

SWITCHVOX SUPPORT SUBSCRIPTION AGREEMENT

PLEASE READ CAREFULLY: BY CLICKING "I AGREE" YOU ARE AGREEING TO THIS SWITCHVOX SUPPORT SUBSCRIPTION AGREEMENT ("AGREEMENT"). THE DATE ON WHICH YOU CLICK "I AGREE" SHALL BE THE EFFECTIVE DATE OF THIS AGREEMENT. CLICKING "I AGREE" CONSTITUTES YOUR LEGALLY BINDING SIGNATURE. BY SUBMITTING THIS AGREEMENT, YOU CERTIFY THAT: YOU HAVE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT; YOU ARE CONSENTING TO BE BOUND BY ALL THE TERMS OF THIS AGREEMENT, ALL INFORMATION SUBMITTED BY YOU IS COMPLETE, 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 ARE NOT ELIGIBLE TO PURCHASE THE SUPPORT SERVICES DESCRIBED HEREIN. THIS AGREEMENT IS MADE BY AND BETWEEN DIGIUM, INC. AND AFFILIATES, COLLECTIVELY REFERRED TO AS "DIGIUM" AND THE PERSON OR ENTITY ACCEPTING THIS AGREEMENT ("YOU" OR "COMPANY"). IN CONJUNCTION WITH THIS AGREEMENT, DIGIUM AND YOU ARE REFERRED TO INDIVIDUALLY AS A "PARTY" OR COLLECTIVELY AS "PARTIES." DIGIUM HAS AN ADDRESS OF 445 JAN DAVIS DRIVE, HUNTSVILLE, ALABAMA 35806.

Version March 1, 2018

1. DEFINITIONS

- a. **"Advance Hardware Replacement"** means the policy in which Digium provides replacement Digium hardware to Company under an authorized RMA prior to receiving a corresponding defective piece of hardware from the Company under the RMA and which exists in the Warranty Section on the Digium Website, www.digium.com on the date listed on the applicable Order Form. Advance Hardware Replacement may or may not be included in the list of entitlements for a given subscription agreement. For purposes of clarification, Advance Hardware Replacement shall not apply to hardware which is not under warranty at the time Company contacts Digium Technical Support to request an RMA under this section.
- b. **"Business Hours"** means from 8am-5 pm at the registered Switchvox server's location.
- c. **"Confidential Information"** means information, which has been marked as Confidential in writing by Company, provided to Digium which is necessary to allow Digium to complete its performance under this Agreement (for example passwords and configurations). If information is disclosed orally and Company wishes for the information to be considered Confidential Company must identify it as confidential at the time of the disclosure and follow up with a written summary to Digium of the disclosure indicating, it is to be considered confidential within thirty (30) days of the disclosure. **Company is responsible for their own system security and Company is advised by Digium to remove remote access accounts after Digium representatives have used passwords provided by Company to complete remote work.**
- d. **"Documentation"** is defined as the terms and conditions of this Agreement and the list of entitlements that come with the Subscription Level. A current list of entitlements may be found at <https://www.digium.com/products/business-phone-systems/on-premise/subscriptions> and shall be binding on Company subject to the notice and modification requirements contained herein.

- e. **“Effective Date”** means the Effective Date indicated on the applicable Order Form for which Support Services are to begin.
- f. **“Engineering Support”** includes advanced troubleshooting of program errors (bugs), attempting to correct bugs, and providing updated versions of Switchvox according to Digium’s normal release cycles. Engineering Support shall occur after Digium Technical Support has confirmed an Incident to be a bug and escalated to Engineering by opening a ticket in the Engineering issue tracker, which is linked to the Tech Support ticket. Engineering Support does not include adding new features to Switchvox, providing programming assistance, nor creating customized scripts, applications, or programs for the Company. Digium reserves the right to qualify incoming bugs and, when appropriate in Digium’s discretion, respond with either “not a bug” or “cannot be fixed.” In the event Engineering closes a ticket with a “cannot fix” or “will not fix” response, that Incident will not count towards the number of Included Incidents. Digium cannot guarantee that a qualified bug will be fixed through Engineering Support, but only that it will provide advanced troubleshooting of the bugs and attempt to correct them. Engineering Support shall only be available on current (meaning the date the ticket is opened in the Engineering issue tracker) releases of Switchvox. If the Company is using an unmaintained version, the Company will be asked to upgrade.
- g. **“Included Cases” or “Included Incidents”** means the number of cases that the Subscription includes as part of the Support Services provided by Digium to Company.
- h. **“Incidents” or “Cases”** mean a single problem, technical question, or issue about Switchvox that the Company identifies to Digium via a phone call to the Digium Technical Support at +1 256 428 6000 or web report sent to the Digium Support Center, and for which the Company desires assistance from Digium. Each Incident may involve a number of phone calls, emails, web responses or other interactions with Company as required to bring about an acceptable resolution or determination. The number of included Incidents is defined by Subscription Level in the Table of Entitlements. Incidents or Cases which have not been used by Company at the end of a Term will not be rolled over for use in the next Term, nor shall Incidents or Cases which have not been used by Company upon the termination or expiration of this Agreement be refunded or credited to Company.
- i. **“Initial Term”** means the period, beginning upon the Effective Date, and whose length is designated on the Company’s Order Form.
- j. **“Maintenance”** means Updates to Switchvox, including: bug fixes, minor point-code, and major releases. For example, if Company purchased Switchvox SMB at version 5.10 is entitled to any point code releases (5.11) or any major releases (6.0) which occur within twelve months of Company’s original activation of the project. Maintenance and Support are sold as a bundle per User at the Titanium and Platinum Subscription levels.
- k. **“Named Contact”** means the certain technical contact person or persons who are identified by the Company by name and who may contact Digium for initiating

Incidents under this Agreement. Named Contacts are also allowed access to the full case history, and are copied on all case-related correspondence. Company may change the Named Contact with commercially reasonable advance prior written notice to Digium through the customer portal. The Named Contact shall receive notifications of updates, releases, status of open support cases, and other notifications under this Agreement.

- l. **“Order Form”** means the (a) the applicable order form document signed by the parties or otherwise accepted by Digium or (b) Company’s Switchvox order placed via Digium’s online web store at the Digium Website. If Company has ordered Switchvox through a third party such as a Digium Authorized Reseller or Distributor, then the Order Form means the third party’s order information as provided to Digium.
- m. **“Renewal Term”** means one or more successive one-year periods set forth in **Section 4** or as otherwise agreed in writing by the parties.
- n. **“Remote Troubleshooting”** means Digium support technicians or engineers using electronic methods to securely log into and attempt to identify and resolve issues. Company’s servers will need to be accessible via the Internet in order for Digium to perform Remote Troubleshooting, and Company may need to make temporary changes to Company router or firewall configurations to facilitate remote troubleshooting.
- o. **“Subscription”** means the Titanium or Platinum Subscriptions and any future levels of Subscriptions offered by Digium under this Agreement. Digium reserves the right to discontinue a Subscription effective upon date of written notice; however, if this occurs Digium will provide a migration path to another Subscription. Titanium support is provided indirectly to Company. The support is provided directly to the dSSE authorized Digium channel partner who purchased it from Digium. If this is purchased Company may not call Digium directly, the support request must go through the Digium authorized channel partner. Direct support is available by purchasing (or upgrading to) Platinum.
- p. **“Subscription Fee”** means the fees set forth in the applicable Order Form and as stated in this Agreement.
- q. **“Support Services”** or **“Support”** means collectively Technical Assistance, Remote Troubleshooting, and support for Switchvox including support of Switchvox in a virtualized VMWare environment when deployed using an official Digium-provided OVA file. Information on support of Switchvox in a virtualized environment can be found here <http://kb.digium.com/articles/FAQ/Can-I-use-Switchvox-in-a-Virtualized-Environment> Support Services does not include support for Switchvox that has been modified, on-site support, system design, system architecture, system implementation, network design, system architecture, system implementation, network design or architecture, nor configuring systems for clustering, redundancy, or backup or Engineering Support. Digium cannot guarantee any level of performance for an unknown hardware configuration. If Company is using Company’s own hardware or third-party hardware and encounters an issue, Digium technical support will attempt to assist until such time as Digium technical support, in their sole discretion, determines that the issue may be hardware related. At that point, Digium, in its sole discretion, may require that Company resolve the issue on their own or purchase Switchvox

hardware. **The Switchvox installation will delete any existing data on Company's server.** Maintenance and Support are sold as a bundle per User at the Titanium and Platinum Subscription levels. Support is sold separately only when purchasing legacy Gold Subscriptions.

- r. **"Switchvox"** for purposes of this Agreement means the software included by Digium in premises based Switchvox systems sold by Digium and associated documentation, updates and upgrades to the software.
- s. **"Switchvox User"** or **"User"** means a license for one phone extension. A phone extension can be created for every Switchvox User purchased. A Switchvox User does not carry any support entitlement directly; however, Switchvox Users can be sold bundled with a Subscription.
- t. **"Term"** means either the Initial Term or a Renewal Term, as applicable.
- u. **"Technical Assistance"** means providing assistance or answering questions related to installation, configuration, and basic troubleshooting of Switchvox. Technical Assistance does not include Engineering Support. **Technical Assistance does not include configuring or assisting in the setup of Switchvox to perform calls to emergency services (e.g. 911).**
- v. **"Update"** means using the updates page to move to a later version of Switchvox that is currently being used.
- w. **"Web Case Initial Response Time"** means the targeted maximum time that Digium will make commercially reasonable efforts to initially respond to Cases that are opened through the Digium Web Case Management System. For clarification, this is the maximum time by which Digium shall respond to Cases, not the maximum time in which Digium shall close Cases. There is no SLA (service level agreement) contained in this Agreement relating to minimum or maximum times in which bugs must be fixed by Digium.
- x. **"Web Case Management System"** is the password-protected subscriber portal on the Digium Website that is designated by Digium for the Company to initiate Cases and to provide information about open Incidents.

2. SUPPORT SERVICES

- a) Digium shall provide commercially reasonable efforts to perform Support Services to Company for Switchvox. Company agrees it will use or apply such Support Services on no more than the number of extensions it purchases. The scope of Support Services provided to the Company under this Agreement is subject to the type of subscription listed in the Table of Entitlements for Support Subscriptions, which is provided as **Exhibit A** and the terms of which are incorporated herein.
- b) Company may receive the Support Services for no more than the total number of extensions for which Subscription Fees have been paid or will be paid according to **Section 4**. All users must have the same Subscription Level.
- c) Any unauthorized use of Support Services shall be deemed to be a material breach of this Agreement and may result in immediate termination.

- d) All information concerning Company's business, employees, customers, operations, or other data that may be incidentally obtained or viewed by Digium personnel during troubleshooting or performing Support Services for Company's systems or users shall be deemed Confidential Information.
- e) Switchvox user licenses comes with one year of software maintenance, beginning from date of activation, not to exceed 90 days from the date of shipment/delivery by Digium to a customer (distributor, reseller, end user, or OEM). Subscriptions added after the initial activation will come with up to one year of support, which runs concurrently with the existing support for Switchvox. For systems with multiple years of support, an additional renewal may be necessary when adding new subscriptions.

3. DELIVERY

- a) Company may obtain Switchvox by purchasing a Switchvox system from Digium or a Digium authorized channel partner. In order to provide the Support Services, Digium shall provide to Company's Named Contact via email within 1 business day of Digium's acceptance of the Order Form a password to Digium's customer portal on the Digium Website.

4. ADDITIONAL EXTENSIONS, UPGRADES, RENEWALS

- a) The following extension types require a Switchvox User: SIP Phone or SIP Adapter for Analog Phone (ATA), Analog Phone, and Virtual Extension. Additional phones attached to a person's main extension do not require a Subscription. The following extension types do NOT require a Switchvox User: IVR (Interactive Voice Response), Call Queue, Agent Log In, Agent Log Out, Simple Conference Room, Meet-Me Conference Room, Group Pickup, Intercom/Paging, Directory, Voicemail Access, Call Parking, Dial Tone, Feature Codes. Upgrades can be purchased at any time to change the existing Subscriptions plan to Platinum. Once the Subscription has been upgraded the Company pays the renewal price for that new support level.
- b) Switchvox Users must have their Subscriptions renewed to: continue to receive technical support and apply software updates. Renewals are purchased in one-year, two-year, or four-year increments. Renewals may be purchased at the same time a system is initially purchased. Purchasing a two-year renewal provides a total of three years of support (the first initial year of support plus the two years of the two-year renewal) and a four-year renewal provides a total of five years of support (the first initial year of support plus the four years of the four-year renewal). Multi-year renewals do not have to be purchased at the same time a system is initially installed to receive the multi-year discount.
- c) When renewing, all subscriptions on the system will need to be renewed regardless of the date they were activated. Example: If the system is initially activated with 10 Platinum subscriptions with one year of support and maintenance and 5 more subscriptions are added 3 months later, the renewal must include the software maintenance as well as 15 Platinum subscription renewals.
- d) If Company does not renew the Subscriptions, Digium's obligation to provide Support Services and updates of Switchvox terminates at the end of the initial one-year period or expiration date. If Subscriptions lapse, the software itself will continue to function with the following exceptions: any advanced Switchvox feature (for example, the Digium-hosted

Switchboard panels) will not function; Company will be unable to add any additional extensions, unless Company purchases an Switchvox user for Expired or Legacy Support Level Systems. Company will be unable to view, retrieve, or apply additional software updates, including bug fixes.

- e) The Subscription expiration date can be found in the Web Suite at Server>Maintenance>Updates. If Subscriptions lapse, then the following applies: Company is subject to a Support Reinstatement Fee of \$385.00 in addition to the Subscription renewal costs; Renewals will backfill to the original date of expiration. For example, if Company's Subscription expired 5 months ago and Company purchases a one-year renewal today, Company's subscriptions will expire seven months from today, not 12 months from today.

5. PAYMENT TERMS

- a) Fees are due on the Effective Date or the beginning date of each Term as specified on the Order Form. Digium will make reasonable efforts to notify Company at least **thirty (30) days** prior to the commencement of each Renewal Term and may provide a renewal option through the customer portal.
- b) Amounts due shall be considered paid when Digium is in receipt of the amount due or upon confirmation of receipt by a bank designated by Digium. All payments hereunder shall be in U.S. dollars.
- c) Upon written notice to Company, Digium may elect to suspend or discontinue Support Services to the Company under this Agreement if payment is not received for an applicable Term by the date due. Such suspension shall continue until all applicable due payments, including late payment fees and payments for the payment for the length of the suspension period, are received by Digium. If Switchvox is purchased through a reseller rather than directly through Digium, Company's Support Services may at Digium's option be suspended if the reseller fails to pay all amounts due to Digium.
- d) The fees due under this Agreement are exclusive of, and Company shall pay for, shipping, any sales, use, property, value added or similar taxes, federal, state, local or international taxes, or other charges imposed on or with respect to the Support Services, or their use, application, delivery, or possession, except taxes based upon the net income of Digium. Company will be responsible for all applicable sales taxes unless it claims a sales tax exemption by providing Digium, prior to the beginning of the Term, a tax exemption certificate acceptable to the applicable authorities.

6. TERM AND TERMINATION.

- a) This Agreement shall commence on the Effective Date and continue for the Initial Term unless terminated earlier as set forth below. Thereafter, this Agreement shall renew if prior to the expiration of the then current Term Company takes action to renew as detailed in Section 4.
- b) **Termination for Cause**. Either Party may terminate this Agreement for cause. For cause includes, without limitation, situations where the Company fails to make payments

specified in the Agreement, or Digium or Company materially neglects or fails to perform, or breaches a material obligation of this Agreement, and such neglect, failure, or breach continues un-remedied for a period of thirty (30) days after receipt of written notice by the other Party of the breach. Either Party may also terminate this Agreement for cause if the other Party becomes insolvent, proposes any dissolution, liquidation, financial reorganization or similar proceedings with respect to its property or business, and such continues un-remedied for a period of five (5) days after receipt of written notice of the other Party's objection to the aforementioned occurrences. If the applicable thirty (30) or five (5) day time period expires without a satisfactory showing that such breach or occurrence has been cured, this Agreement shall terminate for cause without any additional notice being required.

- c) **Termination without Cause.** Either Party may terminate this Agreement without cause by providing the other party sixty (60) days prior written notice.
- d) **Effect of Termination:** Following any termination or expiration of this Agreement, Company shall within thirty (30) days of the termination or expiration date make to Digium any payments owing or accrued as of termination and both parties shall cease distributing, displaying, or making available to any party any marketing material that references the relationship between the parties under this Agreement. In no event, including but not limited to in the events of termination for or without cause, shall Company be entitled to a refund of any Subscription Fee paid by Company and in no event shall Company be entitled to a credit or refund of unused Incidents or Cases. Upon termination or expiration of this Agreement for any reason, Company shall have no further rights to receive or use any Support Services under this Agreement. Upon termination or expiration of this Agreement, the Parties' rights and obligations under following Sections shall survive: Sections **1, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, and 22.**

7. RESERVATION OF RIGHTS.

- a) For purposes of clarification, this Agreement provides support and services on software which has been previously purchased or otherwise obtained independently of this Agreement. The agreement under which Company purchased or obtained the software contains the applicable license terms which governs Company's use of the software. This Agreement standing alone does not grant any license to the software. Company shall not acquire or obtain any rights in, to, or under any patents, patent applications, copyrights, or other intellectual property rights with respect to Switchvox. Nothing in this Agreement should be construed as transferring any aspects of such rights to Company or any third party. Digium and its suppliers reserve any and all rights (including copyright and trademarks) not expressly granted in this Agreement. Company agrees that all goodwill associated to Digium trademarks shall inure to the benefit of Digium.
- b) Except where allowed by the licenses of the respective software (such as to the extent portions of the software may be provided by Digium under Open Source licenses), Company shall not reverse engineer Switchvox or any Digium hardware products, nor knowingly permit any third-party to engage in the foregoing except as expressly permitted by the terms of this Agreement or other applicable license or written agreement. Company shall promptly notify Digium of any known or suspected breach of rights in Switchvox, trademarks or patents that may come to Company's attention.

- c) Any representations made by Company concerning Switchvox shall be consistent with the Documentation and the terms of this Agreement.
- d) Digium and Company shall mutually agree upon any joint press release or press announcement which may take place as a result of the execution of this Agreement or related to the performance of any Support Services provided hereunder. Any interviews with the press or analysts regarding the Agreement or Support Services shall be upon mutual agreement and coordinated by Digium with the cooperation of Company.

8. WARRANTY AND DISCLAIMER.

- a) Digium warrants that during each Term it will use its commercially reasonable efforts to provide the Support Services in a professional manner by qualified personnel. Except for the foregoing, **THE SUPPORT SERVICES ARE PROVIDED TO COMPANY "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND. ADDITIONALLY, NO WARRANTIES CONCERNING SWITCHVOX IS PROVIDED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DIGIUM AND ITS SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY FITNESS FOR A PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT. DIGIUM AND ITS SUPPLIERS DO NOT WARRANT THAT SWITCHVOX OR SUPPORT SERVICES WILL MEET COMPANY'S NEEDS OR THAT THE OPERATION OF SWITCHVOX WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.**

9. EMERGENCY CALLS

- a) Company understands and acknowledges that Switchvox may be used to implement, supplement, or replace telephone systems and telecommunications services, and that in some cases, certain government regulations may apply to their implementation or use; and compliance with such regulations is Company's sole responsibility. Company understands and acknowledges and that users of the system on which Company installs Switchvox may attempt to use that system to place emergency calls. Company acknowledges and agrees that: Switchvox must be properly configured for Company's system or application; that the nature of Switchvox and any networks they may operate upon allow many possible configurations; that such configuration may be beyond the scope of the documentation supplied with Switchvox; that specialized experience and training may be required to properly configure Switchvox; and that the proper configuration of Switchvox is not guaranteed by Digium under this Agreement. Company acknowledges and agrees that it is Company's sole responsibility to ensure that Switchvox and associated networks and systems are implemented and configured such that emergency calls are properly handled, that any system or application based on Switchvox complies with all applicable laws and regulations; and that Digium has no obligation or liability for performing such services under this Agreement. Company acknowledges and agrees that telephone and telecommunications systems can be complex and must be installed, implemented, and configured by the appropriate technically qualified personnel, and represents that Company or Company's authorized agents or consultants have the qualifications necessary to properly implement and configure Switchvox to handle emergency calls, if applicable. Company further acknowledges and agrees that it is Company's sole and ongoing responsibility to ensure the proper operation of any emergency calling system based on Switchvox, including, but not limited to: initially and regularly testing the operation of Switchvox, including testing the operation with emergency services; notifying and training all users of any system on

which Switchvox are installed how to use the system for emergency calls; and notifying such users of any and all limitations of Company's configuration and implementations of Switchvox and any network or system Switchvox is used on or with. **COMPANY EXPLICITLY RELEASES DIGIUM FROM ANY LIABILITY, DUTY, OR OBLIGATION TO ASSIST OR TRAIN COMPANY, ITS USERS, NAMED CONTACTS, OR OTHER PERSONNEL: (A) REGARDING THE PROPER INSTALLATION, CONFIGURATION, OPERATION, OR USE OF SWITCHVOX OR ANY OTHER SYSTEM OR NETWORK THAT SWITCHVOX IS OR MAY BE USED WITH; OR (B) TO DETERMINE, VALIDATE, TEST, OR ASSURE WHETHER COMPANY'S DESIGNS, INSTALLATIONS, CONFIGURATIONS, IMPLEMENTATIONS, OR PLANNED OR ACTUAL USE OF SWITCHVOX PROVIDES FOR OR SHOULD PROVIDE FOR THE PROPER HANDLING OR ROUTING OF EMERGENCY CALLS; OR (C) TO ENSURE THAT COMPANY'S PLANNED OR ACTUAL USE OF SWITCHVOX IS IN COMPLIANCE WITH ANY APPLICABLE LAWS AND REGULATIONS.**

10. CONFIDENTIALITY

- a) Digium agrees that all information disclosed by Company to complete the purpose of this Agreement and marked so as to indicate it is confidential in accordance with Section 1.35 shall be considered the Confidential Information of Company. Except as expressly and unambiguously allowed herein, Digium will hold the Company's Confidential Information in confidence and not disclose any Confidential Information of the Company to any third parties for at least **five (5) years following the termination or expiration date of this Agreement**, except under a written agreement no less restrictive than the terms of this Section, and will treat Company's Confidential Information with the same degree of care taken to protect its own similar Confidential Information but in no event with less than reasonable care. Digium further agrees to limit disclosure of such Confidential Information to those of its employees and contractors who have a need for such information pursuant to the rights and obligations permitted under this Agreement and who are bound under a written agreement to keep such information confidential. For purposes of this Agreement Digium's standard employee agreement covering Confidential Information issues shall satisfy this requirement with respect to its employees.
- b) Notwithstanding the foregoing, Digium shall not be required to protect or hold in confidence any information which:
- i. becomes publicly known through no wrongful act or omission of any person or entity, or
 - ii. becomes known to Digium rightfully from a third party not under a duty of confidentiality or non-disclosure or a restriction or obligation with respect to use or disclosure; or
 - iii. is approved by Company for disclosure without restriction in a written document which is signed by a duly authorized officer of the disclosing party; or
 - iv. is independently developed by Digium without use of Company's Confidential Information.
 - v. Disclosure of Confidential Information shall not be precluded if such disclosure is:
 - vi. necessary to establish or exercise rights granted under this Agreement; or
 - vii. required by law or regulation or in response to a valid order of a court or other governmental body of a country or political subdivision thereof.
- c) Digium agrees that in the event such disclosure is necessary or required, it will cooperate, as may be reasonable, at Company's expense, in obtaining an appropriate

protective order limiting disclosure.

- d) All Confidential Information disclosed by Company together with all copies thereof which have been made by Digium shall remain the property of the Company.

11. LIMITATION OF LIABILITY

- a) TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL DIGIUM BE LIABLE UNDER ANY CONTRACT, FOR NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY LOSS OF USE OF SWITCHVOX, INCONVENIENCE, PUNITIVE, OR INDIRECT DAMAGES OF ANY CHARACTER, WHETHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO, BUSINESS INTERRUPTION, LOSS OF REVENUE OR PROFIT, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, FAILURE OF CONNECTED EQUIPMENT OR PROGRAMS, LOSS OF INFORMATION OR DATA, OR LOSS OF GOODWILL) RESULTING FROM THE USE OF SWITCHVOX, RELATING TO THE USE OR AVAILABILITY OF THE SUPPORT SERVICES, OR ARISING OUT OF ANY BREACH OF THIS AGREEMENT, EVEN IF DIGIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE MAXIMUM LIABILITY OF DIGIUM UNDER THIS AGREEMENT IS LIMITED TO THE AMOUNT PAID TO DIGIUM UNDER THIS AGREEMENT. THE FOREGOING EXPRESS REMEDIES ARE EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES OR REMEDIES, WHETHER EXPRESS, IMPLIED OR STATUTORY. THE FOREGOING LIMITATION OF LIABILITY ALSO APPLIES TO THE AMOUNT A COURT OR JURY IS AUTHORIZED TO AWARD.

12. FORCE MAJEURE

- a) Except for payments owed by Company under this Agreement, neither Party shall be liable to the other for any alleged loss or damage resulting from failure to perform due to Acts of God, natural disasters, acts of civil or military authority, fire, floods, epidemics, quarantine, unavailability of communications facilities or energy sources, strikes, delays in transportation, wars, riots, terrorism, acts of the other party, or any causes beyond a Party's reasonable control. Each Party shall promptly notify the other Party of such event. In the event of the occurrence of any of the foregoing, the date of performance shall be deferred for a period of time, not to exceed **thirty (30) days**, equal to the time lost by reason of the delay. If the delay continues past the **thirty (30) day** time period, the party not asserting the Force Majeure clause may terminate this Agreement in writing with no further notice and no further liability to the other party, except for obligations, including Company's payment obligations, arising prior to the termination of this Agreement. In no event, shall Digium be responsible for refunding payments made by Company under this Agreement, even in the event of an act of force majeure.

13. EXPORT COMPLIANCE

- a) Company acknowledges that Switchvox, with the exception of certain third-party components, is of U.S. origin. Company agrees to take all reasonable steps to ensure that distribution of Switchvox complies with all applicable export laws relating to Switchvox, including the U.S. Export Administration Regulations and is not exported to prohibited entities or destinations. Company shall indemnify and hold Digium harmless from any violation of this Section and shall indemnify Digium for failure by Company's distributors, resellers and agents for their failure to comply with such applicable export laws and instructions.

14. NONEXCLUSIVE

- a) Nothing in this Agreement shall preclude either party from entering into similar relationships with other companies, nor shall this Agreement preclude either party from independently developing or marketing any products that are similar to or compete with the other party's products; provided, however, that the recipient of Confidential Information shall not use it for any such purpose.

15. DISPUTE RESOLUTION

- a) Subject to the right to obtain injunctive relief as described below, the Parties agree to solely use the following process with regard to any Dispute. The Party with the dispute, disagreement, claim, or controversy ("Dispute") arising under, out of, or in connection with this Agreement must send the other Party written notice identifying the Dispute with sufficient detail so as to enable the other Party to attempt to resolve the Dispute and invoking the procedures of this Dispute resolution section. Within **seven (7) days** after receipt of the written notice, the Parties, or representatives of the Parties, shall meet at a mutually agreed upon location, which may be on a telephone conference call at which all parties with authorization necessary to authorize a settlement are present, for the purpose of determining whether they can resolve the Dispute themselves by agreement, and, if the parties have not been able to reach a mutually acceptable resolution on the Dispute within **seven (7) days** after the initial meeting, then the parties must further attempt to resolve the Dispute by attending mediation with a mutually agreed upon mediator in a mutually agreed upon location. Each Party will bear its own costs of mediation and the Parties will share the costs of the mediator equally. Each Party must participate in the mediation in good faith and must be represented at the mediation by a business executive with authority to finally settle the Dispute. If the Dispute remains unresolved following good faith efforts at mediation either Party may then submit the Dispute to a court of competent jurisdiction subject to the choice of law and forum clause of this Agreement. If contractual waiver of a jury trial is permitted by applicable law, the Parties agree that they irrevocably waive their right to a trial by jury and consent to a bench trial. The Parties agree to refrain from instituting any legal action, other than injunctive relief until good faith efforts at mediation have first been made. To the maximum extent permitted by applicable law, in no event is a court or jury authorized to make an award in excess of the amount set forth in the limitation of liability and exclusion of damages limitation in this Agreement.

16. LANGUAGE

- a) The Support Services and all related documentation and correspondence provided under this Agreement shall, unless otherwise agreed in writing by both parties, be provided in the English language. Any action brought under this Agreement shall be conducted in the English language.

17. ASSIGNMENT

- a) Neither party shall assign this Agreement to any third party without the prior written consent of the other, provided, however, that the merger or consolidation of a party into, or the sale or spin-off of substantially all assets of a party to, a third party shall not be deemed to be an assignment.

18. GOVERNING LAW, FORUM JURISDICTION AND VENUE

- a) This Agreement shall be governed by and construed under the laws of the USA, and to the extent no federal law applies the laws of the State of Alabama. Forum, jurisdiction, and venue shall be determined in accordance with such law.

19. WAIVER

- a) Neither party shall be deemed, by any act or omission, to have waived any of its rights or remedies under this Agreement unless such waiver is in writing and signed by an authorized officer of such party. Such a waiver shall be limited specifically to the extent set forth in said writing. Any waiver by either party of a term or condition of this Agreement in any instance shall not be deemed to be a waiver of any subsequent breach thereof, or of any other provision. All remedies, rights, undertakings, obligations and agreements contained in this Agreement shall be cumulative, and none of them shall be in limitation of any other.

20. NOTICES

- a) All notices, approvals, consents, waivers and other communications under this Agreement must be in writing, sent via facsimile, e-mail, certified mail, verifiable overnight delivery, or registered mail to the other party at the business or email addresses furnished herein or to such other address as may be furnished in writing to the other party. Notices shall be deemed effective upon receipt or if sent via e-mail on the fourth day following sender's e-mail transmission to recipient (if no error return message is delivered to sender within the four-day time period). Company agrees that the Named Contact shall be the designated e-mail address under which it shall receive e-mail notifications.

21. ENTIRE AGREEMENT AND MODIFICATIONS

- a) This Agreement, including **Exhibit A** attached to this Agreement and incorporated as a part thereof, represents the complete agreement of the parties, and supersedes all prior discussions, communications and agreements between the parties with respect to the subject matter hereof. This Agreement may be amended or modified only in a writing executed by both parties. The provisions of this Agreement shall take precedence over any conflicting terms in any purchase order. There are no intended third party beneficiaries of this Agreement.

22. SEVERABILITY

- a) If any of the provisions, or part thereof, of this Agreement shall be invalid or unenforceable under the laws of the applicable jurisdiction, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or part thereof, and the rights and obligations of the parties shall be construed and enforced accordingly. The titles of the Sections and Exhibits in this Agreement are provided for convenience and reference only and are not intended to be considered when construing this Agreement.

EXHIBIT A: TABLE OF ENTITLEMENTS

Subscription Level: Gold (Legacy)
9x5 phone and online support
Response within 24 hours of online support request, Monday-Friday
No Incidents outside of Business Hours†
Subscription Level: Platinum
24x7 phone and online support
Response within 4 Business Hours of online support request, Monday-Friday
Maximum of 5 after-hours† Incidents per year
Subscription Level: Titanium
Access to 2 nd level support 24x7 via an dSSE (Digium Switchvox Support Engineer) certified Digium Channel Partner
Response within 4 Business Hours of online support request, Monday-Friday
Maximum of 5 after-hours† Incidents per year
† Business Hours are Monday through Friday, from 8:00 AM to 5:00 PM at the registered Switchvox server's location. Based on Subscription level, after-hours support is available for critical severity Incidents, such as a server crash or issues affecting all calls.