shall indemnify and hold harmless the Customer against any loss, damage or cost (including reasonable attorney's fees) incurred in connection with claims, demands, suits or proceedings ("Claims") made or brought against Customer by a third party arising from damage to tangible personal property located at, or from injury to or the death of any person occurring at, Customer's premises that result from any negligent or willful acts or omissions of the Company or of any agent, employee or contractor of the Company that occur in the course of the performance of any Service installation or maintenance work at the Customer's premise.

**14.1 Customer's Indemnification of the Company.** The Customer agrees to indemnify and hold the Company harmless against any loss, damage or costs (including reasonable attorney's fees)

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incurred in connection with Claims made or brought against the Company by a third party arising from or relating to: (i) any act, error, omission, fault, negligence, or misconduct of Customer or any user of the Service or Equipment; (ii) Customer's material breach of the Rules of Use; (iii) any claim by any employee or invitee of Customer or user other than a claim based on the gross negligence or willful misconduct of the Company; (iv) any claim by any customer of Customer, User, or any other third party relating to, or arising from, Customer's use of the Services or Equipment; or (v) violation of any law or regulation by Customer, any User, or any Customer employee, contractor, or agent.

**14.2 Mutual Provisions.** Each party's indemnity obligations are subject to the following: (i) the aggrieved party shall promptly notify the indemnifier in writing of the Claim; (ii) the indemnifier shall have sole control of the defense and all related settlement negotiations with respect to the Claim (provided that the indemnifier may not settle or defend any Claim unless it unconditionally releases the aggrieved party of all liability); and (iii) the aggrieved party shall cooperate fully to the extent necessary, and execute all documents necessary for the defense of such Claim.

**15. Force Majeure.** Neither party will be liable for any failure or delay in its performance under the Agreement, due to any cause beyond its 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 the Company's reasonable control, provided that the delayed party (a) gives the other party prompt notice of such cause and (b) uses reasonable commercial efforts to correct promptly such failure or delay in performance.

**16. No Lease.** Except as otherwise provided herein, the Agreement is a services agreement and is not intended to and will not constitute a lease of any real or personal property. In particular, Customer acknowledges and agrees that Customer has not been granted any interest whatsoever (leasehold or otherwise) in any premises, real or personal property, equipment or servers of the Company or in any personal property or server space leased by the Company (except for the Equipment rental), and Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations, or ordinances.

**17. Government Regulations.** Customer will not use the the Company's network or the Services to export, re-export, transfer, or make available, whether directly or indirectly, any

regulated item or information to anyone outside the U.S. without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations to whose jurisdiction Customer is subject.

**18. Assignment.** Customer may not assign its rights or delegate its duties under the Agreement either in whole or in part without the prior written consent of the Company, except to a party that acquires all or substantially all of Customer's assets as part of a corporate merger or acquisition. The Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

**19. Notices.** Notices regarding the following may be posted on our website: (i) modifications, impositions or increases to regulations and Fees; (ii) new or modified documentation, including but not limited to SLA, Privacy Policy and other internal documents; (iii) changes to rates, other than those affecting Customer under this Agreement; and (iv) new Services and information. The changes will become effective and will be deemed accepted by Customer, (a) immediately for those Customers who purchase the Services after the updated version is published on our website, or (b) for those having pre-existing accounts, the updated Terms of Service will be deemed effective with Customer's continued use of the Service. Notices regarding: (a) material changes to this Agreement; (b) internal or external changes materially impacting our ability to do business; (c) breach; (d) termination; or (e) any other material information required to be in writing, will be in writing and deemed to have been given if delivered personally, by confirmed email or facsimile, or on the third day after mailing by first-class, registered or certified mail, postage prepaid to either Party at the addresses given above in the heading to this Agreement or to such other address as a Party may, from time to time, designate by notice to the other Party.

**20. Choice of Law and Arbitration.** The Agreement will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws principles. In the event of any controversy or claim arising from or related to this Agreement, its performance or interpretation, the parties, in good faith, will initially attempt to resolve the dispute between them. Except for disputes, controversies, claims or collection efforts regarding Customer's failure to pay any charges, amounts or fees invoiced to Customer, any and all disputes, controversies and claims arising out of or relating to this Agreement or any Order Form, including its/their validity, shall be handled, determined, and resolved by arbitration conducted in Santa Clara County, California, before one (1) arbitrator in accordance with the Commercial

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Arbitration Rules and Mediation Procedures then in effect of the American Arbitration Association. The arbitrator's award shall be final and binding on the parties, and judgment confirming such arbitration award may be entered thereon in any court having jurisdiction over such proceedings. Each party shall bear its own costs and expenses of preparing and presenting its case and shall bear an equal share of the expenses and fees with respect to the arbitration. The arbitrator shall not be empowered to award damages in excess of direct compensatory damages and shall not be authorized to award special, indirect, punitive, incidental, or consequential damages, and each party irrevocably waives any damages in excess of direct compensatory damages.

**21. Entire Agreement.** The Proposal, these Terms of Service, and any Order Form(s) issued hereunder represent the complete agreement and understanding of the parties with respect to the subject matter hereof and supersede, to the extent of any conflict, any other agreement or understanding,

written or oral, between the parties with respect to the subject matter hereof. In the event of an inconsistency between the terms and conditions of the Order Form, these Terms of Service and the Order Form(s) now or hereafter appended hereto, the terms of the Order Form shall govern. Both parties represent and warrant that they have full corporate power and authority to execute and deliver each Order Form and to perform their obligations under the Agreement and that each person whose signature appears on the Proposal, these Terms of Service (if applicable) and any Order Form is duly authorized to execute such document on behalf of the respective party.

**22. Surviving Provisions.** 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; will survive the termination of the Agreement and will apply even if the Agreement is found to have failed of its essential purpose.