

## **MASTER SERVICE AGREEMENT (TERMS + CONDITIONS)**

This MSA is effective as of April 9<sup>th</sup>, 2021 for all Clients agreeing to this MSA and signing this MSA.

Please read this MSA fully and carefully before using the Services. This MSA sets forth the legally binding terms and conditions for the Client's use of the Services. By registering for and/or using the Services in any manner, the Client agrees that it has read, understood and accepts this MSA and all other documents referenced herein, each of which is incorporated herein by this reference and each of which may be updated from time to time as set forth below, to the exclusion of all other terms. The Client may not use the Services if it does not accept this MSA.

If the Client is accepting this MSA on behalf of an organization, it represents and warrants that it has the authority to do so. If the Client's organization has entered into a separate agreement with MITTO covering its use of the Services, then that agreement shall govern instead.

If and to the extent that the Client has agreed to a previous version of MITTO's MSA, this MSA will be effective as of April 9<sup>th</sup>, 2021. The Client is aware that by continuing to use MITTO's Services after April 9<sup>th</sup>, 2021, it accepts this updated MSA. If the Client or its organization have a separate written agreement with MITTO, such updates to the MSA will not apply to it.

MITTO and Client individually a "Party" or collectively "Parties".

## **DEFINITIONS**

As used hereunder, the following terms shall have the meanings specified below. Except where the context requires otherwise, words in the singular shall include the plural and vice versa.

"Accessible Mobile Operators" shall mean the digital cellular networks accessible from the MITTO platform;

"Acceptable Use Policy" the acceptable use of the Services agreed by the Parties available on the site.

"Affiliate" shall mean any person or entity who directly or indirectly through one or more entities, controls or is controlled by or is under common control with any of the Parties. Control, for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity;

"Applicable Law" shall mean all laws, regulations, directives, statutes, subordinate legislation, common law and civil codes of any jurisdiction together with all codes of practice having force of law, statutory guidance, regulatory policy or guidance and industry codes of practice;

"Balance" shall mean the amount of money the Client has paid MITTO less the value of the Services the Client has used with MITTO;

"Beta Services" shall mean Services or a functionality that may be made available to the Client to try at its option at no additional charge and which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description;

"Business Day" shall mean any day that is not a Saturday, Sunday or a public or bank holiday in the canton of Zug/Switzerland;

"Client" shall refer to you, unless you are accepting on behalf of an organization in which case "Client" shall

mean that organization. If you are registering for a user account in order to use the Services on behalf of an organization, then you are agreeing to this MSA for that organization and guaranteeing to MITTO that you have the authority to bind that organization to this MSA;

"Client Data" shall mean all data, works and materials uploaded to or stored within the Services by or for the Client, transmitted by the Services at the instigation of the Client, supplied by the Client to MITTO for uploading to, transmission by or storage with the Services, or generated by the Services as a result of the use of the Services by the Client, but excluding analytics data relating to the use of the Services;

"Data Protection Laws" shall mean all applicable laws relating to the processing of Personal Data including, the Swiss Federal Act on Data Protection of 19 June 1992, together with its ordinance, and the European General Data Protection Regulation (Regulation (EU) 2016/679);

"Documentation" shall mean all of the MITTO API instruction manuals and guides, code samples, manuals, guides, online help files and technical documentation made publicly available by MITTO for the Services, and as may be updated from time to time. Such Documentation is appended to the respective Service Addendum or may be available at <https://www.mitto.ch> and includes terms that are specific to certain Services (namely, what MITTO may refer to as "product specific terms" or "service specific terms");

"Information" shall mean any visual, textual data or other material made available through the access to the MITTO Platform or the Services granted to Client under this MSA;

"Intellectual Property Rights" shall mean all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights. These intellectual property rights include copyrights and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs;

"Malicious Code" shall mean code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs, Trojan horses, ransomware, spyware, adware and other malicious software programs;

"MITTO" shall mean MITTO AG, a company incorporated in Switzerland under the registration number CH-170.3.038.081-8, whose principal place of business is at Bahnhofstrasse 21, 6300 Zug, Switzerland;

"MITTO API" shall mean an application programming interface for the Services (or feature of the Services) provided to the Client by MITTO;

"MITTO Platform" shall mean the server, hardware, software and other equipment that MITTO uses in connection with performance of the Services;

"Mobile Operator" or "Operator" shall mean the legal entity, which operates a mobile telecommunications system or network;

"Mobile Subscriber" shall mean a person having entered into an agreement with a Mobile Operator allowing it to access the Operator's network;

"MSA" shall mean this agreement between Client and MITTO incorporating these terms and conditions and all addenda and documentation attached thereto;

"Personal Data" shall mean any information relating to a living individual who can be identified from such data, or a combination of such data, and other information in the possession of, or likely to come into the possession of, the data controller. If Data Protection Laws definition of Personal Data include data relating to legal entities, such data shall be considered Personal Data;

"Services" shall mean the services, including all products and services, that MITTO offers, and that the Client

orders under a Service Addendum and as described in the respective Service Addendum. This includes MITTO services provided to the Client on a trial basis or otherwise free of charge. Services may include Services that provide both, MITTO Platform services, including access to any MITTO API, and, where applicable, connectivity services that link the Services to the telecommunication providers' networks via the Internet. Refer to the definitions in the respective Service Addendum or available at <https://www.mitto.ch> for a more detailed description;

"Service Addendum" shall mean any Addendum including its Appendices containing the description and any specific terms and conditions for a particular Service, as per article 0 of this MSA;

"Service Level Agreement" shall mean the service levels agreed by the Parties.

"Site" means Mitto's web domains, including the pricing and all other webpages thereof, available at <https://www.mitto.ch/>

"Dashboard" means Mitto's customer portal available on the Site.

PLEASE NOTE: THESE TERMS LIMIT MITTO'S LIABILITY TO THE CLIENT. For more details, see article 0.

IN ADDITION, DISPUTES RELATED TO TERMS OR RELATED TO CLIENT'S USE OF THE SERVICES GENERALLY MUST BE RESOLVED BY A DISPUTE RESOLUTION PROCESS WHICH MAY LEAD TO BINDING ARBITRATION. For more details, see article 0.

### **SCOPE OF AND CHANGES TO THIS MSA**

Subject to the terms and conditions of this MSA, MITTO agrees to provide Client with the Services defined and described in each Service Addendum.

From time to time, the Parties may mutually agree to add or remove Services to or from this MSA by adding or removing a Service as a Service Addendum to this Agreement or by using the dashboard or the site.

MITTO may update this MSA from time to time by providing the Client with prior written notice of material updates at least thirty (30) days in advance of the effective date of the update. Notice will be given in Client's account or via an email to the email address of the owner of Client's account or as indicated in the Registration Form. This notice will highlight the intended updates. Except as otherwise specified by MITTO, updates will be effective upon the effective date indicated in connection with the update. In case of no such communicated effective date, the update will immediately enter into force. The updated version of this MSA will supersede all prior versions.

Following such notice, Client's continued access or use of the Services on or after the effective date of the changes to the MSA constitutes its acceptance of any updates. If Client does not agree to any updates, it should stop using the Services immediately.

MITTO may not be able to provide at least thirty (30) days prior written notice of updates to this MSA that result from changes in the law or requirements from telecommunications providers.

### **ORDER OF PRECEDENCE**

In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the Service Addendum including its appendices, (2) product-specific terms, (3) the Service Level Agreement, (4) the MSA and (5) the Documentation.

### **SERVICE TERMS**

The applicable terms for the Service are defined in this MSA unless there are specific terms for a Service in the respective Service Addendum.

### **CLIENT'S MITTO ACCOUNT(S)**

To use the Services, Client might be asked to create a user account. As part of the account creation process, the Client will be asked to provide its email address, create a password, and provide a telephone number for verification purposes. Until the Client registers for an account, its access to certain Services may be limited. When registering for

an account, the Client must provide true, accurate, current and complete information about itself as requested during the setup process.-

The Client is solely responsible for all use (whether or not authorized) of the Services under its account(s) and any sub-account(s), including the quality and integrity of Client Data. In addition, the Client is solely responsible for all acts and omissions of anyone who has access to or otherwise uses any Service ("End User").

The Client agrees, represents and warrants taking all reasonable safeguards to prevent unauthorized access to or use of the Services and will notify MITTO promptly of any unauthorized access or use. MITTO is not liable for any loss or damage arising out of unauthorized use of Client's account(s).

As part of MITTO's ongoing and routine monitoring of account activity, and to help MITTO to reduce the risk of fraudulent use of Client's account(s) and the Services, the Client may initially be limited in the provision of service while MITTO is activating the Client account(s), or where the Client has not used its account in 12 months or longer.

## **CONNECTIVITY**

Client is solely responsible for providing suitable hardware, software, communications equipment and any other equipment, at its own expense, and for the provision of all infrastructures necessary to ensure its access to the MITTO Platform and the Services. Client is also responsible, at its own expense, for the provision and the regular monitoring of telecommunication and access infrastructure between the Client's operations center and the MITTO Platform. MITTO shall be responsible for the MITTO Platform up to and including the Client's physical point for connection.

## **ACCESS AND USE OF SERVICES**

MITTO makes the Services available to the Client in accordance with this MSA, the Documentation and any applicable Service Addendum. The Services will comply with the Service Level Agreement, which may be updated from time to time. MITTO provides the Services in accordance with laws applicable to MITTO's provision of the Services to its Clients generally (i.e. without regard for Client's particular use of the Services), and subject to the Client's use of the Services in accordance with this MSA, the Documentation and any applicable Service Addendum.

The Client may use the Services, on a non-exclusive basis, solely to:

- use the Documentation and MITTO APIs as needed to develop its application;
- use and make the Services available to End Users in connection with the use of each Service in accordance with the Documentation and MITTO's Acceptable Use Policy or other limitations agreed in the Service Addendum;
- use the Services solely in connection with and as necessary for the Client activities pursuant to this MSA; and
- allow its Affiliates to use the Services pursuant to this MSA or as agreed in the Service Addendum.

## **SERVICE AVAILABILITY**

Unless otherwise sets forth in the addendum, dashboard or the site or any specific service levels, MITTO uses reasonable endeavours to maintain the availability of the Services to the Client, but does not guarantee 100% availability. Particularly, downtime caused directly or indirectly by any of the following is not considered a breach of this MSA:

- force majeure events (see article 0);
- fault or failure of the Internet or any public telecommunications network;
- fault or failure of the Client's IT systems or networks;
- any use of third party applications;
- any impact of denial of service attacks or other influence of Malicious Code;
- any breach by the Client of this MSA; or
- scheduled maintenance.

The Client is obliged to report functional failures, malfunctions or impairments of the Services immediately and as precisely as possible to MITTO.

## **CLIENT DATA**

The Client hereby grants to MITTO a non-exclusive right to copy, reproduce, store, distribute, publish, export, adapt, edit and translate Client Data to the extent reasonably required for the performance of its obligations and the exercise of its rights under this MSA. In addition, the Client grants to MITTO the right to sub-license these rights to its hosting, connectivity and telecommunications service providers.

The Client warrants to MITTO that Client Data will not infringe the Intellectual Property Rights or any other rights of

any third party and does not infringe the Applicable Law.

MITTO may create an automated backup of Client Data as outlined in the Service Addendum and ensures that each such backup is sufficient to enable MITTO to restore the Services to the state they were in at the time the backup was made. MITTO or its commissioned service providers retain and securely store each such backup for a period indicated in the Service Addendum.

MITTO will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Client Data, as described in the Documentation. Those safeguards will include, but are not limited to, measures designed to prevent unauthorized access to or disclosure of Client Data (other than by Client or End Users).

The Client acknowledges that the Internet and telecommunications providers' networks are inherently insecure. The Client agrees that MITTO is not liable for any changes to, interception of, or loss of Client Data while in transit via the Internet or a telecommunications provider's network.

If and to the extent that Client Data includes Personal Data, the Parties shall conclude a data processing agreement (see article 0).

## CLIENT'S OBLIGATIONS

The Client agrees to:

- be solely responsible for all use (whether or not authorized) of the Services and Documentation under the Client's account(s), including the quality and integrity of Client Data;
- use Services only in accordance with this MSA, the Acceptable Use Policy, Documentation, Service Addendum or other applicable terms relating to the use of the Services;
- use Services in accordance with all Applicable Law;
- be solely responsible for all acts, omissions and activities of End Users, including their compliance with this MSA, the Documentation, the Acceptable Use Policy and any terms agreed by the Parties;
- prevent unauthorized access to or use of the Services and notify MITTO promptly of any such unauthorized access or use;
- provide reasonable cooperation regarding information requests from law enforcement, regulators, or telecommunications providers; and
- comply with the representations and warranties made in article 23 of this MSA.

## USE RESTRICTIONS

Concerning the Services the Client agrees:

- that except to make the Services available to Client's End Users in connection with the use of each Service as permitted herein, the Client does not transfer, resell, lease, license or otherwise make available the Services to third parties or offer them on a standalone basis;
- not to attempt to use the Services to access or allow access to emergency services (i.e., an official government-sponsored emergency telephone number, such as 144 in Switzerland or 112 in the European Union and other locations worldwide, which is used to dispatch professional emergency responders) unless the Service is expressly approved for emergency services and the Client use those Services strictly in accordance with the specific terms agreed by the Parties or any other agreement as MITTO deems appropriate;
- not to use the Services in any manner that violates any Applicable Law;
- not to use the Services to create, train, or improve (directly or indirectly) a substantially similar product or service;
- not to create multiple service accounts to simulate or act as a single service account or otherwise access the Service in a manner intended to avoid incurring fees; and
- not to reverse engineer, decompile, disassemble or otherwise create, attempt to create or derive, or permit or assist anyone else to create or derive the source code of any software provided in connection with the Services.

## MAINTENANCE

MITTO may temporarily suspend the Services for maintenance or upgrade reasons. MITTO will endeavor to give Client five (5) Business Days prior written notice of such suspension. It is understood that suspension of the Services for maintenance reasons, excluding force majeure events or serious outage of the Services (where outage means a situation where the Services can barely be operated if at all), will usually be done during between 00:00-06:00 CET (Central European Time).

## SERVICE SUSPENSION

MITTO may suspend, in whole or in part, Client's rights of access and use of the Services upon notice if:

- the Client violates (or gives MITTO reason to believe it has violated) any provision of this MSA, a Service Addendum, the Documentation or the Acceptable Use Policy;
- there is reason to believe that the traffic created from Client's use of the Services or its use of the Services is fraudulent or negatively impacting the operating capability of the Services;
- MITTO determines, in its sole discretion, that providing the Services is prohibited by Applicable Law, or it has become impractical or unfeasible for any legal or regulatory reason to provide the Services;
- subject to Applicable Law, upon Client's liquidation, commencement of dissolution proceedings, disposal of its assets or change of control, a failure to continue business, assignment for the benefit of creditors, or if the Client becomes the subject of bankruptcy or similar proceeding;
- there is any use of the Services by the Client or the End Users that, based on MITTO's judgment, threatens the security, integrity or availability of the Services;
- the use by the Client or the End Users poses a security risk to the Services or any third party, adversely affects the Services, service offerings, systems or data of another MITTO client, exposes MITTO or its service providers to liability, or may be fraudulent; or
- the Client or the End Users are in breach of this MSA, in particular if the Client is more than ten (10) Business Days in default of payments due.

The temporary suspension of access and usage rights has the following effects:

- the Client remains fully liable for all fees incurred up to the date of suspension.
- the Client remains liable for all fees and costs applicable to all Services for which access has not been suspended.
- Client Data stored is not affected by the suspension.

## REQUIREMENTS FOR BUILDING REGULATED SERVICES

MITTO offers both non-interconnected and interconnected Voice over IP ("VoIP") Services. If the Client orders interconnected VoIP services, it is responsible, just like MITTO, to comply with the regulatory requirements, taxes, and fees imposed on interconnected VoIP services. If the Client orders a non-interconnected VoIP service from MITTO, it is still possible for the Client to build an interconnected VoIP Service with MITTO's non-interconnected VoIP services. If the Client builds an interconnected VoIP service (regardless of which MITTO Services are ordered), the Client is solely responsible to comply with the regulatory requirements, taxes, and fees imposed on interconnected VoIP services.

## CHANGES TO MITTO'S SERVICES

The features and functions of the Services, including the MITTO Platform, the MITTO API and MITTO's Service Level Agreement, may change from time to time. It is MITTO's responsibility to ensure that Services are compatible with MITTO's former Services, if technically feasible. MITTO tries to avoid making changes to the Services that are not backwards compatible. If any changes become necessary and lack backwards compatibility, MITTO uses reasonable efforts to notify the Client at least sixty (60) days prior to implementing such changes.

## BETA SERVICES

From time to time, MITTO may make Beta Services available to Clients. Client may choose to try such Beta Services or not in its sole discretion.

Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. MITTO may discontinue Beta Services at any time in its sole discretion and may never make them generally available.

**BETA SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITH NO WARRANTIES WHATSOEVER, AND MITTO SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY HARM OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH BETA SERVICES.**

## AFFILIATES

Client's Affiliates are not permitted to purchase Services using the MSA that Client accepted. Client Affiliates will need to accept the MSA themselves. If Client's Affiliates use the Services under this MSA, then the Client and those Affiliates will be jointly and severally responsible for the acts and omissions of the Affiliates, including, but not limited to, their breach of this MSA. Any claim from any of the Client's Affiliates that use the Services pursuant to this MSA may only be brought against MITTO by the Client on its Affiliates' behalf.

## FEES AND PAYMENT

The fees to be paid to MITTO by Client are set forth in each Service Addendum, dashboard or the site. MITTO is entitled to change the fees set forth in a Service Addendum, dashboard or the site by providing the Client with advance notice in line with the fee change notice period defined in each Service Addendum, dashboard or the site. Payments to be made by Client to MITTO for the Services and payment terms are set forth in the applicable Service Addendum, dashboard or the site. MITTO shall not be obliged to perform any Services under this MSA if Client has not provided payments in accordance with the applicable Service Addendum, dashboard or the site. MITTO has also the right to temporarily suspend the Service until outstanding payments have been received (see article 13). All charges and fees for the Services are exclusive of any taxes, including sales, value-added, or other taxes. Client shall be liable for and shall reimburse MITTO for all sales or value-added taxes imposed in connection with or arising from the provision of Services to Client. Client will provide MITTO sufficient information as to the timely payment of all applicable withholding taxes, if so required by MITTO. All payments between the Parties shall be for the full invoice amount and as such each Party shall pay any bank charges its bank may charge. Any shortfall between the invoiced amount and the amount received by MITTO will constitute an outstanding amount and will be carried forward.

## BILLING

MITTO shall take all reasonably feasible measures to ensure that its system for recording the volume of Client's usage of Services is accurate.

If the data concerning Client's use of Services recorded by Client deviates from the data recorded by MITTO, the Parties shall use reasonable endeavors to investigate their reporting systems in order to resolve the deviation. Client can contest the amount of an invoice by giving MITTO a written notice of the disputed amount within ten (10) Business Days of receiving the invoice. Within ten (10) Business Days of receiving the notice, MITTO will provide Client by email with an itemized transaction log report of all Service requests it received from Client in the given period. Should Parties fail to resolve within a further fifteen (15) days, the dispute may be escalated to senior management, or such dispute shall be resolved in accordance with article 32. The Client shall pay all amounts other than those in dispute on the due date for payment.

Unless otherwise agreed in the respective Service Addendum Dashboard or the Site, MITTO will send invoices to Client by email to the email address specified in the Registration Form. Client is regarded to have received the invoice the same day the invoice is sent by MITTO to the Client via email.

## UNSOLICITED TRAFFIC

Client undertakes that it will not use any Services for any illegal, immoral or improper purpose or in any manner which contravenes Applicable Law or Mobile Operator requirements as they exist and as they change over time and undertakes not to allow any third party to do so.

Client shall under no circumstances send unsolicited traffic to the MITTO Platform, the MITTO API or any Service. Client shall at all times ensure that Client's agreements with its clients contain similar clauses that prohibit sending of unsolicited traffic. Client shall perform all such actions that prevent unsolicited traffic from reaching the MITTO Platform, the MITTO API or any Service.

Should unsolicited traffic nonetheless be sent by the Client or any of the Client's clients or client's clients to the MITTO Platform, the MITTO API or any Service, the following actions shall be taken:

- the Party detecting that unsolicited traffic has been sent shall immediately notify the other Party;
- the Parties shall immediately initiate efforts to work in good faith and exchange information (with timestamp, content, destination number and originator) in order to determine the source of the unsolicited traffic as soon as possible after the incident;
- Client shall immediately terminate the connection with the Client's client that has originated the unsolicited traffic and shall ensure that such Client's client is no longer connected to the MITTO Platform, the MITTO API or Services.

If any clauses in this article 0 are violated, MITTO can immediately suspend (i.e. temporarily stop providing the Service; see article 13 or terminate this Agreement, at its sole option, without prejudice to any damages that MITTO may be entitled to claim.

## **SUBCONTRACTORS**

MITTO may employ subcontractors of its choice to fulfil its obligations. MITTO is responsible for acts and omissions of its subcontractors as if they were its own.

## **INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights in all software, information, technology or data whatsoever supplied by either Party under the Agreement shall remain the property of that Party or its licensors. Any Intellectual Property Rights to any developments shall be the property of the developing party.

For the avoidance of doubt: MITTO exclusively owns and reserves all right, title and interest in and to the Services, Documentation, or Confidential Information (see section 0 below) and all anonymized or aggregated data resulting from the use and operation of the Services (including but not limited to volumes, frequencies, or bounce rates, etc.) and that do not identify a natural person as the source of the information, as well as any feedback, recommendations, correction requests, or suggestions ("Contributions") from the Client or any End User about the Services.

The Client exclusively owns and reserves all right, title and interest in and to Client Data and Client's Confidential Information.

By submitting Contributions, the Client agrees that:

- MITTO is not under any obligation of confidentiality with respect to Client's Contributions;
- MITTO may use or disclose (or choose not to use or disclose) Client's Contributions for any purpose and in any way;
- MITTO owns Client's Contributions; and
- Client is not entitled to any compensation or reimbursement of any kind from MITTO under any circumstances for its Contributions.

The Client grants MITTO the right to use its name, logo, and a description of its use case to refer to the Client on MITTO's website, earnings release and calls, marketing or promotional materials, subject to Client's standard trademark usage guidelines that Client may provide to MITTO.

## **REPRESENTATIONS AND WARRANTIES**

MITTO MAKES NO EXPRESS WARRANTIES TO CLIENT REGARDING THE SERVICES. THE SERVICES ARE BEING PROVIDED TO CLIENT "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY THE APPLICABLE LAW, MITTO DISCLAIMS ALL WARRANTIES WITH REGARD TO THE SERVICES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, MERCHANTABLE QUALITY, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. MITTO ADDITIONALLY DISCLAIMS ALL WARRANTIES RELATED TO THIRD PARTY TELECOMMUNICATIONS PROVIDERS.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY MITTO, ITS AFFILIATES, ITS DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

The Services are not designed, intended or licensed for use in hazardous environments requiring fail-safe controls, including without limitation, the design, construction, maintenance or operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, and life support or weapons systems. MITTO expressly disclaims any express or implied warranty of fitness for such purposes.

MITTO represents and warrants providing to Client Services that meet reasonable commercial standards and good industry practice. MITTO does not warrant that the Services will be fault-free, that any Service will be available continuously or that all the Accessible Mobile Operators will be reachable at all times.

MITTO cannot guarantee that the Services will never be faulty but will do its reasonable commercial efforts to correct reported faults and make the Services available as soon as MITTO reasonably can.

MITTO is not responsible in any way for any mobile telecommunications systems or networks, which it does not operate and in particular for the network of the Operators. Therefore, MITTO is not liable for the acts or omissions of other providers of telecommunication services (including suspension or termination of MITTO connections and/or contracts with any Operator) or for faults in or failures of their apparatus or network, and in general for any other



technical reason attributable to Operator's network or telecommunication service provider.

Client acknowledges that MITTO has no control over the Information and data, which passes through the use of the Services and that MITTO does not examine the use of such Information and data or the nature or the source of the Information and data. Client shall be solely liable for the content of the Information, data and any other material transmitted by Client or anyone else using the Services including but not limited to Mobile Subscribers. MITTO excludes all liability of any kind in connection with the transmission or reception of such content.

The Client represents and warrants that, if it records or monitors all and any communications using the Services, it complies with all Applicable Laws prior to doing so and secures all required prior consents to record or monitor communications using the Services. MITTO makes no representations or warranties with respect to recording or monitoring of any communications. The Client acknowledges that these representations, warranties, and obligations are essential to MITTO's ability to provide the Client with access to recording and monitoring features that are part of the Services, and it further agrees to indemnify MITTO and its Affiliates in accordance with the terms of article 0 for claims arising out of or related to Client's acts or omissions in connection with providing notice and obtaining consents regarding such recording or monitoring of communications using the Services.

The Client further represents and warrants that it has provided (and will continue to provide) adequate notices and has obtained (and will continue to obtain) the necessary permissions and consents to provide Client Data to MITTO for use and disclosure pursuant to article 0.

### **INDEMNIFICATION AND LIMITATION OF LIABILITY**

Notwithstanding anything else to the contrary in this MSA, Client will defend and handle at its own expenses, indemnify and hold harmless MITTO, parent companies, subsidiaries and Affiliates, their respective officers, directors, employees and agents, subcontractors, suppliers (each, an "Indemnified Party") from and against any and all claims, demands, actions, damages, costs and expenses (including attorney fees), or liability of whatever nature incurred or to be incurred by an Indemnified Party arising out of or relating to (i) Client's use of the Services other than as expressly authorized in this MSA, the Documentation and the respective Service Addendum, (ii) Client's infringement of any third party Intellectual Property Rights in using the Services, (iii) any breach of Client's obligations under this Agreement, (iv) any claims arising from Information, data, or messages transmitted by Client using the Services, including, but not limited to, claims for libel, slander, infringement of copyright, and invasion of privacy or alteration of private records or data.

MITTO agrees to promptly notify the Client of any such third party claim, to permit the Client to control the defense and/or settlement of such claim and to assist the Client, at its sole expense and reasonable request, in the defense and/or settlement of any such claim. The Client agrees that MITTO shall have the right to additionally participate, at MITTO expense, in the defense of any such claim through counsel of its own choice.

"IN NO EVENT SHALL MITTO BE LIABLE TO THE CLIENT FOR ANY LOSS OF USE, LOSSES DUE TO FORCE MAJEURE, INTERRUPTION OF BUSINESS, OR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOSS OF CUSTOMERS, LOST PROFITS, LOST REVENUES OR ANTICIPATED SAVINGS OR EARNINGS, INTERFERENCE WITH BUSINESS OR COST OF PURCHASING REPLACEMENT SERVICES) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF MITTO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF THE USE OF, OR INABILITY TO USE THE SERVICES, OR THE PERFORMANCE OR FAILURE TO PERFORM BY MITTO OF ANY PROVISION OF THIS MSA, WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS OF MITTO, ITS AFFILIATES, EMPLOYEES OR AGENTS.

To the extent that MITTO is liable, its maximum total liability is limited to the total amount of paid fees by the Client in the last twelve (12) months under this MSA. This limitation of liability does not apply to the liability for death or personal injury.

No liability is assumed for the Services being suitable for the purposes of the Client and for it working together with the Client's existing soft- and hardware or any other infrastructure.

The liability of MITTO is excluded in the case of non-contractual use by the Client."

Neither MITTO nor its representatives, Affiliates or employees will be liable under any legal or equitable theory for any claim, damage, or loss (and Client will hold MITTO harmless against any and all such claims) arising from or relating to the inability to use the Services to contact emergency services, as defined in article 0. MITTO's outbound communication Services should not be used for contacting emergency services, unless the Service is expressly approved for such purpose and the Client and MITTO have entered in a separate agreement in connection with the use of such approved Service.

## CONFIDENTIALITY

The Parties shall treat all material and Information, including this MSA, which is delivered by the other Party in order to perform its obligations under this MSA as confidential ("Confidential Information"). The Parties shall not disclose such Confidential Information to a third party without a prior written consent of the other Party.

Confidential Information shall not include (i) information which was in the public domain at the time of disclosure, (ii) information which, though originally Confidential Information, subsequently falls into the public domain other than a result of any breach of this clause or any other duty of confidence, (iii) information received by a Party from a third Party, without any breach of this clause or any obligation of confidentiality, (iv) information that is required to be disclosed by a government body or court of competent jurisdiction or by operation of law or in order to comply with the rules of a recognized stock exchange, but only to the extent so required.

At the disclosing Party's written request at any time, the receiving Party shall promptly return the Confidential Information to the disclosing Party promptly, or certify in writing to the disclosing Party that the Confidential Information has been destroyed.

This article 0 shall not prevent the disclosure by the Parties to regulators or Mobile Operators requested by them.

## DATA PROTECTION

Each Party shall comply with Data Protection Laws with respect to the processing of Personal Data.

For the purposes of this provision and the MSA as a whole, data is information provided, submitted or uploaded by the Client or End Users of the Services in connection with the use of the Service. Data includes, in particular, Personal Data that is provided to MITTO by the Client or on Client's instructions or to which MITTO is granted access in connection with the performance of its obligations under this MSA.

MITTO does not obtain any rights to the data. However, MITTO is allowed to generate aggregated statistical data on an anonymous basis regarding the use of the Service.

As service provider, MITTO stores Client Data for the Client, which the Client enters and stores or makes available for retrieval when using the Services. The Client undertakes to refrain from uploading and using any Client Data that are illegal and any Malicious Code in connection with the Services.

In the context of data processing, the Client remains the data controller within the meaning of Data Protection Laws and must therefore always ensure that the processing of data relating to the use of the Services fully complies with Data Protection Laws. MITTO qualifies as a data processor pursuant to Data Protection Law. The Client and MITTO shall enter into a data processing agreement, if necessary, to comply with the Data Protection Laws.

For the purposes of executing the MSA, the Client grants MITTO the right to reproduce the Client Data to be stored by MITTO for the Client in connection with the use of the Services, insofar as this is necessary for the provision of the Services under this MSA. In particular, MITTO is entitled to store the Client Data in a backup system or separate backup data center. In order to eliminate failures, MITTO is authorized to make changes to the structure of the data or the data format.

MITTO is entitled to process Client Data for billing and administrative purposes.

## TERMINATION AND SURVIVAL

The terms and conditions of this MSA shall remain in force until the expiry or termination of all of the Service Addenda.

The right to terminate for good cause remains reserved.

This MSA may be terminated by:

- either Party if the other Party has breached any material obligations under this MSA or as set forth in any Service Addendum and has failed to cure such breach within ten (10) Business Days of receiving written notice of such breach;
- either Party to the extent permissible by law, if the other Party ceases to trade or to pay its debts in the normal course, enters into or proposes to enter into a voluntary arrangement or composition with its creditors, becomes insolvent, bankrupt or goes into liquidation (other than for the purpose of solvent reconstruction or amalgamation) or has a receiver, administrator, trustee or similar officer appointed in respect of all or part of its business and assets or anything occurs analogous to the foregoing under the laws of the place where that Party is established or otherwise ceases to be a validly existing corporation;
- either Party in an event of Force Majeure, and this event has lasted for a period longer than thirty (30) days;
- the Client in the event that a price change notice is served in accordance with article 0 provided that the notice of termination is served in writing within five (5) Business Days from the date of the price change notice;
- the Client in the event that clauses in this MSA or any of the Service Addenda, Dashboard or the Site are modified in accordance with article 0 and 0 provided that the notice of termination is served in writing within

- five (5) Business Days from the date of the modification;
- MITTO if Client has breached its obligations under article 0 or 0;
- MITTO if the Client is subject to a change of control.

Except for termination of this MSA in accordance with article 0, any Balance remaining after termination of this MSA will be repaid by MITTO to Client within ten (10) Business Days of termination.

Provisions which explicitly or implicitly survive the termination of this MSA (e.g. the duty of confidentiality) shall not be affected by the termination and remain in full force. These articles include, but are not necessarily limited to the articles 0, 0, 0, 0, 0, 0 and 0 that will survive any termination or expiration of this MSA.

### **EFFECTS OF TERMINATION**

If the Client causes the termination, the Client shall pay to MITTO the agreed-upon fees until the MSA or the respective Service Addendum would have ended or would have been properly terminated without the termination. Upon termination of the MSA, the Client's right to use the Services ceases immediately.

The termination of the MSA causes all payment obligations arising during the term of the MSA and each Service Addendum to be due.

The termination of the MSA shall not prejudice any other remedies, which the Parties may have under this MSA. MITTO shall return to the Client all documents and Client Data that have been handed over by the Client in connection with this MSA and are still in MITTO's possession. If requested by the Client in writing, MITTO shall transfer all Client Data to transportable data carriers and hand them over to the Client. After an inspection of the data carrier by the Client, MITTO will delete all Client Data.

### **ASSIGNMENT**

The Client will not assign or otherwise transfer this MSA, in whole or in part, without MITTO's prior written consent. Any attempt by the Client to assign, delegate, or transfer this MSA will be void. MITTO may assign this MSA, in whole or in part, without consent. Subject to this article 0, this MSA will be binding on both the Client and MITTO and each of its successors and assigns.

### **FORCE MAJEURE**

Any delay or failure by either Party hereto in performance hereunder shall be excused if and only to the extent that such delays or failures are caused by occurrences beyond such Party's control, including acts of war, earthquakes, hurricanes, floods, fires or other similar casualties, embargos, riots, terrorism, sabotage, strikes, governmental acts, insurrections, pandemics, epidemics, failures of power, restrictive laws or regulations, court orders, condemnation, failure of the Internet or other event of a similar nature, provided that the Party seeking to excuse its performance shall promptly notify the other Party of the cause therefore, such performance shall be so excused during the inability of the Party to perform but for no longer period, and the cause thereof shall be remedied so far as possible with all reasonable dispatch.

### **NOTICES**

Any notice or other document required or authorized hereby may be served on Client at the address(es) and email address(es) and upon the persons specified in the most up-to-date version of the Registration Form.

Any notice or other document required or authorized hereby may be served on MITTO at:

MITTO AG  
Bahnhofstrasse 21  
6300 ZUG  
Switzerland  
[info@mitto.ch](mailto:info@mitto.ch)

Each Party may update its notice information by giving written notice in accordance with this article 0.

### **GOVERNING LAW**

The Parties shall endeavor to resolve any controversy through good faith negotiations. In the highly unlikely event that the parties are unable to resolve the matter within thirty (30) days of the matter being referred to them, or any other period agreed upon, such matter shall be resolved exclusively by arbitration.

This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by and interpreted in accordance with the substantive laws of Switzerland under the exclusion of United Nations Convention on Contracts for the International Sale of Goods.

Any dispute, controversy or claim arising out of, or in relation to, this MSA, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the notice of arbitration is submitted in accordance with these Rules.

The number of arbitrators shall be one (1).

The seat of the arbitration shall be Zurich/Switzerland.

The arbitral proceedings shall be conducted in English.

## **GENERAL PROVISIONS**

The waiver by either party of any default or breach of this MSA shall not constitute a waiver of any other subsequent default of breach.

The Parties are independent contractors. This MSA does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each Party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

This MSA, including the Service Addenda and documents referred to herein or on the Dashboard or the Site, constitutes the entire agreement among the Parties with respect to the subject matter hereof. This MSA shall supersede all prior written or oral agreements or understandings related to the subject matters provided in this MSA.

The Parties may not issue press releases or other forms of promotion that mention the other in regards to this MSA announcing the Service without the prior written consent of the other.

If any provision of this MSA or any part of such provision is or becomes invalid or unenforceable or is missing, the other provisions of this MSA shall not be affected thereby. The invalid or unenforceable or missing provision shall be replaced by a valid and enforceable provision, the effect of which comes as close as possible to the intended economical effect of the invalid or unenforceable or missing provision.

Each Service Addendum to which reference is made herein or any services on the Dashboard or the Site shall be deemed to be incorporated in this MSA by such reference.