

## **AMTELCO miCloud Applications Terms and Conditions**

THIS DOCUMENT STATES THE TERMS AND CONDITIONS UPON WHICH AMERICAN TEL-A-SYSTEMS, INC., (AMTELCO) PROVIDES ITS HOSTED SUBSCRIPTION SERVICES AND/OR ON-SITE SOFTWARE LICENSES WITHIN THE UNITED STATES, MEXICO, AND CANADA. PLEASE READ CAREFULLY THE TERMS. CONTAINED IN THIS AGREEMENT YOU WILL BE REQUIRED TO INDICATE YOUR UNDERSTANDING OF CERTAIN TERMS AND CONDITIONS AND MAY THEN ENTER INTO AN AGREEMENT THAT WILL ALLOW YOU TO USE AMTELCO'S SHARED SOFTWARE AND RESOURCES.

### **A. MULTIPLE USERS**

Customer's rights of immediate use of the Software and Resources, as provided herein, shall be subject to the probability, and any eventuality, that one or more Subscribers ("Other Affected Subscribers") will attempt/require use of the Software and Resources at the same time as the Customer. AMTELCO makes no offer of exclusivity of use of the Software or Resources by any one Customer, nor of any priority of use of the Software or Resources by any one Customer.

The Software and Resources are partitioned into separate logical customer systems, each with its own database and web interface, and all customer partitions are managed by a single instance of the Resources' server engine. The Resources' server engine is designed as a multi-threaded process that is able to act upon service requests from all customers simultaneously. As service requests are received by the server engine, individual jobs are initiated and passed to integral services for execution. Each of the various services is multi-threaded and can act upon multiple requests simultaneously.

AMTELCO reserves the right to allocate the Software and Resources and implement reasonable and prudent procedures and priorities as deemed necessary in the event that attempted usage is widespread and/or extreme in nature, notwithstanding the foregoing provisions, in order to address issues of national security and of the public good.

### **B. OTHER TERMS**

- 1 **CONTRACT TERM.** The term of this Agreement and Customer's rights to use the Services, shall begin upon receipt of payment of the Subscription Fee, and shall continue in effect for twelve (12) months. This Agreement Is automatically renewed unless written notice is received 30 days in advance of the renewal date. This Agreement is a non-cancelable contract that may be terminated only in accordance with its express terms.
- 2 **FEES AND EXPENSES.** The Subscription Fee shall be invoiced by AMTELCO, in accordance with the payment terms specified on the invoice. Non-payment of the Subscription Fee will result in termination of this Agreement. All other fees, and any out-of-pocket expenses reasonably incurred by AMTELCO on behalf of Customer and with prior authorization, shall be invoiced by AMTELCO as and when incurred.
- 3 **THIRD-PARTY COMPONENTS.** The complete solution offered AMTELCO requires third-party components, products and/or services, which are subject to any applicable third-party terms and conditions and which may require separate purchases from and/or agreements with third-party vendors. By using the product offered by AMTELCO the Customer agrees to abide by the terms and conditions of any and all applicable third-party

software licenses. Failure to comply with such terms and conditions may result in termination of service by AMTELCO without providing notice and without incurring obligation.

- 4 ENGINEERING CHANGES. American Tel-A-Systems, Inc. reserves the right to make changes to or discontinue the software at any time and to change specification or design without providing notice and without incurring any obligation.
- 5 MODIFICATIONS TO SOFTWARE. All AMTELCO software and application databases are designed to be customized only with the customization tools provided within the software. Any modifications to the software and to underlying database structures incorporated by AMTELCO products by the Customer will result in the invalidation of any remaining warranty period and of any Service and Support Agreement that may be in place. All efforts by AMTELCO to recover the functionality of AMTELCO products due to attempts at database customization by the licensee will be performed at an hourly rate equal to twice the rate stated in this contract and in any Service and Support Agreement that may be in place.
- 6 CONFIDENTIALITY. All information disclosed by one party to the other in connection with this Agreement shall be treated as confidential information unless it is or becomes publicly available through no fault of the other party, is already known to the other party, or is later rightfully obtained by the other party from independent sources. Each party's confidential information shall be held in strict confidence by the other party, using the same standard of care as it uses to protect its own confidential information, and shall not be used or disclosed by the other party for any purpose except as necessary to implement or perform this Agreement. Without limiting the generality of the foregoing, such confidential information includes (a) Customer's data and trade secrets of Customer, (b) AMTELCO's physical security systems, access control systems, specialized equipment and techniques, pricing and User's Guides, which include trade secrets of AMTELCO, and (c) the terms of this Agreement. The Customer agrees that if the Customer makes use of the Software and Resources under this Agreement, AMTELCO may disclose the fact and nature of the declaration to necessary and appropriate parties for purposes of coordinating efforts to assist the Customer. This Section C6 may be enforced by injunction. AMTELCO shall use the Customer's information only in connection with performing AMTELCO's obligations under this Agreement and in sharing information with the Customer about AMTELCO's services and products.
- 7 USER CONTENT. AMTELCO does not routinely monitor Customer-generated content and information created in connection with this Agreement. However, AMTELCO will respond to any and all reports of abuse or inappropriate Customer-generated content in a thorough and timely manner. AMTELCO reserves the right to remove any Customer-generated content that is deemed offensive, hateful, threatening, or pornographic; incites violence; or contains graphic or gratuitous profanity. By accepting the Terms and Conditions of this Agreement, the Customer agrees not to send unlawful, misleading, malicious, or discriminatory messages, or post unauthorized commercial communications (spam). The Customer further agrees not to engage in any activities that could disable, overburden, or impair the proper functioning of the Software and Resources covered by this Agreement, such as a denial of service attack. By acceptance of this Agreement, the Customer agrees to indemnify and hold AMTELCO harmless from and against all damages, losses, and expenses of any kind - including reasonable legal fees and costs -

related to any claim or claims brought against the Customer or against AMTELCO related to Customer-generated content or information created in connection with this Agreement.

- 8 **FORCE MAJEURE.** Neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement as a result of a cause beyond its reasonable control and/or reasonable resources. In the event of any natural calamity, act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, disruption or outage of communications, power or other utility, failure to perform by any supplier or other third party, or other cause which could not have been prevented with reasonable care. If, due to any such cause, AMTELCO is unable to provide to the Customer the Software and Resources described herein and this inability continues for a period of more than 10 days (the "Outage Period"), then the term of this Agreement shall be extended by the Outage Period. If this inability continues for more than five days after the Customer has declared an Outage Period, then the Customer may terminate this Agreement, without penalty, by giving written notice of termination to AMTELCO at any time before the inability ends and will receive a pro rata refund of any prepaid fees for any period after the date of termination.
- 9 **TERMINATION FOR CAUSE.** If either party breaches any of its obligations under this Agreement in any material respect and the breach is not substantially cured within the Cure Period specified below, then the other party may terminate this Agreement, without penalty, by giving written notice to the breaching party at any time before the breach is substantially cured. With respect to a breach of AMTELCO's obligation to provide the Software and Resources to the Customer during the prescribed period covered by the Subscription Fee, the Cure Period shall be five days. With respect to the Customer's payment obligations, the Cure Period shall be the period of time specified on the invoice. With respect to all other obligations under this Agreement, the Cure Period shall be 30 days after receipt of written notice describing the breach, provided that, if a longer period is reasonably required to cure the breach and the cure is promptly begun, such Cure Period shall be extended for as long as the cure is being diligently prosecuted to completion.
- 10 **NOTICE.** All notices, consents and other communications under this Agreement shall be in writing and shall be deemed to have been received on the earlier of the date of actual receipt or the third business day after being sent by first class U.S. Mail. Any notice may be given by facsimile, and any disaster declaration notice may be given orally, provided that, in either case, a signed written confirmation is received within 24 hours thereafter.
- 11 **ENTIRE UNDERSTANDING.** This Agreement states the entire understanding between the parties with respect to its subject matter, and supersedes all prior proposals, negotiations and other written or oral communications between the parties with respect to the subject matter of this Agreement. No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement.
- 12 **SIGNATORY AUTHORITY.** The parties acknowledge and agree that each signatory to this Agreement is possessed of all rights and authority to execute this Agreement and that it will not challenge the legitimacy, terms or enforceability of this Agreement based on the

identity or authority of any such signatory.

- 13 **PARTIES IN INTEREST.** Neither party may assign this Agreement or any rights or obligations under this Agreement without the prior written consent of the other party which will not be unreasonably withheld; provided however, the Customer's consent shall not be required in the case of an assignment by AMTELCO to an affiliate. This Agreement shall bind, benefit and be enforceable by and against both parties and their respective successors and assigns. No third party shall be considered a beneficiary of this Agreement or be considered as entitled to any rights under this Agreement.
- 14 **CONSTRUCTION. THIS AGREEMENT SHALL BE GOVERNED BY SUBSTANTIVE WISCONSIN LAW.** The Customer consents to the exclusive jurisdiction of the federal, state, and local courts of the State of Wisconsin in all matters relating to this Agreement. In any action relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs from the other party. A determination that any term of this Agreement is invalid or unenforceable shall not affect the other terms of this Agreement. Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement. The relationship between the parties created by this Agreement is that of independent contractors, and not partners, joint ventures or agents. Sections B1, B6, B7, B10, B14, B15, and, B16, shall survive any termination of this Agreement.
- 15 **LIABILITY AND INDEMNIFICATION.** Each party ("Liable Party") to the Agreement shall be liable to the other party for any direct damages caused by any gross negligence or willful misconduct of the Liable Party (or any of its employees or agents) in connection with the use of the Software and Resources or any other matter relating to this Agreement. The Liable Party shall indemnify and hold harmless the other party (and its affiliates and their respective employees and agents) against any claims, actions, damages, losses or liabilities to the extent arising from any such gross negligence or willful misconduct of the Liable Party (or any of its employees or agents). Under no circumstances shall AMTELCO's liability (or that of its employees or agents) exceed the Subscription Fees actually paid by the Customer under this Agreement. The Customer shall indemnify and hold harmless AMTELCO (and its affiliates and their respective employees and agents) against any claims, actions, damages, losses or liabilities to the extent arising from the use, control or possession of any Software and Resources or use by the Customer (or any of its employees or agents). Excluding the Customer's payment obligations, under no circumstances shall either party be liable for lost revenues, lost profits, loss of business, or consequential or special damages of any nature, whether or not foreseeable. **AMTELCO SHALL HAVE NO LIABILITY FOR ANY DAMAGE TO, LOSS OF OR INTERCEPTION OR MISDIRECTION OF THE CUSTOMER'S DATA, FILES, SOFTWARE, CODE, OPERATING SYSTEMS, APPLICATIONS OR OTHER INTANGIBLE PROPERTY THAT OCCURS DURING CONNECTION, TRANSMISSION OR USE BY THE CUSTOMER IN CONJUNCTION WITH THE SERVICE.**
- 16 **NO OTHER WARRANTIES, OR REPRESENTATIONS, EXCEPT AS SPECIFICALLY STATED IN THIS AGREEMENT, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION ARE MADE BY THE TERMS OF THIS**

AGREEMENT.