

## ASTERISK SUPPORT SUBSCRIPTION AGREEMENT

PLEASE READ CAREFULLY: BY CLICKING "I AGREE" YOU ARE AGREEING TO THIS ASTERISK 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 DRAWN UP IN ENGLISH; YOU ARE CONSENTING TO BE BOUND BY ALL THE TERMS OF THIS AGREEMENT, ALL INFORMATION SUBMITTED IN THIS AGREEMENT 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 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. NOTIFICATIONS MADE PURSUANT TO THIS AGREEMENT, EXCLUDING FINANCIAL MATTERS, SHALL BE GIVEN TO DIGIUM, INC. ATTN: IN-HOUSE COUNSEL, 445 JAN DAVIS DRIVE, HUNTSVILLE, ALABAMA 35806, FAX (+1) 256-428-6061

### 1. Definitions.

**1.1 "Subscription Level"** means the L1, L2, L3, or L4 Subscriptions and any future Levels of Subscriptions offered by Digium under this Agreement.

**1.2 "Included Systems" or "Included Servers"** means the number of Asterisk Servers for which Digium will provide Support Services for each Subscription Level. The number of Included Servers varies by the Subscription Level, as designated in the Table of Entitlements.

**1.3 "Included Cases" or "Included Incidents"** means the number of cases that the Subscription includes as part of the Supported Services provided by Digium to Company.

**1.4 "Incidents" or "Cases"** mean a single problem, technical question, or issue about the Supported Product 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 at [www.digium.com/support](http://www.digium.com/support), 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.

**1.5 "Additional Servers"** means the number of Servers that the Company wishes to be covered by this Subscription Agreement beyond the number of Included Servers normally supported by a given Subscription Level. Not all Subscription Levels include the ability to add Additional Servers.

**1.6 "Additional Server Price"** means the price for each Additional Server.

**1.7 "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.

**1.8 “Supported Software”** means the Genuine Asterisk releases and the Supplementary Software Components provided or sold by Digium and identified in the Table of Entitlements for which Digium shall provide Support Services, and associated documentation, updates and upgrades to the software. **Some of the Supported Software, including Asterisk, are provided without fee under Open Source licenses; however, some Supplementary Software Components are licensed commercially, and the cost for such commercial licenses is not included in this Agreement.** The level of support provided by Digium to Company shall depend on the version of Supported Software that the Company is using on a Supported Server Fully Supported Versions receive Full Support; older versions of the Supported Software may only have limited support entitlements such as Technical Assistance.

**1.9 “Fully Supported Versions”** mean those versions of the Supported Software designated by Digium for which Digium will provide both Technical Assistance and Engineering Support.

**1.10 “Support Services”** includes Technical Assistance and/or Engineering Support. Support Services may also include other technical services related to the Supported Products that are provided by Digium at Digium’s discretion under this Agreement. Support Services do not include Consultative Support, support for Products that have been modified, on-site support, system design, system architecture, system implementation, network design or architecture, nor configuring systems for clustering, redundancy, or backup.

**1.11 “Technical Assistance”** means providing assistance or answering questions related to installation, configuration, and basic troubleshooting of the Supported Software. Technical Assistance does not include Engineering Support. **Technical Assistance does not include configuring or assisting in the setup of the Products to perform calls to emergency services (e.g. 911).**

**1.12 “Engineering Support”** includes advanced troubleshooting of program errors (bugs), attempting to correct bugs, and providing updated versions of the Supported Software according to Digium’s normal release cycles. Engineering Support shall only be provided for Supported Software running on computer systems and operating systems that are designated as “Supported Platforms” by Digium. 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 the Supported Software, 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 Asterisk. Customers using unmaintained versions (ex. Asterisk 1.0 and Asterisk 1.2) will be asked to upgrade.

**1.13 “Phone Support Access Hours”** means the hours in Company’s time zone during which Company may place a telephone call to the Digium technical support center. Different Subscription Levels may include different hours of access to Digium technical Support.

**1.14 “Business Hours”** means from 7am until 7pm in the U.S. Central Time Zone, Monday through Friday, except for Digium holidays.

**1.15 “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.

**1.16 “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.

**1.17 “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.

**1.18 “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](http://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 Customer contacts Digium Technical Support to request an RMA under this section.

**1.19 “Consultative Support”** means Digium providing, at a mutually pre-determined scheduled time during Business Hours, up to one hour per session for a member of Digium’s technical staff to discuss with a Named Contact one of the following tasks related to a the Supported Software running on a Supported Server: (a) assist with planning a scheduled rollout or upgrade of Supported Software, (b) performing a review of the configuration and making suggestions as appropriate (c) discussing performance-related issues and troubleshooting or providing recommendations to improve performance if possible; and (d) reviewing Company’s AGI Scripts or other applications for Supported Products in order to make suggestions for improvements. Consultative Support does not include performing network design or architecting, custom programming, support for Products that have been modified, on-site support, nor reviewing, configuring, or validating systems for use in clustering, redundancy, backup, or for emergency services. The maximum hours of Consultative Support Company may receive is eight (8) hours per year. Consultative Support is only included in certain Enterprise class subscriptions.

**1.20 “Training Discount”** means Digium providing a discount off the standard list price for Digium-Authorized training classes that are offered directly and taught by Digium’s employees or authorized pre-qualified and bonafide contractors of Digium, including the Asterisk Fast Start, Advanced Asterisk, and similar classes. The amount of the Training Discount may vary per Subscription Level.

**1.21 “AstriCon Discount”** means Digium providing a discount off the standard list price for the AstriCon™ Asterisk community conference, normally held annually. The amount of the AstriCon Discount may vary according to the Subscription Level.

**1.22 “Deployment Summary on file”** means a written summary of Company’s use of Asterisk which is kept on file with Digium’s technical staff. This summary is used as a reference for Digium’s technical support staff to quickly understand and support the Company’s use of Asterisk.

**1.23 “Order Form”** means the (a) the applicable order form document signed by the parties or otherwise accepted by Digium or (b) Company’s Product order placed via Digium’s online web store at the Digium Website. If Company has ordered Product 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.

**1.24 “Effective Date”** means the Effective Date indicated on the applicable Order Form for which Support Services are to begin.

**1.25 “Subscription Fee”** means the fees set forth in the applicable Order Form and as stated in this Agreement.

**1.26 “Upgrades” and “Updates”.** Upgrades means bug fixes, updates and/or enhancements for Supported Software or other software or software tools that may be provided to Company as part of Support Services and can be distinguished from an Update by the location of the number which changes in the new release of the software. The numbers of a release are in the format of A.B.C.D. When A or B changes it is an Upgrade. When C or D changes it is an Update. For purposes of example only, a change from Asterisk 1.4.3 to Asterisk 1.5.0 or a change would be an Upgrade. A change from Asterisk 1.3.1 to Asterisk 1.3.4 would be considered an Update. For further clarification, an Upgrade is considered a major release of software in which new functionality is added. An Update is considered a minor release of a given major release in which bug fixes or security upgrades are made.

**1.27 “Initial Term”** means the period, beginning upon the Effective Date, and whose length is designated on the Company’s Order Form.

**1.28 “Renewal Term”** means one or more successive one-year periods set forth in **Section 4** or as otherwise agreed in writing by the parties.

**1.29 “Term”** means either the Initial Term or a Renewal Term, as applicable.

**1.30 “Server”** means a single computer which processes data using one or more CPUs, and which is owned, leased or otherwise controlled by the Company. In the event such a computer contains Server Blades and/or Virtual Server Operating System, each such Server Blade or Virtual Server Operating System shall be considered a separate Server.

**1.31 “Server Blade”** means a complete computer system on a single board which includes one or more CPUs, memory, operating system, network connections, and typically includes access to hard drives or other mass storage devices. A Server Blade is designed to be inserted into a space-saving rack, and each rack may contain a number of Server Blades served by one or more power supplies.

**1.32 “Virtual Server Operating System”** means an operating system that has been emulated or does not run directly on physical hardware. A single physical hardware Server or Server Blade may host multiple operating systems and thereby provide multiple Virtual Server Operating Systems.

**1.33 “Support Services”** means the technical services described in this Agreement including, without limitation, technical support, consulting, troubleshooting, updates, upgrades, repairs, and access to Digium’s Company portals.

**1.34 “Product”** means any software, documentation, or updates to the software or documentation that is licensed and provided by Digium; the Support Services; and any other benefits to Company as described in or provided to Company by Digium under this Agreement.

**1.35. “Asterisk Server”** means any one operating version of Asterisk on a server. If Asterisk is running in a partition on a virtual machine (server), each copy is supported as one Asterisk Server.

**1.36 “Software”** is any software which is distributed by Digium

**1.37 “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.**

**1.37 “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 [www.digium.com](http://www.digium.com) and shall be binding on Company subject to the notice and modification requirements contained herein

**1.38 “Supported Platform is** defined to mean a computer system and operating system which is within the list of supported platforms available on [www.digium.com](http://www.digium.com) . Digium reserves the right to change the list of supported platforms pursuant to the notice and modification rights within this Agreement.

## **2. SUPPORT SERVICES**

**2.1** Digium shall provide commercially reasonable efforts to perform Support Services to Company for the Supported Software. Company agrees it will use or apply such Support Services on no more than the quantity of Servers as it designates and pays for under this Agreement and the Order Form (including any Additional Servers if applicable). The scope of Support Services provided to the Company under this Agreement is subject to the then-current version of the software listed in the Table of Entitlements for Support Subscriptions as provided on the Digium Website (a sample of which is provided as **Exhibit A**).

**2.2** Company may receive the Support Services for no more than the total number of Servers for which Subscription Fees have been paid, or will be paid according to **Section 4** (together, the “Paid Servers”).

**2.3** Each Company Server that utilizes any portion of any of the Supported Software must be covered under a Paid Subscription in order to receive Support Services from Digium. All of Company’s Servers running any Supported Software for which Support Services are to be provided must have the same Subscription Level.

**2.4** Any unauthorized use of Support Services shall be deemed to be a material breach of this Agreement and may result in immediate termination.

**2.5** 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 Servers shall be deemed Confidential Information.

## **3. DELIVERY.**

Company may obtain copies of Supported Software by download from a designated area on the Digium or Asterisk Websites. Some Supported Software must be purchased by Company in order to be downloaded. Digium shall also 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. The Product and all associated software will be deemed accepted by Company unless written notice is provided to Digium within **ten (10) days** of delivery. Digium shall thereafter make documentation and updates available to Company from time to time as generally released according to Digium's release schedules. Subsequent releases of the Software or documents by Digium will be deemed accepted upon receipt by Company.

#### **4. ADDITIONAL SERVERS**

If at any time during a Term, Company increases the quantity of its Servers utilizing all or part of Product and for which any Support Services are used or applied to, Company shall notify Digium, within no later than **thirty (30) days** after each such addition and pay the fees for an additional Subscription or an Additional Server (if applicable), beginning from the first date of such utilization of the Support Services. All such Additional Servers will be covered under this Agreement during Company's then-current Term.

#### **5. PAYMENT TERMS**

**5.1** Subscription Fees are due on the Effective Date or the beginning date of each Term as specified on the Order Form or described in **Section 4** above for any additional Subscriptions or Additional Servers. Digium will make reasonable efforts to invoice Company at least **thirty (30) days** prior to the commencement of each Renewal Term and may provide a renewal option through the customer portal.

**5.2** 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. For all payments not received within **thirty (30) days** of the due date, a late payment fee shall accrue daily on such unpaid amounts at the rate of **one-and-one-half percent (1.5%)** per month, or the maximum rate permitted by law, whichever is less. All payments hereunder shall be in U.S. dollars.

**5.3** 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 the Product 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.

**5.4** 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 Product or 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.**

**6.1** 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 for successive one-year Renewal Terms (unless an alternative period is agreed in writing by the parties), unless either party gives at least **thirty (30)** days notice of non-renewal prior to the expiration of the applicable Term.

**6.2 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.

**6.3. Termination without Cause.** Either Party may terminate this Agreement without cause by providing the other party sixty (60) days prior written notice.

**6.5** 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.

**6.6** 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, 22, and 23.**

**6.7 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.

## **7. RESERVATION OF RIGHTS.**

**7.1** For purposes of clarification, this Agreement provides support and services on hardware and software which has been previously purchased or otherwise obtained independently of this Agreement. The agreement under which Company purchased or obtained the hardware or software contains the applicable license terms which governs Company's use of the software and hardware. This Agreement standing alone does not grant any license to the hardware and software, license rights are governed by either the open source license or other document by which Company obtained the hardware and/or 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 the Supported Software under this Agreement. 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 and the licenses of each of the Supported Products, including without limitation Asterisk, AsteriskNOW, Fax for Asterisk, Skype for Asterisk, G.729 for Asterisk. Company agrees that all goodwill associated to Digium trademarks shall inure to the benefit of Digium.

**7.2** Except where allowed by the licenses of the respective software or products (such as products provided by Digium under Open Source licenses), Company shall not reverse engineer the Supported Products 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 the Product, trademarks or patents that may come to Company's attention.

**7.3** Any representations made by Company concerning the Product shall be consistent with the Documentation and the terms of this Agreement.

**7.4** 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.**

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, **ALL OF THE PRODUCTS ARE PROVIDED TO COMPANY "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES CONCERNING THE INSTALLATION, USE, OR PERFORMANCE OF PRODUCTS. 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 ANY PRODUCTS WILL MEET COMPANY'S NEEDS OR THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.**

## **9. EMERGENCY CALLS**

Company understands and acknowledges that the Products 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 the Products may attempt to use that system to place emergency calls. Company acknowledges and agrees that: the Products must be properly configured for Company's system or application; that the nature of the Products and any networks they may operate upon allow many possible configurations; that such configuration may be beyond the scope of the documentation supplied with the Products; that specialized experience and training may be required to properly configure the Products; and that the proper configuration of the Products is not guaranteed by Digium under this Agreement. Company acknowledges and agrees that it is Company's sole responsibility to ensure that the Products and associated networks and systems are implemented and configured such that emergency calls are properly handled, that any system or application based on the Products 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 the Products 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 the Products, including, but not limited to: initially and regularly testing the operation of the Products, including testing the operation with emergency services; notifying and training all users of any system on which the Products 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 the Products and any network or system the Products are 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 THE PRODUCTS OR ANY OTHER SYSTEM OR NETWORK THAT THE PRODUCTS ARE 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 THE PRODUCTS 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 THE PRODUCTS IS IN COMPLIANCE WITH ANY APPLICABLE LAWS AND REGULATIONS.**

## **10. CONFIDENTIALITY**

**10.1** Digium agrees that all Confidential Information disclosed by Company and marked as such 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.

**10.2** Notwithstanding the foregoing, Digium shall not be required to protect or hold in confidence any information which:

- a) becomes publicly known through no wrongful act or omission of any person or entity, or
- b) 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
- c) 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
- d) is independently developed by Digium without use of Company's Confidential Information.

**10.3** Disclosure of Confidential Information shall not be precluded if such disclosure is:

- a) necessary to establish or exercise rights granted under this Agreement; or
- b) 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.

**10.4** 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.

**10.5** All Confidential Information together with all copies thereof which have been made by Digium shall remain the property of the Company.

## **11. LIMIT OF LIABILITY .**

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 THE PRODUCTS, 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 THE PRODUCTS, 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. NOTWITHSTANDING THE FOREGOING, THE MAXIMUM LIABILITY OF DIGIUM UNDER THIS AGREEMENT IS LIMITED TO THE THE COMPANY'S PURCHASE PRICE OF THE APPLICABLE SUPPORT SERVICES DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRIOR TO WHEN THE CAUSE OF ACTION (OR WHERE THE CAUSE IS NOT THE FIRST IN A SERIES OF RELATED OR SIMILAR CAUSES, TO THE FIRST OF SUCH CAUSES) OF LOSS OR DAMAGE FOR THE PURCHASE OF AFFECTED PRODUCTS AND/OR SERVICES 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 AN ARBITRATOR OR COURT IS AUTHORIZED TO AWARD UNDER SECTION 16.

**12.**

**This section intentionally left blank and omitted.**

## **13. FORCE MAJEURE**

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 **ninety (90) days**, equal to the time lost by reason of the delay. If the delay continues past the **ninety (90) 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.

## **14. EXPORT COMPLIANCE**

Company acknowledges that the Product, 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 the Product complies with all applicable export laws relating to the Product, 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.

## **15. NONEXCLUSIVE**

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.

## **16. DISPUTE RESOLUTION**

**16.1 Initiation of proceedings:** Any Party may send the other Party written notice identifying the Matter and invoking the procedures of this Section 16. Within **fourteen (14) days** after giving 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 Matter themselves by agreement, and, if the parties have not been able to reach a mutually acceptable resolution on the Matter within **fourteen (14) days** after the initial meeting, then the parties shall resolve the matter in accordance with the Dispute Resolution Procedures of this Section 16. The parties agree to refrain from instituting any legal action, other than emergency relief under Section 16.6 during the fourteen day dispute resolution period.

**16.2 Scope of Dispute:** Any dispute, controversy or claim arising under, out of or in connection with this Agreement, including any subsequent amendments, or the validity, enforceability, construction, performance or breach thereof, other than the IP Dispute exception provided in Section 16.4 (which shall be settled under the AAA's Patent Arbitration Rules), including any Matter which the parties do not resolve in accordance with Section 16.1 above ("Dispute"), shall be finally settled under the Rules for Commercial Dispute Resolution Procedures ("Rules") of the American Arbitration Association ("AAA") then in force on the date of commencement of the arbitration.

**16.3 Procedures:** Within **fifteen (15) days** after the commencement of arbitration, each party shall select one person, who shall have a minimum of three (3) years arbitration experience, to act as an arbitrator and the two (2) selected shall select a third arbitrator, also to have a minimum of three (3) years arbitration experience within ten (10) days after their appointment. If the arbitrators selected by the parties are unable to agree upon the third arbitrator, the third arbitrator shall be selected by the AAA. The award rendered shall be final and binding on the parties. Judgement upon the award may be entered in any court having jurisdiction in Madison County, Alabama. The award shall be in writing, shall be signed by a majority of the arbitrators, and shall include a statement setting for the reasons for the disposition of any claim. It is the intent of the Parties, barring extraordinary circumstances, arbitration proceedings will be concluded within **sixty (60) days** from the date the panel of arbitrators has been constituted. The arbitral tribunal may extend this time limit in the interests of justice. Failure to adhere to this time limit shall not constitute a basis for challenging the award. The arbitrators shall have no authority to award punitive or other damages not measured by the prevailing parties actual damages, except as required by statute; notwithstanding the foregoing, the arbitrators may award the "Costs and Fees" referenced in this Section. **In no event shall actual damages awarded in an arbitration,**

**not including “Costs and Fees”, initiated under pursuant to the Dispute Resolution Section exceed the the amount set forth in the limitation of liability in Section 11 of this Agreement** The Parties agree that they will not request, and the arbitrators shall have no authority to award, punitive or exemplary damages against either party. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of the prevailing party's costs and fees. “Costs and fees” mean all reasonable pre-award expenses of the arbitration including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone costs, court costs, witness fees, and attorney's fees. No Dispute under this Agreement shall be referred to Arbitration under this Section until such Dispute has been presented to the respective presidents or senior executives of the parties for their consideration and resolution pursuant to **Section 16.1**.

**16.4 Intellectual Property Disputes:** Notwithstanding the foregoing, any and all disputes, controversies or claims relating to intellectual property rights or confidential information (“IP Dispute”) arising out of or relating to this Agreement shall be settled by arbitration administered by the American Arbitration Association under its Patent Arbitration Rules, and judgement on the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.

**16.5 Appeal:** Within **thirty (30) days** of receipt of any award (which shall not be binding if an appeal is taken) any party may notify the AAA of an intention to appeal to a second arbitral tribunal, constituted in the same manner as the original tribunal. The appeal tribunal shall be entitled to adopt the initial award as its own, modify the initial award or substitute its own award for the initial award. The appeal tribunal shall not modify or replace the initial award except for clear errors of law or because of clear and convincing factual errors. The award of the appeal tribunal shall be final and binding, and judgment may be entered by a court having jurisdiction thereof.

**16.6 Emergency Relief:** If a party is in need of emergency relief prior to the constitution of the arbitration panel, that party shall notify AAA and request that the Optional Rules for Emergency Measures of Protection be utilized, in lieu of seeking a court injunction. The party requesting emergency relief shall notify the AAA and all other parties in writing of the nature of the relief sought and the reasons why such relief is required on an emergency basis. The application shall also set forth the reasons why the party is entitled to such relief. Such notice may be given by facsimile transmission, or other reliable means, but must include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify other parties.

**16.7 Forum:** This Agreement has been executed and delivered, and shall be deemed to have been made, in the state of Alabama. Any action, suit or proceeding between the parties arising out of or relating to this Agreement shall be resolved in Madison County, Alabama in accordance with this Dispute Resolution **Section 16** of this Agreement and the laws of the State of Alabama.

**16.8 Confidentiality:** All aspects of the Matter, of the Dispute, and of its arbitration shall be treated as Confidential Information. Neither the Parties nor the Arbitrator may disclose any information about the Matter, the existence, content, or results of the arbitration, except as necessary to enforce an award or to comply with legal or regulatory requirements. Before making any such disclosure, the Party intending to make the disclosure shall give the non-disclosing Party at least **twenty (20) days** prior written notice of such intention to afford the non-disclosing Party a reasonable opportunity to protect its interests.

**17. LANGUAGE.** 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.

## **18. ASSIGNMENT**

Company shall not assign this Agreement to any third party without the prior written consent of Digium, provided, however, that the merger or consolidation of Company into, or the sale or spin-off of substantially all assets of Company to, a third party shall not be deemed to be an assignment. Digium shall not assign this Agreement to any third party without the prior written consent of Company, provided, however, that the merger or consolidation of Digium into, or the sale or spin-off of any assets of Digium to, a third party shall not be deemed to be an assignment. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

## **19. 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 and by the procedures of **Section 16** of this Agreement. Neither the United Nations Convention on International Sale of Goods nor any adopted version of the Uniform Computer Information Transactions Act apply to this Agreement, and shall not and do not govern this Agreement.

## **20. WAIVER**

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.

## **21. NOTICES**

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.

All notices to Digium relating to the terminating or amending the terms of this Agreement shall be given or delivered in writing and addressed and delivered to the attention of: Contracts Manager, Digium Inc., 445 Jan Davis Drive, Huntsville, AL 35806, USA

## **22. ENTIRE AGREEMENT AND MODIFICATIONS**

This Agreement, including **Exhibit A** attached to this Agreement and incorporated as a part thereof, represent the complete agreement of the parties, supersede all prior discussions, communications and agreements between the parties with respect to the subject matter hereof. Upon thirty (30) days written notice delivered by Digium under the terms of Section 21 of this Agreement, Digium, in its sole discretion, reserves the right to amend or modify this Agreement

from time to time. These changes will become effective immediately at the end of the thirty (30) day notice period and shall be deemed to modify and supplement the terms of this Agreement. COMPANY'S CONTINUED PARTICIPATION IN THIS AGREEMENT FOLLOWING SUCH NOTICE WILL CONSTITUTE COMPANY'S BINDING ACCEPTANCE OF SUCH CHANGE. IF ANY MODIFICATION IS UNACCEPTABLE TO COMPANY, COMPANY'S ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT WITHIN THIRTY DAYS OF SUCH NOTICE OR NOTIFY DIGIUM, WITHIN THE THIRTY DAY TIME FRAME, THAT IT WISHES TO NEGOTIATE A MUTUALLY ACCEPTABLE REVISION OF THE MODIFICATION. TERMINATION BY COMPANY UNDER THIS SECTION SHALL NOT BE CONSIDERED TERMINATION FOR CAUSE. For purposes of clarification, Digium may modify **Exhibit A** by providing an updated table of entitlements via any of the methods of notice in Section 21. Digium may also update Exhibit A by posting a new list of entitlements on Digium's Website or on the Company's area of the Digium portal pages and this will be binding upon Company provided that Company has received notice pursuant to Section 21. Except as otherwise set forth herein, 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.

### **23. SEVERABILITY**

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: SAMPLE TABLE OF ENTITLEMENTS

ENTITLEMENTS	SUBSCRIPTION LEVEL			
	SMB		Enterprise	
	L1	L2	L3	L4
Number of Included Systems (Servers)	1	1	Up To 5	Up To 10
Number of Included Incidents (Cases)	2	5	10	Unlimited
Additional Server Price	-	-	\$499.	\$399.
Number of Named Contacts	1	1	1	3
<b>Supported Software</b>				
Asterisk Open Source 1.4	Yes	Yes	Yes	Yes
Asterisk Open Source 1.6	Yes	Yes	Yes	Yes
AsteriskGUI	Yes	Yes	Yes	Yes
G.729 Codec	Yes	Yes	Yes	Yes
HPEC Echo Canceller	Yes	Yes	Yes	Yes
Fax For Asterisk	Yes	Yes	Yes	Yes
LumenVox Speech Recognition for Asterisk	Yes	Yes	Yes	Yes
Cepstral Text-To-Speech For Asterisk	Yes	Yes	Yes	Yes
<b>Problem Resolution Support</b>				
	Business			
Phone Access Hours	Hours	24 x 7	24 x 7	24 x 7
Web Case Initial Response Time	2 Days	1 Day	4 Hours	4 Hours
Web Case Management	Yes	Yes	Yes	Yes
Remote Troubleshooting	Yes	Yes	Yes	Yes
<b>Advance Hardware Replacement</b>				
Advance Hardware Replacement	Yes	Yes	Yes	Yes
<b>Consultative Support</b>				
Scheduled Upgrade Assistance	-	-	-	Yes
Deployment Summary on file	-	-	-	Yes
Configuration Review	-	-	-	Yes
Performance Review	-	-	-	Yes
AGI Script/Application Review	-	-	-	Yes
<b>Self Help Support</b>				
Knowledge Base	Yes	Yes	Yes	Yes
Mailing Lists	Yes	Yes	Yes	Yes
User Forums	Yes	Yes	Yes	Yes
User Chat (IRC)	Yes	Yes	Yes	Yes
<b>Training Offered</b>				
Asterisk Fast Start (3 Days)	Option	Option	Option	Option
Asterisk Advanced (5 Days)	Option	Option	Option	Option
Training Discount	10%	10%	10%	20%