

Mithi Agreement with Partners for promoting and selling our products
Last modified and Agreement effective from: 24th April 2017

This Agreement is between Mithi Software Technologies Pvt. Ltd., a company registered under the Companies Act 1956, having registered address as 268/14 Meera Housing Society, Shankarseth Road, Pune 411 037. India (hereinafter referred to as “Mithi”)

And

the entity agreeing to these terms (hereinafter referred to as “Partner”).

Mithi and Partner are each referred to as a “Party” and collectively as “Parties” throughout this Agreement.

This Agreement is effective as of the date the Partner submits the online form with all the relevant information (Name, Address, contact details etc) and clicks the "I Accept" button on the Partner sign up form on the Mithi web site. You the “Partner”, represent and warrant that: (i) you have full legal authority to bind the applicable entity, to these terms and conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the entity that you represent, to this Agreement.

Both Parties shall be bound by the terms and conditions of this Agreement as if it was signed in writing in paper format.

WHEREAS:

1. “Mithi Service(s)” means the online software services provided by Mithi specified in Annexure A
2. “Subscriber(s)” means any entity or individual paid subscriber to Mithi Services.
3. “End User(s)” means the individual users of Mithi Services subscription user accounts.
4. “End User Data” means data in whatever form pertaining to or stored by Mithi in connection with End User(s) accessing Mithi Services.
5. “Partner Website” means and includes the websites and hosted services, if any, maintained by the Partner.
6. “List Price” means the Subscription Fees normally charged by Mithi subscriptions to Mithi Services. The List Price is subject to change by Mithi.
7. “Subscription Fees” means the monthly, quarterly or annual fees collected from Subscribers for using Mithi Services on the basis of number of End Users.
8. “DOFC-R” (Direct Order From Customer but business via a Partner) means the customer was referred by a Partner but billing was done with the customer directly. In this case the discount percentage amount is paid by Mithi to Partner specified in Schedule 1.
9. “DOFC-F” (Direct Order From Customer but referred by a Partner or Individual) means the customer was referred by a Partner or Individual but billing was done with the customer directly. In this case the discount percentage amount is paid by Mithi to Partner specified in Schedule 1.
10. “DOFP” (Direct Order From Partner) means customer was referred by the Partner and billing was also done on the Partner. In this case, the discounted Subscription Fees are charged by Mithi to Partner as specified in Schedule 1

11. “Reseller Discount” means the margin given to a reseller over the List Price of the product.
12. “Referral Discount” means the one time margin given to an Individual or Partner for simply referring a customer to Mithi and if the customer buys the product. It is in the best interest of the person referring the customer to put in a good word to the customer to help the sale conclude.
13. “Confidential Information” means the terms of this Agreement and any confidential or proprietary information that is marked or otherwise designated as “Confidential” or is clearly by its nature confidential and is disclosed in any medium by one party to the other in connection with this Agreement. Confidential Information shall not include any information that:
 - a) is or becomes a part of the public domain through no act or omission of the receiving party;
 - b) was in the receiving party’s lawful possession prior to the disclosure by the disclosing party;
 - c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - d) is independently developed by the receiving party without access to the Confidential Information.
14. “Mithi Service(s)” means various cloud services including but not limited to MithiSkyconnect, Vaultastic, Clrstream, and Ideolve owned by, licensed to, developed and updated/upgraded by the Company in one form or other.
15. “Mithi Logo” means logos displayed in Annexure A of Mithi Service(s) including its literal and graphical elements
16. “Mithi Trademark” means and includes but not limited to, the names ‘Mithi’, MithiSkyconnect, Vaultastic, Clrstream, and Ideolve logos displayed in Annexure A
17. “Mithi Privacy Policy” means Mithi’s policy for storage and access of Personal Information of users of Mithi Services as modified by Mithi from time to time. The current version of Mithi Privacy Policy is maintained at Annexure A
18. “Mithi Terms of Service” means the terms and conditions for use of Mithi Services as modified by Mithi from time to time. The current version of Mithi Terms of Service is maintained at Annexure A

TERM

The term of this Agreement shall be one year from the Effective Date. This Agreement shall automatically renew for further periods of one (1) year unless either party notifies the other, in writing, at least thirty (30) days prior to the renewal date that it desires to terminate the Agreement at the end of the current term.

MODIFICATIONS

Mithi reserves the right to modify the terms of the agreement, product prices, policies, margins at any time during the duration of this contract. Normally these changes are done rarely and maybe once a year during an annual review with the stakeholders. Any changes will be updated into this agreement for future signups and an alert will be sent to all signed up partners to inform them of these changes. Once the changes are announced, the new agreement is deemed to be effective immediately for new Partners and existing Partners.

GRANT

1. Mithi hereby designates Partner as a non-exclusive reselling partner of Mithi for Mithi Services. Partner may distribute subscriptions to Mithi Services one and/or all of the Mithi services mentioned in Annexure A to its customers.
2. Partner may provide access to Mithi Services by embedding links to Mithi Services on its website, or may redirect potential customers and End Users to Mithi's website or to a Mithi sign up web page where users may access or subscribe to the Mithi Services.
3. Partner shall display Mithi Partner Logo on Partner Website during the term of this agreement.
4. Partner shall communicate Mithi Terms of Service to Subscribers. Partner shall not make any commitment, representation or warranty in respect of Mithi Services to Subscribers except as expressly provided in Mithi Terms of Service, this Agreement, or authorized by Mithi.
5. Mithi shall provide Partner with generally accepted sales and marketing support as requested by Partner.

END USER SUPPORT

1. Unless specified to the contrary in the SLA documents listed in Annexure A, Mithi shall provide technical and general customer support directly to Subscribers.
2. Partner may provide localized support services to Subscribers. For this Partner may be required to undergo training with respect to Mithi Services. Mithi will provide all possible assistance to partners to help him support the end customer as needed.
3. Mithi shall provide Partner with a "Lead Registration" process for registering Partner's prospective customers for a period of thirty (30) days and not to exceed ninety (90) days, by providing details of such prospective customers in writing to Mithi. Mithi will make best efforts to provide account protection during the Account Registration period. However, Mithi is under no obligation to provide such account protection if such prospective customer is registered in the account of any other reseller or distributor of Mithi Services at that time. In the event of disputes regarding such prospective customers, Mithi shall make commercially reasonable efforts to resolve the issue in favor of Partner.

LIST PRICE, DISCOUNT and PAYMENT PROCESS

1. Partner shall charge Subscribers for subscriptions to Mithi Service at the prevailing rack rates mentioned on the website corresponding to each of the services as listed in Annexure A.

2. Partner may, without Mithi's prior consent, charge additional amounts towards any services, including local support services, provided by Partner to Subscribers.
3. Partner is entitled to Reseller Discount as specified in Schedule 1. All payments by Mithi to the Partner are subject to subsequent adjustment for cancellations, and such other events that require Mithi to make a payment back to the End User and/or accept an offset to other payments that Mithi receives from that End User. Such adjustments can be applied at any time by Mithi at its sole discretion.
4. In the event of change in List Price, Reseller Discount Price shall also change proportionately.
5. The commission would be paid out to Partners as per Schedule 2.

PROPREITARY RIGHTS

Mithi owns all right, title and interest in the software and technology pertaining to Mithi Services. This agreement does not grant any right, title or interest in or to any software or technology to Partner.

LICENSE TO USE TRADEMARKS

1. Mithi hereby grants Partner a non-exclusive, non-transferable license, without the right to sublicense, to use or display the Mithi Trademark including the name 'Mithi,' Mithi logo and Mithi Services Logo on Partner website, press releases and other publicity materials; provided that any use of the Mithi Trademark including the name and logo must be approved in writing by Mithi in advance and be used solely for the purposes of this Agreement.
2. Partner hereby grants Mithi a non-exclusive, non-transferable license, without the right to sublicense, to use or display to use Partner's name or trademarks in any Publicity Materials of Mithi. Mithi may also include Partner in any List of resellers, distributors or partners maintained by Mithi on its websites or in any other form.

PRIVACY AND SECURITY of END USER DATA

1. Mithi shall adopt privacy measures in respect of End User's Personal Information according to Mithi Privacy Policy and adopt all commercially reasonable security measures for protection of End User Data according to industry standards.
2. Information related to Partner or Subscriber's credit card will stored by a well known payment gateway service provider. Mithi will not store or access such any credit card related information.

LIMITATION of LIABILITY

2. Limitation on Indirect Liability. NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.
3. Limitation on Amount of Liability. NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY

CUSTOMER TO RESELLER FOR THE SERVICES DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

4. Exceptions to Limitations. These limitations of liability apply to the fullest extent permitted by applicable law but do not apply to breaches of confidentiality obligations, violations of a party's Intellectual Property Rights by the other party, or indemnification obligations.

INDEMNITY

1. Mithi agrees that it will, at its own expense, defend Partner in respect of any action brought against Partner, and indemnify and hold harmless Partner against any award of damages and costs made against Partner in any and all claims, actions or suits alleging that Mithi Service used within the scope of this Agreement constitutes an infringement of any valid patent or copyright or other intellectual property rights, provided that Partner gives Mithi
 - i. Prompt written notice of the claim
 - ii. Sole control over the defense or settlement (subject, in the case of settlement, to Partner's consent, which consent shall not be unreasonably withheld or delayed), and (iii) reasonable support and cooperation with regard to the defense.. The above is Mithi's sole obligation to Partner and shall be Partner's sole and exclusive remedy pursuant to this Agreement for intellectual property infringements.
2. Partner shall indemnify and hold harmless Mithi from and against all claims, actions and proceedings arising out of or resulting from
 - i. Any breach of third party intellectual property rights by Partner,
 - ii. Any warranty made by Partner to Subscribers, or
 - iii. Breach of any of the terms of this Agreement, provided that Mithi gives Partner
 - iv. Prompt written notice of the claim,
 - v. Sole control over the defense or settlement (subject, in the case of settlement, to Mithi's consent, which consent shall not be unreasonably withheld or delayed), and
 - vi. Reasonable support and cooperation with regard to the defense.

TERMINATION

1. This Agreement may be terminated by either party upon any material breach by the other party of the terms of this Agreement and failure to cure such breach upon 15 (fifteen) days' written notice.
2. This Agreement may be terminated for convenience by Partner upon 30 days written notice to Mithi and by Mithi upon 90 days written notice to Partner.
3. Upon termination, Partner shall cease distribution of subscriptions to Mithi Service. However, Subscribers may continue Mithi Service subscriptions.

4. Upon termination of this Agreement, all provisions which by their nature survive shall survive such termination. Company and the Distributor shall comply and fulfill all obligations accrued prior to the effective date of such termination.
5. Upon termination, each party will promptly return any and all Confidential Information, including any documentation, specifications or other materials regardless of medium, previously provided by the other party within fifteen (15) business days.
6. Upon termination, Partner shall cease to be entitled to discounts specified in this Agreement. Partner shall also cease use of Mithi Trademarks.

MISCELLANEOUS

Assignment: This Agreement may not be assigned by either Party except with the prior written consent of the other Party. However, either party shall have the right to assign this agreement to their respective subsidiaries with prior written notice on whose composition the assignor owns 50% or more voting power.

Notices: Any notice to be issued under this Agreement by either Party to the other shall be sent to the respective party's address as stated above in this Agreement. Any such notice shall be sent by certified mail with return receipt requested and postage prepaid.

Force Majeure: Neither Party shall be liable for breach of this Agreement in case of happening of a force majeure event which include but is not limited to fire, explosion, flood, earthquake, strikes, lockout, government interferences, or any other event which is beyond the reasonable control of the respective Party.

Governing Law, Jurisdiction and Arbitration: This Agreement shall be construed in accordance with the laws of India and courts in Pune shall have exclusive jurisdiction. Any dispute arising out of this Agreement shall be referred to arbitration in accordance with the laws of Arbitration and Conciliation Act, 1996 in force when notice of arbitration is sent as per these rules. The venue of arbitration shall be Pune and language of proceedings shall be English.

Schedule 1

Partner Categories, Margins, Qualification, Roles & Responsibilities

Type of deal	Description	Margin Applicable
DOFC-R	Direct order from customer, partner involved as a Reseller organisation and commission to be paid out to Partner.	25% of the order value for the first year and 15% for Second and third year for the renewal.
DOFC-F	Direct order from customer, partner involved as a lead generator and commission to be paid out to the Partner for referring the lead and putting in a good word.	10% one time on the order value.
DOFP	Direct order from Partner, where Partner receives an order from the customer, and issues a back to back order to Mithi. In this type of deal, Partner will handle all billing and recovery from customer, based on a transfer price shared with partner. Mithi will bill and recover from Partner as per order received from the Partner. Mithi would provide a quotation or transfer price to the partner, which the partner can use to quote further to the customer.	Here the partner gets a transfer price from Mithi in such a way that he gets a margin of 25% of the order value in the first year and 15% for second and third year for renewal.

Note:

In addition, we may spend approximately 5 % of the order value as Market Development fund.

Also, in some situations, the Partner and Mithi may mutually agree to proceed with a special price to acquire the customer (case to case) and in that case the transfer price and margin would differ and would remain special only to that deal.

Schedule 2

Payment payout process

There are two types of orders received in a deal, which has a partner involved. The two types are described below with the relevant processes to disburse commission to partners.

Type of deal	Brief Description	Commission payout process
DOFC-R	Direct order from customer, partner involved and commission to be paid out to Partner	Depending on the payment schedule of the customer (some pay upfront advance, some pay monthly, quarterly or six monthly), the commission would be paid out as the payment received. 1. Mithi will raise the necessary invoices, at the agreed upon schedules on the customer 2. Upon receipt of payment from the customer, Mithi will instruct the partner to raise the invoice for the margin. 3. Upon receipt of margin invoice from Partner, Mithi will disburse the margin payment within 30 days of the receipt of the invoice.
DOFC-F	Direct order from customer, referred by Partner or an Individual	Depending on the payment schedule of the customer (some pay upfront advance, some pay monthly, quarterly or six monthly), the commission would be paid out as the payment received. 1. Mithi will raise the necessary invoices, at the agreed upon schedules on the customer 2. Upon receipt of payment from the customer, Mithi will instruct the partner to raise the invoice for the margin. 3. Upon receipt of margin invoice from Partner, Mithi will disburse the margin payment within 30 days of the receipt of the invoice.
DOFP	Direct order from Partner, where Partner receives an order from the customer, and issues a back to back order to Mithi.	NA since the order to Mithi from the Partner is after considering the margin.

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Annexure A

Price, Support, Logos and SLA for Mithi Services

Vaultastic

For details on the plan, tech specs and price refer to the following URL

<https://www.vaultastic.com/>

For support resources and SLA refer

http://xf.wiki.mithi.com/index.php/Vaultastic_Service_Level_Agreement-SLA

Mithiskyconnect

For details on the plan, tech specs and price refer to the following URL

<https://www.mithiskyconnect.com/>

For support resources and SLA refer

[https://www.mithiskyconnect.com/docs/SkyConnect_service_level_agreement_\(SLA\)](https://www.mithiskyconnect.com/docs/SkyConnect_service_level_agreement_(SLA))

Clrstream

For details on the plan, tech specs and price refer to the following URL

<http://www.clrstream.com/>

For support resources and SLA refer

[https://www.clrstream.com/docs/Service_level_agreement_\(SLA\)](https://www.clrstream.com/docs/Service_level_agreement_(SLA))