

PushCall End User License Agreement
IMPORTANT - PLEASE READ CAREFULLY

Before reading the articles below, please note the following preliminary terms, which use some of the definitions specified in Article 1 below:

No Emergency Calls: by entering into this Agreement You acknowledge and agree that the PushCall Software and/or solution does not and does not intend to support or carry emergency calls. Please also see article 7 below.

Entering into this Agreement: This End User License Agreement constitutes a valid and binding agreement between PushCall and You, as a user, for the use of the PushCall Software and/or solution. You must enter into this Agreement by clicking on the ACCEPT button in order to install and/or use the PushCall Software and/or solution. You hereby agree and acknowledge that this Agreement covers all Your use of PushCall Software and/or solution, whether it be from this installation or from any other terminals where PushCall Software and/or solution has been installed, by You or by third parties. Furthermore, by installing and continuing to use the PushCall Software and/or solution You agree to be bound by the terms of this Agreement and any new versions hereof.

Electronic Signatures and Agreement(s): You acknowledge and agree that by clicking on the ACCEPT button or similar buttons or links as may be designated by PushCall to show Your approval of any foregoing texts and/or to download and install the PushCall Software and/or solution, You are entering into a legally binding contract. You hereby agree to the use of electronic communication in order to enter into contracts, place orders and other records and to the electronic delivery of notices, policies and records of transactions initiated or completed through the PushCall Software and/or solution. Furthermore, You hereby waive any rights or requirements under any laws or regulations in any jurisdiction which require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent permitted under applicable mandatory law.

Jurisdiction's Restrictions: if You are residing in a jurisdiction which restricts the use of internet-based applications according to age, or which restricts the ability to enter into agreements such as this agreement according to age and You are under such a jurisdiction and under such age limit, You may not enter into this Agreement and download, install or use the PushCall Software and/or solution. Furthermore, if You are residing in a jurisdiction where it is forbidden by law to offer or use Software and/or solution for Internet telephony, You may not enter into this Agreement and You may not download, install or use the PushCall Software and/or solution. By entering into this Agreement You explicitly state that You have verified in Your own jurisdiction if Your use of the PushCall Software and/or solution is allowed.

Article 1 Definitions

In this Agreement the following capitalized definitions are being used, singular as well as plural.

1.1 Affiliate: any corporation, company or other entity that directly or indirectly controls, is controlled by, or is under common control with, PushCall. For the purpose of this definition, the word "control" shall mean the direct or indirect ownership of more than fifty percent (50%) of the outstanding voting stock of the corporation, company, or other entity.

1.2 Agreement: this End User License Agreement, as may be renewed, modified and/or amended from time to time.

1.3 Emergency Services: means services that connect a user to emergency services personnel or public safety answering points pursuant to applicable local and or national regulatory requirements.

1.4 Documentation: any online or otherwise enclosed documentation provided by PushCall.

1.5 Effective Date: the date on which this Agreement is entered into by clicking on the ACCEPT button as stated above.

1.6 IP Rights: any and all intellectual property rights, including but not limited to copyrights, trademarks and patents, as well as knowhow and trade secrets contained in or relating to the PushCall Software and/or solution, the Documentation, the PushCall Website or the PushCall Promotional Materials.

1.7 Password: refers to a code You select, which, in combination with the User ID, gives You access to Your User Account.

1.8 PushCall: refers to the company established under the laws of the Netherlands, PushCall BV, with its address at Patrijsweg 102, 2289 EZ Rijswijk ZH, The Netherlands, reg.no (27299356), VAT no. (NL8178.39.859.B.01).

1.9 PushCall Online Material: the PushCall banner available for download on the PushCall Website, consisting of a PushCall logo and a link to the PushCall Website.

1.10 PushCall Promotional Materials: any and all trademarks, names, signs, logos, banners, PushCall Online Material and any other materials, in whatever form, owned and/or used by PushCall for the promotion of its company, its products and activities.

1.11 PushCall Software and/or solution: the software distributed by PushCall, including without limitation the UI and Documentation, as well as any future programming fixes, updates and upgrades thereof.

1.12 PushCall Staff: the officers, directors, employees and agents of PushCall or its Affiliates, or any other persons hired by PushCall or its Affiliates.

1.13 PushCall Website: any and all elements, contents and the 'look and feel' of the website available - among other URL's - under the URL www.PushCall.com, from which website the PushCall Software and/or solution can be downloaded.

1.14 Terms of Service: means the agreement between PushCall and You for the use of the PushCall Services.

1.15 UI: the user interface of the PushCall Software and/or solution.

1.16 User Account: refers to the account with User ID and Password that You create for Your use of the PushCall Software and/or solution;

1.17 User ID: refers to an identification code You selected, which in combination with the Password, gives access to Your User Account;

1.18 You: you, the end user, company or organisation that deploys the PushCall Software and/or solution, also used in the form "Your" where applicable.

Article 2 License and Restrictions

2.1 License. Subject to the terms of this Agreement, PushCall hereby grants You a limited, commercial, non-exclusive, non-transferable, non-sub licensable, non-assignable license to download, install and use the PushCall Software and/or solution on Your computer(s) and/or website(s) and/or emails and/or pdf-files and/or other documents for the sole purpose of personally using the services and applications provided by PushCall and any other applications that may be explicitly provided by PushCall by paying the tariffs and/or subscription fees as stated on the PushCall website.

2.2 No Granting of Rights to Third Parties. You will not sell, assign, rent, lease, distribute, export, import, act as an intermediary or provider, or otherwise grant rights to third parties with regard to the PushCall Software and/or solution or any part thereof.

2.3 No Modifications. You will not undertake, cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling or hacking of the PushCall Software and/or solution or any part thereof.

2.4 Third Parties. You acknowledge and agree that the PushCall Software and/or solution may be incorporated into, and may incorporate itself, software and other technology owned and controlled by third parties. Any such third party software or technology that is incorporated in the PushCall Software and/or solution falls under the scope of this Agreement. Any and all other third party software or technology that may be distributed together with the PushCall Software and/or solution will be subject to you explicitly accepting a license agreement with that third party. You acknowledge and agree that you will not enter into a contractual relationship with PushCall or its Affiliates regarding such third party software or technology and you will look solely to the applicable third party and not to PushCall or its Affiliates to enforce any of your rights.

2.5 New Versions of the PushCall Software and/or solution. PushCall, in its sole discretion, reserves the right to add additional features or functions, or to provide programming fixes, updates and upgrades, to the PushCall Software and/or solution. You acknowledge and agree that PushCall has no obligation to make available to You any subsequent versions of the PushCall Software and/or solution. You also agree that you may have to enter into a renewed version of this Agreement, in the event you want to download, install or use a new version of the PushCall Software and/or solution. Furthermore, You acknowledge and agree that PushCall, in its sole discretion, may modify or discontinue or suspend Your ability to use any version of the PushCall Software and/or solution, and/or disable any PushCall Software and/or solution You may already have accessed or installed without any notice to You, for the repair, improvement, and/or upgrade of the underlying technology or for any other justifiable reason, including but not limited to, circumstances where You, at PushCall's discretion, are in breach of this Agreement, creating problems, possible legal liabilities, or engaging in fraudulent, immoral or illegal activities, or for other similar reasons. PushCall will not accept any liability in relation to the direct or indirect damages caused by (1) the release and/or the absence of release of new versions of the PushCall Software and/or solution and (2) by the suspension or termination of the license or this Agreement by PushCall and/or by You.

2.6 Premium (Paid) Services and Free of Charge Services. This Agreement applies for both our Free of Charge Services as our Premium (Paid) Services.

Article 3 Definitions to License Restrictions and Additional Terms

3.1 Distribution of PushCall Software and/or solution. You are not allowed to distribute the PushCall Software and/or solution under this Agreement. For the right to distribute You will have to agree to and meet with the Distribution Terms which can be provided by PushCall on written request.

3.2 PushCall Promotional Materials. Nothing in this Agreement will give You any right to use the PushCall Promotional Materials.

Article 4 Utilization of Your computer

4.1 Utilization of Your computer. You hereby acknowledge that the PushCall Software and/or solution may utilize the processor and bandwidth of the computer (or other applicable device) You are utilizing, for the limited purpose of facilitating the communication between PushCall Software and/or solution users.

4.2 Protection of Your computer (resources). You understand that the PushCall Software and/or solution will use its commercially reasonable efforts to protect the privacy and integrity of the computer resources (or other applicable device) You are utilizing and of Your communication, however, You acknowledge and agree that PushCall cannot give any warranties in this respect.

Article 5 Confidentiality and Privacy

5.1 PushCall's Confidential Information. You agree to take all reasonable steps at all times to protect and maintain any confidential information regarding PushCall, its Affiliates, the PushCall Staff, the PushCall Software and/or solution and the IP Rights, strictly confidential.

5.2 Your Confidential Information and Your Privacy. PushCall is committed to respecting Your privacy and the confidentiality of Your personal data. We do not sell or rent Your personal information to third parties for their marketing purposes without Your explicit consent. We store and process Your information on computers that may be located outside Your country that are protected by physical as well as technological security devices. You can access and modify the information You provide. If You object to Your information being transferred or used in this way please do not use our services.

Article 6 IP Rights and Translations

6.1 Exclusive Ownership. You acknowledge and agree that any and all IP Rights to or arising from the PushCall Software and/or solution are and shall remain the exclusive property of PushCall and/or its licensors. Nothing in this Agreement intends to transfer any such IP Rights to, or to vest any such IP Rights in, You. You are only entitled to the limited use of the IP Rights granted to You in this Agreement. You will not take any action to jeopardize, limit or interfere with the IP Rights. You acknowledge and agree that any unauthorized use of the IP Rights is a violation of this Agreement as well as a violation of intellectual property laws, including without limitation copyright laws and trademark laws. You acknowledge and understand that all title and IP Rights in and to any third party content that is not contained in the PushCall Software and/or solution, but may be accessed through use of the PushCall Software and/or solution, is the property of the respective content owners and may be protected by applicable copyright or other intellectual property laws and treaties.

6.2 No Removal of Notices. You agree that You will not remove, obscure, make illegible or alter any notices or indications of the IP Rights and/or PushCall's rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to such materials.

6.3 Translations. You acknowledge and agree that the intellectual property rights regarding any translations made by You of any information on or accessible through the PushCall Website or as otherwise requested of You by PushCall at any time prior to or subsequent of the Effective Date will be and remain the sole and exclusive property of PushCall without any compensation to You.

Article 7 Communication and Your Use of the PushCall Software and/or solution

7.1 Communication. Installing PushCall Software and/or solution enables users to communicate with You.

7.2 No Warranties. PushCall cannot guarantee that users will always be able to communicate with You, nor can PushCall guarantee that You can communicate without disruptions, delays or communication-related flaws. PushCall will not be liable for any such disruptions, delays or other omissions in any communication experienced when using PushCall Software and/or solution.

7.3 No Responsibility of Content. You acknowledge and understand that the content of the communication spread by the use of the PushCall Software and/or solution is entirely the responsibility of the person from whom such content originated. You, therefore, may be exposed to content that is offensive, harmful to minors, indecent or otherwise objectionable. PushCall will not be liable for any type of communication spread by means of the PushCall Software and/or solution.

7.4 No Emergency Services. You expressly agree and understand that the PushCall Software and/or solution is not intended to support or carry emergency calls to any type of hospital, law enforcement agency, medical care unit or any other kind of Emergency Service. PushCall, its Affiliates or PushCall Staff are in no way liable for such emergency calls.

7.4.1 Alternative Arrangements. By agreeing to this Agreement You understand that additional arrangements must be made to access Emergency Services. To access Emergency Services, You acknowledge and accept Your responsibility to purchase, separately from PushCall Software and/or solution, traditional wireless or wireline telephone service that offers access to Emergency Services.

7.4.2 No Compulsion to Offer Emergency Services. You recognize and agree that PushCall is not required to offer Emergency Services pursuant to any applicable local and or national rules, regulation or law. You further recognize that PushCall is not a replacement for Your primary telephone service.

7.5 Lawful purposes. You acknowledge and agree to use the PushCall Software and/or solution solely for lawful purposes. In this respect You may not, without limitation (a) intercept or monitor, damage or modify any communication which is not intended for You, (b) use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that are designed to distort, delete, damage or disassemble the PushCall Software and/or solution or the communication, (c) send any unsolicited commercial communication not permitted by applicable law, or (d) expose any other user to material which is offensive, harmful to minors, indecent or otherwise objectionable.

Article 8 Term and (Consequences of) Termination

8.1 Term. This Agreement will be effective as of the Effective Date and will remain effective until terminated by either PushCall or You as set forth below.

8.2 Termination by PushCall. Without limiting other remedies, PushCall may limit, suspend, or terminate this license and Your use of PushCall Software and/or solution, prohibit access to PushCall Website and delete Your User Account and/or User ID, with immediate effect, if we think that You are in breach of this Agreement, creating problems, possible legal liabilities, infringing someone else's intellectual property rights, engaging in fraudulent, immoral or illegal activities, or for other similar reasons. PushCall shall effect such termination by providing notice to You to the email address You have provided, and/or by preventing Your access to the respective User Account. We reserve the right to cancel User Accounts that have been inactive for more than one (1) year.

8.3 Termination by You. You may terminate this Agreement with immediate effect at any time, with or without cause and without recourse to the courts, provided that You will meet with the conditions as set forth in Article 8.4 below.

8.4 Consequences of Termination. Upon termination of this Agreement, You (a) acknowledge and agree that all licenses and rights to use the PushCall Software and/or solution shall terminate, and (b) will cease any and all use of the PushCall Software and/or solution, and (c) will remove the PushCall Software and/or solution from all hard drives, networks and other storage media and destroy all copies of the PushCall Software and/or solution in Your possession or under Your control.

8.5 No liability. PushCall will not be liable in relation to any damage caused by the termination of this Agreement.

Article 9 Your Representations and Warranties; Indemnification of PushCall.

9.1 Representations. You represent and warrant that You are authorized to enter into this Agreement and comply with its terms. Furthermore, You represent and warrant that You will at any and all times meet with Your obligations hereunder, as well as any and all laws, regulations and policies that may apply to the use of the PushCall Software and/or solution.

9.2 Indemnification. You agree to indemnify, defend and hold PushCall, Affiliates and the PushCall Staff harmless from and against any and all liability and costs, including reasonable attorneys' fees incurred by said parties, in connection with or arising out of Your (a) violation or breach of any term of this Agreement or any applicable law or regulation, whether or not referenced herein, or (b) violation of any rights of any third party, or (c) use or misuse of the PushCall Software and/or solution, or (d) communication spread by means of the PushCall Software and/or solution.

9.3 Export Restrictions. You acknowledge that the PushCall Software and/or solution may be subject to international rules that govern the export of software. You agree to comply with all applicable international and national laws that apply to the PushCall Software and/or solution as well as end-user, end-use and destination restrictions issued by national governments.

Article 10 Disclaimer of Warranties

10.1 No warranties. THE PUSHCALL SOFTWARE AND/OR SOLUTION IS PROVIDED "AS IS", WITH NO WARRANTIES WHATSOEVER; PUSHCALL DOES NOT, EITHER EXPRESSED, IMPLIED OR STATUTORY, MAKE ANY WARRANTIES, CLAIMS OR REPRESENTATIONS WITH RESPECT TO THE PUSHCALL SOFTWARE AND/OR SOLUTION, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR USE OR A PARTICULAR PURPOSE. PUSHCALL FURTHER DOES NOT REPRESENT OR WARRANT THAT THE PUSHCALL SOFTWARE AND/OR SOLUTION WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE AND ERROR-FREE OR WILL OPERATE WITHOUT PACKET LOSS, NOR DOES PUSHCALL WARRANT ANY CONNECTION TO OR TRANSMISSION FROM THE INTERNET, OR ANY QUALITY OF CALLS MADE THROUGH THE PUSHCALL SOFTWARE AND/OR SOLUTION.

10.2 Specific Disclaimer of Liability for Emergency Services. PushCall does not provide Emergency Services in conjunction with the PushCall Software and/or solution. Neither PushCall nor its officers or employees may be held liable for any claim, damage, or loss, and You hereby waive any and all such claims or causes of action, arising from or relating to the use of PushCall Software and/or solution to contact Emergency Services personnel. You shall defend, indemnify, and hold harmless PushCall, PushCall Staff and Affiliates and agents and any other service provider who furnishes services to You in connection with the PushCall Software and/or solution, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees) by, or on behalf of, You relating to the absence, failure or outage of PushCall Software and/or solution provided hereunder, including specifically any claims arising out of the failure of PushCall to offer Emergency Services.

10.3 Your own Risk. You acknowledge and agree that the entire risk arising out of the use or performance of the PushCall Software and/or solution remains with You, to the maximum extent permitted by law.

10.4 Jurisdiction's Limitations. As some jurisdictions do not allow some of the exclusions or limitations as set forth above, some of these exclusions or limitations may not apply to You. In such event the liability will be limited as far as legally possible under the applicable legislation.

Article 11 Limitation of Liability

11.1 No Liability. The PushCall Software and/or solution can be provided to You free of charge or as a premium (paid) service. ACCORDINGLY, YOU ACKNOWLEDGE AND AGREE THAT PUSHCALL, ITS AFFILIATES AND THE PUSHCALL STAFF WILL HAVE NO LIABILITY IN CONNECTION WITH OR ARISING FROM YOUR USE OF THE PUSHCALL SOFTWARE AND/OR SOLUTION, AS SET FORTH BELOW.

11.2 Limitation of Liability. IN NO EVENT SHALL PUSHCALL, ITS AFFILIATES OR THE PUSHCALL STAFF BE LIABLE, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER FORM OF LIABILITY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION ANY LOSS OF DATA, INTERRUPTION, COMPUTER FAILURE OR PECUNIARY LOSS) ARISING OUT OF THE USE OR INABILITY TO USE THE PUSHCALL SOFTWARE AND/OR SOLUTION, EVEN IF PUSHCALL, ITS AFFILIATES OR THE PUSHCALL STAFF HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.3 Remedy. YOUR ONLY RIGHT OR REMEDY WITH RESPECT TO ANY PROBLEMS OR DISSATISFACTION WITH THE PUSHCALL SOFTWARE AND/OR SOLUTION IS TO DEINSTALL AND CEASE USE OF SUCH PUSHCALL SOFTWARE AND/OR SOLUTION.

11.4 Jurisdiction's Limitations. As some jurisdictions do not allow some of the exclusions or limitations as set forth above, some of these exclusions or limitations may not apply to You. In such event the liability will be limited as far as legally possible under the applicable legislation.

Article 12 General Provisions

12.1 New versions of the Agreement. PushCall reserves the right to modify this Agreement at any time by providing such revised Agreement to You or by publishing the revised Agreement on the PushCall Website. The revised Agreement shall become effective within thirty (30) days of such publishing or provision to You, unless You expressly accept the revised Agreement earlier by clicking on the accept button. The express acceptance by You, or Your continued use of the PushCall Software and/or solution after expiry of the notice period of thirty (30) days, shall constitute Your acceptance to be bound by the terms and conditions of the revised Agreement. You can find the latest version of this Agreement at www.PushCall.com. PushCall reserves the right to make changes to this Agreement from time to time.

12.2 Entire Agreement. The terms and conditions of this Agreement constitute the entire agreement between You and PushCall with respect to the subject matter hereof and will supersede and replace all prior understandings and agreements, in whatever form, regarding the subject matter.

12.3 Partial Invalidity. Should any term or provision hereof be deemed invalid, void or enforceable either in its entirety or in a particular application, the remainder of this Agreement shall nonetheless remain in full force and effect.

12.4 No waiver. The failure of PushCall at any time or times to require performance of any provisions hereof shall in no manner affect its right at a later time to enforce the same unless the same is explicitly waived in writing and signed by PushCall.

12.5 No Assignment by You. You are not allowed to assign this Agreement or any rights hereunder.

12.6 Assignment by PushCall. PushCall is allowed to at its sole discretion assign this Agreement or any rights hereunder to any Affiliate, without giving prior notice.

12.7 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Netherlands without giving effect to the conflict of laws or provisions of the Netherlands or Your actual state or country of residence.

12.8 Competent Court. Any legal proceedings arising out of or relating to this Agreement will be subject to the jurisdiction of the courts of the Netherlands.

12.9 Language. The original English version of this Agreement may have been translated into other languages. In the event of inconsistency or discrepancy between the English version and any other language version of this Agreement, the English language version shall prevail.

YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND UNDERSTAND THE RIGHTS, OBLIGATIONS, TERMS AND CONDITIONS SET FORTH HEREIN. BY CLICKING ON THE ACCEPT BUTTON AND/OR CONTINUING TO INSTALL THE PUSHCALL SOFTWARE AND/OR SOLUTION, YOU EXPRESSLY CONSENT TO BE BOUND BY ITS TERMS AND CONDITIONS AND GRANT TO PUSHCALL THE RIGHTS SET FORTH HEREIN.

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