

## **CounterPath Corporation End-User License Agreement**

**\*IMPORTANT:** This is a softphone application and not a VoIP service. A SIP server or subscription with a SIP-based VoIP provider is required to make calls.\*

**\*\*IMPORTANT: VOIP OVER MOBILE/CELLULAR DATA NOTICE**

Some mobile network operators may prohibit or restrict the use of VoIP functionality over their network and may also impose additional fees, or other charges in connection with VoIP. You agree to learn and abide by your cellular carrier's network restrictions. CounterPath Corporation will not be held liable for any charges, fees or liability imposed by your carrier for use of VoIP over mobile/cellular data.\*\*

This is a legal agreement ("the Agreement") between you and CounterPath Corporation ("CPC"). This Agreement pertains to your use of the CPC software, technology, programs, documentation and updates which are provided to you by CPC (collectively, "the Software"). Please carefully read the terms and conditions below. If you do not agree to the terms of this Agreement, DO NOT accept the Agreement. By accepting the Agreement, you are consenting to, and agreeing to be bound by, the terms of this Agreement.

**Emergency Calls.** COUNTERPATH'S MOBILE SOFTWARE PRODUCTS MAY PROVIDE HANDLING DESIGNED TO REDIRECT EMERGENCY CALLS TO THE NATIVE CELLULAR DIALER WHEN POSSIBLE ON A REASONABLE COMMERCIAL EFFORTS BASIS, HOWEVER THIS FUNCTIONALITY IS ALSO DEPENDENT ON THE OPERATING SYSTEM OF THE MOBILE PHONE WHICH IS OUTSIDE OF OUR CONTROL AND SUBJECT TO CHANGE AT ANY TIME. YOU EXPRESSLY ACKNOWLEDGE THAT THE SOFTWARE, WHETHER FOR MOBILE OR FIXED DEVICES, IS NOT INTENDED, DESIGNED OR FIT FOR PLACING, CARRYING OR SUPPORTING EMERGENCY CALLS. WITHOUT LIMITING THE FOREGOING, YOU ACKNOWLEDGE THAT THE SOFTWARE IS NOT INTENDED, DESIGNED OR FIT FOR PLACING, CARRYING OR SUPPORTING ANY CALL TO ANY EMERGENCY SERVICE OR ANY CALL FOR THE PURPOSE OF OBTAINING ASSISTANCE, HELP OR AID IN THE EVENT OF AN EMERGENCY. NEITHER CPC NOR ANY OF ITS AFFILIATES, SUBSIDIARIES, PARENT COMPANIES, AGENTS, PARTNERS, OR EMPLOYEES ARE OR WILL BE LIABLE TO YOU OR ANY THIRD PARTY IN ANY RESPECT FOR ANY COSTS OR DAMAGES ARISING EITHER DIRECTLY OR INDIRECTLY FROM THE USE OF THE SOFTWARE FOR EMERGENCY CALLS, INCLUDING CALLS TO EMERGENCY SERVICES AND CALLS FOR THE PURPOSE OF OBTAINING ASSISTANCE, HELP OR AID IN THE EVENT OF ANY EMERGENCY.

**Recording of Calls.** If your Software includes the capability to record telephone conversations, please ensure that you abide by the laws in your jurisdiction regarding the recording of calls, including notifying the counterparty of such recording where required.

**Terms of Use.** The provisions of CPC's Terms of Use (<http://www.counterpath.com/terms>) and Privacy Policy (<http://www.counterpath.com/privacy>) are incorporated herein and made a part hereof.

**Installation, License Use and Reservation of Rights.** Subject to payment of all applicable fees, taxes, duties and charges, this Agreement grants you a non-exclusive, non-transferable, non-sublicensable right to install, use, access, display and run one copy of the Software on a single computer, such as a workstation, terminal or other device ("Workstation Computer"). The Software may not be used by more than one processor at any one time on any single Workstation Computer. CPC reserves all rights in the Software not expressly granted herein, including without limitation ownership and proprietary rights.

**Free or Trial Software.** Free or Trial Software is provided for non-commercial, demonstration or evaluation purposes only.

**Confidentiality and License Restrictions.** You acknowledge and agree that the Software contains proprietary and confidential information of CPC and its third party suppliers, and agree to keep such information confidential. You shall maintain all copyright and other proprietary notices and legends placed on the Software by CPC. You may not reproduce or distribute the Software for any purpose whatsoever. Without limiting the foregoing, you may not copy or upload the Software or any part thereof to any server or location for reproduction or distribution. You may not reverse engineer, decompile, disassemble, translate, reconstruct, transform or extract the Software or any portion of the Software. You may not publish the Software or any License numbers. The restrictions contained herein apply equally to any updates to the Software that you may obtain.

**Disclaimer of Warranties.** ALL FREE OR TRIAL SOFTWARE PROVIDED BY CPC IS PROVIDED "AS IS." ALL ROYALTY OR FEE BEARING SOFTWARE AS ORIGINALLY DELIVERED IS WARRANTED TO FUNCTION SUBSTANTIALLY IN ACCORDANCE WITH ITS DOCUMENTATION FOR A PERIOD OF 30 DAYS FROM THE DATE OF SHIPMENT TO YOU. CPC'S SOLE LIABILITY AND YOUR SOLE REMEDY FOR A BREACH OF THIS WARRANTY SHALL BE CPC'S GOOD FAITH EFFORT TO RECTIFY SUCH NONCONFORMITY. CPC AND ITS AFFILIATES, SUBSIDIARIES, PARENT COMPANIES, AGENTS, PARTNERS, AND EMPLOYEES MAKE NO REPRESENTATION, WARRANTY OR CONDITION TO YOU OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO ANY OF THE FOLLOWING:

- A. THE DESCRIPTION, QUALITY, NON-INFRINGEMENT, MERCHANTABILITY, COMPLETENESS, OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE OF THE SOFTWARE, OR TITLE TO THE SOFTWARE;

- B. THE CONDITION OF THE SOFTWARE AS FREE FROM ANY VIRUS OR OTHER CODE THAT IS CONTAMINATING, MALICIOUS OR DESTRUCTIVE BY NATURE;
- C. THE CONDITION OF THE SOFTWARE AS ERROR FREE OR CAPABLE OF OPERATING WITHOUT PACKET LOSS OR INTERRUPTION;
- D. THE RELIABILITY OR QUALITY OF ANY CONNECTION TO OR ANY TRANSMISSION OVER THE INTERNET OR OTHER DATA COMMUNICATION PATH;
- E. THE QUALITY OF CALLS PLACED, CARRIED OR SUPPORTED BY THE SOFTWARE;

ALL SUCH REPRESENTATIONS, WARRANTIES AND CONDITIONS HEREBY BEING EXPRESSLY EXCLUDED AND DISCLAIMED. YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SOFTWARE.

Limitation of Liability. IN NO EVENT SHALL CPC, ITS AFFILIATES, SUBSIDIARIES, PARENT COMPANIES, AGENTS, PARTNERS, OR EMPLOYEES BE LIABLE TO YOU OR ANY THIRD PARTY IN ANY RESPECT FOR ANY COSTS OR DAMAGES ARISING EITHER DIRECTLY OR INDIRECTLY FROM THE USE OF THE SOFTWARE INCLUDING WITHOUT LIMITATION ANY ACTUAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, OR FOR ANY LOSS OF REVENUE, PROFITS, USE, DATA, GOODWILL OR BUSINESS OPPORTUNITIES OF ANY KIND OR NATURE WHATSOEVER, ARISING IN ANY MANNER FROM ANY CAUSE OF ACTION OR CLAIM RELATING TO THIS AGREEMENT OR TO THE SOFTWARE OR TO THE USE OR INSTALLATION OF THE SOFTWARE. THIS LIMITATION OF LIABILITY APPLIES EQUALLY TO ANY THIRD PARTIES WITH WHOM CPC ENTERS INTO A BINDING AGREEMENT TO MARKET, DISPLAY AND/OR DISTRIBUTE THE SOFTWARE TO END USERS AND SUCH THIRD PARTIES SHALL NOT BE LIABLE TO YOU OR ANY OTHER THIRD PARTY FOR ANY OF THE DAMAGES SET FORTH ABOVE. SHOULD A COURT OF COMPETENT JURISDICTION ELECT TO HOLD CPC RESPONSIBLE FOR DAMAGES DESPITE THE LIMITATION OF LIABILITY SPECIFIED ABOVE, THE PARTIES AGREE THAT, IN NO EVENT SHALL THE TOTAL COLLECTIVE LIABILITY OF CPC FOR ALL CLAIMS UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU TO CPC.

Indemnification. You agree to indemnify and hold CPC, its affiliates, subsidiaries, parent companies, agents, partners, officers, directors, employees, shareholders, licensors, suppliers, and any third party distributors harmless from and against any and all damages, losses, costs including attorney fees and expenses resulting from any violation by you of this Agreement or asserted by any third party due to or arising out of your use of or conduct with respect to the Software.

Export Control Laws. The export and re-export of CPC Software and other materials are controlled by the export laws and regulations of Canada and the United States, as they may be amended from time to time. Accordingly, you certify that you are aware of and will comply with all applicable export rules and regulations, including the responsibility to obtain a license for the export or re-export of the Software and other materials to any destination requiring such a license. In addition, the Software may not be exported or re-exported to any country to which Canada or the United States prohibits the export of goods, technology, or services or to nationals of those countries, wherever located. Moreover, the Software may not be distributed to persons on the Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals maintained by the U.S. government. By downloading the Software, you are certifying that you are not a national of one of the above-listed countries or of any other country to which Canada or the United States embargoes goods, services, or technology and that you are not a person on the Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals.

Modifications of the Software. CPC reserves the right to modify the Software at its sole discretion, without notice.. CPC's right to modify the Software applies to all aspects of the Software.

Intellectual Property Rights and Third Party Materials. All service marks, logos, trade names, trade dress, and trademarks of CPC (collectively "Marks") incorporated into the Software are the exclusive property of CPC and nothing in this Agreement shall grant you a license to use such Marks. All intellectual property rights in the Software, including without limitation all computer code, audio, graphics, multimedia, images, sounds, and text incorporated into the Software, are owned exclusively by CPC and are protected by United States and/or Canadian copyright laws and international copyright treaty provisions. Any unauthorized use or appropriation of the intellectual property embodied in or incorporated into the Software is expressly prohibited by law and may result in severe civil and criminal penalties. Additionally, other marks that appear on CPC's web sites may belong to third parties that are not affiliated with CPC. Links available on the web site may enable you to leave the CPC site. CPC does not control or endorse the content of third party web sites. The linked sites are not under the control of CPC, and CPC is not responsible for the contents of any linked site or any link contained in a linked site, or any changes or updates to such sites. You are responsible for taking all precautions to ensure that whatever page, program or download links you follow, whether on CPC's web sites or the sites of third parties, are free of viruses, worms, Trojan horses, and other items of a contaminating, malicious or destructive nature.

IP Addresses. Upon expiration, cancellation, or termination of this Agreement, you shall relinquish any IP address or addresses assigned to you by CPC.

Governing Law and Forum. This Agreement, its validity, construction, effect and enforcement, and the relationship between CPC and you shall be governed in accordance with the laws of the State of Nevada and the applicable federal laws of the United States of America in effect in the State of Nevada. Any dispute between you and CPC regarding this Agreement will be subject to the exclusive jurisdiction

of the state and federal courts in the State of Nevada. You agree to submit to exclusive jurisdiction in the State of Nevada, and you expressly waive all defenses to jurisdiction.

**Entire Agreement.** This Agreement, together with the provisions of CPC's Terms of Use (<http://www.counterpath.com/terms>) and Privacy Policy (<http://www.counterpath.com/privacy>), set forth the entire agreement and understanding between you and CPC relating to your use of the Software and supersedes all prior or contemporaneous communications, understandings, expectations, representations, discussions, undertakings or agreements with respect to the Software.

**Severability.** If any provision of this Agreement is held fully or partially invalid or unenforceable for any reason whatsoever, or adjudged to violate any applicable law, this Agreement is to be considered divisible as to such provision and such provision, to the extent that it is invalid or unenforceable, is to be deemed deleted from this Agreement, and the remainder of this Agreement shall be valid and binding as if such provision were not included herein. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

**Non-Waiver.** CPC's failure to insist upon or enforce strict performance of or strict compliance with any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement.

**Assignment of Rights.** CPC may assign its rights and duties under this Agreement to any party at any time without notice to you.

**Modifications of Agreement.** Only CPC may modify this Agreement, the provisions of CPC's Terms of Use (<http://www.counterpath.com/terms>) or the provisions of CPC's Privacy Policy (<http://www.counterpath.com/privacy>). CPC may modify this Agreement, the provisions of CPC's Terms of Use (<http://www.counterpath.com/terms>) or the provisions of CPC's Privacy Policy (<http://www.counterpath.com/privacy>) at any time without providing notice to you. Any such modification shall be deemed effective immediately upon posting of the modified Agreement anywhere on CPC's website. You agree to check our web site periodically to review such modifications. Your continued access or use of the Software shall be deemed your acceptance of the modified Agreement.

**Termination.** For free or trial Software, CPC reserves the right to terminate this Agreement and your use of the Software at any time and for any reason or no reason at all. For royalty or fee bearing Software, CPC may terminate this Agreement: (a) upon notice to you if any amount payable to CPC is not paid within thirty (30) days of the date on which payment is due; (b) if you become bankrupt, make an assignment for the benefit of your creditors, or if your assets vest or become subject to the rights of any trustee, receiver or other administrator; (c) if bankruptcy, reorganisation or insolvency proceedings are instituted against you and not dismissed within 15 days; or (d) if you breach any provision of this Agreement and such breach is not rectified within 15 days of receipt of notice of the breach from CPC. Upon termination of this Agreement, you shall return or destroy all copies of the Software. All of your obligations arising prior to termination, and those obligations relating to confidentiality and non-use, shall survive termination.

You may terminate this Agreement at any time by ceasing to use the Software. The provisions contained herein shall survive termination of this Agreement.

**YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.**

**IF YOU SUBSCRIBE TO CPC'S SCREEN SHARING SERVICE PLEASE READ THE FOLLOWING ADDITIONAL TERMS AND CONDITIONS**

### **Screen Sharing Service**

**Service.** In order to use the Screen Sharing Service, you or your company, as applicable, are responsible at your own expense to access the Internet, either directly or through devices that access Web-based content and pay any service fees associated with such access.

**Availability of Screen Sharing Service.** Subject to the terms and conditions of this Agreement, CPC or its suppliers shall use commercially reasonable efforts to provide the Screen Sharing Service for twenty-four (24) hours a day, seven (7) days a week throughout the term in which you subscribe to the Screen Sharing Service. You agree that from time to time the Screen Sharing Service may be inaccessible or inoperable for various reasons, including (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which CPC or its suppliers may undertake from time to time; or (iii) causes beyond the control of CPC or which are not reasonably foreseeable by CPC or its suppliers, including interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion or other failures (collectively "Downtime"). CPC or its suppliers shall use commercially reasonable efforts to provide twenty-four (24) hour advance notice to you or your company, as applicable, in the event of any scheduled Downtime. CPC or its suppliers shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the Screen Sharing Service in connection with Downtime, whether scheduled or not.

**End User Content.** You shall be solely responsible for providing, updating, uploading and maintaining all of your data stored in

connection with the Screen Sharing Service and any and all material uploaded by you onto CPC's or CPC's suppliers servers in connection with the Screen Sharing Service or provided by you in accordance with this Agreement (collectively, "End User Content"). The accuracy of End User Content shall be your sole responsibility.

**License of End User Content.** In consideration of CPC's performance of its obligations under this Agreement, for the term of this Agreement, you grant to CPC, and CPC accepts from you, a non-exclusive, worldwide, royalty free license to copy, display, store, use, transmit and display (including on and via the Internet) the End User Content, solely to the extent necessary to provide the Screen Sharing Services.

**License Grant to End User.** Subject to the terms and conditions of this Agreement, and upon the acceptance by you of this Agreement, CPC grants to you a non-exclusive, non-transferable, license, solely during the term of the applicable order (the "Subscription Period"), to access and use the Screen Sharing Service, solely for your internal use and solely in connection with any license restrictions set forth on the applicable order.

**Restrictions.** You may not use the Screen Sharing Service in contravention to any applicable laws or government regulations. You shall not decompile, disassemble or otherwise reverse engineer the Screen Sharing Service. You shall not remove any proprietary label or notice contained within the Screen Sharing Service. You shall indemnify and hold CPC, or CPC's suppliers harmless from and against any losses, damages and costs incurred by a breach of this Agreement. CPC reserves the right to terminate the access of the Screen Sharing Service in the event of any such violation, in addition to its other remedies hereunder.

**Your Responsibilities.** (i) **IP Addressing.** You shall not change, redirect, modify, delete, or disable any IP addresses set up by CPC on your systems, without the express approval of CPC. If you breach this clause, CPC shall have the right to suspend or terminate the Screen Sharing Service immediately without notice to you. You indemnify CPC from and against all costs, claims, liabilities, and demands, relating to any breach of this provision. (ii) **Responsibility for End User Accounts and Passwords.** You are responsible for maintaining the confidentiality of your End User account and password. You agree to immediately notify CPC of any unauthorized use of your account of which you become aware.

**Ownership.** Ownership of the Screen Sharing Service, any related documentation, copies, modifications and derivatives of the Screen Sharing Services (in whole or in part), and all related copyright, patent, trade secret and other proprietary rights, are and will remain the exclusive property of CPC and/or its licensors and suppliers. CPC reserves all rights not expressly granted by it to you under this Agreement. There are no implied rights.

**Injunctive Relief.** You acknowledge that any use of the Screen Sharing Service in a manner inconsistent with the provisions of this Agreement may cause CPC or its Supplier's irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, you agree that, in addition to any other remedy to which CPC or its suppliers may be entitled hereunder, at law or equity, CPC or its suppliers shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

**Warranty.** CPC represents and warrants that the Screen Sharing Service will comply in all material respects with the description of the Screen Sharing Service found in the Screen Sharing Services documentation CPC makes available to customers of its Screen Sharing Services and shall be provided in a professional and workmanlike manner.

**Exclusive Remedy.** For any breach of the warranty set forth above, your sole and exclusive remedy and CPC's entire liability shall be, in CPC's sole discretion, either: (a) correction of the defect or error that caused the breach of warranty; (b) replacement of the nonconforming item of the Screen Sharing Service; or (c) in the event CPC reasonably determines that it is unable to cure such breach, termination of your right to use the particular defective module(s) of the Screen Sharing Service and return the service fees paid for the last month for such nonconforming module related to the Screen Sharing Service.

**DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES MADE HEREIN, CPC MAKES AND CUSTOMER RECEIVES NO OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO THE SCREEN SHARING SERVICES. CPC SPECIFICALLY DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY AND ALL WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR TRADE USAGE. THE STATED PRODUCT WARRANTY IS IN LIEU OF ALL OBLIGATIONS AND LIABILITIES ON THE PART OF CPC FOR DAMAGES.

**YOU ACKNOWLEDGE THAT YOU HAVE READ THESE ADDITIONAL TERMS IF YOU SUBSCRIBE TO CPC'S SCREEN SHARING SERVICES AND UNDERSTAND THEM AND AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.**