

## Minimum Terms for the MaX UC End User License Agreement

The End User License Agreement (the “EULA”) used for the MaX UC application (the “Product”) must contain the following minimum terms. You are responsible for ensuring that your EULA complies with these requirements. Metaswitch is not responsible for reviewing the provisions of any EULA submitted by you to Metaswitch. Any review of your terms which Metaswitch may perform will not operate as a waiver by Metaswitch of your obligation to include these minimum terms.

1. If you intend to make the Product accessible to users located within the United States, you must state that the Product is not intended for use by persons under the age of thirteen (13). If you intend to make the Product accessible to users located in the United Kingdom or the European Union, you must state that the product is not intended for use by persons under the age of sixteen (16).
2. *License.*
  - a) Each user should be granted a non-exclusive, non-transferable, limited, revocable license to use for personal or internal business purposes the executable code version of the Product.
  - b) You agree to revoke the license for any given user or group of users upon written notification by Metaswitch requesting such revocation.
  - c) The EULA for the Apple iOS versions of the Product must limit the Product’s use to Authorized Devices (as defined in Section 9 below) and such usage must be subject to the Store Usage Rules (also as defined in Section 9).
  - d) The license must state that copies of the Product created or received pursuant to the EULA are licensed, not sold, and the user receives no title to or ownership of any copy of the Product.
  - e) Nothing in the EULA should be construed to limit the end user’s rights under or to grant the end user rights that supersede the terms and conditions of any applicable “open source software” licenses as defined by the open source initiative at [www.opensource.org/osd.html](http://www.opensource.org/osd.html) (“Open Source Software licenses”).
3. *License Restrictions.* The EULA must contain provisions restricting the user from:
  - a. modifying or creating any derivative works of the Product or documentation, including customization, translation or localization;
  - b. decompiling, disassembling, reverse engineering, "unlocking", attempting to access or otherwise attempting to discover the source code for the Product (unless and only to the extent expressly permitted or required under applicable law or under the licensing terms governing use of any software components that are included in the Product that are subject to Open Source Software licenses;
  - c. redistributing, encumbering, selling, renting, leasing, sublicensing, or otherwise transferring rights to the Product;
  - d. removing or altering any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Product; or
  - e. publishing any results of benchmark tests run on the Product to a third party.
4. *Privacy.* The Product uses analytics provided by Metaswitch and you will receive data about end users and the traffic that they generate while providing services to the end users.
  - a. You must provide your end users with a privacy statement that describes how you will use the data that you receive from MaX UC, including any analytics data made available to you by Metaswitch.
  - b. You must include this section in the relevant privacy statement applicable to the Product. You may vary references to “you,” “we”, “your service provider,” “Metaswitch” and “us” as necessary for editorial consistency with your privacy statement.
    - The Product allows you to make important choices about your privacy. The method of making these choices varies depending on which device you use. For Windows devices select Tools > Options > General from the menu. For Apple OS X (non-mobile) devices select Preferences > General from the menu. For Apple iOS (mobile/iPad) and Android devices select the Settings option. You will then have an option labelled “Send Additional Analytics Data”. This option is enabled by default.
    - While this option is enabled we may share additional information about you with your service provider. This information may include your Service Set Identifier (SSID), location data, International Mobile Station Equipment Identity (IMEI), directory number (DN) and other additional information about your usage. Your service provider’s use of any information received in this manner is described in the privacy statement that they have provided to you.
    - While this box is enabled the application will also share information about you with us. The information shared with us may be different than the information shared with your service provider and on mobile devices will generally include a unique identifier provided by the application store that you downloaded the client from.
    - If you do not wish to transmit the above additional information to your service provider and us then you are able to disable this option. If you choose to disable this option, then you should verify that it remains disabled whenever you perform a factory reset of your device, reinstall the MaX UC client, update the MaX UC client or any event occurs which may change the stored data in your application.
5. *Disclaimer of Warranty.* You must disclaim all warranties, express and implied, on behalf of Metaswitch and its suppliers and licensors, including without limitation any implied warranties that the Product is free of defects, virus-free, able to operate on an uninterrupted basis, merchantable, compatible with any operating system or device, available for use or download in any third party software stores, fit for a particular purpose and non-infringing. Neither Metaswitch nor its suppliers or licensors shall have any obligation to indemnify or defend the end user against claims related to infringement of intellectual property rights.

6. *Limitation of Liability.* You must limit the liability of Metaswitch and its suppliers and licensors to the end user to the maximum extent permitted by applicable law and you must exclude all liability for any indirect, special, incidental and consequential damages arising out of the use or inability to use the Product, including without limitation damages for lost profits, income or savings, opportunity costs, loss of goodwill, work stoppage, loss, theft or corruption of data, computer failure or malfunction, loss of use of facilities or equipment and any and all other commercial damages or losses and regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, even if Metaswitch or its suppliers or licensors has been advised of the possibility of such claims, losses or damages and even if such damages are foreseeable. In no event shall the cumulative liability of Metaswitch and its suppliers and licensors to the end user exceed the sum of fees paid by such end user for the Product license.
7. *Export restrictions and Compliance with Law.* The end user of the Product must represent and warrant that: the end user is not located in a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) the end user is not listed on any U.S. Government list of prohibited or restricted parties. The end user must agree to comply with all applicable international and national laws that apply to the Product, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by U.S. and other governments. In some locations there may be restrictions on the use of the Product or features or functions provided by the Product, including without limitation the call recording function which is available on some versions of the Product. It is your responsibility to ensure that the end users are required to use the Product in compliance with applicable law. Applicable law may require the end user to advise all participants on a call prior to activating the call recording function available on some versions of the Product, otherwise restrict the end users’ use of the call recording function or prohibit the recording of any call.
8. *Emergency Calls.* You must notify the end user that the Product is not intended, designed or fit to be an end user’s primary method for placing, carrying or supporting emergency calls to any type of hospitals, law enforcement agencies, medical care unit or any other kind of emergency service nor any call for the purpose of obtaining assistance, help or aid in the event of an emergency. The end user must be notified that the Product may not function during a power outage, internet connectivity interruption, or system failure on the device on which it is running. The end user must be notified that the Product is not a replacement for the end user’s primary telephone service. You must exclude all liability of Metaswitch and its suppliers and licensors arising either directly or indirectly from the use of, or the inability to use, the Product for emergency calls to emergency services and for calls for the purpose of obtaining assistance, help or aid in the event of any emergency, even if Metaswitch or its suppliers or licensors has been advised of the possibility of such claims, losses or damages.
9. *Apple Store Terms.* You must include the provisions in this Section 9 in the EULA for the Product on any Apple iPhone, iPad or iPod Touch.
  - a. *Acknowledgement.* This EULA is concluded between you and the end user only, and not with Apple. You, and not Apple, must be solely responsible for the Product and the content thereof.
  - b. *Scope of License, Definition of Terms Used in Section 2.* “Authorized Device” refers to any Apple iPhone, iPad or iPod Touch that the end user owns or controls. “Store Usage Rules” refers to the “Usage Rules” set forth in Apple’s App Store Terms of Service, currently posted at <http://www.apple.com/legal/itunes/us/terms.html>, including any successor version thereof promulgated by Apple.
  - c. *Maintenance & Support.* In the event that applicable law requires maintenance or support services related to the Product, you must be solely responsible for providing them. You and the end user must acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Product.
  - d. *Warranty.* To the extent that the EULA includes warranties or has not effectively disclaimed all warranties, if any, you are solely responsible for any the Product warranties. In the event of any failure of the Product to conform to any such applicable warranty, the end user may notify Apple, and Apple will refund the purchase price for the Product (if any) to the end user. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Product, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be your soleresponsibility.
  - e. *Product Claims.* You and the end user must acknowledge that you and your suppliers and licensors, not Apple, are responsible for addressing any claims of yours or of any third party relating to the Product or your possession and/or use of the Product, including, but not limited to: (a) product liability claims; (b) any claim that the Product fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation.
  - f. *Intellectual Property Rights.* You and the end user must acknowledge that, in the event of any third-party claim that the Product or your possession and use of the Product infringes that third party’s intellectual property rights, you and not Apple will be the sole bearer of any responsibility for the investigation, defence, settlement, and discharge of any such intellectual property infringement claim.
  - g. *Third Party Beneficiary.* You and the end user must acknowledge and agree that Apple and Apple’s subsidiaries are third-party beneficiaries of the EULA and that, upon the end user’s acceptance of the terms and conditions of the EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce the EULA against the end user as a third-party beneficiary.