

IMPORTANT - READ CAREFULLY

This Digium Online MAINTENANCE AGREEMENT (the "Agreement") is a legal agreement between Digium, 150 West Park Loop, Suite 100, Huntsville, Alabama, 35806 and the entity (hereinafter, "Company") for Digium software, hardware, and associated documentation (collectively the "Products") and Digium Services (hereinafter, "Services"). If company does not agree, or is not authorized to agree with the terms and conditions of this Agreement, then company should not accept this Agreement.

TERMS AND CONDITIONS.

1. ACCEPTANCE.

Company accepts the annual maintenance plan elected in the online order and agrees to payment of the respective Annual Fee as adjusted from time to time pursuant to Section 8 below. All Digium hardware and software utilized by Company must be maintained under the same plan level.

1.1 Company shall manifest its acceptance of the terms and conditions of this Agreement by engaging in the following action:

(a) Following placement of an order, Company places a check mark in the acceptance button before proceeding to the checkout phase of the order placement.

1.2 Company shall receive validation of its consent to this Agreement in the following two ways:

(a) Company shall receive an e-mail confirmation of its purchase order and the e-mail shall contain a link to this Agreement along with a reminder that by taking the action listed in 1.2 of this Agreement Company consented to the terms of this Agreement.

(b) Company's user account shall contain a link to this Agreement along with a reminder that by taking the action listed in 1.2 of this Agreement Company consented to the terms of this Agreement.

2. SERVICES PROVIDED.

Provided that Company is current in any undisputed payments required under any agreement with Digium, during the term of this Agreement, Digium agrees to provide in accordance with the elected Plan, the following services:

2.1 Digium agrees to provide call center availability and remote technical support to Company during the hours of the Plan. Company shall report issues through the customer support hotline or web page designated by Digium. Digium will use reasonable commercial efforts to respond to reported issues that are verifiable and reproducible failures of the covered hardware or software to operate substantially in accordance with Digium's documentation therefore ("Problem(s)") within the Plan service level commitment from the time of remote diagnosis.

2.2 Digium agrees to replace Digium hardware that is the subject of a Problem, arising out of the malfunction or failure to operate of such hardware, which cannot be remedied by Digium in accordance with this Agreement, without additional charge to Company, provided that notice of such Problem is provided to Digium in writing prior to the expiration or termination of this Agreement. Digium will use reasonable commercial efforts to ship hardware replacement parts the same business day for such hardware Problems diagnosed before 4pm CST or the next business day for hardware Problems diagnosed after 4pm CST. If at any time there has been a time period during which (i) the hardware which is the subject of a Problem has not been covered by a paid-

up Digium maintenance plan agreement and (ii) the original warranty period for such hardware has expired or the Problem otherwise is not covered by the original warranty, then Digium shall have no obligation to remedy or replace such hardware, but may elect to do so in Digium's sole option.

2.3 Digium agrees to provide Company with access to Digium software updates and upgrades as are generally made available to maintenance customers by electronic transfer through the Digium customer support web page. Digium agrees to provide remote installation assistance for such software updates and upgrades.

3. EMERGENCY ONSITE ASSISTANCE.

If a problem cannot be remotely diagnosed or resolved and Digium deems onsite attention is necessary, Digium may, at its sole option, elect to provide such onsite assistance upon request by Company at Digium's then-prevailing time and materials rate. Alternatively, Company may elect in advance to include as part of Company's Plan metro area onsite emergency assistance services, which additional services are available as a fee-based addendum to the 7x24x4 HR plan. Additional charges, at Digium's then-prevailing rates, may apply if the Digium representative must (a) wait more than one hour after arrival to commence servicing, (b) attend or remain onsite for pending resolution of issues unrelated to Digium hardware or software, (c) provide services not covered under the scope of the Plan, (d) perform services on hardware or software not covered by this Agreement, or (e) travel to an onsite location at Company's specific request or because remote access or diagnosis as specified in Section 3 is not permitted by Company or is impractical due to Company policies, procedures, systems, or regulations, when Digium does not deem emergency onsite assistance to be necessary.

4. UPGRADE OF PLAN.

Company may upgrade to a higher level plan at any time upon payment of a fee equal the greater of (i) one-half the annual fee then in effect for the higher level plan or (ii) an amount equal to the annual fee then in effect for the higher level plan prorated to cover only the number of months remaining in current term of Company's current Plan (e.g., $1/12 \times \text{annual fee} \times \text{number of months remaining in current term}$). If Company allows its existing Plan to lapse, in addition to the foregoing, the Company shall pay retroactively all annual support fees from the date of the lapse in order to reinstate the Plan, and Digium shall have no obligation to provide any services, updates or upgrades unless and until full payment has been made by Company for all fees payable since the lapse of the Plan, and shall have no obligation to provide replacements for hardware unless pursuant to Section 2.2 hereof.

5. EXCLUSIONS.

5.1 The following services are not included as maintenance services that Digium is obligated to perform pursuant to this Agreement, but Digium may in its sole discretion elect to provide such services hereunder in accordance with 5.2 below.

(a) providing consumables and standard supplies (including without limitation, documentation, fans, cables, batteries, housings, power cords, labels and accessories are not covered under this Agreement, and Company is solely responsible for remedy and replacement of such items) for use on-site, even if consumed while providing maintenance, warranty, or support services;

(b) maintenance due to usage in an environment that violates parameters set forth by Digium in documentation for the software or hardware at issue;

(c) maintenance, repair, and replacement because of:

(i) abuse, misuse, accident, neglect, or loss or damage to the hardware or software due to a cause or causes external to the hardware or software that are prohibited by Digium or the documentation (or that a reasonable person in the industry would recognize as an abuse, misuse, or neglect of the hardware or software) and which causes or causes are not approved or recommended by Digium;

(ii) Company's failure to perform necessary backups; or

(iii) failure by Company to properly perform Company's responsibilities as described in this Agreement;

(d) maintenance services with respect to any modifications to the hardware or software made by Company, or its agents or third parties, except as recommended or approved by Digium;

(e) on-site preparation and maintaining a proper environment or Problems arising in connection with Company's failure to prepare and maintain a proper environment; or

(f) Problems with third party hardware or software or Problems caused by third party hardware, software or communications.

5.2 If Digium determines that a Problem or other issue is not covered by this Agreement, then Digium shall not be obligated to remedy, repair or replace the affected hardware or software. However, in the event Digium elects (in its sole discretion) to remedy, repair or replace the affected hardware or software, Company agrees to pay Digium for such services or replacement products at Digium's then-prevailing time and materials rate.

6. COMPANY COOPERATION.

6.1 Company will cooperate with Digium in resolving problems related to the Digium hardware and software, including assisting with any issues related to fault isolation, problem duplication, network diagnosis, electrical power, and any third-party hardware and software (for which the parties agree Digium bears no responsibility).

6.2 Company agrees that unless otherwise specified in writing, the Digium services shall be delivered remotely (either as Customer installable or remotely installable by Digium).

6.3 Company will in a timely manner provide Digium's personnel with all information, data, access, and support reasonably required by Digium, including remote and secure root access to any associated servers via a VPN or secure Internet connection, (such as "root", or "super-user" access permissions, passwords, and network access via high-speed Internet transport, at speeds greater than 128/Kbs), as may be beneficial for the performance of activating this maintenance agreement, performing system audits, and the performance of the services hereunder. Company shall secure for Digium the rights of use and access to Company and any third party hardware or

software which may be beneficial to the performance of the services hereunder, including all rights of access and rights to modify under copyright, confidentiality agreements, the Computer Fraud and Abuse Act, and all other forms and sources of rights or restrictions. All network and server access methods and passwords shall be subject to confidentiality provision set forth in Section 11 below. Company acknowledges and agrees that Digium is not responsible for the software, hardware, products and services of other entities or any acts thereof.

7. TITLE AND OWNERSHIP.

Company acknowledges Digium' owns the entire right, title and interest in the intellectual property rights (including without limitation the copyright, patents, trademarks, trade secrets) in and to the Digium products, including software and hardware provided to Company, and agrees that all ownership and goodwill associated therewith shall remain with and inure to the exclusive benefit of Digium, including ownership of any and all custom modifications and software or hardware which may be created during the course of the performance of the services hereunder, and including all corrected, revised, updated or replaced hardware and software, notwithstanding if Company or Digium actually performed the development work or who paid for said changes, modifications, revisions, or any other related enhancement, and Company hereby grants, transfers, assigns and conveys to Digium all right title and interest in and to the intellectual property rights (including, without limitation, under patent, trademark and copyright) in and to all custom modifications, software and hardware created pursuant to this Agreement. No license or ownership rights are granted by Digium under this Agreement. Digium reserves all rights to know-how and procedures applied in delivering Digium support services. Company shall to promptly notify Digium of any known or suspected breach or violation of the rights of Digium that may come to Company's attention.

8. PAYMENT AND TERMS.

Fees to Digium are payable in full, net thirty (30) days from the Effective Date and in the case of renewals, prior to such annual anniversary. Company agrees to reimburse Digium for reasonable incidental out-of-pocket expenses such as travel expenses for travel requested by Company. If Company does not pay an undisputed invoice when due, Digium may elect to withhold services until payment is received. The annual fees for the plans set forth in Section B above may be modified by Digium by providing written notification to Company of the price adjustment at least thirty (30) days prior to the effective date of the price adjustment.

9. WARRANTIES.

Digium warrants that it will perform the services in a professional and workmanlike manner using reasonable commercial efforts. Company acknowledges and agrees that with the exception of the limited warranty set forth in the preceding sentence, Digium has not made and makes no representation or warranty of any kind or nature, either oral or written, either express or implied, concerning the services, hardware or software to be provided hereunder, and to the fullest extent permitted under applicable law, Digium specifically disclaims any and all other representations and warranties concerning such software, hardware and services, including without limitation, warranties of merchantability, fitness for a particular purpose or use, accuracy of data, system integration, non-infringement, and all other warranties relating to the results to be derived from the use of such software, hardware or services or other materials provided in connection with this Agreement. Company acknowledges that it is a sophisticated party to this Agreement and recognizes and agrees that this provision is an integral part of Digium's pricing and an important factor in its willingness to agree to perform the services hereunder.

10. LIMITATION OF LIABILITY.

Digium's entire liability and Company's exclusive remedy for any claim, allegation or damage to Company, including any claim, allegation or damage alleged against Company by any third party, relating to or arising from the hardware, software, services or this Agreement, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort or otherwise, including without limitation negligence and strict liability, shall not exceed the amount actually paid by Company to Digium under this Agreement. In no event will Digium or its suppliers be liable for any loss of data, loss of income, loss of opportunity or profits, or cost of recovery or for any other special, incidental, consequential, punitive, exemplary, or indirect damages arising from or relating to the hardware, software, services, or this Agreement however caused and under any theory of liability. This limitation will apply even if either party or its suppliers have been advised of the possibility of such damage. No claim arising in connection with this Agreement may be brought against Digium more than one (1) year after it accrues. Company acknowledges that the Digium fees reflect this allocation of risk.

11. CONFIDENTIALITY.

11.1 Each party agrees that all Confidential Information disclosed by the other party shall be considered the Confidential Information of that party. Except as expressly and unambiguously allowed herein, the receiving party will hold the disclosing party's Confidential Information in confidence and shall not use the Confidential Information (except as necessary for Digium to perform the services hereunder) nor disclose any Confidential Information of the disclosing party to third parties and will treat the disclosing party'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. Each party receiving Confidential Information 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 to keep such information confidential in accordance with this Agreement.

11.2 Notwithstanding the foregoing, no information shall be considered Confidential Information, or otherwise subject to this Section 11 which: a) becomes publicly known through no wrongful act or omission of any person or entity; b) becomes known to the receiving party 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; c) is approved by the disclosing party for disclosure without restriction in a written document which is signed by a duly authorized officer of the disclosing party; d) is independently developed by the receiving party without use of or reliance upon the other party's Confidential Information; e) is rightfully known by the receiving party prior to the disclosure of the information hereunder; or f) is required to be disclosed by law, regulation or court order.

12. TERM AND TERMINATION.

12.1 The term of this Agreement will begin on the Effective Date and will continue in effect for a period of one (1) year. Upon each anniversary of the Effective Date, if this Agreement is then in effect, this Agreement shall automatically renew for an additional one (1) year term upon payment of the Annual Fee by Company prior to expiration of the then-current term, provided that Digium may send to Company a notice of non-renewal at least thirty (30) days prior to the expiration of the then-existing term, in which case the Agreement shall expire at the end of the then-existing term and shall not renew. In the event Company pays in advance the Annual Fee for an additional one (1) year term prior to receipt of the notice of non-renewal from Digium, Digium agrees to refund such fees paid for future services to Company.

12.2 Either party may immediately terminate this Agreement, upon written notice to the other party, if (i) such other party is subject to proceedings in bankruptcy or insolvency, voluntarily or involuntarily, (ii) a receiver is appointed for the other party with or without such party's consent, (iii) the other party assigns its property to its creditors or performs any other act of bankruptcy, or (iv)

the other party becomes insolvent or cannot pay its debts when they are due.

12.3 In addition to any other rights and remedies available to it, Company or Digium may immediately terminate this Agreement in the event of a material breach by the other party of its obligations hereunder, including any of the representations, warranties and covenants hereunder, provided that such breach is not cured by the breaching party, or efforts that are likely to accomplish cure have not made in good faith to cure such breach, within thirty (30) business days of notification of such breach (which notification includes a detailed description of the nature of the breach).

13. EXPORT COMPLIANCE.

Company acknowledges that Digium hardware and software contain components of U.S. origin and may be subject to export regulations. Company shall take all reasonable steps to ensure that import and export by or on behalf of Company of Digium hardware and software comply with all relevant U.S. and international laws and regulations. Company shall indemnify and hold Digium harmless from any violation of this Section.

14. GOVERNING LAW.

This Agreement shall be governed by the laws of the State of Alabama without reference to its conflicts or choice of laws provisions. Each party hereby consents to the exclusive jurisdiction of the state and federal courts located in Alabama. The parties hereby expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods which shall not govern or otherwise apply to this Agreement or any services, hardware or software provided hereunder.

15. FORCE MAJEURE.

Neither party shall be liable to the other party for any delay, failure or inability to perform its obligations hereunder (except the obligation to make payment) due to any cause beyond its reasonable control, including but not limited to, utility failures, equipment breakdowns, fires, storms, accidents, acts of God, acts of war, acts of terrorism, or any act or omission of the other party or its employees, contractors or agents.

16. INDEPENDENT CONTRACTOR.

For all purposes relating to this Agreement, Digium shall be deemed an independent contractor of Company, and not a partner, joint venturer, agent, or employee. Neither party shall have the power or authority to bind the other party to any contract or obligation.

17. PUBLICITY.

Company hereby consents to Digium referring to Company by name in any advertising and promotional materials of Digium relating to the services provided hereunder.

18. AUTHORIZATION.

Each party represents that the person executing this Agreement on its behalf is fully authorized to do so, and that this Agreement constitutes a valid and binding obligation of such party fully enforceable in accordance with its terms.

19. NOTICES.

All notices and other communications required hereunder shall be in writing and delivered by personal deliver, facsimile or certified mail, postage prepaid, to the address for the receiving party first set forth above. Any changes to the notification address shall be notified to the other party in accordance with this Section.

20. ASSIGNMENT.

Company may not assign or otherwise transfer, by operation of law or otherwise, this Agreement or any rights, interests, benefits or obligations hereunder, without the prior written consent of Digium. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

21. ENTIRE AGREEMENT.

This Agreement, including exhibits if any, sets forth the entire understanding and agreement of the parties and supersedes and replaces any and all prior or contemporaneous, oral or written, agreements or understandings between the parties as to the subject matter of this Agreement. This Agreement may be amended only by a writing duly executed by an authorized representative of each of the parties. Without limiting the foregoing, no term or condition contained in any purchase order or other sales documentation of Company that is inconsistent, conflicts with, or additional to this Agreement shall be binding upon Digium, regardless of whether such document has already been or is hereafter acknowledged by Digium.

22. HEADINGS AND SEVERABILITY.

Section headings have been inserted for convenience only and shall not be considered in interpreting this Agreement. If any provision of this Agreement is found unenforceable or invalid, it shall be enforced to the maximum extent permissible without affecting the validity or enforceability of the remaining provisions hereof.

23. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile copy of a counterpart shall have the same effect as an original.