



SHORETEL SUMMIT TERMS OF SERVICE

(Updated March 21, 2017)

These Terms of Service ("**Terms of Service**") are entered into by and between you, as a registrant of the portal to use and access certain telecommunication services or capabilities available online (the "**Summit Service**") provided by ShoreTel, Inc. ("**ShoreTel**") and is effective as of the date this Terms of Service is accepted ("**Effective Date**"). Subject to your successful registration to access the Summit Service and compliance with these Terms of Service, you and your authorized staff on behalf of the entity that you represent (collectively, "**you**" or "**Customer**") will be enabled to access and use the Summit Service.

IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, PLEASE EXIT THIS WEBSITE AS YOU ARE NOT PERMITTED TO USE THE SUMMIT SERVICE.

1. **DEFINITIONS.** In addition to terms defined in these Terms of Service, the following terms will have the following meanings.

1.1 "**API**" means an application programming interface to certain of the Summit Service that may be provided to Customer by ShoreTel to allow integration of Customer Applications with the Summit Service.

1.2 "**Authorized Users**" means those individuals authorized by Customer to access the Summit Service and who have been supplied user identifications and passwords.

1.3 "**Customer Application**" means a software application that interfaces with the Summit Services and any services related to such software application that are offered or made available by the Customer.

1.4 "**Customer Data**" means all data, applications or information provided or submitted by Customer via the Summit Service, and all corresponding intellectual property rights.

1.5 "**Documentation**" means, in digital, printed or other form, the technical, user and reference manuals, notes, instructions and summaries, technical release notes, specifications and any other supporting documentation related to the Summit Service or Software.

1.6 "**Marks**" means any trademarks, services marks, and logos, whether registered or unregistered.

1.7 "**ShoreTel Data**" means the data collected by the Summit Service, including statistics relating to how often data is captured, transferred, stored, copied, manipulated, or downloaded, performance metrics relating to the Summit Service, and configuration settings.

1.8 "**ShoreTel Property**" means the Summit Service, Software, API, Documentation, ShoreTel Data, ShoreTel's Marks (including without limitation "ShoreTel" and "Powered by ShoreTel"), ShoreTel's Confidential Information, all other information, materials, documentation or data provided by ShoreTel to Customer under these Terms of Service, together with any and all underlying software, technology and other materials used to make the Summit Service available and all corresponding intellectual property rights in all the foregoing.

1.9 "**Software**" means any ShoreTel software or API that may be made available for access by Customer via the Summit Service.

1.10 "**Summit Service(s)**" means, as provided by ShoreTel, certain web-based communication services and development platforms to integrate the same into third party Customer Applications, including without limitation the API. Summit Services expressly exclude any international calling services, which are not available as a service under these Terms of Service. International calling services are only available under the terms of a work order to be agreed by the parties in writing.

2. **RESPONSIBILITIES.**

2.1 ShoreTel Responsibilities.

(a) Upon acceptance by ShoreTel of your application to receive Summit Services and/or access the Software, ShoreTel will provide access to the Summit Services and any Customer Data as submitted



by you or your Authorized Users as contemplated by these Terms of Service as it may be updated from time to time. Each Authorized User will be required to accept or otherwise agree to these Terms of Service and any ShoreTel online terms of use and Use Guidelines as they may be posted from time to time.

(b) In addition, upon acceptance by ShoreTel of Customer's application to receive Services and/or access the Software, ShoreTel will credit Customer's account in an amount determined by ShoreTel to allow Customer to begin utilizing the Summit Services. Once Customer's use of the Summit Services and/or Software has exhausted such credit, Customer will not be permitted to access or use the Summit Services or Software unless and until Customer submits payment to ShoreTel for continued use of the Summit Services and/or Software as set forth below.

(c) ShoreTel may amend and/or modify the ShoreTel Property, Summit Services and any ShoreTel Software at any time. Customer has sole and exclusive liability for ensuring that calls or requests made to the Summit Services via the Customer Applications are compatible with then current ShoreTel APIs.

2.2 Customer Responsibilities. Customer (i) will provide or upload sufficient Customer Data, in a suitable format, for ShoreTel to provide the Summit Services; (ii) will have suitable computing devices to be able to access the ShoreTel Property; (iii) will not use the ShoreTel Property for any inherently dangerous application or for an illegal activity or for resale; (iv) is solely responsible for backing up all Customer Data; and (v) will comply with all Customer requirements and use guidelines contained in the Use Guidelines, made available at <https://www.shoretel.com/sites/default/files/sip-aup.pdf> ("Use Guidelines"), as they may be updated from time to time. **Customer is solely responsible for all acts and omissions of its Authorized Users and their compliance with these Terms of Service and the Use Guidelines and e911 policy.**

2.3 Telecommunications Terms. Customer will comply with all applicable third party acceptable use policies. Customer will also ensure that all outbound calls on a CC ten-digit telephone number ("**Number**") originate from telephone equipment provided by ShoreTel (or equipment authorized for use in writing by ShoreTel) and through the Summit Services provided to Customer. Customer will not use the Summit Services in a manner that would require ShoreTel to incur originating access charges or local exchange carrier charges for queries to a routing database (i.e., "dip" fees), or that would subject ShoreTel to any reverse billing process. Customer will not use the Summit Services to place 911/E911 or other emergency calls except in accordance with a subscription to 911/E911 Service and the terms and conditions of such Service, including waiver of any claim or cause of action arising from the provision of such Service. Customer will not use the Summit Services for any unauthorized or fraudulent communications on pay- per-call Numbers, information service calls, directory assistance calls or the like. Customer will not use the Summit Services for mass calling events, excessive non-completed or invalid calls, or calls that are purposely designed or expected to fail. Customer will remain in compliance at all times with all requirements of laws and regulations applicable to Customer's use of the Summit Services, including without limitation those requirements relating to the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, all regulations of the Federal Communications Commission, including without limitation Title 47, Part 64, Subparts L and P of the Code of Federal Regulations, all orders, rules and guidance issued by the Federal Trade Commission, including without limitation the Telemarketing Sales Rule, Title 16, Part 310 of the Code of Federal Regulations, and all other federal, state and local laws, regulations and guidance documents, including but not limited to those relating to export and import control, email and text spam, automated opt-out functions, pre- recorded messages, recording of telephone calls, Do Not Call lists, required call duration, call abandonment rates, auto-dialed calls, robocalls, customer proprietary network information ("**CPNI**") and caller identification ("**caller ID**") functions ("**Regulations**"). Customer will originate all of its communications through use of the Summit Services on the Internet utilizing TCP/IP as a transmission protocol ("**IP Originated Communications**").

2.4 Restrictions on Use of Summit Services. In order to manage the network, ShoreTel reserves the right to suspend or terminate Summit Services, or access to a specific Number, and to charge a surcharge, if the Customer engages in the following activities:

- (a) Call volume that is in excess of average network usage;
- (b) An unusual volume of calls with a duration of less than six seconds ("**Short Duration Calls**"); or



(c) Posting or publishing a ShoreTel inbound local or toll-free Number (“TFN”) in a manner that may create an uncharacteristically high volume of inbound calls to that number within a short time frame or Short Duration Calls (for example, posting a Number for contest use or for a give-away). If Customer wishes to use a TFN in such a manner, Customer must notify ShoreTel in advance to make arrangements to do so and Customer will bear any additional charges associated with the provision of a TFN for such purposes.

2.5 Management of Numbers. Customer must commence usage of each Number requested by Customer within 90 days of delivery of the Number by ShoreTel. ShoreTel reserves the right to turn off any unused Numbers on or after the ninety-first (91st) day from delivery of the unused Number to Customer. Customer may request a longer period of time to begin Usage of the Number. ShoreTel may grant such a request in its sole discretion, but shall not be obligated to do so.

2.6 Call Detail Records. ShoreTel will own the record of each call, including the Automatic Number Identification (“ANI”), Dialed Number Identification Service (“DNIS”), call start time, call end time, duration and any other information captured by ShoreTel at its discretion. All Call Detail Record data will be made available to Customer within 30 days of Customer’s request.

2.7 User Names, Passwords and Compliance. Customer is responsible for keeping its user names and passwords confidential and secure, and limiting access to the Summit Services to its Authorized Users. Customer is solely responsible and liable for any activity that occurs under its account, including without limitation all actions of Authorized Users. Customer will notify ShoreTel in writing within 3 days of Customer’s discovery of any unauthorized use. CUSTOMER HAS SOLE RESPONSIBILITY FOR (I) ENSURING ITS OWN COMPLIANCE WITH ALL APPLICABLE LAWS OR REGULATIONS, AND (II) THE ACCURACY, QUALITY, INTEGRITY, LEGALITY, RELIABILITY, AND APPROPRIATENESS OF ALL CUSTOMER DATA AND COMMUNICATION ACTIVITIES.

2.8 ShoreTel Data Collection. The Software and Summit Services may collect certain information that is generated by Customer’s use of the Service, including the ShoreTel Data. Customer consents to such collection. ShoreTel may use such information and data, including the ShoreTel Data, without notice to or consent from Customer unless otherwise prohibited by applicable law, our Privacy Policy, or these Terms of Service. Customer has read our Privacy Policy on our website posted at <http://www.shoretel.com/privacypolicy>, that is applicable to the Summit Services that sets forth how we will collect, store, and use your Customer Data. ShoreTel may periodically delete Customer Data. Further, data storage is not guaranteed by us and you agree that we will not have any liability whatsoever for any damage, liabilities, losses, or any other consequences that you may incur relating to the loss or deletion of Customer Data.

2.9 App Development. Customer may develop and upload its own Customer Applications to work in combination with the Service. All such software applications will be Customer Data as contemplated above, except to the extent any such software applications include any ShoreTel Property. **Customer is solely responsible for all acts and omissions of its Authorized Users in connection with Customer Applications.**

2.10 Service Changes. ShoreTel, from time to time, may modify, upgrade or otherwise change the ShoreTel Property and/or the manner in which the Summit Services are provided including, but not limited to, the hardware, software, features or environment required and Customer’s continued use of the Summit Services shall constitute acceptance of such changes. ShoreTel has no obligation to update, upgrade, modify, enhance, impose, or otherwise implement any changes to the ShoreTel Property or Service, nor is ShoreTel obligated to remedy or fix any error, bug, or defect or provide any workaround.

2.11 Modifications to these Terms of Service. ShoreTel may change or modify these Terms of Service, our policies and pricing described herein and the underlying ShoreTel Property at any time. Use of the ShoreTel Property following online notice of changes to these Terms of Service and implementation constitutes your agreement to such changes or modifications.

3. FEES AND PAYMENT.

3.1 Payment. All Summit Services and access to Software under this Agreement are available only on a prepaid basis. Access and use of Summit Services and Software that is billed and paid in arrears is solely available under the terms of a work order to be agreed by the parties in writing. All fees are calculated and paid in



U.S. dollars. All costs incurred for collection and bank charges will be paid by Customer. Customer is responsible for paying any applicable taxes. All fees are nonrefundable.

3.2 Account Replenishment. You must submit the necessary credit card information to maintain a positive balance in your account to utilize the Summit Services. If the card information that you submit is incorrect or invalid, your payment or order will not be processed and you will not be able to use the ShoreTel Property until your account is replenished. Payment is subject to the approval of the financial institution issuing the card. ShoreTel assumes no responsibility or liability if the financial institution refuses to accept or honor your card for any reason. ShoreTel works with a third party payment processor to help ensure the security of your credit card data. If you authorize a recurring purchase, ShoreTel (or our third party payment processor) will store your credit card information as necessary to process such recurring purchases.

3.3 Draw Downs. Customer's account will be debited from the prepaid fees in Customer's account for each use of the Summit Services and/or Software in the requisite amount applicable to Customer's use of the Summit Services and/or Software as set forth on ShoreTel's then-current schedule of fees, available online at <https://summit.shoretel.com/how-it-works/pricing/>, as such schedule may be amended from time to time in ShoreTel's discretion, in which case ShoreTel will publish such new schedule.

3.4 SMS Pricing. ShoreTel's pricing for Summit Services is determined based on an assumption that all Customer's SMS traffic (both inbound and outbound) will be routed through or will otherwise use the Summit Services and/or Software. In the event Customer's outbound SMS traffic using the Summit Services and/or Software is less than 40% of Customer's total transactions through Summit Services, ShoreTel reserves the right to adjust the fees charged to Customer accordingly upon notice to Customer.

4. **TERM; TERMINATION; CHANGES.**

4.1 Term of Agreement. These Terms of Service continue unless otherwise terminated as set forth below.

4.2 Termination for Cause. A party may terminate these Terms of Service for cause: (i) 30 days following written notice to the other party of a material breach, provided the breach remains uncured; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In addition, ShoreTel may terminate these Terms of Service immediately upon a violation of the applicable Use Guidelines or if ShoreTel has reason to believe that Customer or any Authorized Users are using the Service for any unlawful or fraudulent activity or that use of the Service poses a potential security threat to ShoreTel or any third party. ShoreTel may also terminate this Agreement at any time in the event that it ceases to provide the Summit Services and/or Software to its customer base.

4.3 Effect of Termination. Upon termination of these Terms of Service, the parties will return or destroy any Confidential Information, as defined in Section 6.1 below, disclosed under these Terms of Service. Customer will pay any fees accrued or payable to ShoreTel prior to the effective date of termination. The provisions of these Terms of Service that should by their nature survive termination of these Terms of Service will survive any termination.

4.4 Regulatory and Legal Changes. If changes in applicable law, regulation, rule or order materially affect delivery of the Summit Services, the parties will negotiate appropriate changes to these Terms of Service. If the parties cannot reach agreement within 30 days after ShoreTel's notice requesting renegotiation: (i) CC may, after the 30 day period, pass any increased delivery costs on to Customer; and (ii) if ShoreTel does so, Customer may terminate the affected Service on notice to ShoreTel delivered within 30 days.

5. **OWNERSHIP AND GRANT OF RIGHTS.**

5.1 ShoreTel Property. Title to and ownership of all intellectual property rights relating to the ShoreTel Property will at all times remain with ShoreTel, including all adaptations, modifications, derivative works, additions or extensions, whether made by ShoreTel, Customer, or a third party.

5.2 Customer Data. As between ShoreTel and Customer, all Customer Data is owned by Customer. Customer grants ShoreTel a limited, non-exclusive right to use, access, duplicate, sublicense, and modify the



Customer Data solely to perform its responsibilities under these Terms of Service. All back up and storage of Customer Data is the sole and exclusive responsibility of Customer. ShoreTel has no obligation or liability with respect to loss or deletion of any Customer Data.

5.3 Grant of Rights. Subject to Customer's payment of fees as contemplated by these Terms of Service, ShoreTel grants to Customer limited, non-exclusive, non-transferable, non-sub-licensable rights to access and use the Service and underlying ShoreTel Property solely to the limited extent necessary to (i) access and use the Service in accordance with these Terms of Service and the Use Guidelines, and (ii) use the ShoreTel API to develop Customer Applications, and (iii) make the Summit Services available to end users in connection with the use of Customer Applications. All other rights are reserved by ShoreTel. Customer may not use any ShoreTel Marks without prior express written consent from ShoreTel in each instance of use.

5.4 Limited License to Modify. In addition to the license above to access and use the Service, Customer may configure the Software to meet its requirements, using that certain portion of configurable code made available to Customer in ShoreTel's discretion, in order to configure the Software for use in connection with Customer's implementation of the Service; *provided however*, any changes and modifications to the Software source code do not give Customer any right, title or interest in or to the ShoreTel Property or any Software. Any such code or other materials may solely be used by Customer for the purpose intended under these Terms of Service.

5.5 License Restrictions. Customer gets no right or license to any ShoreTel Property other than the limited right to access the ShoreTel Property as necessary to use the Summit Services as contemplated by these Terms of Service. Except as expressly permitted by this Section 5, Customer is prohibited from publishing, distributing via the Internet or any other public computer based information system, creating derivative works (including translating), transferring, selling, leasing, licensing, or otherwise making available the ShoreTel Property to any unauthorized party. Customer will not copy, revise, alter, modify, decompile, reverse engineer, assemble, or attempt to discover, nor sell, assign, sublicense, encumber, or otherwise transfer any interest in any ShoreTel Property, including, without limitation, any object code, source code, underlying processes or algorithms contained therein and Customer will not permit any person or entity to commit or engage in such activities or conduct. The Service may not be used on a time-sharing or service bureau basis. Customer acknowledges that any violation of this section imposes a serious threat to ShoreTel's business and its ability to exist and that in the event of any actual or threatened breach of this section entitles ShoreTel to seek injunctive relief in a court of competent jurisdiction without posting of a bond, proof of damages or other similar requirement.

6. **CONFIDENTIAL INFORMATION.**

6.1 Definition of Confidential and Proprietary Information. "**Confidential Information**" means trade secret other non-public information of or concerning a party or its business, suppliers, customers, products, or services, disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"). Without limitation, the Summit Services and ShoreTel Data are ShoreTel Confidential Information and Customer Data are Customer Confidential Information. Information will not be considered to be Confidential Information to the extent that it (i) is already known to Receiving Party on a non-confidential basis when first obtained from Disclosing Party, (ii) is or becomes publicly known through no wrongful act of Receiving Party, (iii) is rightfully received by Receiving Party from a third party without restriction, or (iv) was independently developed by Receiving Party without use of any Confidential Information of Disclosing Party. Neither party will use or disclose any Confidential Information of the other party except as permitted by these Terms of Service. Confidential Information of Disclosing Party will be maintained under secure conditions by Receiving Party using reasonable security measures and, in any event, not less than the same security measures used by Receiving Party for the protection of its own Confidential Information.

6.2 Compelled Disclosure. If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it will, if possible, provide Disclosing Party with prior notice of the compelled disclosure and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.

6.3 Remedies. If Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of Disclosing Party in breach of this Section, Disclosing Party will have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts in a court of competent jurisdiction



without posting of a bond, proof of damages or other similar requirement, it being specifically acknowledged by the parties that any other available remedies are inadequate.

7. DISCLAIMER OF WARRANTY.

7.1 Customer Applications. ShoreTel is not responsible in any way for Customer Applications, Software owned by third party software suppliers or other third party products, such as equipment or hardware. CUSTOMER ACKNOWLEDGES THAT COMMUNICATIONS AND TRANSACTIONS CONDUCTED ON-LINE MAY NOT BE ABSOLUTELY SECURE, THAT THERE MAY BE SYSTEM OR INTERNET FAILURE, OR INTERRUPTIONS OF SERVICE, THAT LIMIT CUSTOMER'S ACCESSIBILITY TO OR USE OF THE SERVICE, AND THAT THE SERVICE IS NOT GUARANTEED TO BE ERROR-FREE OR AVAILABLE AT ALL TIMES. BY USING THE SERVICE, CUSTOMER ACCEPTS ALL RESPONSIBILITY AND RISK ASSOCIATED WITH THE USE OF THE SHORETEL OFFERINGS AND COMMUNICATIONS VIA THE INTERNET GENERALLY.

7.2 Disclaimer of Warranties. SHORETEL IS PROVIDING THE SUMMIT SERVICE "AS-IS" WITH NO WARRANTIES. SHORETEL DISCLAIMS ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), RELATED TO THESE TERMS OF SERVICE, WHETHER ARISING BY LAW, CUSTOM OR USAGE IN THE TRADE, COURSE OF DEALING, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, CONTINUED OR UNINTERRUPTED USE, IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT SHORETEL OR A THIRD PARTY SOFTWARE SUPPLIER IS AWARE OF ANY SUCH PURPOSE). SHORETEL MAKES NO REPRESENTATION OR WARRANTY THAT CUSTOMER'S USE OF THE SHORETEL PROPERTY, OR ANY SOFTWARE, API, OR SERVICE, WILL BE IN COMPLIANCE WITH EVERY APPLICABLE LAW OR REGULATION WITH WHICH CUSTOMER MAY BE REQUIRED TO COMPLY.

7.3 DISCLAIMER AND LIMIT OF LIABILITY. CUSTOMER ACKNOWLEDGES, UNDERSTANDS, AND AGREES THAT SHORETEL'S VOICE SERVICE IS INTERNET BASED (E911). ACCORDINGLY, SHORETEL WILL NOT PROVIDE TRADITIONAL WIRELINE CARRIER BASED 911 SERVICES. CUSTOMER ACKNOWLEDGES AND AGREES THAT NEITHER SHORETEL, NOR UNDERLYING CARRIER(S) PROVIDING TELECOMMUNICATIONS TO SHORETEL, NOR ANY OTHER THIRD PARTIES INVOLVED IN THE ROUTING, HANDLING, DELIVERY, OR ANSWERING OF CALLS FOR EMERGENCY SERVICES, OR IN RESPONDING TO EMERGENCY CALLS, NOR THEIR OFFICERS OR EMPLOYEES, SHALL BE LIABLE FOR ANY CLAIM, DAMAGE, LOSS, FINE, PENALTY OR COST (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) ARISING FROM OR RELATING TO THE PROVISION OF ANY AND ALL TYPES OF EMERGENCY SERVICES PROVIDED TO CUSTOMER. CUSTOMER FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS SHORETEL, ITS AFFILIATES AND SHORETEL'S UNDERLYING CARRIER(S) PROVIDING TELECOMMUNICATIONS TO SHORETEL FROM ANY CLAIM OR ACTION BY ANY CALLER PLACING AN EMERGENCY CALL, WITHOUT REGARD TO WHETHER THE CALLER IS AN AUTHORIZED USER, EMPLOYEE OR CUSTOMER OR FRANCHISEE OF CUSTOMER. SHORETEL SHALL NOT BE LIABLE FOR ANY INJURY ARISING OUT OF FAILURES TO ROUTE OR MISROUTING OF E911 CALLS, REGARDLESS OF WHETHER THE E911 CALL WAS DIALED CORRECTLY OR WAS ROUTED TO A PUBLIC SAFETY ANSWERING POINT OR AN OFFICIAL EMERGENCY OPERATOR. CUSTOMER HOLDS SHORETEL AND ITS SUBSIDIARIES AND AFFILIATES, AS WELL AS THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES AND AGENTS, HARMLESS FROM ANY DAMAGES OR LIABILITIES ARISING FROM ANY SUCH INJURY. THESE LIMITATIONS APPLY TO ALL CLAIMS REGARDLESS OF WHETHER THEY ARE BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT AND ANY OTHER THEORIES OF LIABILITY. Provision and use of E911 Services from ShoreTel is subject to the terms of **ShoreTel's e911 policy**, posted on its website at <https://www.shoretel.com/legal>.

8. CUSTOMER REPRESENTATIONS AND WARRANTIES. Customer represents and warrants that (a) it is duly organized and validly exists in good standing under the laws of its state of incorporation, with the ability to enter into and perform its obligations under these Terms of Service in accordance with its terms and conditions and any other documents or requirements incorporated by reference and (b) the Customer Applications and Customer's use of the Summit Service shall not infringe on any third party intellectual property rights.



9. **LIMITATION OF LIABILITY.**

9.1 Direct Damages. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR LIABILITY ARISING FROM SECTION 10, BREACH OF CONFIDENTIALITY, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY FOR ANY BREACH OF THESE TERMS OF SERVICE WILL NOT EXCEED THE AMOUNTS PAID OR PAYABLE UNDER THESE TERMS OF SERVICE FOR ONE MONTH OF SERVICES. ANY FAILURE OR DISRUPTION OF THE SUMMIT SERVICES SHALL NOT BE CONSIDERED A BREACH OF THESE TERMS OF SERVICE AND IN ANY CASE IS SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH HEREIN.

9.2 Indirect Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, LOSS OF REVENUE, OR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSSES OR DAMAGES OR FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS RELATED TO THESE TERMS OF SERVICE, EVEN IF THE NON-CLAIMING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

9.3 Limitation of Action. Except for actions for nonpayment or liability arising from Section 10, no claim, suit, action or proceeding relating to these Terms of Service may be brought by either party more than 2 years after the cause of action has accrued.

9.4 Basis of the Bargain. The provisions of this Section allocate the risks under these Terms of Use between the parties, and the parties have relied on the limitations set forth hereunder in determining whether to agree to these Terms of Use.

10. **INDEMNIFICATION.** Customer will indemnify, defend and hold harmless ShoreTel, its directors, officers, employees, and agents, against all costs, liabilities, losses, fines and expenses (including, but not limited to, reasonable attorneys' fees) arising from Customer's or any Authorized User's use of the Summit Services or of Customer Applications, including, without limitation, any government investigation or enforcement and/or third party claim, suit, action, or proceeding (each, an "**Action**") relating to (i) violation or alleged violation of any applicable regulation by Customer or its Authorized Users, (ii) arising out of, or breach of, Sections 2.2, 2.3, or 5, above by Customer or its Authorized Users, (iii) alleged libel, slander or invasion of privacy, (iv) violation or alleged violation of any contractual or other legal obligation to a third party, (v) any Customer Application or other Customer Data including an Action that any Customer Application infringes any patent, copyright or other intellectual property of a third party or misappropriates any trade secrets of a third party. Customer will pay all costs and damages incurred by ShoreTel in any Action, or those costs and damages agreed to in a monetary settlement of such Action. ShoreTel shall notify Customer promptly in writing of the commencement of any Action, give Customer sole control of the defense and any related settlement negotiations, and cooperate with Customer in the defense.

11. **CHOICE OF LAW; VENUE.** These Terms of Service will be interpreted and construed in accordance with the laws of the State of California and the United States, excluding conflict of laws provisions. All disputes relating to these Terms of Service will be resolved in the State and Federal courts in Santa Clara County, California.

12. **GENERAL.**

12.1 Assignment. These Terms of Service binds the parties' representatives, successors, and assigns, except that neither party may assign these Terms of Service without the prior written consent of the other party unless it is: (a) to an affiliate of the party; or (b) to a purchaser of all or substantially all of the business or assets of the party, whether by merger or otherwise, and written notice is provided within 30 days to the other party.

12.2 Notices. Any written notice required to be given to a party will be given by personal delivery or by confirmed e-mail to that party, or mailed by registered or certified mail, return receipt requested, postage prepaid. Any notice to Customer will be delivered in accordance with this provision to the address on file for Customer as provided by Customer. Any notice to ShoreTel should be delivered to: summitsupport@shoretel.com.

12.3 Force Majeure. Except for the obligation to make payments, neither party will be liable for delays or breaches in its performance under these Term of Service due to causes beyond its reasonable control.



12.4 Modifications; Severability; Waiver. Notices regarding the following may be posted on ShoreTel's website: (i) modifications, impositions or increases to regulations and Fees; (ii) new or modified documentation, including but not limited to these Terms of Service, Privacy Policy and other internal documents; (iii) changes to rates, other than those affecting Customer under this Agreement, and (iv) new Summit Services and information. The changes will become effective and will be deemed accepted by Customer, (a) immediately for those Customers who purchase the Summit Services after the updated version is published on ShoreTel's website, or (b) for those having pre-existing accounts, with Customer's continued use of the Service. Notices regarding (I) internal or external changes materially impacting ShoreTel's ability to do business, (II) breach; (III) termination; or (IV) any other material information required to be in writing, will be in writing and given in accordance with "Notices." Any provision of these Term of Service that is held to be invalid, illegal or unenforceable will be severed from these Term of Service, and the remaining provisions will remain in full force and effect. No failure or delay by either party to exercise any right or remedy will be construed as a current or future waiver of such remedy or right.

12.5 Entire Agreement. These Term of Service, together with the Use Guidelines, e911 policy and Privacy Policy contains the entire agreement between ShoreTel and Customer with respect to the subject matter and supersedes all prior and contemporaneous understandings made by either party.

You, on behalf of yourself and the entity that you represent, agree that you have read, understand and willingly agree to the terms of these Term of Service as stated above and are entering into these Term of Service electronically.