

**Digium Cloud Services  
Terms of Service**

BY ELECTRONICALLY SIGNING OR USING A CLICK ACCEPTANCE BUTTON YOU CERTIFY THAT YOU HAVE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT DRAWN UP IN ENGLISH, YOU ARE CONSENTING TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, ALL INFORMATION SUBMITTED BY YOU IS COMPLETE, TRUE, ACCURATE, AND NOT MISLEADING AND IF YOU ARE SUBMITTING THIS AGREEMENT ON BEHALF OF AN ORGANIZATION YOU ARE DULY AUTHORIZED TO BIND THE ORGANIZATION TO THESE TERMS. IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, YOU MUST NOT SIGN THESE TERMS OF SERVICE AND YOU WILL NOT RECEIVE SERVICES. THIS AGREEMENT IS MADE BY AND BETWEEN DIGIUM CLOUD SERVICES L.L.C. (REFERRED TO AS "DIGIUM CLOUD SERVICES"), WITH AN ADDRESS OF 445 JAN DAVIS DRIVE, HUNTSVILLE ALABAMA 35806, AND THE PERSON OR ENTITY LISTED AS CUSTOMER IN THE ORDER FORM ("CUSTOMER"). THE EFFECTIVE DATE OF THIS AGREEMENT SHALL BE THE DATE UPON WHICH CUSTOMER EITHER ELECTRONICALLY OR MANUALLY SIGNS THIS AGREEMENT ("EFFECTIVE DATE"). THIS AGREEMENT SHALL NOT BE LEGALLY BINDING UNLESS AND UNTIL CUSTOMER SIGNS THIS AGREEMENT.

**Version March 15, 2018**

This Agreement is entered into by and between Digium Cloud Services, L.L.C., a wholly owned subsidiary of Digium, Inc. (DCS) and Customer for the provision of managed services under the terms and conditions set forth herein.

**1. Definitions.**

- 1.1. "Agreement" shall mean these Terms of Service and any and all attachment(s), addendum(s), Sales Order(s), work order(s), or exhibit(s) attached thereto and any and all other applicable terms and conditions and policies referenced in any of the preceding. This Agreement overrides, supplants and supersedes any and all prior agreements and renewals between DCS and Customer.
- 1.2. "D.C.S. Customer CPNI Policy" means the DCS policy detailing the use, collection, and distribution of Customer Proprietary Network Information (CPNI) available at <https://www.digium.com/policies>, the terms of which are incorporated herein by reference. This may be amended by DCS by publishing an updated copy at <https://www.digium.com/policies>.
- 1.3. "DCS Services" or "Service(s)" means those certain phone rental, communication, data and other business and consumer continuity services, including but not limited to, managed IT, data, and communication services, as may be modified, upgraded, or revised from time to time. With regard to international telecommunication traffic if Customer purchases this Digium Cloud Services will terminate international communication traffic which is delivered to one of Digium Cloud Services' interconnection locations in the United States to Customer's Cloud SIP or Cloud PBX account and Digium Cloud Services reserves the right to change the destination of such international communication traffic at any time without notice to Customer.
- 1.4. "On Network Services" shall mean those Services that are provided by DCS on a network system operated by DCS.

- 1.5. "Off Network Services" shall mean those Services that are either provided solely by a third-party or provided either partially or wholly off of DCS's operated network.
- 1.6. "Privacy Policy" means the Digium (DCS's parent company) Privacy Policy available at <https://www.digium.com/policies>, the terms of which are incorporated herein by reference. This may be amended by DCS by publishing an updated copy at <https://www.digium.com/policies>.
- 1.7. "Sales Order(s)" shall mean the sales order(s) entered into, from time to time, between DCS and Customer which detail, among other things, the Services to be provided by DCS and the prices paid by Customer for those Services.
- 1.8. "Switchvox Cloud Edition" means a software platform owned and developed by Digium, Inc. that includes an underlying operating system, designed to be run in a virtualization environment that enables many copies of Switchvox Cloud Edition to run on a virtualized server provided by DCS. Certain On Network Services are powered by Switchvox Cloud Edition and these Services are limited to Hosted Cloud PBX, SIP Trunking, associated IP telecommunications and hosting services.
- 1.9. "We", "us", and "you". In this Agreement, use of the words "we" and "us" shall refer to DCS, and use of the word "you" shall refer to Customer.

**2. Provision of Services.** DCS will provide those Services selected by Customer and set forth, from time to time, on Sales Orders, in accordance with the terms and conditions of this Agreement.

**3. Term.** This Agreement shall become effective on the date that Customer signs this Agreement. This Agreement shall remain in effect until all Services received by Customer from DCS are terminated. The initial term for each of the Services shall be as set forth in the Sales Order (the "Initial Term"). Customer shall receive an activation notice (as defined in Section 7) from DCS for each Service. The activation notice shall set forth the date upon which the Initial Term commenced for that Service. This shall be the same as the Actual Start Date (as defined in Section 7). The Initial Term of each Service shall automatically renew for successive one (1) month terms at the then-current one month rates (the "Renewal Term(s)") (collectively, with the Initial Term, the "Term"), unless either DCS or Customer provides written notice of its intent not to renew at least thirty (30) days prior to the end of the Initial Term or any Renewal Term. If, for any reason, the Term for any Services shifts to a month-to-month basis, then the fees for these Services shall be billed on a monthly basis at the then-current monthly rates.

Notwithstanding the foregoing, DCS and Customer shall have the right to terminate this Service Agreement and any of the Services provided through this Agreement, as provided herein. However, it is understood that, in the event of a partial cancellation or termination, the terms and conditions of this Agreement, shall continue to govern the remainder of the parties' relationship.

**4. Billing and Fees.** Customer shall pay DCS for any supplemental charges applicable to the Services, such as charges for incremental usage, design changes, Service relocation, maintenance, and expedites requested by Customer. **Customer shall pay DCS a supplemental charge per call for calls to Directory Assistance.** It is understood that changes to these rates and supplemental charges may be made from time to time, under the terms of this Agreement. For any adjustments resulting in material additional or material increased charges or a material reduction in Service for any Service, excluding changes set forth in Section 5 ("Regulatory-related Rate Adjustments"), Customer shall have the right to cancel the affected Service(s) under month to month contracts, without penalty, by sending notification to [service@digiumcloud.com](mailto:service@digiumcloud.com) from an authorized representative of Customer. Once email notification has been received, DCS will then acknowledge Customer's request with a return receipt of the notification. At that time, DCS will cancel the Service. Failure to provide written notification of cancellation within this time period shall be deemed

acceptance of the changed terms. Customer may not cancel the Service purchased under a year or three year contract under this section.

**Local, long distance, and toll free minutes are billed in six (6) second increments, rounding up to the nearest six (6) second increment. For example, a nine (9) second call would be billed as twelve (12) seconds.**

**For international calling and extended area dialing, all calls are billed in sixty (60) second increments and in some cases Digium Cloud Services may require Customer to pre-pay an amount, determined by Digium Cloud Services on a case by case basis, to the Customer's account based on projected international call usage. For example, an eighty (80) second call would be billed as one hundred and twenty (120) seconds.**

**With regard to Switchvox Metered, services from different rate plans may not be combined. Rate plans differ by the contract time commitment- month to month, 1 year, or 3 year. For purposes of example, assume the Customer wishes to order cloud seats on a month to month plan. This means that if Customer wants additional seats, toll free usage, US 48 usage, E911 DID, Digium phone rentals, Fax, purchased Digium phones, or DID/E911/Toll Free that these must all be purchased under the month to month plan. Additionally, Customer may not have a Switchvox Metered and a Switchvox Unlimited on the same subscription (i.e. not on the same URL), though Customer may have both on the same account. In order to change between the Unlimited and Metered plans or switch to a different rate plan Customer must accept a new contract for the contract term and the new service. Usage rates for US48 and Toll Free are different. "Unlimited" usage means the combined number of inbound and outbound voice minutes and fax pages, but excluding all advertising and informational messages sent directly by DCS, as determined in the sole discretion of DCS. Customer's Unlimited usage must be comparable to that of the average DCS small business customer utilizing such plans. Please see the DCS Acceptable Use Policy for more information. The DCS Acceptable Use Policy is available at <https://www.digium.com/company/policies> .**

**The Common Area Phone Extension may only be used with Switchvox Cloud Unlimited, not Switchvox Cloud Metered.**

Customer shall pay the initial set up fees itemized on a Sales Order and all other fees itemized on the Sales Order in full upon successful delivery of the Service. Thereafter, Customer shall pay, in advance of the Service, those fees as stated on a monthly, yearly, or every three years invoice from DCS per the payment terms of that invoice via credit card or ACH ("Due Date"). Prior to being able to pay via ACH Customer must complete and sign DCS's ACH Authorization Form and provide a blank voided check as detailed in the ACH Authorization Form. If Customer wishes to use ACH Customer must still provide DCS a credit card as a backup method of payment and Customer acknowledges if ACH fails DCS will charge Customer's credit card for the failed ACH transaction and for all transactions moving forward. Customer may access the ACH Authorization Form and elect to stop using ACH by logging into <https://my.digiumcloud.com/> and switching to credit card billing only. If Customer has signed the ACH Authorization Form and later elects to be billed only by credit card the change will be effective as of the next scheduled monthly billing which follows the date of Customer's change within <https://my.digiumcloud.com/>. The parties acknowledge that DCS shall not be extending credit to Customer. Customer is responsible for safeguarding Customer's own information and credentials, and will be liable for all costs incurred due to misuse of Services arising out of compromised account information or credentials. Customer acknowledges that DCS uses a third party payment processor which utilizes Account Updating. Account Updating enables DCS to bill using the original account information obtained from Customer's credit card and checks with Visa, MasterCard, American Express, and Discover to see if there any updates to the card such as the following: New account number and/or expiration date (or new token if applicable); information about accounts transitioning from Visa to MasterCard and vice versa due to bank portfolio migration scenarios; account closed notification; contact customer notification. If there is an update to the card, DCS will bill using the update. All SIP Trunking purchases are subject to a \$100 preauthorization on the card. The credit card merchant will remove the preauthorization within 7-10 days.

DCS is not liable for the credit card merchant's failure to remove the preauthorization within the 7-10 day time frame.

In the event Customer fails to make full payment by the Due Date, Customer also shall pay a late fee in the amount of the lesser of one and one-half percent (1 1/2%) of the unpaid balance per month or the maximum lawful rate under applicable state law that shall accrue from the Due Date. Customer shall pay any amounts incurred by DCS in the collection of past-due amounts owed, including, but not limited to, reasonable attorneys' fees and costs. Further, DCS will terminate the Service(s) and this Agreement automatically terminates if payment is not received in full within 7 days of the Due Date or Customer's credit card is declined. DCS will reinstate the Agreement and resume providing Services if within twelve (12) days of the Due Date or credit card decline Customer pays the past due balance owed and a \$25.00 Contract Reinstatement Fee (fee for administrative expenses DCS incurs in reinstating Customer under the previously accepted Agreement). Notwithstanding statements to the contrary herein, Customer has the right to withhold payment of fees related to the Service(s) being provided by DCS hereunder that Customer disputes in good faith; provided that, should this occur, Customer agrees to provide written notice to DCS within seven (7) days of such time as payment or invoice is due. Customer shall not have the right to dispute any invoice after the expiration of this seven (7) day time period. During the period of time that there is a reasonable dispute pending and Customer is withholding monies on account of such reasonable dispute, DCS shall not invoke any additional charges on account of the unpaid disputed amount, take any action against Customer on account of such good faith dispute, or withhold the Services otherwise due to Customer hereunder, as a result of said withholding. Customer will not withhold payments that are not subject to the above good faith dispute requirements and the provisions of this Section shall apply to any payments which are not in dispute.

In the case where this Agreement includes the delivery of Services to multiple locations and Service delivery is delayed definitely or indefinitely due to circumstances beyond the immediate control of DCS, as determined by DCS in its sole, reasonable discretion, Customer shall pay such partial fees for those portions of the Service which are not so delayed. Partial delivery of Service, in this manner, shall not constitute a failure to fulfill the Agreement or cause for Termination as described in Section 12.

**5. Regulatory-related Rate Adjustments.** In the event that Customer contracts for Services subject to federal, state, or local regulation, and notwithstanding any other provision herein to the contrary, DCS may, upon prior email or written notice to Customer when practicable, modify, change or add to: (a) the rates, (b) the regulated Service(s), and/or (c) the other terms and conditions contained in the Agreement, including without limitation, surcharges and other charges, to reflect the impact of, or to effect, such regulatory activity. Digium Cloud Services makes no representations or warranties that the FCC, PUCs, or any type of governmental body, whether federal, state (provincial), or local, or any underlying providers will not make any changes to existing laws, regulations, and/or tariffs that could impair Digium Cloud Services' ability to deliver Services to Customer. In consideration of the Services provided, Customer shall pay DCS those fees itemized on the Sales Orders. If any local, state, federal, public or quasi-public governmental entity or its political subdivision imposes any taxes, fees, surcharges or other charges or obligations on Digium Cloud Services as a result of Digium Cloud Services' sale of Services or Customer's use of Services, Customer shall pay any such obligations (Additional Charges) and indemnify Digium Cloud Services for any liability or expense associated with the Additional Charges. If Additional Charges are assessable to support the federal Universal Service Fund (USF), Digium Cloud Services may elect to calculate and charge Customer in accordance with applicable regulations of the government authority having jurisdiction (USF Charges).

## **6. Use of Services.**

### **6.1 All Services**

6.1.1 Any use of DCS's systems that is in violation of DCS's Acceptable Use Policy, as such policy is set forth at <https://www.digium.com/policies> the terms of which are incorporated herein by reference and as may be amended from time to time, in DCS's sole discretion, or disrupts the normal use of the system for other DCS customers, shall be considered abuse of the system. **An example of abusive use is making completed calls which are 6 seconds or less in duration (each a "Short Duration Call") and 10% or**

**greater of Customer's calls within a one month time span are Short Duration Calls. If the percentage of Short Duration Calls exceeds the 10% threshold then DCS will add a supplemental charge per Short Duration Call for all Short Duration Calls, not just those which are over the threshold.** It is understood that DCS may monitor Customer's use of the system for violations of the Acceptable Use Policy and any other terms and conditions applicable to the use of the systems. DCS reserves the right to remove and/or block all communications if it suspects a violation of these policies, terms, or conditions if, in its sole, reasonable discretion, it deems such action necessary to protect the system, DCS, or its affiliates, directors, officers, agents, employees, or other customers, from harm. DCS' privacy policy may be amended from time to time, in DCS' sole discretion, and is set forth in the privacy policy located on <https://www.digium.com/policies> the terms of which are incorporated herein by reference.

6.1.2 Customer shall be the end-user of the Service. The Service is not to be resold or distributed without the prior express, written consent of DCS.

6.1.3 Customer may be required to maintain a secure password for use of a Service. Password requirements shall be established by DCS. Customer is solely responsible for maintaining the security and integrity of his, her or its password.

6.1.4 Customer shall not use any process, program or tool via DCS's system for guessing the passwords or circumventing any security measures of DCS customers or other systems. Customer shall not use DCS's system to make unauthorized attempts to access the systems and networks of others.

6.1.5 Customer shall not copy or alter, or cause a third party to copy or alter, any firmware or software related to the Services. Customer is solely responsible for any costs, liabilities, or charges incurred as a result of such actions. Customer shall not attempt to hack or otherwise disrupt the Services or make any use of a Service that is inconsistent with its intended purpose.

6.1.6 Customer shall use the Service in accordance with all applicable local, state and federal laws, including but not limited to, obscenity laws. Customer shall not use the Service to conduct any business or activity or solicit the performance of any activity that is prohibited by law, nor shall Customer's use of the Service impinge upon the use of DCS's system by other customers.

6.1.7 DCS has not granted to customer any license to use any firmware or software provided to Customer in connection with the Services, other than a nontransferable, revocable license to use the firmware or software in object code, strictly according strictly for the uses contemplated by this Agreement. With regard to Switchvox Cloud Edition, Customer agrees that customer may not reverse engineer or de-compile the software, that title to the Software does not pass to Customer (meaning the intellectual property to the software is owned by Digium and is not transferred to Customer), that Digium is not liable to Customer for any damages whatsoever, including direct, indirect, incidental, or consequential damages arising from use of the software, that Digium does not warrant the software will be uninterrupted or error free or that the software will meet Customer's specific requirements, that the software may be subject to the U.S. Export Administration Act and its associated regulations and international import and export regulations, with which Customer agrees to comply, (6) states that the term of the end user license for the software expires at such time as Customer discontinues use of software as no perpetual rights to use are granted under the end user license agreement, that Customer may not transfer or duplicate the software except for a backup copy, and that the software is licensed, not sold, for Customer's nonexclusive and non-transferable use.

6.1.8 Customer is responsible for maintaining the integrity of the Services it receives from DCS that are under the control of Customer. This includes, without limitation, guarding against fraudulent usage of voice and data services. Customer shall secure VoIP communications using strong password policies and prudent security measures. Fraudulent calls made and the associated liability from using international VoIP are the Customer's sole responsibility. Digium Cloud Services makes no representations or warranties that it will monitor any international calling activities or records with regard to fraudulent use. Customer shall be responsible to DCS and shall indemnify, hold harmless, and defend DCS and Digium, Inc. for any and all costs, including Service charges incurred through fraudulent, unauthorized, improper, or other use stemming from activities that are under Customer's control. By way of example and not limitation, this

would include long-distance voice charges for calls made using Customer's handset and line. DCS reserves the right, in its sole discretion, to block access to certain countries and locations outside the U.S.

6.1.9 Violations of any of the DCS conditions of use are unethical and may be deemed criminal offenses. Customer shall report to DCS any information Customer may have concerning instances in which the conditions of use have been or are being violated. When DCS becomes aware of any possible violations, DCS will initiate an investigation. In the event that DCS determines that Customer has violated or will violate any of these policies, DCS may take such action as deemed to be appropriate under the circumstances as known to DCS at the time such action was taken to eliminate or preclude such violation. DCS shall not be liable for any damages of any nature suffered by any Customer, Client, or third party resulting in whole or in part from its exercise of its rights under these policies. Customer is responsible for any charges resulting from the violation of these policies including but not limited to charges resulting from the compromise of any Customer secure password or Service under the control of Customer.

6.1.10 Notwithstanding anything herein which may indicate or require otherwise, including, without limitation, any requirements that DCS provide certain notices to Customer, Customer's use of any Service is an absolute acknowledgement by Customer that Customer has received delivery of such Service.

6.1.11 DCS is not obligated to store Customer's communications logs, call recordings, voicemails, faxes, or other messages and does so only as a convenience to Customer. Customer agrees that DCS has no responsibility or liability whatsoever for the deletion or failure to store any call log information, voicemails, faxes, and/or other communications maintained or transmitted by the Services. Customer agrees that DCS may establish limits as to the size of the communications that DCS transmits or stores and the duration for which DCS stores any communications.

6.1.12 DCS cannot guarantee requested telephone numbers will be available, that Customer's pre-existing provider will agree to port Customer's number, or that circumstances beyond DCS's control will not prevent or delay a successful port of Customer's telephone number for the Services. Customer should not order any printed material, such as business cards or stationary, showing a telephone number or issue any press releases with the telephone number or otherwise publicize any telephone number until that telephone number becomes active. Under no circumstances is DCS liable for reimbursing these expenses.

Information on porting a number from DCS can be found at the following link:

<https://support.digium.com/Answers?id=kA08000000GwnXCAS> . Information on porting a number to DCS can be found at the following link: <https://kb.digium.com/articles/FAQ/Number-Porting-FAQS> .

6.1.13 DCS may reclaim any telephone numbers that have not been used to pass traffic within the immediately preceding 120 day period.

## 6.2 Terms applicable only to Customers who rent Digium phones

6.2.1 Customers may rent new or like-new Digium phones or other equipment from DCS on a monthly basis.

6.2.2 The monthly rental charges and the rental period are provided in the relevant quote or Sales Order.

6.2.3. Customer acknowledges and agrees that Digium phones shall at all times be the sole property of DCS and not of Customer, and Customer shall not remove (or permit anyone else to remove) any notices pertaining to ownership of the phones.

6.2.4 To the extent the terms of this Agreement do not otherwise conflict, the Digium phones must be returned in accordance with the Digium return policy a copy of which is available here- <https://www.digium.com/company/policies/return-policy> . Generally, in advance of returning rented phones to DCS's return center, which is located at Digium Inc., 6767 Old Madison Pike, Suite 700 A, Huntsville Alabama 35806, Customer must contact DCS's technical support department to request an RMA number

for tracking purposes during the return process. The RMA number must be clearly visible on the outside of the shipping box (es) and return slip. The phones must be returned in the original packaging. DCS pays the shipping costs to have the phones shipped to Customer and Customer is responsible for all costs related to packing and shipment of the phones to DCS's return center at the end of the rental period.

6.2.5 Throughout the rental period Customer assumes all risk of loss or damage to phones. Digium owns the rental phones throughout and after the rental period.

6.2.6 Customer agrees to use the phones solely in connection with the Service and in accordance with this Agreement and to the extent the terms of this Agreement do not otherwise conflict in accordance with the Digium phone EULA a copy of which is located at <https://www.digium.com/company/policies> the terms of which are incorporated herein by reference.

6.2.7 Customer agrees to use the Digium phones solely at the physical address registered with DCS and must not remove any Digium Phones from such address.

6.2.8 Upon any expiration or termination of the rental period, the phones must be returned to DCS's return center Digium Inc. If Customer fails to return the phones to DCS's return center at the expiration or termination of the rental period or if the phones are returned to DCS's return center but DCS determines the phones are damaged (beyond normal wear and tear) or were destroyed or lost during shipping to DCS's return center a penalty will be assessed as follows. DCS will generate an invoice to the Customer for the MSRP of the Digium phones and charge the amount of that invoice to the credit card stored in the Customer's DCS account record or, if Customer has completed the ACH Authorization Form, DCS will draft Customer's bank account for the amount. If Customer wishes to use ACH Customer must still provide DCS a credit card as a backup method of payment and Customer acknowledges if ACH fails DCS will charge Customer's credit card for the failed ACH transaction and for all transactions moving forward. Additionally, if the rental arrangement is terminated prior to the end of the rental period by DCS for Cause or by Customer without cause, Customer is responsible for paying the full remaining balance on all rental charges owed for the remaining Term as detailed in Section 12.

6.2.9 Customer must use best efforts to maintain the phones in good repair and working condition with exceptions for normal wear and tear. Customer must not pledge the phones as security for any debt or allow liens or encumbrances to be assessed against such phones. Customer must not transfer or loan the phones to any other party.

6.3 Terms applicable only to Customers who participate in the 30 day Switchvox Cloud and Digium D phone rental trial

6.3.1 Customers may participate in a 30 day trial of the Service Switchvox Cloud and as part of the trial may rent Digium D phones free of charge during the same 30 day period subject to the rental terms set forth in section 6.2 and the remainder of this Agreement.

6.3.2 The Switchvox Cloud and D phone trial includes: 5 full-featured Switchvox Cloud user extensions, up to 5 pre-configured Digium D phones, unlimited local and US48 long distance calling, a local number to which the Customer may forward one or more numbers for testing the Switchvox Cloud Service, an orientation call with a DCS transitions specialist, and access to online administrator and user training.

6.3.3 In order to participate in the trial Customer must first provide DCS with a credit card that will be used for a \$500.00 USD security deposit which will be held by DCS for 45 days. If Customer chooses to terminate the trial without continuing the Switchvox Cloud Service and fails to return the phones by the 45<sup>th</sup> day after the start of the trial the credit card will be charged \$500.00 for the phones and Customer will also be charged for one (1) month of the Service Switchvox Cloud for 5 user extensions and will continue to be charged monthly for the 5 user extensions until the phones are returned. If Customer chooses to terminate the trial without continuing the Switchvox Cloud Service and returns the phones by the 45<sup>th</sup> day from the start of the trial then DCS will release the \$500.00 security deposit from the credit card or, if

Customer has completed the ACH Authorization Form, DCS will draft Customer's bank account for the amount. If Customer wishes to use ACH Customer must still provide DCS a credit card as a backup method of payment and Customer acknowledges if ACH fails DCS will charge Customer's credit card for the failed ACH transaction and for all transactions moving forward.

6.3.4 If Customer notifies DCS prior to the expiration of the trial that Customer wishes to continue the Service Switchvox Cloud and rent the phones then DCS will release the \$500.00 security deposit from the credit card or, if Customer elected to use ACH, will not draft Customer's bank account for the security deposit and Customer will be charged for the phone rental in accordance with the terms of 6.2 and the remainder of this Agreement and will be charged for the first month's Switchvox Cloud Service for 5 user extensions.

**7. Start of Service.** The Requested Start Date ("RSD") for each Service shall be requested by Customer while ordering and set forth on the activation notice. DCS will make commercially reasonable efforts to meet the RSDs. The installation interval shall be determined on an individual basis. DCS shall make reasonable efforts to provide Services within its Standard Service Installation Interval or by the RSD set forth on the Sales Order. It is understood that failure of DCS to deliver by either such date shall not constitute a default under this Agreement and DCS shall not be liable to pay Customer any penalties or damages stemming from its failure to meet such Standard Service Installation Intervals. If Customer requests to either delay or otherwise replace its confirmed start date, additional charges and fees may apply. Additional charges will also apply if Customer cancels an installation appointment without proper notice or otherwise fails to make proper arrangements for its installation, which results in DCS having to reschedule to complete installation.

Once a Service is on line, DCS will issue the activation notice to Customer. Prior to issuing the activation notice, DCS shall test the Service to verify it works. The activation notice shall not be more than 48 hours from the time that DCS has completed testing and the Service is available for use. The date of the activation notice shall be deemed to be the date upon which that Service commenced (the "Actual Start Date"). Customer will be billed applicable usage charges beginning on the Actual Start Date, regardless of when Customer actually begins using the Service. Customer shall be able to view the Actual Start Dates for the Services by reviewing the first monthly statement of service supplied at install. If Customer fails to give written notice that the Service is in material non-compliance with the terms of this Agreement within two (2) business days after DCS issues the activation notice, Customer shall be deemed to have accepted such Service.

As stated above, DCS shall test the Services to verify that they meet the commitments set forth in this Agreement. Unless otherwise stated in this Agreement, this shall be the extent of the testing performed by DCS. Customer has sole responsibility for installation, testing and operations of its facilities, services and equipment. Customer is also responsible for ensuring that the Services are compatible with its existing systems and devices. DCS shall only be responsible for the installation of the Services.

## **8. Purchased Devices.**

8.1 DCS may sell to Customer certain devices, including, but not limited to phones, routers, switches, and modems, etc. ("Purchased Devices") for Customer's use in conjunction with the Services. Full payment for Purchased Devices shall be due at the time of purchase. Purchased Devices shall be listed on a Sales Order. Ownership of, and title to, the Purchased Devices shall transfer from DCS to Customer at the time of sale. Customer will own and bear all risk of loss, theft, or damage.

8.2 As set forth in Section 9, DCS makes no warranty as to the Purchased Devices. Any warranties on Purchased Devices which are Digium products are provided under the terms and conditions of Digium, Inc.'s warranty policy. DCS may provide assistance with repair or replacement of Purchased Devices, in some instances, at possibly at an additional charge. DCS may also offer certain types of support pursuant to certain service plans if Customer elects to pay for and receive this additional Service, the terms and conditions for which are set forth in this Agreement.



8.3 Customer may elect to use its own equipment instead of purchasing equipment direct from DCS. DCS shall not be responsible in any way for the compatibility or fitness for use of any Customer-supplied equipment.

8.4 Customer acknowledges that the performance of equipment, including the Purchased Devices and equipment supplied by Customer, can be affected, and thus the corresponding Services can be directly impacted, by environmental conditions, which are out of the control of DCS. It is the responsibility of Customer to ensure that such equipment is receiving proper care, such as proper cooling, a clean power supply, being housed in proper facilities, etc. In addition, DCS will in no way be responsible to Customer for any damage caused by these factors to the Purchased Equipment, customer's supplied equipment, or any degradation in Service performance resulting therefrom.

8.5 Notwithstanding anything to the contrary contained herein, DCS is not responsible for supporting SIP Trunking or for assisting with configuration of Customer's PBX, networks, routers, switches, LAN, firewall or any other Customer owned equipment or services to support Services.

## **9. Representations, Warranties, and Acknowledgements.**

Representations and Warranties of DCS. DCS hereby represents, warrants, and covenants that:

- (i) It has the requisite power and authority to execute, deliver and perform its obligations under this Agreement;
- (ii) The Services will conform to the specifications set out in this Agreement;
- (iii) Its provision of the Services does not and will not violate, infringe, or misappropriate the intellectual property rights of any third party.
- (iv) It will adhere to the terms and conditions of this Agreement;

Representations and Warranties of Customer. Customer hereby represents, warrants, and covenants that:

- (i) It has the requisite power and authority to execute, deliver and perform its obligations under this Agreement; and
- (ii) It will make all payments on time;
- (iii) It will abide by this Agreement, including all applicable terms of use; and also abide by all applicable laws.
- (iv) It will not introduce to any DCS system, any code, device, criteria, mechanism or function which may be used to restrict, damage, disable, destroy or otherwise shut down or alter any portion of the DCS system;
- (v) It will not introduce into any DCS system, any malicious code, commands, instructions, programs or other internal components (e.g., a computer "virus," computer "worm," computer "time bomb," "Trojan horse," "back door," or malware);
- (vi) It will take reasonable steps to protect the DCS system, and assist with troubleshooting;
- (vii) It will not use the Services to violate, infringe, or misappropriate the intellectual property rights of DCS or any third party.

### **Disclaimer of Warranties and Emergency 911 Calling**

Customer acknowledges that the information available via DCS's system and/or through the interconnecting networks may not be accurate and that DCS makes no representation or warranty of any kind, either express or implied, regarding the quality, accuracy, or validity of the data and/or information available from or through such networks. Use of information obtained from or through DCS's system is at the Customer's risk.

**EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THE PARTIES DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY**

## IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

IN SOME INSTANCES, DCS IS SUPPLYING DEVICES (PURCHASED DEVICES) TO CUSTOMER NECESSARY FOR CUSTOMER TO RECEIVE THE SERVICES, DCS IS NOT THE MANUFACTURER OF THE PURCHASED DEVICES AND MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, QUALITY, PERFORMANCE, OR NON-INFRINGEMENT OF THE PURCHASED DEVICES. WITH RESPECT TO DCS, CUSTOMER'S PURCHASE OF THESE DEVICES IS "AS-IS." PURCHASED DEVICES SHALL BE SUBJECT TO ANY WARRANTIES PROVIDED TO CUSTOMER BY THE DEVICE MANUFACTURER. MODIFICATIONS MAY VOID OR OTHERWISE LIMIT ANY WARRANTY APPLICABLE TO THE DEVICES. DCS MAY PROVIDE ASSISTANCE WITH THE PURCHASED DEVICES, INCLUDING REPLACEMENT AND REPAIR, AT AN ADDITIONAL CHARGE. DCS MAY OFFER AND CUSTOMER MAY ELECT TO PURCHASE A SERVICE PLAN FOR CERTAIN PURCHASED DEVICES.

DCS MAKES NO WARRANTIES WHATSOEVER AS TO THE COMPATIBILITY OF ITS SERVICES WITH EQUIPMENT, DEVICES OR SOFTWARE SUPPLIED BY CUSTOMER OR PURCHASED BY CUSTOMER FROM A VENDOR OTHER THAN DCS AND DCS MAKES NO WARRANTIES OF NON-INFRINGEMENT.

## 9. EMERGENCY 911 CALLING

### 9.1 Enhanced 911 Versus Basic or Limited E911.

Digium Cloud Service's 911 dialing ("911 Dialing") is different from traditional 911 service. Digium Cloud Services' customers have access to either basic 911 or Enhanced 911 ("Enhanced E911") service, depending on the capability of their emergency center.

- **Enhanced E911 Service.** With Enhanced E911 service, when you dial 911, your telephone number and registered address is simultaneously sent to the local emergency center assigned to your location, and emergency operators have access to the information they need to send help and call you back if necessary.
- **Basic and Limited E911 Service.** Customers in locations where the emergency center is not equipped to receive, capture or retain your telephone number and/or address have basic 911 or limited E911. With basic 911 or limited E911, the local emergency operator answering the call may not have your call back number or your exact location, so you must be prepared to give them this information. Until you give the operator your phone number, he or she may not be able to call you back or dispatch help if the call is dropped or disconnected, or if you are unable to speak.

As additional local emergency centers upgrade to Enhanced E911 and become capable of receiving all of our customers' information, Digium Cloud Services will automatically upgrade customers with basic or limited 911 to Enhanced E911 service. Digium Cloud Services will not give you notice of the upgrade.

By using Digium Cloud's service, you authorize Digium Cloud Services to disclose your telephone number, name and address to third-parties involved with providing 911 Dialing to you, including, without limitation, call routers, call centers and local emergency centers.

### 9.2 You Must Notify All Users That 911 Dialing is Different Than Traditional 911 Service.

You should inform all employees, guests and other third persons who may be present at the physical location where you utilize Digium Cloud Services' service of the important differences in and limitations of Digium Cloud Services' 911 Dialing as compared with basic 911 or Enhanced E911. The documentation

that accompanies the Services will include instructions for obtaining a label that details the potential non-availability of basic 911 or Enhanced E911 (the "911 Label"). **It is your responsibility, in accordance with the instructions that accompany the Service, to place the 911 Label on each device that you use with the Service.** 911 Labels may be obtained by visiting <https://www.digium.com/dcs-e911-labels>. **Do not block the telephone number on the handset when dialing 911.**

### **9.3 You Must Register The Location of Your Physical Address.**

For each phone line and telephone number that you utilize with the Digium Cloud Services' service, you must register with Digium Cloud Services the physical location (including floor and suite number) where you will be using the Digium Cloud Services' service with that phone number. You can complete the registration of your initial location by using the onboarding wizard, which you will gain access to as part of subscribing to Digium Cloud Services' service. It is incumbent on you to confirm the accuracy of your physical address. If you have any changes to the physical location where you are using a phone number with Digium Cloud Services' service, you must notify us immediately by logging into <https://www.digium.com> and completing the form available at <https://www.digium.com/support/e911>. The form will NOT display unless you are logged in. Digium Cloud Services is providing a VoIP Trunking solution for businesses intended strictly for use at the physical address of the business. Users who are residential users or who have nomadic equipment or phones where the calling location changes as the device used with the Service moves to another location may not use Digium Cloud Services' service. If you are a residential user or nomadic user who attempts to make unauthorized use of Digium Cloud Services' service from the new location, 911 calls made will be sent to an emergency center near your old address. If Customer fails to provide an accurate physical address or fails to provide any address at all and dials 911, DCS reserves the right to charge Customer up to \$80.00 per call.

### **9.4 Outages May Disrupt Digium Cloud Services' Service and/or E911 Dialing.**

- **Service Outages Due to Power Failure or Disruption.** 911 Dialing does not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Digium Cloud Services' service, including 911 Dialing, will not function until power is restored. Following a power failure or disruption, you may need to reset or reconfigure the device used with the Service prior to utilizing the Digium Cloud Services' service, including 911 Dialing.
- **Service Outages Due to Internet Outage or Suspension or Disconnection of Broadband Service or Internet Service Provider ("ISP") Service.** Service outages or suspensions or disconnections of service by the underlying broadband provider or ISP will prevent all Digium Cloud Services' service, including 911 Dialing, from functioning.
- **Service Outage Due to Disconnection of Your Digium Cloud Services Account.** Service outages due to disconnection of your account will prevent all Digium Cloud Services' service, including 911 Dialing, from functioning.
- **Service Outages Due to Customer Premise Equipment, ISP or Broadband Provider Blocking of Ports or Other Acts.** Your Firewall, ISP, broadband provider or other third party may intentionally or inadvertently block the ports over which the Digium Cloud Services' service is provided or otherwise impede the usage of the Digium Cloud Services' service. If you suspect this has happened to you, you should alert us to this situation and we will work with you to attempt to resolve the issue. During the period that the ports are being blocked or your Digium Cloud Services' service is impeded, your Digium Cloud Services' service, including 911 Dialing, may not function. You acknowledge that Digium Cloud Services is not responsible for the blocking of ports by any firewall or third party or any other impediment to your usage of the Digium Cloud Services' service, and any loss of Digium Cloud Services' service, including 911 Dialing, which may result. In the event you lose service as a result of blocking of ports or any other impediment to your usage of the Digium Cloud Services service, you will continue to be responsible for payment for the Digium Cloud Services service charges unless and until you disconnect the Digium Cloud Services' service in accordance with the terms of your written agreement with Digium Cloud Services covering the Digium Cloud Services' services.

- **Other Service Outages.** If there is a service outage for any reason, such outage will prevent all Digium Cloud Services' service, including 911 Dialing, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere in this policy.

#### **9.5 Network Congestion May Reduce Speed of Routing or Answering 911 Dialing Calls.**

There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 Dialing call made utilizing the Digium Cloud Services' service as compared to traditional 911 dialing over traditional public telephone networks.

#### **9.6 Changes to Your Address or Use of a Non-Native Number May Cause Delays in Assistance.**

Address changes through the process described in paragraph 4 above require processing, and delays in updating your new address in an applicable automatic location information (ALI) database may impair or restrict the ability of emergency personnel to help you. You should allow at least 12-24 hours for the ALI database to update before your new address will be available to emergency personnel, where available. In addition, if you move to a location that uses a different area code, exchange or other number system from the telephone number that has been assigned to you, processing your emergency call may be delayed by a local emergency center.

#### **9.7 Disclaimer of Liability and Indemnification.**

Digium Cloud Services does not have any control over whether, or the manner in which, calls using Digium Cloud Services' 911 Dialing service are answered or addressed by any local emergency response center. Digium Cloud Services disclaims any and all responsibility for the conduct of local emergency response centers. Digium Cloud Services relies on third parties to assist it in routing 911 Dialing calls to local emergency response centers. Digium Cloud Services' disclaims any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. None of Digium Cloud Services, its affiliates, or any of their partners, shareholders, members, directors, managers, officers, employees or agents may be held liable for any claim, cause of action, damage, loss, liability, expense, cost, fee, charge, or penalty, and by using the Digium Cloud Services' service you hereby waive any and all such claims, causes of action, damages, losses, liabilities, expenses, costs, fees, charges, or penalties, arising from or relating to Digium Cloud Services' 911 Dialing service unless such claims, causes of action, damages, losses, liabilities, expenses, costs, fees, charges, or penalties arose solely from Digium Cloud Services' gross negligence or willful misconduct. You shall defend, indemnify, and hold harmless Digium Cloud Services', its affiliates, all of their partners, shareholders, members, directors, managers, officers, employees and agents, and any other service provider who furnishes services to you in connection with the Digium Cloud Services' service, from any and all claims, causes of action, damages, losses, liabilities, expenses, costs, fees, charges, or penalties (including, without limitation, attorneys' fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Digium Cloud Services' service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Digium Cloud Services' service to be able to use 911 Dialing or access emergency service personnel.

#### **9.8 You May Want to Make Alternate 911 Arrangements or Choose Not to Use Digium Cloud Services' Service.**

If you are not comfortable with the limitations of the 911 Dialing service, you should consider having an alternate means of accessing traditional 911 or E911 services or disconnecting the Digium Cloud Services' service.

## 9.9 Direct Access to 9-1-1 Service Required

A law called “Kari’s Law” is effective in the State of Oklahoma. The law requires DCS to provide our Oklahoma customers with notification of the statutory provisions contained in Kari’s Law. Kari’s Law states that:

- A. A business owner or operator that owns or controls a telephone system or equivalent system which utilizes Voice over Internet Protocol (VoIP) enabled service and provides outbound dialing capacity or access shall be required to configure the telephone or equivalent system to allow a person initiating a 9-1-1 call on the system to directly access 9-1-1 without an additional code, digit, prefix, postfix, or trunk-access code.
  
- B. A business owner or operator that provides residential or business facilities utilizing a telephone system or equivalent system as described in subsection A, shall configure the telephone or equivalent system to provide a notification to a central location on the site of the residential or business facility when a person within the residential or business facility dials 9-1-1, provided that the business owner or operator’s system is able to be configured to provide such notification without an improvement to the system’s hardware. The requirement of this subsection does not require a business owner or operator to have a person available at the central location to receive such notification.

**10. Indemnification.** Customer shall indemnify, defend and hold harmless DCS and Digium, Inc. from and against any and all loss, claim, liability, damage, cost or expense (including, without limitation, court costs and reasonable attorneys' fees) arising in connection with the receipt and use of the Services or in any way related to Customer’s performance under this Agreement, including, but in no way limited to, a breach by Customer of its representations and warranties, except those losses, claims, liabilities, damages, costs or expenses arising out of the willful misconduct of DCS, its employees, agents or other representatives.

**11. Limitation of Liability.** DCS AND DIGIUM, INC. SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT. ANY DCS AND DIGIUM, INC LIABILITY TO CUSTOMER FOR ANY DAMAGES OF ANY KIND UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO DCS UNDER THIS AGREEMENT. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT.

**12. Termination.** DCS may terminate all, or any portion of this Agreement, at any time, for any reason, upon sixty (60) days’ notice to Customer. Customer may also terminate this Agreement as a whole without cause by providing five (5) days prior written notice to [service@digiumcloud.com](mailto:service@digiumcloud.com) no later than sixty (60) days following the Effective Date.

Either party may terminate this Agreement, or any portion of this Agreement for cause, provided that the party wishing to terminate first provides written notice to the other party, specifying the alleged cause for termination. The breaching party shall then have a period of thirty (30) days from receipt of this notice to correct the situation. “Cause” is defined as (i) the failure of Customer to pay any amounts for Services that are undisputed (provided any disputes are reasonable and in good faith) and set forth on a DCS invoice within seven (7) days after the date of the invoice and this includes failure to pay due to a credit card being declined or insufficient funds in an ACH draft, (ii) Any material failure by a party to comply with or to perform any material nonpayment provision or condition of this Agreement and the continuance of such failure for a period of thirty (30) days after notice thereof to such party; or (iii) A party becomes insolvent, is unable to pay its debts when such debts become due, or is the subject of a petition in bankruptcy, whether

voluntary or involuntary, or of any other proceeding under bankruptcy, insolvency or similar laws; or makes an assignment for the benefit of creditors; or is named in, or its property is subject to a suit for appointment of a receiver; or is dissolved or liquidated.

If DCS terminates all or any portion of this Agreement for Cause or if Customer terminates all or any portion of this Agreement without cause without having provided DCS notice within the sixty (60) day window, Customer shall be responsible for the full remaining balance of all amounts owed for the remaining Term of the terminated portion of the Agreement, including, without limitation, payments for terminated Services, the balances of which shall be accelerated and due to DCS in full within thirty (30) days of said termination. If DCS elects to terminate other than for Cause (as prescribed above), then Customer shall be responsible for paying all amounts owed under this Agreement up and until the date of termination but shall not incur any termination liability.

Customer agrees that actual damages in the event of a termination by DCS for cause or an improper termination by Customer will be difficult or impossible to ascertain and that the amounts due as set forth in this section are intended, therefore, to establish liquidated damages and not intended as a penalty.

**13. Out-of-Service Credit.** Applicable Out-of-Service Credits, if any, are made available upon the following formula(s):

Unavailability Event Duration - Up to One Hour = 1 hr credit  
Unavailability Event Duration > 60Min = 1 day credit  
Aggregate duration of outages during a 30 day period > 8hrs = 1 week credit  
Aggregate duration of outages during a 30 day period > 18hrs = 1 month credit

Amount to be credited to the customer's account is established as follows:

Total Services Consumed Last Billing Cycle / 31 = 1 Day Credit  
1 Day Credit / 24 = 1 Hour Credit

**14. Service Suspension / Maintenance.** DCS may from time-to-time suspend a Service for routine maintenance. DCS shall provide Customer advance notification of the Service suspension. Such Service suspensions are not considered an out-of-service condition, provided that the Service is restored by the end of the period specified in the notification. This section is not intended to impact the ability of DCS to suspend or terminate a Service as otherwise provided in this Agreement.

**15. Intellectual Property / Proprietary Information.** Customer acknowledges that this Agreement is not intended to transfer ownership of any intellectual property. DCS shall continue to own and retain all of its intellectual property, including, but in no way limited to, patents, inventions, trade secrets, trademarks, service marks, trade names, logos, designations, copyrights and other proprietary rights, and Customer agrees that it will not at any time during or after the term of this Agreement, assert or claim any interest in or do anything that may adversely affect the validity of any trademark, service mark, trade name, logo, designation or copyright belonging to or licensed to the DCS (including, without limitation, any act or failure to act which may infringe or lead to the infringement of any of the proprietary rights) except that Digium, Inc. owns all rights to Switchvox Cloud Edition.

**Confidentiality.** Anything provided by DCS to Customer which is marked in writing so as to indicate it is confidential must not be used by Customer for Customer's own benefit, except in connection with the performance of this Agreement, or disclosed by Customer to any party other than the directors, officers and employees of Customer.

**16. Force Majeure.** If DCS's performance of any obligation under this Agreement is prevented, restricted or interfered with by causes outside of DCS's control such as acts of God, explosions, vandalism, cable cuts, storms, fires, floods or other catastrophes, power failure, national emergencies, insurrections, riots, wars, strike, lockouts, boycotts, work stoppages or other labor difficulties, or any law, order, regulation or other actions of any governmental authority, agency, instrumentality, or of any civil or military authority,

then DCS shall be excused from such performance on a day-to-day basis to the extent of such restriction or interference. DCS shall use commercially reasonable efforts under the circumstances to avoid or remove such causes of nonperformance with reasonable dispatch. If such occurrence occurs for a period of at least sixty (60) days, then Customer shall have the option to terminate this Agreement effective upon date of written notice to DCS, without liability.

**17. Notices.** All notices required or permitted to be given hereunder shall be in writing (including electronic mail sent to the addresses set forth on Page 1 of this Agreement) and deemed given (a) when personally delivered, (b) one (1) day after delivered to an overnight courier guarantying next day delivery, (c) three (3) days after deposited in the United States mail, postage prepaid, sent certified or registered or (d) the date the upon which the electronic mail was sent. All notices shall be addressed to the parties at the addresses specified above or to such other address as hereafter designated in writing by the applicable party in the manner provided in this Section 17 for the giving of notices.

**18. Attorneys' Fees.** If a proceeding is brought for the enforcement of this Agreement (including the collection of any amounts owed hereunder) or because of any alleged or actual dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs and expenses incurred in such action or proceeding in addition to any other relief to which such party may be entitled.

**19. Disputes.** Prior to invoking legal action against the other party due to a disagreement, claim, dispute or controversy relating to the terms of or performance under this Agreement or arising under this Agreement in any way ("Dispute), the party with the Dispute must send the other party written notice identifying the Dispute which notice must contain sufficient detail so as to permit the other party to make good faith efforts to attempt to resolve the dispute. Within fourteen (14) days after receipt of the written notice, executive representatives of the parties with authority to finally settle the dispute shall meet at a mutually agreed upon location, which may occur via a telephone conference call for the purpose of determining whether they can resolve the Dispute themselves by agreement. If the parties have not been able to reach a mutually acceptable resolution on the Dispute within fourteen (14) days after the initial meeting, then the parties shall resolve the matter in accordance with the procedures of this Section.

Any Dispute which the parties do not resolve in accordance with the above must go to mediation prior to either party filing suit against the other. Mediation shall be conducted in accordance with the laws and rules of the applicable jurisdiction, forum, and venue which are applied under Section 21. The parties will mutually agree upon a neutral mediator within thirty (30) days of receipt of a written request to mediate from the party with the Dispute. Neither party may unreasonably withhold consent to the selection of the mediator. If the parties are unable to agree upon a mediator, each party shall select one (1) mediator and the two (2) mediators shall select a third (3<sup>rd</sup>) mediator. This 3<sup>rd</sup> (third) mediator shall serve as the sole mediator and the other two (2) selected mediators shall no longer be involved in the mediation process following the selection of the third mediator. Each party will bear its own costs of mediation, but the parties will share the costs of the mediator equally. Each party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to finally settle the Dispute. If the Dispute remains unresolved thirty (30) days following the first date on which the parties attend a mediation session under this section, either party may then submit the Dispute to a court of competent jurisdiction. If contractual waiver of a jury trial is permitted by applicable law each party irrevocably consents to a bench trial and waives the right to a trial by jury as a means of relief for any Disputes relating to this Agreement. Neither party may take any legal action against the other, with the sole exception being that either party may obtain an injunction, until one business day following the unsuccessful conclusion of good faith efforts by both parties in mediation to resolve the Dispute. To the maximum extent permitted by applicable law, in no event shall actual damages awarded by a court exceed the amount set forth in Section 11 of this Agreement. All proceedings must be conducted in English.

**20. Marketing** Customer may unsubscribe from marketing communications sent by Digium and Digium Cloud Services at any time by clicking the unsubscribe button at the bottom of any marketing e-mail or un-

subscribing via <https://www.digium.com> by logging into the Customer's user account, going to manage e-mail subscriptions, and changing the settings as Customer wishes.

## **21. Miscellaneous Provisions.**

**Past Due Accounts.** In the event Customer is past-due on amounts owed, Customer shall not be entitled to any applicable out-of-service credit. In addition, DCS may, at its sole option, refuse to provide additional Services or allow Customer to place additional orders; place Customer's account on "hold"; and refuse to provide support for the Services, including the issuance of new "trouble tickets." Customer shall receive email notification that its account will be placed on "hold" unless Customer pays the past-due amounts, including any applicable fees. DCS shall not be responsible in any way for damages caused by or expenses incurred by Customer resulting from placing Customer's account on "hold".

**Privacy.** DCS collects, redistributes, and uses personally identifiable information and Customer Network Proprietary Information as detailed in the Privacy Policy and D.C.S. Customer CPNI Policy.

**Technical Support.** DCS shall not be responsible for any charges incurred by Customer for Customer's engagement of a third party to perform technical support, whether related or unrelated to the Services and/or devices used with the Services (except where specifically noted in an applicable service plan).

**Relationship of the Parties.** Nothing in this Agreement will create, or shall be construed to create, any partnership, joint venture, agency, franchise, sales representative or employment relationship between the parties.

**Severability.** If any provision of this Agreement is unenforceable under applicable law, that provision is automatically severed and the remaining provisions of this Agreement will be unimpaired and remain in full force and effect.

**Waiver, Remedies Non-Exclusive.** No failure of delay on the part of any Party in exercising any right or remedy provided in this Agreement will operate as a waiver thereof; nor will any single or partial exercise of or failure to exercise any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy provided herein or at law or in equity. Except as expressly provided herein, no remedy specified in this Agreement is intended to be exclusive of any other remedy, and each and every remedy will be cumulative and in addition to every other right or remedy provided herein or available at law or in equity.

**Applicable Law, Forum, jurisdiction, and venue.** This Agreement shall be governed by the laws of the USA and, to the extent that no federal law applies, the laws of the State of Alabama, USA, and by the applicable Rules which are specified in the Dispute Resolution Section of this Agreement. Forum jurisdiction and venue for any legal claims or actions arising under this Agreement shall be determined in accordance with such law. The United Nations Convention on International Sale of Goods, the application of which is expressly excluded, does not govern this Agreement.

**Headings.** The headings of the sections, subsections, and paragraphs of this Agreement are inserted for convenient reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

**Assignment.** The Customer may not assign this Agreement, in whole or in part, including without limitation by operation of law, without Digium Cloud Service's prior written consent. Any attempt to assign this Agreement without such consent will be null and void. Digium Cloud Services may assign this Agreement without the Customer's consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of each Party's permitted successors and assigns.



**Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the Parties related to the subject matter hereof and shall supersede and/or replace any and all prior or contemporaneous oral and written communications including but not limited to the terms of any purchase orders with conflicting or supplementary language.

**Amendments.** This Agreement may only be changed in a writing signed by an authorized representative of both Parties.

**Drafting.** Both Parties have had sufficient time to consult their counsel if desired) and both Parties understand and agree to all of the terms contained herein, so this Agreement shall be fairly interpreted in accordance with its terms without any presumption or strict construction in favor or, or against, either Party arising from the identity of the drafter.

**Execution.** This Agreement may be executed electronically, in counterparts, or facsimile copies, each of which will be deemed an original, but all of which together will constitute one and the same instrument.