

Terms and Conditions

Following Terms and Conditions ("**Agreement**") shall come into effect on the date and deemed to have been agreed and accepted by Customer upon issuance of the Purchase Order(s). The Customer acknowledges that this Agreement was made available to the Customer prior to issuance of the Purchase Order and the Customer agrees that the Purchase Order issued by the Customer, shall at all times, be subject to the terms of this Agreement, as amended by Airtel from time to time.

1. Products

The Products provided are on a non-exclusive basis and are for internal use only and not for resale or distribution by Customer.

2. Customer Obligations

- 2.1 Customer shall provide all necessary approvals, documents, support and access as required to fulfill the delivery and service obligations by Airtel.
- 2.2 Use of Products shall be in accordance with Applicable Laws.
- 2.3 Customer understands and acknowledges to be in constant compliance with such terms and conditions as may be applicable to the use of the Products, which may be prescribed by Airtel and/or Service Provider from time to time, including but not limited to terms of warranty as well as EULA.
- 2.4 Customer acknowledges and accepts that EULA and any user condition updated or introduced by Service Provider shall become part of this Agreement by reference and the Customer agrees to comply with all such conditions.

3. Price and Payment Terms

Pricing and Payments Terms for the Products will be as specified in Airtel's commercial proposal.

4. General

- 4.1 Unless otherwise agreed by the Parties in writing, Airtel shall not be responsible for installation, commissioning or maintenance of any equipment or hardware or software licenses.
5. **Term and Termination** The Term of this Agreement would be as specified in the Purchase Order.
- 5.1 This Agreement shall be renewed on same terms and conditions for such period as may be prescribed under a new purchase order.
- 5.2 Airtel may terminate this Agreement for its convenience by providing a notice of at least 45 (forty five) days to the Customer.
- 5.3 Without prejudice to any of Airtel's rights or remedies, Airtel may after providing a written notice suspend the provision of Products in the case of delay of payment or non-payment.
- 5.4 In the event the Agreement is terminated, unless otherwise agreed in writing by Airtel, all or any sums and charges payable under this Agreement and which are unpaid at the effective date of termination shall forthwith become due and payable by the Customer. The provisions of this Agreement shall, to the extent stated in other clauses hereof or necessarily implied, survive the termination thereof.

In the event of any change in Applicable Law, Airtel reserves the right to forthwith terminate the Agreement by giving a written notice to the Customer.

- 5.5 Termination of Agreement shall not affect Customer's obligations under this Agreement.

6. Liability in relation to the Products

- 6.1 Airtel shall not be responsible towards Customer or any third party for damage to or loss or loss of use of data or information or other content in the course of implementation and/or usage of the Products. In addition, Airtel shall not be responsible for any malfunctions or interruptions in the service due to the actions of third party carriers, other third parties or any Force Majeure event(s).
- 6.2 Airtel shall not, in any manner, be held responsible for any breach of contract by Customer or with any of Customer's customers, clients, strategic partners, suppliers or affiliates as a result of the implementation or usage of the Products.
- 6.3 **Disclaimer of Warranty.** Customer acknowledge that Airtel is neither a manufacturer nor the service provider of the Products. Accordingly, Product warranties / service support, if any, shall be provided by the Service Provider of the Products in accordance with EULA, as amended from time to time and such other terms and conditions as Service Provider may deem fit. Unless otherwise specifically agreed, Airtel shall not be responsible for any warranty and / or support of whatsoever kind in respect of the Products under this Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS STATED IN THIS AGREEMENT OR THE TERMS AND CONDITIONS SPECIFIED BY SERVICE PROVIDER, THE PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTIES, CONDITIONS, REPRESENTATIONS OR GUARANTIES OF ANY KIND, EITHER EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, NONI-NFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. AIRTEL DOES NOT WARRANT THAT THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY ERRORS WILL BE CORRECTED.
- 6.4 NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT, UNDER NO CIRCUMSTANCES SHALL AIRTEL BE LIABLE TO CUSTOMER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT. AIRTEL SHALL ALSO NOT BE LIABLE TO CUSTOMER OR ANY OTHER THIRD PARTY FOR ANY COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT PRODUCTS OR SERVICES, ACCIDENT, ABUSE, UNAUTHORIZED REPAIR, MODIFICATIONS, ENHANCEMENTS, OR MISAPPLICATION, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF OPPORTUNITY, LOSS OF GOODWILL, LOSS OF DATA OR LOSS OR USE OF DATA, WHETHER DIRECT OR INDIRECT, WHICH MAY ARISE UNDER OR PURSUANT TO THIS AGREEMENT. FURTHER, AIRTEL'S TOTAL LIABILITY ARISING UNDER OR IN RELATION TO THIS AGREEMENT FOR ALL CLAIMS, WHETHER ARISING UNDER CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) UNDER AN INDEMNITY, STATUTE OR ANY OTHER THEORY OF LAW, IN THE AGGREGATE, WILL BE LIMITED TO AN AMOUNT EQUAL TO THE FEES PAID UNDER THIS TENDER FOR THE PRECEEDING TWELVE (12) MONTH PERIOD FROM THE DATE OF SUCH CLAIM. THE ROLE OF AIRTEL IS LIMITED TO BEING RESELLER OF THE PRODUCTS AND ANY USE OF THE PRODUCTS BY YOU SHOULD BE GOVERNED IN ACCORDANCE WITH THE PROVISIONS OF THE SERVICE PROVIDER TERMS AND CONDITIONS ONLY (WHETHER PUBLISHED ON SERVICE PROVIDER WEBSITE AND INCORPORATED BY REFERENCE, OR OTHERWISE DELIVERED AND ACCEPTED BY THE CUSTOMER, INCLUDING ANY SEPARATELY SIGNED AGREEMENT WITH SERVICE PROVIDER), UNLESS OTHERWISE SPECIFICALLY AGREED IN WRITING, AIRTEL SHALL NOT BE RESPONSIBLE FOR AND WILL NOT BE LIABLE IN ANY MANNER FOR ANY PRODUCTS AND SERVICES PROVIDED BY THE SERVICE PROVIDER.
- 6.5 IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL OTHER LIMITATIONS OF LIABILITY AND EXCLUSION OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT.
- 6.6 Customer shall indemnify, defend, and hold Airtel harmless from any third party claims, costs, losses, or damages (including attorneys' fees) resulting from: (i) breach of any of Customer's obligations under this Agreement, or (ii) claims, including intellectual property rights infringement claims, which arise from Customer permitting a third party to use the Products.

7. Confidentiality

7.1 Confidentiality

- 7.1.1 The 'Confidential Information' will mean all information, of any kind whatsoever, which is disclosed by the Parties or their Representatives, whether in writing, verbally or by any other means, including without restriction all technical, commercial, strategic or financial information, studies, specifications, software, know-how and manufacturing information and secrets. For avoidance of doubt, Confidential Information shall not mean to include end user data. Confidential Information will not include information (i) that is or becomes a part of the public domain through no act or omission of the other Party, or (ii) that the other Party can demonstrate by competent evidence (A) was in its lawful possession prior to the disclosure and had not been obtained by it either directly or indirectly from the disclosing Party, (B) was lawfully disclosed to it by a third party without restriction on disclosure, or (C) is independently developed by it.
- 7.1.2 Subject to Clause 7.1.1, each Party will keep confidential all Confidential Information of the other Party, not use the other Party's Confidential Information for any purposes other than as required under this Agreement, and will ensure that its Representatives do not disclose to any person any Confidential Information of the other Party at any time, or make or authorise any public or private announcement or communication concerning the Agreement. Receiving party will also ensure that its Representatives are provided access to Confidential Information only on a need-to-know-basis and solely for the performance of this Agreement.
- 7.1.3 Each Party agrees not to disclose each other's Confidential Information to any person other than those specified in the following sentence. Each Party may disclose Confidential Information only to those Representatives who are required to protect it against unauthorized . Nothing will prevent either Party from disclosing the terms or pricing under this Agreement or orders submitted under the Purchase Order in any legal proceeding arising from or in connection with the Agreement. A Party may disclose Confidential Information to a Government Authority as required by law, provided, prior to such disclosure, and promptly upon receiving the disclosure request, but to the extent legally permissible, the receiving Party provides notice to the disclosing Party about such disclosure requirement and assists the disclosing Party in resisting such disclosure. Confidential Information disclosed to a Government Authority will continue to remain subject to confidentiality obligations.

- 7.2 Each Party acknowledges that a breach of this Clause 7 may result in irreparable harm to the other for which monetary damages may not provide a sufficient remedy. Accordingly, the aggrieved Party may seek equitable relief or injunctive relief in relation to such breach.
- 7.3 Clause 7 (Confidentiality) and Parties' obligations under it will continue for 3 (three) year after expiration or termination of this Agreement.
8. **Publicity**
In relation to the subject matter of this Agreement, each Party agrees not to use the trademarks, trade names, services marks or other proprietary marks of the other Party to this Agreement in any advertising, press releases, publicity matters, or other promotional materials or for any other purpose than as envisioned by this Agreement without prior written approval of the other Party. In addition each Party agrees not to initiate or distribute any press releases, publicity matters or other promotional materials related to or referencing the subject matter of this Agreement without prior written approval of the other Party.
- 8.1 Parties agree that Airtel shall have the right to refer to the Customer in its list of clients for the duration of the Term.
9. **Governing Law and Jurisdiction**
Any dispute or claim (contractual or non-contractual) arising out of or in relation to this Agreement, including disputes as to its formation, will be governed by and construed in accordance with Indian laws. The Parties submit to the exclusive jurisdiction of New Delhi courts.
10. **Miscellaneous**
- 10.1 **Mutual Representations and Warranties:** Each Party represents, warrants and agrees that this Agreement: (i) has been duly authorized by all necessary action consistent with the respective Party's form of organization; (ii) has been executed by an individual that has been duly authorized to do so; (iii) constitute legal, valid and binding obligations of each respective Party; (iv) it has all necessary statutory and regulatory permissions, approvals, licenses and permits required for running and operating its establishment and conducting its business; (v) this Agreement is made expressly subject to all present and future Applicable Law, orders, approvals, directives and regulations of any regulatory body having jurisdiction over the subject matter hereof.
- 10.2 **Regulatory Compliance:** The Customer shall ensure that objectionable, obscene, unauthorized or any other content, messages, or communications infringing any person's copyright, intellectual property rights and, or which in any form is inconsistent with the laws of India as well as any international & domestic cyber laws, are not carried in its network or any other person using Customer's network. Acts such as break-ins or attempted break-ins of Indian networks shall be regarded as an anti-national act and shall be dealt with in accordance with the Applicable Law.
- 10.3 **Data Protection:** The Customer acknowledges that information processed in the course of distributing the Products to the Customer may involve personal data ("**Personal Data**"), as defined in the applicable data protection laws and regulations ("**DP Law(s)**"). With respect to such Personal Data provided by the Customer to Airtel or Service Provider, Customer shall (a) comply with applicable DP Laws and (b) take all necessary measures to ensure that only such data is provided as has been consented to be provided by end users. Customer agrees that any Personal Data it may provide to Airtel or Service Provider about itself and/or its employees, agents, contracted third parties or others for the purposes of administering this Agreement shall be processed by Service Provider for the following purposes: (a) administering this Agreement; (b) analysing, maintaining and improving Service Provider solutions and services; (c) complying with legal, governmental or contractual terms; and (d) anonymously aggregating and statistically analysing data. Customer agrees that any Personal Data it provides to Service Provider or Airtel may be transferred to and processed by Service Provider, and its employees, contractors, partners and vendors for the purposes defined above, in the United States or other countries that may have different data protection laws than the region in which Customer is situated ("**Third Countries**"). The Customer consents that any transfer of Personal Data to any sub-processor(s) established in Third Country/ies will, if required by DP Laws, be subject to appropriate data transfer agreements (including standard contractual clauses) on Customer's behalf.
- 10.4 Nothing in this Agreement shall be deemed to constitute a partnership between the Parties nor constitute either Party the agent of the other Party for any purpose.
- 10.5 If any provision of this Agreement is found invalid or unenforceable, the validity or enforceability of the remaining provisions or portions hereof shall not be affected, unless the invalid or unenforceable provision is material or essential to the substance of this Agreement.
- 10.6 Nothing contained in this Agreement will be deemed to grant any ownership in, or license to, any patents, inventions, copyrights or trademarks of either Party, whether made under this Agreement or not. Each Party will own any intellectual property created by it during the period of the Agreement. In case a Party wants to use the other Party's intellectual property as created above for internal purposes, it would have to acquire appropriate licenses and rights from the other Party, under a separate agreement. Each Party will continue to own any pre-existing material contributed by it.
- 10.7 This Agreement, along with Commercial Proposal and Purchase Order supersedes all prior proposals, representations, commitments and discussions on this subject and is the complete and exclusive statement of the agreement between the Parties in relation to the subject matter hereof. The contents of the main body of this Agreement and that of the Commercial Proposal and Purchase Order will be construed harmoniously to the maximum extent possible. Unless otherwise agreed specifically in writing, in the event of any direct conflict, the provisions of the main body of this Agreement will take precedence over those of Commercial Proposal and Purchase Order.
11. **Definitions**

The following capitalised terms used in this Agreement will have the meaning assigned below.

Airtel shall mean Bharti Airtel Services Limited.

Applicable Law means any statute, law, regulation, ordinance, license conditions, rule, judgment, order, decree, bye-law, approval of any Government Authority of the Republic of India.

Customer shall mean the user of the Product(s) and / or issuer of the Purchase Order.

EULA shall mean End User License Agreement.

Force Majeure Event means, in relation to a Party an exceptional event or circumstance listed below and (a) which is beyond that Party's control, (b) which such Party could not reasonably have provided against, and (c) which, having arisen, such Party could not reasonably have avoided or overcome:

- (i) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, military invasion, insurrection of military or usurped power;
- (ii) earthquake, flood, or any other natural disaster, but excluding weather as such, regardless of verity; or
- (iii) strikes at national or state level or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by such Party or its Representatives and which affects a substantial or essential portion of the obligations of that Party.

Government Authority means any ministry, department, board, or any governmental instrumentality directly or indirectly under control of any central, provincial or local government, and includes any court, tribunal, or judicial or quasi-judicial body having jurisdiction.

Purchase Order shall mean the purchase order issued by the Customer and includes any amendments / modifications thereof.

Product(s) means all products and services that Customer will avail in accordance with the Purchase Order.

Representative(s) means directors, employees, agents, contractors, representative, advisors or personnel.

Service Provider means the original service provider or original equipment manufacturer, as the case may be, of the Products being provided by Airtel under the Purchase Order and this Agreement.

Taxes mean all applicable taxes, duties, cess or levies imposed by a Government Authority.

Term shall mean term specified in the Purchase Order.