

# Terms and conditions

## Article 1. DEFINITIONS

The following terms shall have the meaning hereby assigned to them by the Parties:

- Beneficiary: a legal subsidiary body of the Client, or that belongs to the same corporate group as the Client, which is monitored by common affiliated company and beneficiary of the service
- Order: offer signed according to present Terms and Conditions
- Client: natural person and/or legal person subscribed for Service
- Prices and associated conditions: list of prices for administrative and technical service
- Description of the Service: all documents, drawings, plans attached to an offer
- Contracting Documents: the Order, the Prices and associated conditions and the Description of the Service
- MIXvoip: provider of the Service according to Contracting Documents
- Parties: collectively refer to MIXvoip and the Client
- User: person who uses the Service
- Service: defined benefit plans indicated in the Order

## Article 2. THE SCOPE OF APPLICATION

1. These Terms and Conditions is an integral part of the Contracting Documents, which define the rights and obligations of the Parties concerning services of MIXvoip S.A., with the head office located at L-7333 Steinsel, 70 rue des Prés, with registered number B 0138372 at RCS of Luxembourg regarding the Service and the use of the said service by the Client.
2. The Service is the subject-matter of these Terms and Conditions, is defined and identified in the Order. The use of the Service requires the acceptance of the Contracting Documents relating to the said Service. MIXVoip is authorized to use contact information given by the Client at the time of registration (completed or non-completed registration) to contact the Client (by email, post or telephone ...).

## Article 3. ACCEPTANCE

1. The Client acknowledges having read and understood these Terms and Conditions before the confirmation of the Order.
2. It is expressly recognized by the Client that the use of the Service requires acceptance of these Terms and Conditions and the Contracting Documents.
3. It is expressly recognized that confirmation of the Order by one of the representatives of the Client is equal to expressed and inalienable acceptance of the all Contracting Documents.
4. Acceptance of these Terms and Conditions by the Client as well as confirmation of the Order relating to the Service chosen by the Client is irrevocable.
5. These Terms and Conditions cancel and replace any exchanges between the Parties prior to the confirmation of the Order relating to the Service chosen by the Client.

## Article 4. ENTRY INTO FORCE

1. The Contracting Documents enter into force in the moment of confirmation by the Client, the said confirmation constitutes irrevocable acceptance of the present Terms and Conditions. The use of the Service is equal to acceptance of the Contracting Documents of the said Service.
2. Entry into force of the Service shall be possible only after the confirmation of the Order, the

acceptance of the registration by MIXvoip, about which the Client will be informed by email, and according to the conditions mentioned in the Article 8 "IMPLEMENTATION AND USE OF SERVICE"

## **Article 5. TERM**

1. The Contracting Documents, except the modifications in regard of Prices and associated conditions, are valid during all the period of the use of Service.
2. If no other period of time was set by MIXvoip, the Service and the Contracting Documents are concluded for the period of 4 months, starting from the confirmation of the Order by the Client regarding of when the Service was implemented.
3. The termination of the Contracting Documents and the Service on the terms are laid down in the article "TERMINATION".

## **Article 6. CONTRACTING DOCUMENTS**

1. The Contracting relations between MIXvoip and the Client are regulated by the following Contracting Documents, presented in decreasing hierarchic order:  
The Order  
The description of the Service  
Prices and associated conditions of the Service
2. If there is any contradiction between one or more paragraphs found in any one of the Contracting Documents above, the highest document shall prevail.
3. All modifications, if necessary, regarding the provisions of the Contracting Documents and all modifications relating to the choice of the Service mean acceptance of confirmed order of the Client by MIXvoip.
4. Should the contractual relations be terminated, it is the responsibility of the Customer to backup and edit the messages, statistics and registrations before the date of termination of the said relations.

## **Article 7. SERVICE**

1. The Service provided by MIXvoip shall be defined on the basis of the following documents:  
The Offer and its acceptance by the Client in the form of the Order  
The description of the Service  
Prices and associated conditions of the Service
2. The Client expressly recognizes of having read all information regarding the Service and all its elements before the confirmation of the Order, for example, prior technical requirements requested for the functioning of the said Service.
3. On this occasion, the Client was able to acknowledge the Service and its elements in total and to check if the said Service is relevant to his or her needs, without incurring any liability of MIXvoip if the Client were to notice that the Service chosen under its own control, management, and responsibility in some way is inadequate for its needs.
4. The Client assumes its liability for the use of the Service, it being understood that MIXvoip shall not be held liable under criminal or civil law for the use of the Service in accordance with the regulations in force.

## **Article 8. IMPLEMENTATION AND USE OF SERVICE**

1. The Service is implemented according to the conditions of the article "ENTRY INTO FORCE" after the acceptance by MIXvoip.
2. The Client will be solely liable for the content of transmissions (messages, SMS, emails, calls...) performed by the mean of the Service.

3. MIXvoip shall not be held liable for the content of transmissions by the mean of its Service. The latter is used as a mean of information transfer.
4. The Client undertakes to use the Service honestly and reasonably. The Client agrees not to use the Service fraudulently.
5. The Client undertakes not to use the Service for conducting illegal, unlawful and fraudulent activity and/or committing offences that breach the regulations in force of the Grand Duchy of Luxembourg or in the state of use.
6. The Client undertakes not to violate intellectual property rights.
7. Delivery, operation and return of the Equipment:  
If the Service includes implementation of the Equipment by MIXvoip, shipment of the Equipment, implementation or installation will be performed at the particular address indicated by the Client in the Order, subject to availability of ordered equipment. In case of renting, the Equipment can be used by the Client, but it is in the property of MIXvoip. Consequently, the Client undertakes not to deal with any displacement or sharing and is obliged to return the Equipment to MIXvoip according to the specific conditions of the article "TERMINATION" when the Contracting Documents and the Service were being ended. The Client uses the Equipment under the state of its guardian from delivery and until transmission to MIXvoip. In case of any failure of the Equipment, the Client contacts MIXvoip support service for return and replacement of the present Equipment. Unless stated otherwise in writing in the Order.
8. MIXvoip implements various remedies for the purpose of protection of the Clients from the risks of fraudulent usage of the Service. In this case, MIXvoip may limit or suspend the operation of the Service if suspicious, fraudulent or abusive use is detected.
9. MIXvoip shall not be held liable for any damage, technical support or equipment that was not implemented by MIXvoip itself.
10. MIXvoip can request the Client fulfil the documents that permit to justify his or her identity (identity documents or passport, extract from the Companies Registrar (RCS), copy of the bank card...). MIXvoip reserves the right to interrupt on permanent or temporary basis the access to the Service.

## **Article 9. ACCESS TO SERVICE**

1. It is recognized by the Client that MIXvoip cannot guarantee constant access to the Service given its characteristics and the means of Electronic Communications/ Telecommunications that it requires, accessibility to said Service not being dependent in any way on the sole, particularly technical responsibility of MIXvoip.
2. The Client recognizes that he has been informed about the existence of emergency plans implemented by MIXvoip that permit to assure the best access to the Service and in any event of equipment disability placed under the responsibility of MIXvoip.
3. MIXvoip reserves the right, in limited and temporary manner, to suspend the access to the Service for technical service reasons. In this case, MIXvoip informs the Client about it by email, the duration of the suspension shall not exceed the duration of maintenance operations.
4. In the case of an Internet access provided by MIXvoip, and in accordance with E.U. rules 2015/2120 establishing measures related to access to an open Internet, MIXvoip guarantees the User the freedom to access to the desired contents, applications and services. MIXvoip shall not be liable for any unlawful use. It is the User's responsibility to ensure the legality of the content and the use that might be made of it. The providers of these services or contents are also considered as Users. MIXvoip guarantees respect for privacy and the protection of personal datas, and reserves the right to slow the traffic, without discrimination of source, destination or content, for all objective reasons related to congestion, attacks, or legal requests (non-exhaustive list).  
Information about download or upload rates represent a maximum. Speeds may vary due to

numerous criterias besides those referred to in the two preceding paragraphs, such as, for example, the equipment of suppliers/customers Users of contents, services or applications, the number of simultaneous uses of a connection etc. In the event of significant, permanent or recurring deviations, the User is invited to contact [support@mixvoip.com](mailto:support@mixvoip.com).

## Article 10. FINANCIAL CONDITIONS

1. The invoices issued by MIXvoip between the first and the fifth day of each month are available in the account of the Client and are sent on a monthly basis by email from the day of acceptance of the Order of the Client by MIXvoip, except obligations on non repeated basis or annual, for which a special invoice may be issued at the set date, as well as direct debit mandate for the recurring contracts subject to the applicable conditions as described below.
2. The invoices, which are the subject of direct debit mandate, are debited automatically by MIXvoip on the account indicated in question.
3. In case of late or nonpayment, total or partial, of the charges indicated in the invoices issues by MIXvoip, the Client shall be liable to MIXvoip for default interest equal to the legal rate without prejudice to the right of MIXvoip to limit, and/or to suspend availability and use of the Service until the moment of complete payment of all amounts, or to terminate the Contracting Documents according to the conditions prescribed in the article "TERMINATION". MIXvoip reserves the right to suspend the account of the Client after recall procedure listed in the paragraphs 4 to 6 below.
4. In case of late and/or nonpayment, namely if the Client did not pay two invoices (invoice of current month and of month before current), MIXvoip automatically issues the first recall by email during current month after the fifteenth day. This recall will be billed to the Client in the amount of 1.55 Euro.
5. In case of late and/or nonpayment, namely if the Client did not pay three invoices (invoice of current month and of two months before current), MIXvoip automatically issues the second recall by email and SMS informing about urgency of this situation. This recall will be billed to the Client in the amount of 3.55 Euro.
6. Finally, MIXvoip automatically issues the third recall by email and SMS informing the Client that the Service will be suspended. This recall will be billed to the Client in the amount of 3.55 Euro.
7. Blocking of the account is a subject to additional suspension charges in the amount of 25.55 Euro.  
MIXvoip reserves the right to block every unpaid account.
8. It is prohibited for the Client to modify and/or to delay the periods of payments, which are indicated in the invoice of MIXvoip.
9. MIXvoip reserves the right to modify the prices, its Terms and Conditions or to establish new charges related to the Service and its use. All modifications will be brought to the attention of the Client by information of the upload on [www.mixvoip.com](http://www.mixvoip.com) of the new version indicated on the monthly invoice of the Client, by postal mail or by e-mail according to the billing mode chosen thirty (30) days prior to installation. In the absence of acceptance of these new rates by the Client, the Client must inform MIXvoip within one month from the date of issue of the invoice by simple letter or by e-mail. In the absence of notification within 30 days, the amendments shall be deemed to have been accepted.
10. The Client bears all bank fees relating to the mean of payment and to all consequences in case of non-credited bank account/ non-sufficient funds/ refusal of transfer/ lack of bank account details on the bank account of the Client.
11. The Client must inform MIXvoip in the latest delay about the change of the number of the account, expiry date of the bank card, or the address to which invoices are issued; and, in general, all modifications relating to initial registration and sub registration for the Service.
12. All changes of the Service if requested by the Client mean brief creation and confirmation of the

new order accepted by MIXvoip.

13. In case of refusal of the invoice by the Client, he must address its refusal to MIXvoip within 30 days from the date of the emission of the invoice. Beyond that period, the invoice is deemed to have been accepted by the Client.
14. In case of the rejection of payment by the bank of the Client, the charge in the amount of 10 Euro will be billed to the Client in the next invoice.
15. MIXvoip can claim against the Client, without prejudice to any compensation of the procedure, which exceeds the amount that may be granted by the tribunal according to the Article 240 of the New Code of Civil Procedure of Luxembourg, to pay compensation set at flat rate of 1.500,- EUR concerning all recovery costs not included in costs incurred through late payment.

## **Article 11. LIABILITY**

1. It is expressly agreed by the Parties that MIXvoip exercises contractual obligations in full according the provisions of the Contracting Documents, in the course of due diligence, and the uses and regulations of its profession, and trade practices.
2. In the case when the liability of one of the Parties is engaged, it is agreed between the Parties that only direct damages are the subject of repair works, indirect damages are not the subject of repair works, namely, loss of profit, turnover, financial fees, destruction of data, harm to brand image...
3. In addition, it is agreed between the Parties that the right for repair works is limited, all sectors taken together, equal to the amount of recurring sums paid by the Client during the last month, which precedes the fact that generates the possibility to engage the liability of MIXvoip.
4. It is expressly recognized between the Parties that in case of all sentences pronounced by all court and/or authorized body relating to the use and content of the Service by the Client, the latter will be liable for any expenses incurred by his actions.
5. In case when the Client is not the Beneficiary of the Service, the Client is the sole liable for fulfillment of obligations indicated in the Contracting Documents, in respect of MIXvoip, particularly (but not solely) the obligations of payment.
6. WARNING: MIXvoip can not be held responsible for any power or Internet service outage which may cause malfunctions on telephony, anti-intruder alarms, fire alarms, and all their connected devices.

## **Article 12. TERMINATION**

### **12A-TERMINATION AT ANY MOMENT**

1. The Contracting Documents concluded for the duration of 4 months can be terminated by the customer at any moment, respecting the provided notice period of one full calendar month following the month during which termination is notified. The notice must be performed by the registered letter with an acknowledgement of receipt or email.
2. In the case of termination, the Client agrees to return all Equipment belonging to MIXvoip within fifteen days, including the date of termination. If the Client does not return the Equipment within this period, MIXvoip reserves the right to withdraw the Equipment at the expense of the Client.

### **12B-TERMINATION BY THE BREACH OF OBLIGATIONS BY THE PARTIES**

1. In case of breach of any of its contractual obligations by MIXvoip, the Client may, thirty (30) calendar days after having formally notified MIXvoip to perform its obligations in a registered letter with an acknowledgement of receipt that remained unanswered, legally terminate the Contractual Documents, without prejudice to any damages or interests. In addition, if within

thirty (30) calendar days after the above mentioned period, the Client has not implemented the mutual agreement procedure and/or has not brought action in the competent court, it is deemed to have waived its claim and its action, notwithstanding the provisions of the "Non-waiver" article herein.

2. In the case of breach by the Client of any of its contractual obligations, MIXvoip may, thirty (30) calendar days after giving notice to the Client to perform its obligations by registered letter with an acknowledgement of receipt has remained unsuccessful, automatically terminate the Contracting Documents, without prejudice to any damages or interests.
3. In case of jeopardy to this clause caused by the Client, the latter shall pay MIXvoip for all services performed and/or used at the date of termination, whether received or not, notwithstanding the right of MIXvoip to seek compensation for damages. Also MIXvoip is authorized in such cases to:  
Apply the charges for termination prescribed above;  
Limit the use of the Service, after the first incident of payment and until complete payment;  
Suspend the use of the Service, after the first incident of payment and until complete payment;  
Seek damages and interest at the extent actually suffered.  
No termination of the Service is possible by the Client without prior contact with MIXvoip for confirmation and planning of the Service termination.

### **Article 13. FORCE MAJEURE**

1. The Parties agree that in the first instance, the case of force majeure shall suspend the execution of all reciprocal obligations.
2. If the state of force majeure lasts more than one (1) month, the Contracting Documents will be automatically terminated, without compensation of any kind for each of the Parties.
3. Explicitly, cases of force majeure are considered to be those usually retained as such by the Luxembourg courts.
4. In any event, in cases of force majeure, the Parties undertake to reduce the aforementioned impact of such force majeure on the operation and execution of the Contracting Documents and shall inform each other of any actions taken.

### **Article 14. INDEPENDENCE OF PARTIES**

1. The Contracting Documents are agreed between independent Parties. None of their provisions may be interpreted as giving to either of the Parties the power or authority to act on behalf of the other Party or as constituting any form of association of partnership between the Parties.

### **Article 15. SUBCONTRACTING**

1. Mixvoip reserves the right to subcontract all or part of its services necessary to provide the Service. In case of subcontracting, MIXvoip remains liable to the Client for failure of the subcontractor to comply with its obligations.

### **Article 16. CONFIDENTIALITY**

1. The provisions of the Contracting Documents are confidential.
2. Each Party undertakes to ensure the same level of protection and confidentiality of documents, writing and data of the other Party as for its own documents, writing and data.
3. The provisions of this Article shall not apply to documents, writings and data in the public domain and/or reported by one of the Parties as non-confidential.
4. The Client recognizes to be informed of lack of security and confidentiality of Internet network through which the information will be transited. Consequently, confidential information transited

by the Client by using the Service is at his own risk, and in no way MIXvoip be held liable for any such claimed violation.

#### **Article 17: TRANSFER**

1. The Contracting Documents may not be transferred in their entirety or partially by either party without the consent of the other.

#### **Article 18: INTERPRETATION**

1. The provisions of the Contracting Documents shall be interpreted in relation to each other and in the interest of Parties.

#### **Article 19. HEADINGS AND CLAUSES**

1. In the event of a difficulty of interpretation between the headings of clauses and/or of one of the headings and one of the clauses relating thereto, the Parties agree to declare the headings non-existent.

#### **Article 20. ENTIRE AGREEMENT**

1. The provisions of the Contracting Documents constitute the entirety of obligations of Parties.
2. No other obligation may be incorporated in the Contracting Documents in the absence of additional agreement between the authorized representatives of each Party.

#### **Article 21. VALIDITY**

1. The Parties expressly agree that in the event or following a final court decision that a legal or regulatory change to any of the provisions of the Contracting Documents is declared invalid or unenforceable, this shall not affect the other provisions of the Contracting Documents.
2. In this case, the Parties agree to meet to analyze the impact of this situation with regard to their respective obligations and the purpose of the Contracting Documents in order to pursue their relationships.

#### **Article 22. NO-WAIVER PROVISION**

1. The Parties expressly agree that the failure to claim a breach of contract does not mean renunciation of making such a claim in the future.

#### **Article 23. LANGUAGE**

1. The Parties expressly agree that the language governing the Contracting Documents is English.

#### **Article 24. APPLICABLE LAW**

1. The Contracting Documents, in its entirety, are governed by the law of Luxembourg.

#### **Article 25. LEGAL OR REGULATORY DEVELOPMENT**

1. The Client is informed that the Service may be subject to modifications and development, including prices, in case of legal or regulatory developments within the duration of the Contracting Documents. These developments shall apply to the Service under the conditions set out for those developments.

## **Article 26. DATA PROCESSING AND FREEDOMS**

1. It is the sole responsibility of the Client to comply with the Law of 2 August 2002 relating to protection of individuals with regard to processing personal data, when using the Service, MIXvoip shall not be held liable for any such claimed violation.
2. The Client`s personal data are for registration and for the Service, for contacting it and for informing it of the offers and services of MIXvoip and its partners and in accordance with current regulations.
3. By accepting the Offer, the Client agrees to provide true and accurate information about itself. False information is contrary to these Terms and Conditions and may be the reason for suspension and/ or termination of the Service.
4. In accordance with the law relating to protection of individuals with regard to processing personal data, the collection and processing of information has been the subject of the statement to the CNIL.
5. MIXvoip is the sole holder of the Client`s information. Only MIXvoip and its partners may send to the Client accurate and precise information on promotional basis. These partners are selected by MIXvoip and they are recognized for the quality of their products and services.

## **Article 27. UNFORESEEN CIRCUMSTANCES**

1. In the event of modification during the term of the Contracting Documents of economic circumstances with respect to the circumstances existing at the time of activation of the Service, regardless of the intervention of the Parties and outwith cases of Force Majeure, the Parties agree that the Service may be temporarily suspended; the Parties agree to meet to take into account these new circumstances and to explore implications with respect to the Service and its continued use.

## **Article 28. PLACE OF DOMICILE**

1. The Parties elect their place of domicile at their respective headquarters. In the event of change of registered office, each Party undertakes to notify the other by email.

## **Article 29. EVIDENCE AND NOTIFICATION**

1. The notifications by MIXvoip shall be in the form of email and SMS.

## **Article 30. AMICABLE SETTLEMENT**

1. In the event of a difficulty of execution and/or interpretation of the Contracting Documents and prior to referral to the competent courts, the Parties agree to attempt to move towards each other, with each of them by designating lawyer, representing agent or employee.
2. The representatives of Parties shall meet on their initiative of the first Party to act and no later, in the absence of a better agreement, within fifteen (15) days of the meeting request.
3. In this case, these representatives shall establish an agenda for this meeting, and subsequent meetings if necessary, to put an end to their dispute.
4. In case of agreement, the Parties shall sign a confidential agreement protocol and/or amendment to the Contracting Documents.
5. In the absence of agreement between the Parties, each of them shall regain its complete freedom of action.

## **Article 31. JURISDICTION**

1. In case of difficulty of implementation and/or interpretation of Contracting Documents and after



failure of amicable settlement, express jurisdiction is attributed to the courts of Luxembourg, notwithstanding multiple defendants of the introduction of the third parties, including for emergency, conservatory, interim or complaint measures.

## Legal notice

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