

Mithi Agreement with Cloud Service Providers CSPs or ASPs Application Service Providers

This Agreement is between Mithi Software Technologies Pvt. Ltd., a company registered under the Companies Act 1956, having registered address as 103, Mayfair Court, Dr. Pai Marg, Nachiket Park, Baner Rd. Pune, 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 website. You, the “Partner,” represent and warrant that: (i) you have the 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 written 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 about 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 typically charged by Mithi subscriptions to Mithi Services. The List Price is subject to change by Mithi.
7. “Subscription Fees” means the monthly or annual fees collected from Subscribers for using Mithi Services based on the number of End Users.
8. “DOFC-R” (Direct Order from Customer but business via a Partner) means a Partner referred the customer, but the billing was done with the customer directly. In this case, the margin amount is paid by Mithi to Partner specified in Schedule 1.
9. “DOFP” (Direct Order from Partner) means customer was referred by the Partner and billing was done on the Partner. In this case subscription fees less margin and charged by Mithi to Partner as specified in Schedule 1



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10. “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.
11. “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.
12. “Additional resources” means the additional users, storage or plan changes which are purchased mid-term by a customer.
13. “Pro rata billing” means the bill generated for additional resources purchased mid-term, which cover the use of the resource from the date of purchase to the end of the ongoing contract.
14. “Mithi Logo” means logos displayed in Annexure A of Mithi Service(s) including its literal and graphical elements
15. “Mithi Trademark” means and includes but not limited to, the names ‘Mithi’, MithiSkyconnect, Vaultastic, Clrstream, and Ideolve logos displayed in Annexure A
16. “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
17. “Mithi Terms of Service” means the terms and conditions for the 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 before the renewal date that it desires to terminate the Agreement at the end of the current term.

MODIFICATIONS



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Mithi reserves the right to modify the terms of the agreement, product prices, policies, and margins at any time during the duration of this contract. Usually, these changes are done rarely and maybe once a year during an annual review with the stakeholders. Any changes will be updated in 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 effective immediately for new 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 redirecting potential customers and End Users to Mithi's website or 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 regarding 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 concerning 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 an "Opportunity Locking" process for registering Partner's prospective customers for thirty (30) days and not to exceed ninety (90) days by providing details of such prospective customers in writing to Mithi. Mithi will do its best to protect the account during the Account Registration period. However, Mithi is not obligated to provide such account protection if a prospective customer is registered in the account of any other reseller or distributor of Mithi Services. In the event of disputes regarding such prospective customers, Mithi shall make commercially reasonable efforts to resolving the issue in Partner's favor.

LIST PRICE, MARGINS, 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 service listed in Annexure A.



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2. Partner may, without Mithi's prior consent, charge additional amounts towards any services provided by Partner to Subscribers, including local support services.
3. Partner is entitled to Margins as specified in Schedule 1. All payments by Mithi to the Partner are subject to subsequent adjustment for cancellations and other events that require Mithi to pay 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 a change in List Price, margins may also change proportionately.
5. The margins would be paid to Partners as per Schedule 2.

PROPRIETARY RIGHTS

Mithi owns all rights, titles, and interests in the software and technology of 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 this Agreement.
2. Partner hereby grants Mithi a non-exclusive, non-transferable license without the right to sublicense, 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 regarding the End User's Personal Information according to Mithi's Privacy Policy and adopt all commercially reasonable security measures to protect End User Data according to industry standards.
2. A well-known payment gateway service provider will store information related to Partner or Subscriber's credit card. Mithi will not store or access 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.



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3. Limitation on Amount of Liability. NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY THE CUSTOMER TO THE RESELLER FOR THE SERVICES DURING THE TWELVE MONTHS BEFORE 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 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 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 about the defense. The above is Mithi's sole obligation to Partner and shall be Partner's sole and exclusive remedy according to this Agreement for intellectual property infringements.
2. Partner shall indemnify and hold harmless Mithi from and against all claims, actions, and proceedings arising from 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 concerning the defense.

TERMINATION

1. Either party may terminate this Agreement 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.



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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 distributing 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. The company and the Distributor shall comply and fulfill all obligations accrued before the effective date of such termination.
5. Upon termination, each party will promptly return any 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 margins specified in this Agreement. Partner shall also cease the 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 issued under this Agreement by either Party to the other shall be sent to the respective party's address as stated above. Any such notice shall be sent by certified mail with the 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 includes 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 per 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 the 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 the language of proceedings shall be English.



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Schedule 1

Partner Categories, Margins, Qualification, Roles & Responsibilities

Type of deal	Description	Margin Applicable
DOFC-R	<p>Direct order from the customer, partner involved as a Reseller organization, and margin to be paid to Partner.</p> <p>In this type of deal, Mithi will handle all billing and recovery from the customer with help from the partner as required.</p>	25% of the order value for the first year and 15% for the second and third years for the renewal.
DOFP	<p>Direct order from Partner, where Partner receives an order from the customer and issues a back-to-back order to Mithi.</p> <p>In this type of deal, Partner will handle all billing and recovery from the customer based on a transfer price shared with the partner. Mithi will bill and recover from Partner as per the order received from the Partner.</p> <p>Mithi would provide a quotation or transfer price to the partner, which the partner can use to quote further to the customer.</p>	The transfer price includes 25% of the order value in the first year and 15% from the second year onwards.
Additional resources purchased mid-term.	Here the reseller gets the margin on the pro-rated bill generated for the customer per the contract year.	25% of the pro-rated order value applies only to the contract's first year. 15% from the second year onwards.

Note:

We may also spend approximately 5 % of the order value as a 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 unique only to that deal.



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Schedule 2

Payment payout process

Type of deal	Brief Description	Margin payout process
DOFC-R	Direct order from the customer, partner involved, and margin to be paid to Partner	<ol style="list-style-type: none">1. Mithi will raise the necessary invoices at the agreed-upon schedules on customer2. Upon receipt of payment from the customer, Mithi will instruct the partner to raise the invoice for the margin.3. Upon receipt of the margin invoice from Partner, Mithi will disburse the margin payment within 30 days of receipt.
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.
Additional Resources Purchased	Customer buys mid-term	Margin paid out back to back upon receipt of payment from the customer.



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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://vaultastic.mithi.com/>

For support resources and SLA, refer to

<https://docs.mithi.com/home/vaultastic>

<https://docs.mithi.com/home/terms-of-services/>

Mithi SkyConnect

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

<https://skyconnect.mithi.com/>

For support resources and SLA, refer to

<https://docs.mithi.com/home/skyconnect>

<https://docs.mithi.com/home/terms-of-services/>

