



Mfactor by Workgroups TERMS OF SERVICE

These Terms of Service ("Agreement") govern the use of the online service made available by MetaCommunications, Inc. ("MetaCommunications," "we," "us," or "our") under the brand name Mfactor ("Service"). By accessing and using the Service, you agree to be bound by this Agreement. If you do not agree to the terms and conditions of this Agreement you must not use the Service. As used in this Agreement, "you" and "your" mean you individually or the business entity that you represent, and you represent that you have the authority to bind that business entity. MetaCommunications only offers accounts on behalf of business entities and does not offer personal accounts on behalf of individuals.

This Agreement takes effect when you click "I accept" or a similar button or check box presented to you as part of the registration process or when you first use the Service, whichever is earlier, and will remain in effect until the end of the relevant subscription term option selected by you as part of the registration and ordering process ("Subscription Term(s)") or until terminated as specified in this Agreement ("Term").

1. SERVICE.

1.1. Access to and Use of the Service. Subject to your compliance with the terms and conditions of this Agreement, We grant you a nonexclusive, nontransferable, revocable, limited license during the Term to access and use the Service solely for your internal business purposes in accordance with this Agreement and any online user documentation that we make available for the Service ("Documentation").

1.2. Service Usage Limits. You acknowledge that we may establish general practices and limits concerning use of the Service, including, without limitation, the number of named users, the maximum number of days that Content (as defined below) will be retained by the Service, the maximum size of any email message that may be sent from or received by an account on the Service, the maximum disk space that will be allotted on MetaCommunications' servers on your behalf, and the maximum number of times (and the maximum duration for which) you may access the Service in a given period of time, and other applicable usage metrics (Services Usage Limits). Use of the Service is limited to the Service Usage Limits associated with the subscription plan for the Service that you select. You acknowledge that we reserve the right to modify these Service Usage Limits from time to time. You further acknowledge that we reserve the right to log off accounts that are inactive for an extended period of time.

1.3. Restrictions. You shall not, and shall not permit any third party to: (i) use the Service except as expressly authorized under this Agreement; (ii) interfere with or disrupt the integrity or performance of the Service; (iii) resell, sublicense, time-share, or otherwise use or share the Service with or for the benefit of any third party; (iv) remove any title, trademark, copyright, or restricted rights notices or labels from the Service; (v) modify or create a derivative work of the Service or any portion of the Service; (vi) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code, object code or underlying structure or algorithms of the Service; (vii) engage in spamming or other unsolicited advertising, marketing or other activities, including, without limitation, any activities that violate anti-spamming laws and regulations, including, but not limited to, the CAN SPAM Act of 2003, the Telephone Consumer Protection Act, the Do-Not-Call Implementation Act, the Telemarketing Sales Rule, 47 C.F.R. §64.1200 et seq., or other state or local laws relating to calling or texting (collectively, the "Calling Laws"); (viii) upload, post, email, transmit, submit or otherwise make available any Content that infringes any rights of any other party, including, without limitation, patent, trademark, trade secret, copyright or other proprietary rights or is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable, under any applicable laws. You will not use, or encourage, promote, facilitate or instruct others to use, the Service for any illegal, harmful or offensive use, or transmit, store, display, distribute or otherwise make available content that is illegal, harmful, or offensive, under any applicable laws; (ix) impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity, or disguise the origin of any Content transmitted through the Service. You must abide by all applicable local, state, national and foreign laws, treaties, and regulations in connection with your use of the Service, including those related to data privacy.

1.4. Support. We will provide technical support for the Service to your authorized contact person consisting of online support Monday-Friday from 7 a.m. – 7 p.m. CST/CDT, excluding our locally observed holidays.

1.5. Free Trial. These supplemental terms shall apply to your participation in any free trial provided by MetaCommunications (“Free Trial,” and such terms and conditions, the “Free Trial Terms”). Only new MetaCommunications customers are eligible to participate in a Free Trial. The Free Trial starts when you create a user account (“Free Trial Start Date”) and ends upon the later of (i) fourteen (14) calendar days from the Free Trial Start Date, or (ii) the date agreed upon by MetaCommunications in its sole discretion. During the Free Trial, certain services and features may not be available. At any time during the Free Trial, you may convert your Free Trial account into a paid subscription account by clicking the “Purchase” button within the application or other mechanism made available by MetaCommunications for converting to a paid subscription account. Your continued use of the Service after upgrading to a paid account is subject to your ongoing compliance with this Agreement and the Free Trial Terms and Conditions set forth in this section shall no longer apply. When the Free Trial ends, you shall no longer have access to the Service (unless you convert to a paid subscription account), and the Free Trial Terms shall no longer apply. During the fourteen (14) calendar day period following the conclusion of the Free Trial, you may (i) export limited Content from the Service data export function within MetaCommunications’ platform; or (ii) may contact MetaCommunications customer support to upgrade to a paid subscription account.

1.6. Content. As used in this Agreement, “Content” means any and all information, data, code, video, images, text, documents or other materials of any type that is uploaded, posted, emailed, transmitted, submitted or otherwise made available to or through the Service by you, regardless of whether it is publicly posted or privately transmitted. All Content is the sole responsibility of the party from whom such Content originated. This means that you, and not MetaCommunications, are entirely responsible for all Content that you upload, post, email, transmit, submit or otherwise make available via the Service. MetaCommunications does not control the Content posted via the Service and does not have access to such Content (except account-related information or unless authorized by you). As such, MetaCommunications does not and cannot guarantee or endorse the accuracy, integrity or quality of such Content. You understand that by using the Service, you may be exposed to Content that is offensive, indecent, objectionable or illegal in your jurisdiction. Under no circumstances will MetaCommunications be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content uploaded, posted, emailed, transmitted, submitted or otherwise made available via the Service. You acknowledge that MetaCommunications does not pre-screen Content, but that MetaCommunications and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse, move or remove any Content that is available via the Service. Without limiting the foregoing, MetaCommunications and its designees shall have the right to remove any Content that violates this Agreement or is otherwise objectionable or illegal as determined in MetaCommunications’ sole discretion. In no event shall MetaCommunications or its designees have any liability or obligation to you in connection with exercising any rights contained in this section. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content. You acknowledge, consent and agree that MetaCommunications may access, preserve, and disclose your account information and Content if required to do so by any applicable law or in a good faith belief that such access, preservation, or disclosure is reasonably necessary to: (a) comply with any applicable legal process; (b) enforce this Agreement; (c) respond to claims that any Content violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property or personal safety of MetaCommunications, its users and the public. If we receive a subpoena which requests disclosure of information contained in your account you agree that we may disclose any such requested information contained in the account. You understand that the technical processing and transmission of the Service, including your Content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices. You may not attempt to override or circumvent any of the usage rules embedded into the Service.

2. REGISTRATION, ORDERS, FEES, AND PAYMENT TERMS.

2.1. Registration and User Account. To access and use the Service you will be required to register and set up a user account. You must keep your registration information accurate and complete during the Term and protect as confidential any user names, passwords, authentication keys, or security credentials that enable your access to and management of the Service. You are responsible for all activity occurring under such user account and will notify us immediately of any unauthorized use of your user account or any other known or suspected breach of security. You are responsible for obtaining, maintaining, and supporting all internet access, computer hardware, and other equipment and services needed for access to the Service.

2.2. Orders. You may submit orders for the Service using our online subscription process (“Order(s)”). All Orders are subject to the terms of this Agreement and are not binding until accepted by us. We may accept or reject Orders in our sole discretion. Your Order will be deemed accepted by us when we provide you with an authentication key or other means allowing you to access the Service. We are not required to provide the Service to you until you provide us with all information that we require for processing your Order and provisioning the Service for you.

2.3. Fees and Payment Terms. When you place an Order, (including if you choose to convert to a paid subscription after a Free Trial), you will be required to select a subscription plan, and we will begin billing you for subscription fees corresponding to your subscription plan, plus any applicable tax. To view the specific details of your subscription plan, you can check the "Account Admin" page that is available after logging into the Service. Your subscription will automatically renew for successive Subscription Terms, without prior notice to you, unless and until you cancel your subscription, or we terminate it in accordance with this Agreement. You must cancel your subscription before it renews in order to avoid billing of the next Subscription Term’s subscription fees to your payment method. The subscription fee will be billed at the beginning of your initial Subscription Term and on each renewal Subscription Term thereafter, unless and until you cancel your subscription. We will automatically bill you each Subscription Term on the calendar day corresponding to the commencement of the Subscription Term. Except and to the extent required by applicable law, all fees and charges are non-cancelable and nonrefundable. If you are paying via your credit or debit card and your card reaches its expiration date, your continued use of the Service constitutes your authorization for us to continue billing you, and you remain responsible for any uncollected amounts. Overdue payments are subject to late payment fees equivalent to 1.5% of the overdue balance per month (or the maximum permitted by law, whichever is lower), plus any expenses associated with collections. Payments must be made in US dollars.

2.4. Change of Plans. If you elect to upgrade your subscription plan level or otherwise add any paid component or feature, we will prorate the amount due based on the number of days remaining in your then-current Subscription Term; provided, however, that any such proration shall be based on your subscription plan level or paid components or features in existence immediately prior to your election to upgrade or add paid components or features. If you downgrade your subscription plan level, the new subscription fees will take effect at the beginning of the next Subscription Term, and you will not be entitled to any refund or credit for the then-current Subscription Term. Additionally, if you downgrade your subscription plan, you may cause the loss of Content or features for your account. MetaCommunications does not accept any liability for such loss.

2.5. Fee Increases. We may change the fees and charges in effect or add new fees and charges from time to time. Furthermore, notwithstanding any other provision contained herein (but subject to any applicable law), at the time of any renewal of your subscription you agree that we may increase your recurring fees up to the greater of (i) the then list price as publicly marketed on our website, or (ii) five percent (5%). We may, in our sole discretion, offer you a grace-period in which your fees will not increase for a certain period of time. If you do not accept the increase or addition to the existing fees, you may elect to terminate your account during the then current billing period and you shall not be liable for such fee increase after the applicable billing period; however, any later renewal of Service will be subject to the increased fee structure.

2.6. Payment by Credit Card or ACH. If you elect to make any payment via credit or debit card, you authorize us to charge your credit card or bank account for all fees payable for the applicable Subscription Terms. You also authorize us to use a third party to process payments, and consent to the disclosure of your payment information to such third-party payment processor. If you elect to make any payment via the Automated Clearing House (“ACH”), you authorize your bank to transfer funds to our bank using the U.S. ACH system or domestic wire. Any bank fees (including, without limitation, your bank fees and our bank fees) (collectively, the “Bank Fees”), shall be your responsibility and may be recoverable by us from you. .

2.7. Taxes. In connection with your purchase and/or use of the Service you may be subject to taxes, including, without limitation, sales and use taxes, by any authority which has jurisdiction to impose such taxes. You agree that the obligation and payment of any such taxes shall be your sole and absolute responsibility, and you agree, that unless otherwise required by applicable law, to indemnify MetaCommunications pursuant to the section below entitled “Indemnification” to the extent that MetaCommunications incurs any obligations or other liabilities in connection with such taxes.

3. CONFIDENTIALITY AND DATA SECURITY.

3.1. Confidential Information. Each party (“Recipient”) shall hold in confidence all information received from the other party (“Discloser”), including any business and technical information, which is marked or otherwise designated as proprietary or confidential or which the receiving party knows or should know is confidential or proprietary under the circumstances (“Confidential Information”). Recipient shall protect Discloser’s Confidential Information in the same manner that Recipient protects its own Confidential Information of similar importance, but in no event with less than reasonable care. Recipient shall only use the Confidential Information of the Discloser for the purposes permitted under this Agreement and shall not disclose such Confidential Information to any third parties except to its employees and contractors who need to know such information and are subject to binding use and disclosure restrictions at least as protective as those set forth herein. Notwithstanding the foregoing, Confidential Information shall not include any information that: (i) is or becomes publicly known without the Recipient’s breach of any obligations owed to the Discloser; (ii) is rightfully disclosed to the Recipient from a source other than the Discloser without a breach of an obligation of confidentiality; (iii) is independently developed by the Recipient without any use of or reliance on the Discloser’s Confidential Information; or (iv) is required to be disclosed by applicable law or court order, provided that the Recipient provides the Discloser with reasonable advance notice of such disclosure and assistance to the Discloser to contest such order or requirement and prevent or limit such disclosure.

3.2. Data Protection and Security. All Content submitted by you to us through the Service will be considered your Confidential Information (except as set forth in Section 3.1 above) and will be used by us only as permitted under this Agreement and our then-current [Privacy Policy](#). You are responsible for ensuring that the security of the Service is appropriate for your intended use and the storage, hosting, or processing of any Content. You are responsible for taking and maintaining appropriate steps to protect the confidentiality, integrity, and security of all Content from unauthorized access, use, loss, or destruction. Those steps include: (a) controlling access you provide to the Service; (b) configuring the Service appropriately; (c) ensuring the security of Content while it is in transit to and from the Service; (d) using encryption technology to protect Content; and (e) backing up Content. You represent and warrant that: (i) you or your licensors own all right, title and interest in and to Content or have all the rights in the Content to use it and grant the rights contemplated in this Agreement and (ii) no Content will contain any harmful or malicious code, files, scripts, agents or programs.

3.3. Usage Data. We may monitor and collect performance and usage data associated with your use of the Service (“Usage Data”) and use the Usage Data: (a) to facilitate delivery of the Service (such as tracking Licensed Units, providing support, monitoring the performance of the Service, and preventing or addressing service or technical issues) and (b) to generally improve our products and services. We may disclose usage Data in aggregate form (e.g., data aggregated from your and other customers’ use of the Service, but does not identify you or any other customer) for promotion, statistical analysis, market analysis, financial analysis, and other such purposes.

4. PROPRIETARY RIGHTS.

4.1. Ownership of Service. As between us and you, we or our licensors own all worldwide right, title, and interest in and to the Service, including all worldwide intellectual property rights therein. We reserve all rights and licenses in and to the Service not expressly granted to you under this Agreement.

4.2. Ownership of Content. As between you and us, you or your licensors own all worldwide right, title and interest in and to the Content, including all worldwide intellectual property rights therein. You hereby grant to us, and we hereby accept, a non-exclusive license to use, copy, store, modify, transmit, and display Content solely to the extent necessary to provide the Service to you.

4.3. Feedback. You may from time to time provide suggestions, comments, or other feedback to us with respect to the improvement, correction, or modification of the Service (collectively, “Feedback”). You agree that we shall be free to use, disclose, reproduce, license, distribute, and otherwise commercially exploit the Feedback provided to us with respect to the Service as we sees fit, entirely without obligation or restriction of any kind.

4.4. Third Party Licensors. You acknowledge and agree that third party licensors may own certain proprietary information and intellectual property rights included in the Service. Such third party licensors are third party beneficiaries entitled to enforce our rights and your obligations hereunder and to seek appropriate legal and equitable remedies, including but not limited to, damages and injunctive relief, for your breach of such obligations. Except as provided in this Section, there are no other third-party beneficiaries to this Agreement.

5. WARRANTIES AND DISCLAIMER.

5.1. Mutual Warranty. Each party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such party and enforceable in accordance with its terms.

5.2. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICE IS PROVIDED "AS IS" AND WITH ALL FAULTS. WE HEREBY DISCLAIM ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF WE HAVE BEEN INFORMED OF SUCH PURPOSE), OF RELIABILITY OR AVAILABILITY, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE WITH REGARD TO THIS AGREEMENT. WE DO NOT WARRANT THAT THE SERVICE WILL BE PROVIDED ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION, OR THAT THE SERVICE WILL FULFILL YOUR REQUIREMENTS. TO THE EXTENT THAT WE CANNOT DISCLAIM ANY SUCH WARRANTIES AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTIES WILL BE THE MINIMUM REQUIRED UNDER SUCH LAW. The above disclaimers extend to us and our affiliates, suppliers, and licensors, and our and their shareholders, officers, directors, employees, representatives, and agents (the "MetaCommunications Parties").

6. TERMINATION AND SUSPENSION.

6.1. Termination for Cause. Either party may terminate this Agreement: (i) if the other party is in material breach of this Agreement and fails to cure the breach within 15 days of receiving written notice from the non-breaching party or (ii) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

6.2. Termination for Convenience. You may cancel your subscription to the Service and terminate this Agreement without cause at any time, and cancellation and termination will be effective immediately upon our receipt of your notice. However, you will not be entitled to a refund of or credit for the unused portion of the fees paid to us for the canceled subscription.

6.3. Effect of Termination. Upon any termination or expiration of this Agreement: (i) all licenses and rights granted to you hereunder shall terminate and we will no longer provide the Service to you, (ii) you shall cease using the Service; (iii) you shall promptly return, or if we request, destroy any of our Confidential Information in your possession and control; and (iv) within 7 days of expiration or earlier termination of this Agreement, you will pay to us all fees outstanding. In addition to any provisions that by their terms survive the termination or expiration of this Agreement, the following provisions will also survive: Sections 1.3, 2.3, 2.7, 3, 4, 5.2, 6.3, 7, 8, and 9.

6.4. Suspension. We may suspend your use of the Service if: (i) you are in breach of this Agreement and do not cure that breach within 15 days after we notify you of that breach; (ii) your use of the Service poses a security risk to the Service or to other users of the Service; or (iii) suspension is required pursuant to a subpoena, court order, or other legal requirement. We will give you notice before suspending your use of the Service if permitted by applicable law or unless we reasonably determine that providing notice presents a risk of harm to the Service or other users of the Service, in which case we will notify you as soon as feasible or permitted.

7. INDEMNIFICATION. You will defend, indemnify and hold us harmless from and against any loss, damage, liability or cost (including reasonable attorneys' fees) resulting from any third party claim based on: (i) your use of Content that infringes the rights of, or has caused harm to, a third party; (ii) a violation by you of your representations and warranties; or (iii) a breach by you of this Agreement; provided that we promptly notify you in writing of any and all such claims. In the event of any loss, damage, liability or cost for which you are obligated to indemnify us hereunder, you shall have sole control of the defense and all related settlement negotiations, and we will reasonably cooperate with you in the defense and/or settlement thereof at your expense; provided that we may participate in such defense using its own counsel, at its own expense.

8. LIMITATION OF LIABILITY.

8.1. Exclusion of Consequential Damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE METACOMMUNICATIONS PARTIES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DAMAGES FOR LOSS OF PROFITS OR REVENUES, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF BUSINESS INFORMATION (WHETHER ANY OF THE FOREGOING ARE INCURRED DIRECTLY OR INDIRECTLY) OR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE,

CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING OUT OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHER LEGAL OR EQUITABLE THEORY, EVEN IF THE METACOMMUNICATIONS PARTIES BEEN ADVISED OF, KNOW OF, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

8.2. Limitation of Liability. IN NO EVENT SHALL THE METACOMMUNICATIONS PARTIES' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHER LEGAL OR EQUITABLE THEORY, EXCEED: (I) IN THE CASE WHERE YOU HAVE A PAID SUBSCRIPTION ACCOUNT, THE SUBSCRIPTION FEES PAID BY YOU TO US FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY OR (II) IN THE CASE WHERE YOU ONLY HAVE A FREE TRIAL ACCOUNT, ONE HUNDRED U.S. DOLLARS (\$100.00).

9. GENERAL.

9.1. Notices. Notices under this Agreement must be in writing and will be considered effective on the earlier of actual receipt or: (i) the first day after delivery by registered mail (or by courier with tracking number) or (ii) the second business day after sending by email. Billing notices and other general notices relating to a party's performance under this Agreement may be sent via email to the contacts specified by the other party. All legal notices under this Agreement must be delivered by registered mail (or by courier with tracking number) to the attention of the receiving party's legal department.

9.2. Governing Law and Dispute Resolution. The parties shall use good faith, reasonable efforts to resolve any dispute before initiating legal action. This Agreement shall be governed by the laws of the State of Iowa and the United States, without reference to conflict of laws principles. The parties expressly disclaim the application of the United Nations Convention on the International Sale of Goods to this Agreement and the Uniform Computer Information Transactions Act as it may be enacted in the applicable jurisdiction. Except for disputes that are subject to arbitration under Section 9.15 below, the District Court for Johnson County, State of Iowa, and the United States District Court for the Southern District of Iowa shall have sole and exclusive jurisdiction over any dispute arising out of this Agreement. We and you hereby consent to such jurisdiction and waive any rights to have the action tried or determined in a different venue. You and we waive all rights to a jury trial in any suit or claim arising out of or in any way connected with the Agreement.

9.3. Entire Agreement. This Agreement constitutes the complete and exclusive understanding and agreement between the parties regarding their subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to their subject matter. Any additional or different terms in your documents (including any terms contained on ordering documents and purchase orders) shall not apply and are hereby deemed to be material alterations and notice of objection to, and rejection of them, is hereby given.

9.4. Amendments. We may modify the terms of this Agreement or Service at any time. You will be given notice of any amendments to this Agreement or the Service. We may provide notice to you by means of (i) posting information or a link to it in the Service or on our website or (ii) by email to your e-mail address on record under your user account. Such notice shall be deemed to have been given upon the expiration of three days after posting or one day after emailing.

9.5. Assignment. Neither party may assign or transfer this Agreement, in whole or in part, without the other party's prior written consent (not to be unreasonably withheld. Any attempt to assign or transfer this Agreement without the prior written consent of the other party shall be void. Notwithstanding the foregoing, either party may assign this Agreement in its entirety without approval of the other party to a party that succeeds to all or substantially all of its assets (whether by sale, merger, operation of law or otherwise), so long as such assignee or transferee agrees in writing to be bound by the terms and conditions of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their authorized successors and permitted assigns.

9.6. Marketing. During the Term, we may include your name, logo, and success stories (if provided) on our website and in any press releases, promotional and sales literature, and lists of customers.

9.7. Force Majeure. Except with respect to the obligation to pay fees when due hereunder, neither party shall be deemed in default of this Agreement because of a delay or failure in performance of its obligation resulting from any cause beyond its reasonable control (a "Force Majeure"), provided it gives reasonably prompt notice of the Force Majeure condition to the other party and uses reasonable efforts to mitigate the delay or failure.

9.8. Basis of Bargain. Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for bases of this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

9.9. Construction. The headings of sections of this Agreement are for convenience and are not for use in interpreting this. As used in this Agreement, the word “including” means “including but not limited to.”

9.10. Waiver. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by duly authorized representative of the party against whom the waiver is to be asserted. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

9.11. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

9.12. Independent Contractors. The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties.

9.13. Compliance with Laws. We will comply with all U.S. state and federal laws (where applicable) in our provision of the Service and our processing of your Content. We reserve the right at all times to disclose any information as necessary to satisfy any law, regulation, legal process or governmental request. You will comply with all laws in your use of the Service, including any applicable export laws. You must comply with all applicable laws related to the recording of audio and video calls and sessions and ensure all proper consent to record is obtained prior to making any such recording. You will comply with the sanctions programs administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. You will not directly or indirectly export, re-export, or transfer the Service to prohibited countries or individuals or permit use of the Services by prohibited countries or individuals.

9.14. Copyright Policy. It is MetaCommunications’ policy to respect the copyright and intellectual property rights of others. MetaCommunications may remove content that appears to infringe the copyright or other intellectual property rights of others. In addition, MetaCommunications may terminate access by users who appear to infringe the copyright or other intellectual property rights of others. Further, MetaCommunications complies with the Digital Millennium Copyright Act (“DMCA”). If you believe in good faith that your work has been copied in a way that constitutes copyright infringement, please provide MetaCommunications’ Copyright Agent the following information:

- a. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest.
- b. A description of the copyrighted work that you claim has been infringed.
- c. A description of where the material that you claim is infringing is located on the Website.
- d. Your address, telephone number, and e-mail address.
- e. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law.
- f. A statement by you, made under penalty of perjury (e.g., notarized affidavit), that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Please direct inquiries regarding infringement issues by email to: legal@meta-comm.com

9.15. Arbitration. PLEASE READ THIS ARBITRATION PROVISION CAREFULLY TO UNDERSTAND YOUR RIGHTS. YOU AGREE THAT ANY CLAIM THAT YOU MAY HAVE IN THE FUTURE MUST BE RESOLVED THROUGH BINDING ARBITRATION. YOU ACKNOWLEDGE AND AGREE THAT YOU ARE WAIVING THE RIGHT TO A TRIAL BY JURY. THE RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT, SUCH AS DISCOVERY OR THE RIGHT TO APPEAL, MAY BE MORE LIMITED OR MAY NOT EXIST. YOU AGREE THAT YOU MAY ONLY BRING A CLAIM IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. YOU FURTHER AGREE THAT THE ARBITRATOR MAY NOT

CONSOLIDATE PROCEEDINGS OR CLAIMS OR OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING.

- a. Generally. Arbitration is a method of resolving a Claim without filing a lawsuit. "Claim" means any dispute between you, the MetaCommunications Parties, and/or any involved third party relating to your account, your use of the Service, your relationship with the MetaCommunications Parties, or this Agreement. This includes any and all claims that relate in any way to your use of the Service, your attempted use of the Service, and any act or omission by the MetaCommunications Parties or any third party related to your use or attempted use of the Service. You, MetaCommunications, the other MetaCommunications Parties, or any involved third party may pursue a Claim. MetaCommunications agrees to binding arbitration should it have any Claims against you. Likewise, you agree to binding arbitration should you have any Claims against MetaCommunications. By agreeing to arbitrate, you waive the right to go to court and agree instead to submit any Claims to binding arbitration. This arbitration provision sets forth the terms and conditions of our agreement to binding arbitration and is governed by and enforceable under the Federal Arbitration Act (the "FAA"), 9 U.S.C. §§ 1-16, as amended.
- b. Exceptions to Binding Arbitration. As an exception to binding arbitration, you and MetaCommunications both retain the right to pursue, in a small claims court, any claim that is within that court's jurisdiction and proceeds on an individual (non-class) basis. MetaCommunications will not demand arbitration in connection with any individual claim that you properly file and pursue in a small claims court, so long as the claim is pending only in that court. Binding arbitration also does not apply to disputes concerning trade secret misappropriation, patent infringement, copyright infringement or misuse, or trademark infringement or dilution.
- c. Mandatory Pre-Dispute Procedures. You acknowledge and agree that before initiating any Claim (subject to the exceptions above) against the MetaCommunications Parties, you will first give us an opportunity to resolve your problem or dispute. This includes sending a written description of your problem or dispute to us, including, but not limited to, information or representations related to our products and upon which you rely. You may send the written description by U.S. Mail to MetaCommunications, Inc., 201 E. Washington St. Iowa City, IA 52240; Attn: General Counsel. You agree to negotiate with MetaCommunications in good faith about your problem or dispute. If for some reason your problem or dispute is not resolved to your satisfaction within 60 days after MetaCommunications's receipt of your written dispute, you agree to the dispute resolution provisions below.
- d. Commencement of Arbitration. You and MetaCommunications agree to commence any arbitration proceeding within 1 year after the Claim arises (including the mandatory pre-dispute procedures outlined above) and that any proceeding commenced after 1 year shall be barred.
- e. Arbitration Location. The arbitration will be conducted in the federal district for the Southern District of Iowa. It may be held by telephone or through written submissions if both you and MetaCommunications agree.
- f. Sponsoring Organization, Rules and the Arbitrator. You agree that any Claims shall be resolved by submitting the dispute to final and binding confidential arbitration before a single arbitrator who is a retired judge or an experienced attorney with experience in the subject(s) of the Claim. The arbitrator shall be chosen from JAMS Comprehensive Arbitration Rules and Procedures and the arbitration rules of the selected tribunal shall apply, which can be obtained by calling the selected tribunal. The arbitrator shall have the exclusive and sole authority to resolve any dispute relating to the interpretation, construction, validity, applicability, or enforceability of this Agreement and this arbitration provision. The arbitrator shall have the exclusive and sole authority to determine whether this arbitration agreement can be enforced against a non-signatory to this agreement and whether a non-signatory to this agreement can enforce this provision against you, MetaCommunications or the other MetaCommunications Parties.
- g. Arbitration Fees. MetaCommunications shall pay for all filing, administrative, and arbitrator fees for an arbitration initiated by either party. If the arbitrator determines the claim(s) you assert in the arbitration to be frivolous, you agree to reimburse MetaCommunications for all fees associated with the arbitration paid by MetaCommunications on your behalf that you otherwise would be obligated to pay under the AAA's rules. The parties shall each pay their own additional fees, costs, and expenses, including, but not limited to, those for any attorneys, experts, documents, and witnesses.
- h. Arbitration Award. The arbitrator shall follow substantive law and may order any relief if permitted by law. The arbitrator may award any form of individual relief, including injunctions and punitive damages, so long as they are in accordance with applicable law. The arbitrator may award costs

or fees to a prevailing party, but only if the law expressly allows it. Although MetaCommunications may have a right to an award of attorneys' fees and expenses under some laws if it prevails, MetaCommunications agrees that it will not seek such an award, unless your Claims are determined by the arbitrator to be frivolous. Nothing herein shall be construed to limit the arbitrator's ability to award remedies provided by applicable law. Any award rendered shall include a written opinion and shall be final, subject to appeal under the FAA.

- i. Enforceability. This provision survives termination of your account or relationship with MetaCommunications, bankruptcy, assignment or transfer. If the class action waiver is deemed unenforceable (i.e., unenforceability would allow arbitration to proceed as a class or representative action), then this entire arbitration provision shall be rendered null and void and shall not apply. If a portion of this arbitration provision (other than the class action waiver) is deemed unenforceable, the remaining portions of this arbitration provision shall remain in full force and effect.
- j. Miscellaneous. Failure or any delay in enforcing this arbitration provision in connection with any particular Claims will not constitute a waiver of any rights to require arbitration at a later time or in connection with any other Claims. This provision is the entire arbitration agreement between you and MetaCommunications and shall not be modified except in writing by MetaCommunications.
- k. Amendments. MetaCommunications reserves the right to amend this arbitration provision at any time, provided that such amendment shall not apply to any Claim that was filed in a legal proceeding against MetaCommunications prior to the effective date of such amendment. Your continued use or attempted use of the Service, is affirmation of your consent to such changes. Should the changes to this arbitration provision be material, MetaCommunications will provide you notice and an opportunity to opt-out. Your continued use or attempted use of the Service, is affirmation of your consent to such material changes.
- l. Opt-Out. YOU HAVE THE RIGHT TO OPT-OUT OF THIS ARBITRATION PROVISION WITHIN 30 DAYS FROM THE DATE OF PURCHASE, USE, OR ATTEMPTED USE OF A METACOMMUNICATIONS PRODUCT OR SERVICE (WHICHEVER COMES FIRST) BY WRITING TO METACOMMUNICATIONS, INC. 201 E. WASHINGTON ST. IOWA CITY, IA 52240; ATTN: GENERAL COUNSEL. FOR YOUR OPT-OUT TO BE EFFECTIVE, YOU MUST SUBMIT A SIGNED WRITTEN NOTICE IDENTIFYING ANY METACOMMUNICATIONS PRODUCT OR SERVICE YOU PURCHASED, USED OR ATTEMPTED TO USE WITHIN THE 30 DAYS AND THE DATE YOU FIRST PURCHASED, USED OR ATTEMPTED TO USE OF METACOMMUNICATIONS PRODUCT OR SERVICE. UNTIMELY OPT-OUTS WILL NOT BE VALID AND YOU MUST THEN PURSUE YOUR CLAIM THROUGH ARBITRATION PURSUANT TO THESE TERMS.