



# General Terms and Conditions

## version 1.2

The following General Terms and Conditions (these "GTCs") apply to all services offered by Digital Agent, LLC ("DA") except to the extent expressly provided otherwise in DA's Service-Specific Terms for a specific service or in a written agreement between DA and Customer.

### I. Definitions

When used in these GTCs, the following terms shall have the definitions set forth below. Other terms are defined in Customer's Application and elsewhere in these GTCs.

**1.1. Application** means the Digital Agent Service Application signed by Customer and accepted by DA, accompanied by a DA Quote specifically identifying the Services to be purchased by Customer and provided by DA.

**1.2. Confidential Information** means information of DA or Customer, including trade secrets under applicable law ("Trade Secret(s)"), that a) possesses an element of value, b) is not generally known to the public, and c) would damage DA or Customer if disclosed or information (whether in oral, written, electronic or any other form) which is marked or notified as being proprietary or confidential or which, in the normal course of business, would be considered to be proprietary or confidential. Confidential Information shall not include any information that i) is or becomes generally available to the public other than as a result of an unauthorized disclosure, ii) has been independently developed and disclosed by others without violating these GTCs or the legal rights of any party, or iii) otherwise enters the public domain through lawful means.

**1.3. Customer** means a person or entity who agrees to purchase DA's Services, as evidenced by the signature of such person or entity or its authorized representative on a DA Service Application accepted by DA.

**1.4. Customer(s) Premise(s)** means the location or locations occupied by Customer or Customer's End Users to which Services are provided or delivered or at which DA Facilities can be located.

**1.5. Customer Proprietary Network Information ("CPNI")** means (a) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of telecommunications or Voice over Internet Protocol service(s), if any, that DA provides to Customer and that is made available to DA by virtue of the fact that DA provides such service(s) to Customer, and (b) information contained in DA's bills to Customer for such service(s), except that it does not include information concerning Customer's name, telephone number(s), address(es) and primary advertising classification(s) that DA has published, caused to be published or accepted for publication in any directory format. CPNI includes, but is not limited to, information concerning the date, time, duration, and calling or called number of calls that Customer and its End Users place and receive.

**1.6. DA Facilities** means real or personal property owned or leased by DA and used to deliver Services, including without limitation terminal and other equipment, wires, lines, ports, routers, switches, cabinets, racks, and servers.

**1.7. Initial Term** means the period set forth in the DA Quote accompanying Customer's Application.

**1.8. Service(s)** mean, individually and collectively, the services described in an Application and accompanying DA Quote that has been accepted by DA.

**1.9. Service-Specific** means DA's terms and conditions applicable to the provision of specific services.

### 2. Provision of Services.

Subject to the terms and conditions of these GTCs:

2.1. DA shall provide Customer with the Services designated on Customer's Application that has been accepted by DA.

2.2. DA shall promptly ensure that all Services are available for Customer's use and thereafter, throughout the applicable Term, provide to the Customer those Services specified Customer's accepted Application in the quantity, and to the specifications, specified in the DA Quote and in the Service-Specific Terms applicable to such Services.



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2.3. Customer acknowledges that certain services provided hereunder, including intrastate, interstate and international telecommunications services, may be subject to tariffs filed with federal or state regulatory authorities ("Tariffed Services") and/or may be subject to DA's pricing guides set forth at [www.digitalagent.net/legal.html](http://www.digitalagent.net/legal.html), and these GTCs incorporate by reference the terms of DA's applicable tariffs and pricing guides, which may be modified from time to time by DA in accordance with law. In the event any term or condition of service contained in these GTCs is inconsistent with any applicable tariff or DA's pricing guide, the terms of such tariff or pricing guide shall govern, except to the extent expressly provided otherwise in such tariff or pricing guide.

2.4. DA's offering of Services is subject to any and all final regulatory approval and requirements.

2.5. Customer shall pay for Services at the recurring and non-recurring rates and charges provided in the DA Quote as more fully described in Sections 14 through 16 of these GTCs.

2.6. DA may provide additional services related to installation or use of the Services upon Customer's prior approval of such additional services and any charges therefor, and Customer agrees to pay all rates and charges for such additional services upon invoice therefor by DA.

2.7. DA retains the right to modify, from time to time, in its sole discretion and without liability to Customer, the methods, processes and/or the suppliers by or through which DA provides Services to Customer.

## 3. Acceptable Use Policy and Other Use.

3.1. With respect to Internet Services, Customer agrees to be bound by the DA Acceptable Use Policy ("AUP"), which may be found at: <http://www.digitalagent.net/legal.html>. The terms and conditions of the AUP, which may be updated or modified by DA from time to time, are hereby incorporated herein by this reference. Customer agrees to check the AUP web site periodically to review any changes to the AUP. Any changes to the AUP are effective immediately upon publication by DA.

3.2. Customer shall not use the Services hereunder for any unlawful purpose. Services may otherwise be used for any lawful purpose, provided that such purpose is a purpose for which Customer is technically suited, Customer shall have obtained any and all required government approvals, authorizations, licenses, consents and permits for such purpose, and such purpose is consistent with the transmission and switching parameters of the telecommunications facilities utilized in the provision of Services.

3.3. Service will not be used in a manner which:

- might reasonably be expected to frighten, abuse, torment, or harass another;
- interferes in any manner with other person(s) in the use of their service;
- prevents other persons from using their service; or
- otherwise impairs the quality of service to other customers.

3.4. Customer is responsible for notifying Carrier immediately of any unauthorized use of services.

## 4. Non-Exclusivity

These GTCs shall not be construed to (i) require Customer to purchase Services only from DA, (ii) require DA to sell Services only to Customer, or (iii) require either Party to refrain from providing any Services in competition with the other Party.

## 5. Use of the Services/Service Issues

Use of Services is limited to Customer, Customer's employees, and Customer's consultants in the course of their performing work for Customer (collectively, "End Users"). With respect to Internet Services, Customer shall notify DA within five (5) days of any notices that are served on Customer that might adversely affect DA, including but not limited to notices of any claims or proceedings that involve the Services. Customer shall promptly notify DA of any errors, "bugs," or problems with the Services of which Customer becomes aware. Notwithstanding any term of these GTCs, DA shall not be liable to Customer for any claim arising from or based upon the combination, operation or use of the Services with equipment, data or programming not supplied by DA, or arising from any alteration or modification of the Services or equipment supplied by DA. For Tariffed Services, DA must be provided notice of any service interruption as provided in applicable tariffs.

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### 6. Network Numbers/Domain Name Policy

6.1. If Customer is ordering a Service which utilizes network numbers or Domain Names, Customer agrees to the Network Number and Domain Name Policies established by DA as set forth in this Section 6.1. In all instances, Domain Name and TCP/IP Addresses that are provided by DA remain DA's sole and exclusive property, and upon termination of Service, use by Customer will immediately terminate and such Domain Names and TCP/IP Addresses shall revert back to DA. Unless otherwise mutually agreed in writing by the Parties, Customer at all times has responsibility for maintaining its own Domain Name when purchasing DA Internet Services and for paying all charges associated with the Domain Name, including charges billed to Customer for Domain Name registration by third parties. DA has sole discretion as to the internet routing of DA-provided IP addresses.

6.2. For telecommunications and Voice over Internet Protocol services using telephone numbers, Customer has no right to any particular telephone number(s) except to the extent that Customer may have the right to port such telephone number(s) to another service provider. Once assigned, Customer generally may retain telephone numbers assigned to the Service furnished. However, neither DA nor Customer has a property right to the telephone number or any other call number designation associated with Services furnished by DA. DA reserves the right to change such numbers whenever DA in its sole discretion deems it necessary or appropriate to do so in the conduct of its business or in connection with compliance with any governmental requirement or industry standard. DA will give Customer as much advance notice of any change of Customer's telephone number(s) as may be reasonably practicable and, in any event, will give Customer at least thirty (30) days' prior notice. Use of telecommunications or Voice over Internet Protocol services may require listing Customer's participation in relevant directories unless Customer pays additional charges for unlisted or unpublished telephone numbers. Customer grants permission to DA to make such listings as DA reasonably determines are necessary or useful.

### 7. Term

7.1. These GTCs and applicable Service-Specific Terms shall apply as of the Effective Date indicated on Customer's Application. DA's obligation to provide Services and Customer's obligation to receive and pay for such Services commence on the Service Commencement Date and expire, unless terminated earlier in accordance herewith, upon expiration of the Initial Term and any renewals thereof as described below.

7.2. DA will notify Customer that the Services are installed or connected and are available for use. Except as provided in the DA Quote or otherwise agreed in writing, the date of such notice shall be the service commencement date ("Service Commencement Date"). Billing will commence effective with the Service Commencement Date, unless the date is extended due to Customer Rejection. "Customer Rejection" shall mean Customer's demonstration to DA that the Services do not conform to standards set forth in these GTCs, applicable Service-Specific Terms or an applicable tariff, in which case the Service Commencement Date shall be the date DA remedies any non-conformance and notifies Customer of such action. The Parties may mutually agree upon a substitute Service Commencement Date, provided, however, that in the event the Service Commencement Date is extended based on a request by Customer, DA may bill Customer for any costs it has incurred in preparing Service for the original Service Commencement Date, as well as any costs it will incur up until the date that the Customer accepts Service. Customer's sole remedy for DA's failure to meet a mutually agreed upon Service Commencement Date, or DA's notice (prior to the Service Commencement Date) to Customer of its inability to provide Services, shall be the termination of these GTCs or the applicable Service Order by Customer. Customer agrees to cooperate with DA to accomplish Service activation by providing access to Customer's Premises and facilitating testing and Service delivery requirements.

7.3. The Initial Term shall be as provided in the DA Quote. Upon expiration of the Initial Term and each Renewal Term, Customer's agreement for service shall automatically renew for additional terms of one year each (each such additional term being a "Renewal Term") pursuant to the terms and conditions set forth in DA's then-current GTCs, Service-Specific Terms and applicable tariffs unless either Party has delivered written notice of its intent to terminate the Services at least sixty (60) days prior to the expiration of the Initial Term or then-current Renewal Term, as applicable. The Initial Term and any Renewal Term may be referred to collectively in these GTCs as the "Term." Any termination shall not relieve Customer of its obligation to pay any charges incurred prior to termination.

### 8. Construction of Facilities.

8.1. In the event DA is required to construct and/or acquire telecommunications facilities in order to provide Service to Customer, Customer acknowledges and agrees that DA therefor incurs significant costs in provisioning Service to Customer. In addition to any other rights and remedies DA may have, Customer agrees that if Customer cancels an order for Services prior to the Service Commencement Date, or if Customer

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terminates Services prior to expiration of the Initial Term, Customer shall reimburse DA for all costs DA incurs in constructing and/or acquiring such telecommunications facilities. DA shall notify Customer of the estimated cost of constructing and/or acquiring any telecommunications facilities prior to incurring any construction or acquisition cost in excess of any amount specified in the DA Quote, whereupon within three (3) business days following such notification Customer may, subject to all other provisions of these GTCs concerning cancellation of an order for Services, cancel its order for the Service(s) to be provided using such telecommunications facilities and incur no liability for such construction or acquisition cost.

8.2. If operation of any DA Facilities at the Customer's Premises requires construction of additional facilities, or any required modifications to existing facilities, Customer shall be responsible for such associated costs.

8.3. At the request of Customer, installation or maintenance may be performed outside of DA's regular business hours or in hazardous locations. In such cases, charges based on the cost of the actual labor, material or other costs incurred by or charged to DA will apply. If installation or maintenance is started during regular business hours, but, at Customer's request, extends beyond regular business hours into other time periods including, but not limited to, weekends, holidays or night hours, additional charges may apply.

8.4. Customer must pay DA's cost for replacement or repair of damage to the equipment or facilities of DA caused by the negligence or willful acts or omissions of Customer or others, by improper use of the Services, by use of equipment provided by Customer or others, or by the non-compliance by Customer with these GTCs, the Service-Specific Terms or DA's tariffs.

8.5. Customer shall not create or allow to be placed any liens or other encumbrances on DA Facilities.

## 9. Transmission of Services

9.1. DA will attempt to provide Customer with reasonable notification of service-affecting activities that may occur in normal operation of its business. No specific advance notification period is applicable. In some instances, during emergency or unplanned service-affecting conditions, any notification to Customer may be impossible.

9.2. DA will not be liable for errors in transmission or for failure to establish a connection.

## 10. Equipment and Facilities

10.1. Upon suitable notification to Customer, and at a reasonable time, DA may take such tests and inspections as may be necessary to determine that Customer is complying with applicable requirements for the installation, operation, and maintenance of DA Facilities located at Customer's Premises, Customer-provided terminal equipment ("CPE") and other equipment that is connected to services provided by DA. If the protective requirements for CPE and DA Facilities are not being complied with, DA may take such action as it deems necessary to protect its facilities and personnel. DA will notify Customer promptly if there is any need for further corrective action. Within ten (10) days of receiving this notice, Customer must take this corrective action and notify DA of the action taken. If Customer fails either to take corrective action prescribed by DA or fails to notify DA that it has done so, DA may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities and personnel from harm.

10.2. DA may, upon reasonable notice, make such tests and inspections as may be necessary to determine whether the terms and conditions of applicable tariffs are being complied with in respect to the installation, operation or maintenance of the CPE or DA Facilities.

10.3. Customer obtains no property right or interest in the use of any specific type of facility, service, equipment, IP address, telephone number, process or code. All rights, titles and interests remain, at all times, solely with DA.

10.4. DA Facilities shall be carefully used by Customer. DA Facilities shall remain DA's property and shall be returned to DA whenever requested, within a reasonable period following the request, in good condition, reasonable wear and tear excepted. Customer is required to reimburse DA for any loss of, or damage to, DA Facilities located on the Customer Premises, including loss or damage caused by agents, employees or independent contractors of Customer through any negligence.

10.5. DA shall use reasonable efforts to maintain only the DA Facilities. Customer may not, nor may Customer permit others to, rearrange, dis-

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connect, remove, attempt to repair, or otherwise interfere with any of the DA Facilities, except upon the written consent of DA.

10.6. DA may substitute, change or rearrange any facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided to Customer.

10.7. Except to the extent provided in the DA Quote or otherwise agreed in writing, DA shall not be responsible for the installation, operation, or maintenance of any CPE. Where such equipment is connected to DA Services, the responsibility of DA shall be limited to the furnishing of services offered under these GTCs and applicable Service-Specific Terms. Subject to this responsibility, DA shall not be responsible for:

- a. the transmission of signals by CPE or the quality of, or defects in, such transmission;
- b. the reception of signals by CPE; or
- c. network control signaling when performed by Customer-provided network control signaling equipment.

## 11. Customer Provided Terminal Equipment

11.1. DA Services may be connected to CPE in accordance with the provisions of applicable tariffs. All CPE shall be registered pursuant to Part 68 of Title 47, Code of Federal Regulations, and all Customer-provided wiring shall be installed and maintained in compliance with those regulations.

11.2. Customer is responsible for ensuring that CPE connected to DA equipment and facilities is compatible with such facilities. The magnitude and character of the voltages and currents impressed on equipment and wiring provided by DA by the connection, operation, or maintenance of such Customer equipment and wiring shall be such as not to cause damage to equipment and wiring provided by DA or injury to DA's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by DA at Customer's expense.

11.3. CPE and the electric power consumed by such equipment shall be provided by and maintained at the expense of Customer. Customer is responsible for the provision of wiring or cable to connect its equipment to DA equipment and facilities. Any special interface equipment necessary to achieve compatibility between the equipment and facilities of DA used for furnishing telecommunications services and the channels, facilities, or equipment of others shall also be provided at Customer's expense.

## 12. Additional Obligations of Customer

12.1. Customer shall provide any information and/or documentation that DA reasonably requests from Customer and that is necessary for DA to properly perform any of its obligations hereunder. Customer shall provide such information in a form reasonably specified by DA by the dates specified. In the event that there are errors in such information and such errors require additions, corrections or modifications related to DA performance hereunder, then any costs associated therewith shall be the responsibility of Customer, provided DA has reasonably notified Customer before any additional costs are incurred.

12.2. Customer shall provide all ventilating, heating, cooling, humidity, power, and dust control necessary to ensure that the Customer's Premises meet applicable environmental requirements. The Customer's Premises shall be dry, free of dust and of conditions injurious to employees or agents of DA. Customer shall provide suitable electric power for the operation of DA Facilities located at Customer's Premises.

12.3. Specific environmental considerations defined by the applicable manufacturer(s) of DA Facilities which are more stringent than the general requirements noted in this Section 12 are incorporated into these GTCs by reference, and Customer agrees to provide facilities which meet such requirements at Customer's own expense. DA shall not be responsible for any malfunction attributable to Customer's nonconformity with environmental specifications.

12.4. Customer shall provide a safe place to work and comply with all laws and regulations regarding the working conditions on the Customer Premises at which DA's employees and agents will be installing or maintaining DA Facilities. Customer may be required to install and maintain DA Facilities within a hazardous area if, in DA's opinion, injury or damage to DA employees or property might result from installation or maintenance by DA. Customer shall be responsible for identifying, monitoring, removing and disposing of any hazardous materials (e.g., friable asbestos) prior to any construction or installation work.

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12.5. Customer shall be responsible for making arrangements or obtaining permission for safe and reasonable access for DA employees or agents of DA to enter the Customer Premises at any reasonable hour for the purpose of installing, testing, programming, repairing, testing or removing any part of DA's facilities or equipment associated with the provision of DA's services.

12.6. Customer is responsible for the payment of all charges for services furnished to Customer and to all users of DA Services provided to Customer, regardless of whether those services are used by Customer itself or are resold to or shared with other persons or whether such use is with or without the knowledge or consent of Customer. The security of Customer's authorization codes, presubscribed exchange lines, and direct connect facilities are the responsibility of Customer. All calls placed using direct connect facilities, presubscribed exchange lines, or authorization codes will be billed to and must be paid by Customer.

## 13. Credit Approval and Deposits

DA may request information from a reporting agency to enable DA to assess Customer's credit history and that DA may alter its standard billing arrangements as a result of any credit information received by DA, upon notice to Customer. DA may require Customer to make a deposit, the amount of which will be determined exclusively by DA, as a condition to DA's acceptance of Customer's Application or as a condition to DA's continuation of Services. The deposit will be held by DA as security for payment of Customer's charges, and, in DA's sole discretion, may be applied against any past-due charge (and Customer may be required to replenish or increase such deposit). The sum of any Customer deposit and any advance payment that may be required by DA shall not exceed an amount equal to two and one-half months' estimated charges for Services. Upon termination of Services, the amount of the deposit then remaining will be credited to Customer's account and any remaining credit balance will be refunded to Customer. Any deposit held by DA shall accrue interest at a rate of 7.0% per annum, and DA shall pay such interest or credit such interest to Customer's account while DA holds such deposit. DA may delay the installation or performance of Services at any time if, in DA's opinion, the financial condition of Customer warrants such action. If Customer fails to remit to DA the deposit within ten (10) days of demand, Customer shall be deemed in violation of these GTCs, thereby entitling DA to all of the remedies provided herein.

## 14. Rates and Charges

14.1. Customer shall pay DA for Services pursuant to the terms and conditions of applicable tariff(s), DA's pricing guide, these GTCs and applicable Service-Specific Terms (the "Charges").

14.2. Customer agrees to pay the applicable set-up, installation and disconnect fees, if any, as invoiced pursuant to the DA Quote, applicable Service-Specific Terms or any applicable tariff or as otherwise agreed by the Parties in writing. Installation and disconnect fees are non-refundable unless otherwise agreed to in writing by DA.

14.3. Customer shall be responsible for the payment of service charges for visits by DA's agents or employees to the Customer Premises when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than DA, including but not limited to Customer.

## 15. Invoicing and Payment

15.1. Regular billing for the Service will begin on the Service Commencement Date. Invoices will be sent to Customer thereafter on a regular basis (first invoice sent by DA referred to herein as the "Initial Invoice") and are payable upon receipt. The Initial Invoice includes i) non-recurring charges not paid at the time of order or as advance payments, ii) first prorated month of service charges and iii) first full month of service charges. Invoices will include, but not be limited to, that period's Service fees, applicable usage fees (including any fees for ordered optional or additional Services), and Applicable Taxes and Surcharges. Customer agrees that any additional Services requested will incur additional fees and charges, and Customer agrees to pay these fees and charges when invoiced.

15.2. Invoices, or any portion thereof, not paid within thirty (30) days after receipt, will be past due and subject to a 1.5% per month late payment charge or the maximum rate permitted by law, whichever is less. Customer agrees to reimburse DA for any costs incurred as a result of any collection activity, including but not limited to attorneys' fees.

15.3. Any billing dispute must be declared within ninety (90) days of the original invoice date to be considered valid. No disputes identified in

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excess of this ninety (90) day period will be eligible for correction.

15.4. A fee of \$20.00 will be charged whenever a check or draft presented by Customer for payment for service is not accepted by the institution on which it is written.

## 16. Taxes and Surcharges

All Charges for Service are exclusive of Applicable Taxes and Surcharges (as defined below), which shall be borne by Customer.

16.1. **Taxes.** Customer shall pay all federal, state, and local taxes, fees and other charges that are set by the government and that DA is required by law to collect (collectively, "Applicable Taxes") and any penalties and interest related to Applicable Taxes. These may include, without limitation, sales, use, excise, public utility and other taxes. These taxes, fees and charges may change without advance notice.

16.2. **Surcharges.** Customer shall also pay all the surcharges, fees and other charges that DA assesses in order to recover its governmental costs or costs of complying with certain governmental programs. These include, without limitation, Federal Universal Service Fund contributions and Regulatory Cost Recovery Charges and may also include other charges related to DA's governmental and compliance costs (collectively, "Surcharges"). DA establishes these Surcharges and the amounts thereof. These Surcharges are not taxes, are not required by law and are kept by DA in whole or in part, and the amounts and what is included in the Surcharges are subject to change without notice.

16.3. **Exemption.** Customer shall not be required to pay Applicable Taxes or Surcharges to the extent that Customer provides DA an appropriate exemption certificate related to any such Applicable Tax or Surcharge. DA will give prospective effect to any valid exemption certificate to the extent that it applies to any Service billed to Customer by DA and shall cooperate at Customer's sole expense in pursuing any claim for refund of Applicable Taxes or Surcharges previously paid by Customer.

## 17. Termination

17.1. Without incurring liability, upon five (5) days' written notice to Customer, DA may immediately discontinue Services to Customer or may withhold the provision of ordered or contracted Services:

- a. For nonpayment of any undisputed sum due DA for more than thirty (30) days after the date of the invoice for the amount due, or
- b. For any continuing violation of any material term or condition of these GTCs which Customer shall not have cured after DA has given at least ten (10) days prior written notice.

17.2. DA, after notice in writing to Customer and after having given Customer an appropriate opportunity to respond to such notice, may terminate Services under the following conditions:

- a. In the event of prohibited, unlawful or improper use of the service, or any other violation by Customer of the terms and conditions governing the service furnished, whether by reason of any order or decision of a court, or any state or federal regulatory body or governmental authority or interpretation by DA's lawyers thereof;
- b. If, in the judgment of DA, any use of the service by Customer may adversely affect DA's personnel, plant, property, or service or in the event of a condition which is determined to be hazardous to other Customers of DA, to DA Facilities, the public or to employees of DA;
- c. In the event of unauthorized use, where Customer fails to take reasonable steps to prevent the unauthorized use of the service received from DA;
- d. If Customer provides false information to DA regarding Customer's identity, address, credit-worthiness, past, current or planned use of DA's services;
- e. Upon Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, DA may immediately discontinue or suspend service without incurring any liability; or
- f. Upon condemnation of any material portion of the facilities used by DA to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair.

17.3. DA shall have the right to take immediate action, including termination of the service and severing of the connection, without notice to Customer:

- a. if in the opinion of DA injury or damage to DA's or DA's supplier's personnel, plant, property or service is occurring, or is likely to occur;
  - b. if DA deems such action necessary to protect itself or third parties against fraud or to otherwise protect its or its Suppliers' personnel, agents,
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facilities or services; or

c. if DA is requested or required by any governmental authority to suspend or terminate service to Customer without notice.

17.4. Prohibited, unlawful or improper use of the service includes, but is not limited to:

- a. Calling or permitting others to call another person or persons so frequently or at such times of the day or in such manner as to harass, frighten, abuse or torment such other person or persons;
- b. The use of profane or obscene language;
- c. The use of the service in such a manner that it interferes with the service of other customers or prevents them from making or receiving calls;
- d. The use of a mechanical dialing device or recorded announcement equipment to seize a customer's line, thereby interfering with such customer's use of the service;
- e. Permitting fraudulent use; or
- f. The use of Internet Service(s) in violation of DA's Acceptable Use Policy.

17.5. Any termination of Services by DA shall not be construed as an exclusive remedy and shall not preclude or waive DA's right to pursue any other available remedies (subject to the limitations on liability set forth in these GTCs).

17.6. **Early Termination Charge.** Except to the extent expressly provided otherwise elsewhere in these GTCs or in applicable Service-Specific Terms, in the event that Customer terminates Services prior to the end of the Term for any reason other than a material default by DA, Customer shall be liable for and shall pay immediately upon presentation of an invoice an Early Termination Charge equal to the sum of (a) one hundred percent (100%) of the recurring charges for the remainder of the Term for any and all Transport Circuits included in or used to provide the Services, plus (b) thirty percent (30%) of the recurring charges for the remainder of the Term for all other Services. Customer acknowledges that a precise calculation of DA's damages for an early termination of Services would be extremely difficult and that the Early Termination Charges represent reasonable liquidated damages, not a penalty.

17.7. The discontinuance of service(s) by DA pursuant to this Section 17 does not relieve Customer of any obligations to pay DA for charges due and owing for Service(s) furnished up to the time of discontinuance or for any applicable Early Termination Charges. Upon DA's discontinuance of service to Customer pursuant to this Section 17, in addition to all other remedies that may be available to DA at law or in equity, DA may declare all future monthly and other charges which would have been payable by Customer during the remainder of the term for which such services would have otherwise been provided to Customer to be immediately due and payable.

## 18. Confidentiality

18.1. Each Party acknowledges that, in the course of performance, it (the "Receiving Party") may receive Confidential Information of the other Party (the "Disclosing Party"). Neither Party shall disclose to any third party or use for any purpose whatsoever, except to the extent required for such Party's performance or to the extent expressly permitted hereunder, any Confidential Information of the other Party. Notwithstanding the foregoing, DA is permitted to disclose Customer's Confidential Information without notice to Customer of any kind (a) to the extent that DA reasonably believes such disclosure is required by law and (b) to the extent that Customer has consented to such use in DA's CPNI Notice and Consent Form, which Customer may revise at any time by notice to DA i) in writing, ii) via the DA web-based customer support system, or iii) by telephone communication with DA customer support.

18.2. The Parties' confidentiality obligations shall survive expiration or termination of Services for any reason whatsoever, and the Receiving Party's obligations shall continue (i) with respect to Confidential Information of the Disclosing Party which also constitutes Trade Secrets, until such time as such information no longer constitutes a Trade Secret due to no fault of the Receiving Party, and (ii) with respect to all other Confidential Information, for a period of three (3) years after the expiration or termination of Services or such longer period as may be required by applicable law.

## 19. Indemnification

a. DA shall be indemnified, defended and held harmless by Customer from and against any and all claims, loss, demands, suits, or other actions, or any liability whatsoever, including attorney fees, whether suffered, made, instituted or asserted by Customer or by any other party, for any personal injury to or death of any person or persons (including claims for payments made under Worker's Compensation law or under any plan for employee disability or death benefits), and for any loss, damage or destruction of any property, including environmental contamination, whether owned by Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, oper-





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ation, failure to operate, maintenance, presence, condition, location, use or removal of any equipment or facilities or the service, except to the extent that any personal injury, death or loss, damage or destruction of tangible property results from the gross negligence or willful misconduct of DA or its employees or agents.

b. DA shall not be liable for, and shall be fully indemnified and held harmless by Customer against any claim, loss, expense, or damage for defamation, libel, slander, invasion of privacy, infringement of copyright or patent, unauthorized use of any trademark, trade name or service mark, or proprietary or creative right, or any other injury to any person, property or entity arising from Customer's use of DA's services; out of the material, data, information, or other content revealed to, transmitted, or used by DA; or for any act or omission of Customer.

c. **Customer's Release and Waiver.** If DA is required under the terms and provisions of any agreement pursuant to which DA obtains access to premises in order to provide Services to Customer (a "Building Access Agreement") to indemnify the the owner or lessor of such building from and against any claim arising out of or related to such Building Access Agreement or the provision of Service to Customer (collectively "Building Owner Claims") , regardless of the cause and regardless of whether such Building Owner Claims arise from the sole or partial negligence, actions or inaction of the building owner or lessor or its employees, servants, agents, contractors, subcontractors or other Persons using the building, Customer hereby waives and releases such owner or lessor from such Building Owner Claims, regardless of whether such Building Owner Claims arise from the sole or partial negligence, willful misconduct or other action or inaction, of such owner or lessor or its employees, servants, agents, contractors, subcontractors or other Persons using the building.

## 20. Exclusive Remedy; Waiver

Except as otherwise provided herein, no remedy conferred by any specific provision of these GTCs or applicable Service-Specific Terms or available to a Party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

## 21. Limitation Of Liability

21.1. These GTCs shall not be construed to limit DA's liability for personal injuries, death or loss, damage or destruction of tangible property resulting from DA's gross negligence or willful misconduct.

21.2. DA shall not be liable for any defacement of or damage to equipment of Customer or Customer Premises resulting from the furnishing of services or equipment on such Customer Premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of DA's agents or employees.

21.3. DA is not liable for any claims for loss or damages involving:

- a. Breach in the privacy or security of communications transmitted over DA's services;
- b. Any representations made by DA employees that do not comport, or that are inconsistent, with the provisions of these GTCs or applicable Service-Specific Terms;
- c. Any non-completion of communications or transmissions due to network busy conditions; or
- d. Any act or omission in connection with the provision of 911, E911 or similar services.

21.4. DA shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over DA, or of any commission, agency, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties; or the unlawful acts of DA's agents and employees, if committed beyond the scope of their employment.

21.5. DA shall not be liable for any act or omission of any entity furnishing to DA or to Customer facilities or equipment used for or with the services DA offers. DA shall not be liable for any damages or losses due to the fault or negligence of Customer or due to the failure or malfunction of CPE.

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## General Terms and Conditions...cont.

21.6. DA shall not be liable for any indirect, special, incidental, or consequential, exemplary or punitive damages including, but not limited to, loss of revenue or profits, for any reason whatsoever.

21.7. The liability of DA for errors in billing that result in overpayment by Customer shall be limited to credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.

**21.8. DA's entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid to DA by Customer for the specific services giving rise to the claim. No action or proceeding against DA shall be commenced more than one year after the service is rendered or not rendered as the case may be.**

21.9. DA shall not be liable for damages or adjustments, refunds or cancellation of charges unless Customer has notified DA, in writing, of any dispute concerning charges, or the basis of any claim for damages, after the invoice is rendered by DA for the call or other service giving rise to such dispute or claim. Any such notice must set forth sufficient facts to provide DA with a reasonable basis upon which to evaluate Customer's claim or demand and must be consistent with the remedies set forth in these GTCs.

21.10. DA shall not be liable for any damages, including refund or cancellation of usage charges, that Customer may incur as a result of the unauthorized use of its communications equipment. The unauthorized use of Customer's communications equipment includes, but is not limited to, the placement of calls or transmission of data from Customer Premises and the placement of calls and transmission of data through Customer-controlled or Customer-provisioned equipment that are transmitted or carried over DA's network services without the authorization of Customer. Customer shall be fully liable for all such charges.

21.11. DA shall not be liable for Customer's failure to fulfill its obligation to take all necessary steps, including obtaining, installing and maintaining all necessary equipment, materials and supplies for interconnecting equipment or facilities of Customer, or any third party acting as Customer's agent, to DA's network.

**21.12. DA makes no warranties or representations express or implied either in fact or by operation of law, statutory or otherwise, including warranties of merchantability or fitness for a particular use or purpose, except those expressly set forth herein.**

21.13. No agents or employees of connecting, concurring or other participating carriers or companies shall be deemed agents or employees of DA without written authorization.

21.14. Any claim of whatever nature against DA shall be deemed conclusively to have been waived unless presented in writing to DA within thirty (30) days after the date of the occurrence that gave rise to the claim.

## 22. Representations and Warranties

22.1. **By Customer.** Customer represents and warrants to DA as follows:

- i. Customer will not reproduce, publish or distribute content in connection with the Services that infringes any third party's trademark, copyright, patent, trade secret, publicity, privacy or other personal or proprietary right; and
- ii. Customer will use the Services in compliance with all laws and regulations including, without limitation, prohibition on the use of telecommunications facilities to transmit illegal, obscene, threatening, libelous, harassing, other offensive messages, or otherwise unlawful material.

## 23. Assignment

23.1. Customer may not sell, transfer, or assign its agreement for Services without the prior written consent of DA, which consent shall not be unreasonably withheld. Subject to DA's credit standards and other applicable requirements of these GTCs, applicable Service-Specific Terms and DA's tariffs, DA will permit a Customer to assign or transfer its existing service at the same location to another entity, provided that the existing Customer has paid all charges owed by it to DA and such permitted assignee or transferee accepts and agrees to be bound by all of the terms and conditions of these GTCs, applicable Service-Specific Terms and applicable tariff, as well as all other conditions of service. Such a transfer will be treated as a disconnection of existing service and installation of new service, and non-recurring installation charges will apply. Any sale, assignment or other transaction in derogation of this section is null and void, and shall not relieve Customer of its obligations under these



## *General Terms and Conditions...cont.*

GTCs and applicable Service-Specific Terms.

23.2. No person or entity not a Party hereto shall have any interest herein or be deemed a third party beneficiary hereof, and nothing contained herein shall be construed to create any rights enforceable by any other person or third party.

### 24. Governing Law

These GTCs and applicable Service-Specific Terms shall be governed by the substantive law of Georgia without reference to its principles of conflicts of laws.

### 25. Jurisdiction and Venue

Each of the Parties hereby consents to personal jurisdiction and service of process in the State of Georgia and further agrees that the sole and proper venue for the determination of any dispute arising in connection with these GTCs or Service-Specific Terms shall be the United States District Court for the Northern District of Georgia or the courts of the State of Georgia.

### 26. No Joint Venture or Partnership

Nothing in the Agreement shall be construed as creating a joint venture or partnership between the Parties hereto. Neither Party has or shall have any authority to bind, assume any obligation for or incur any debt on behalf of the other Party in any respect whatsoever.

### 27. Attorney Fees

In the event that DA is required to initiate legal proceedings to collect any amounts due to DA, or to enforce any judgment obtained against Customer, or for the enforcement of any provision of these GTCs or applicable Service-Specific Terms, Customer shall, in addition to all amounts due, be liable to DA for all costs incurred by DA in such proceedings and enforcement actions, including attorney' fees, collection agency fees or payments, and court costs. In any such proceeding, the amount of collection costs, including attorneys' fees, due to DA, will be determined by the court based upon the costs actually incurred by DA.

### 28. Headings

Section headings in the Application, these GTCs and the Service-Specific Terms are inserted for convenience only and shall not be used in any way to construe the terms of the Application, these GTCs or any Service-Specific Terms. The invalidity, in whole or in part, of any provision of these GTCs or any Service-Specific Terms shall not affect the validity of the remainder of these GTCs and applicable Service-Specific Terms.

### 29. Entire Agreement

Customer's Application, the DA Quote, these GTCs, and applicable Service-Specific Terms constitute the entire agreement between DA and

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## *General Terms and Conditions...cont.*

Customer with respect to the DA's Services and supersede all prior agreements, proposals, representations, statements or understandings, whether written or oral, or the rights and obligations related to the Services. These GTCs and applicable Service-Specific Terms shall not be contradicted, or supplemented by any written or oral statements, proposals, representations, advertisements, service descriptions or terms not expressly set forth in these GTCs or applicable Service-Specific Terms and may not be amended, modified or altered except by a written instrument duly executed by authorized representatives of the Parties. The agreement between Customer and DA is not for the benefit of any third party.

### 30. Severability

Should any provision or portion of these GTCs or any Service-Specific Terms be held by a court or administrative agency of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions of these GTCs or the Service-Specific Terms, as applicable, will remain in full force and effect.