

TERMS OF SERVICE

THIS AGREEMENT PROVIDES FOR SETTLEMENT OF DISPUTES BY ARBITRATION INSTEAD OF JURY TRIALS. See Section 11.

These Terms of Service for D3UC LLC (“D3UC”) (this “Agreement”) is a legal agreement between you (either an individual or an entity that you are representing, hereinafter “you”) and D3UC, Inc. and its agents (collectively “D3UC”) for the D3UC Services (“Services”). Your use of the Services constitutes your agreement to the terms of this Agreement and D3UC’s Privacy Policy and you acknowledge that D3UC would not agree to provide the Services without that assent. Your use of the Services in combination with a third party’s products or services with whom D3UC has entered into either a marketing arrangement (a “Marketing Agent”) may impose additional terms from that Marketing Agent Marketing Agent’s product and services, and, in some instances, D3UC’s products and services. The terms and conditions and policies of a Marketing Agent may be separate and distinct from D3UC’s Terms of Service, Privacy Policy, and other policies applied by D3UC to similarly situated customers. Notwithstanding any agreement you may enter into with such Marketing Agent, you agree to these Terms of Service.

You may only receive the Services if you are a Service subscriber in good standing with a valid, authorized payment method on file with D3UC. You understand that you must obtain your own Internet connection in order to use the Services. We do not control your Internet access or the quality of your Internet connection. WE ARE NOT RESPONSIBLE FOR ANY THIRD PARTY PRODUCTS OR SERVICES, OR FOR PROBLEMS IN THE SERVICES CAUSED BY YOUR INTERNET CONNECTION OR THIRD PARTY PRODUCTS OR SERVICES, NOR WILL WE CONTACT ANY OF THESE PROVIDERS ON YOUR BEHALF.

Unlimited calling applies only to calls made within the continental United States and Canada. Calls to Alaska, Hawaii and all non-Canadian international calls are subject to additional charges.

Additional D3UC Services can be purchased by users you designate as administrators through the D3UC user interface or by calling D3UC Customer Care. You hereby authorize those users with administrative privileges to (i) add these Services to your D3UC account and (ii) commit you to pay for these Services in accordance with the terms of your order. You further authorize D3UC to obtain payment of your then-current statement balance from you each month from your credit card account.

You may designate one or more users to be an account administrator (“Administrator”) with full administrative control of your account from the D3UC user interface. Upon creation of your account, the individual assigned to be the Administrator is the individual who entered into an agreement with D3UC through our online sign-up process or, if the agreement was not entered into online, the individual whose name is identified on your order form. The Administrator: (i) can make any changes to the account (e.g., service additions, service deletions, assignment of users, account cancellations, updates to credit cards, etc.); and (ii) is the authorized individual on your account with respect to porting of your telephone numbers to a carrier other than D3UC. The Administrator may assign one or more additional administrators on the account and may re-assign “Administrator” status to another user. In the event that you wish to re-assign the Administrator designation on your account and the Administrator is unable to make the change, you must submit an email from the Administrator’s email address that is on file with D3UC or otherwise provide a written request via facsimile, on your letterhead and executed by an officer or owner of the company that you represent.

If you want D3UC to provide information on your account relating to a customer service record or call log details (other than through any available user interface), such request may be made by the Administrator, but information provided by D3UC will only be transmitted to the email address on file for the Administrator. The Administrator may designate one or more “Company Contacts” for the account. The Company Contact is the individual(s) who will receive all messages from D3UC concerning matters of general relevance to the account (notices of updates to the account, billing notices, maintenance alerts, etc.); such notices are typically provided through email. D3UC will initially assign the Administrator to be the Company Contact. A Company Contact may or may not be the Administrator for the account.

D3UC may adjust the components comprising a specific plan at any time. D3UC reserves the right, from time to time, to change the terms and modify service plans and features, provided that such changes are consistently applied in a manner and degree to similarly situated customers. D3UC will use commercially reasonable efforts to provide thirty days’ notice of such proposed changes. D3UC also reserves the right to increase pricing when there are government sourced or regulated changes applicable to VoIP providers, which increase the cost of VoIP services, and to include/exclude certain international calling destinations at any time based on its commercial or legal judgment. All pricing is exclusive of taxes, fees, and other government charges.

1. PAYMENT & SERVICES.

- 1.1 **Automatic Monthly Billing.** The Services are provided on a monthly basis, with an automatic monthly renewal unless you give us thirty days’ notice of cancellation prior to a scheduled billing date in accordance with the requirements of Section 2 below. You agree to pay D3UC the recurring monthly service charges, set-up charges and usage charges, if applicable, for your use of the Services plus any applicable taxes as set forth in Section 1.4 below.
- 1.2 **Payment Processing.** You agree to provide us with a valid email address and a valid payment method. You must advise us immediately if your email address changes and/or payment method changes or expires. Failure to comply may result in the immediate termination of Services. You authorize D3UC to automatically bill the credit card you provided, until you cancel the Services in accordance with the requirements of Section 2 below. You agree that D3UC may receive updated information about your account from the financial institution issuing your credit card.

- 1.3 Fee Payments & Late Charges.** Except for usage-based fees, all fees are due in advance on the first day of each billing period. Fees may include monthly recurring charges (“Service Fees”), and other non-recurring charges including, but not limited to, activation fees, porting fees, early termination fees, regulatory compliance fees (“Regulatory Recovery Fees”) and government-mandated pass through fees such as, but not limited to, Universal Service Fund fees (“USF”) and e911 fees (“Fees”). All usage-based charges (including charges for calls to Alaska, Hawaii and international calls), Fees and any other non-recurring charges are due and payable in arrears on the first day of each billing period following the month they were incurred. You agree to pay for all equipment and set-up fees at the time you request the Services. You agree to pay for the first month of Services upon your request for such Services. All payments, including payments paid in advance, are non-refundable. Failure to pay in full will result in immediate account suspension and D3UC shall have no liability for such suspension. Accounts will be reactivated, at D3UC’s sole discretion, only when the account balance is paid in full and a \$25 reconnect fee is paid. D3UC will assess an additional 1.5% per month (or the highest amount allowed by law, whichever is higher) late charge if your payment is more than thirty (30) days past due. A Marketing Agent may suspend Services when payments are not timely made and the timeframe and procedures for doing so may vary by Marketing Agent. You are responsible and liable for any fees, including attorney and collection fees, that D3UC, or a Marketing Agent, may incur in its efforts to collect any remaining balances from you. You also agree that you will be billed for and will pay any outstanding balances if you cancel the Services.

During any period of suspension for non-payment, Services will be unavailable to you until the account balance is paid in full. In the event that D3UC is providing data backup service, call recording service, or any other service for which D3UC is collecting or providing data, to you during a period of suspension, you will be unable to backup new data or record calls and you will be unable to access any data or recordings that have previously been stored by D3UC.

Notwithstanding the foregoing, in the event that your use of the Services involves usage-based charges that in D3UC opinion are substantial, D3UC may, in its sole discretion, process charges against your payment method prior to your regular monthly billing cycle date and/or require a non-interest bearing deposit to secure your payment obligations under this Agreement. In the event that D3UC requires a deposit, the deposit will be in an amount determined by D3UC to be equal to your forecasted monthly usage charges. All deposits must be paid via credit card or a wire transfer and will be held on account during the term of this Agreement. This deposit may be adjusted as usage levels increase or decline and will be refunded, less any past due balance, if you cancel your account. D3UC may suspend your service at any time pending receipt of the required deposit. Marketing Agents may do the same.

- 1.4 Taxes.** Prices for the Services do not include any customs duties, sales, use, import or export, value added, excise, federal, state, local, public utility, universal service or other similar taxes or fees. You may also be charged taxes by a Marketing Agent for non-D3UC products and services sold or licensed by that Marketing Agent in connection with your order for D3UC Services. All such taxes shall be paid by you and will be added to any amounts otherwise charged to you unless you provide D3UC or Marketing Agent, as applicable, with an appropriate exemption certificate. If any amounts paid for the Services are refunded by D3UC or Marketing Agent, applicable taxes may not be refundable.
- 1.5 Invoice Discrepancies & Currency Conversion.** We deliver all invoices through email only. You agree to notify D3UC about any billing problems or discrepancies within thirty days after they first appear on your account statement. If you do not bring them to D3UC’s attention within thirty days, you agree that you waive your right to dispute such problems or discrepancies. All transactions are charged in U.S. dollars (USD). Please remember that orders placed with us will be converted from USD to your currency by your credit card company when they process the transaction. D3UC cannot be held responsible for any adverse currency fluctuations.
- 1.6 Release of Numbers.** You acknowledge that if your account is terminated or cancelled, all telephone numbers associated with your account may be released. Similarly, the cancellation of services that have associated telephone numbers will result in the release of such numbers. You acknowledge that it is your responsibility to work with another provider to port out those numbers before your termination or cancellation of your account or termination of services.
- 1.7 Regulatory Recovery Fee.** A Regulatory Recovery Fee will be charged monthly to offset costs incurred by D3UC in complying with inquiries and obligations imposed by federal, state and municipal regulatory bodies/governments and the related legal and billing expenses. This fee is not a tax or charge required or assessed by any government.
- 1.8 E911 Fee.** The FCC requires that D3UC provide emergency 911 services, and allows us to charge a recurring monthly fee that is used for the following: next generation costs required by the FCC for supporting computer software and hardware upgrades that allow public safety answering points (PSAP) to send assistance to the registered location of a 911 caller. The monthly E911 Fee is charged for each phone number assigned to your account.
- 1.9 Unlimited Voice Services.** Unlimited voice services are provided solely for live dialogue between individuals. Unlimited voice services may not be used for call forwarding, monitoring services, data transmissions, transmission of broadcasts, transmission of recorded material, or other connections which do not consist of uninterrupted live dialogue between individuals. If D3UC finds that you are using an unlimited voice service offering for other than live dialogue between individuals, D3UC may, at its option, terminate your service or change your plan to one with no unlimited usage components. D3UC may provide commercially reasonable written or email notice that it intends to take any such action, and you may terminate the Agreement. Notwithstanding the foregoing, you shall be entitled to use D3UC conference calling services such as three way calling and D3UC-provided conference calling bridges. See section 4.2 below for additional limitations pertaining to your use of unlimited voice services.
- 1.10 Metered Usage.** There are certain calls that will incur additional usage charges, such as calls to Alaska, Hawaii and international calls. Metered usage is billed in full-minute increments, and actual usage is rounded up to the next full increment at the end of each call for billing purposes.

- 1.11 Bundled Usage.** D3UC may offer bundled plans that include a defined combination of services and which may offer a specified number of minutes or unlimited usage (subject to D3UC's Fair Use Policy set forth below). Bundled plans may also include usage-based charges that differ from other plans.
- 1.12 Credentials Necessary to Access Services.** You are responsible to secure all credentials used to access the Services, including credentials used by telephones or softphones and credentials used by end users or Administrators to access the D3UC user interface, as well as the media access control (MAC) address of telephones you use. You acknowledge that placing telephones on a publicly accessible internet protocol address or a publicly accessible network will subject you to a higher level of risk for fraudulent activity, as will use of the Services using a network that has not been secured using best-practice measures. You acknowledge that you bear the risk of loss arising from any unauthorized or fraudulent usage of the Services. D3UC may, but shall not be required, to take action to prevent or terminate any fraud or abuse in connection with the Services.
- 1.13 Notices from D3UC.** D3UC may provide you notice under this Agreement either by written document, email, voice mail or by publishing the information on the D3UC website.

2. CANCELLATION OF SERVICES.

Your request to initiate cancellation may be started one of our Marketing Agents. If you contact a D3UC Marketing Agent to cancel all Services or any portion thereof, the Marketing Agent will collect the pertinent information on a cancellation form and provide that information to D3UC to effect cancellation in accordance with your instructions. You will receive written confirmation of the requested scope of cancellation from D3UC.

You may cancel the Services at any time by providing D3UC with a notice of your intent to cancel at least 30 days in advance by having the Administrator contact by telephone during normal business hours. **YOU MAY ONLY CANCEL SERVICES THROUGH THIS METHOD. D3UC WILL NOT ACCEPT CANCELLATION VIA EMAIL, FAX, SMS OR OTHER METHODS. FAILURE TO CANCEL SERVICES IN ACCORDANCE WITH THIS SECTION WILL RESULT IN ONGOING SERVICE FEES.** You acknowledge that the cancellation will be effective 30 days after you provide notification. D3UC will provide you with email confirmation of both your request to cancel Services and the actual cancellation of Services. If you do not receive a confirmation of your request to cancel or if you do not receive a confirmation of Service cancellation, you must notify D3UC by sending an email to billing@d3uc.com or contacting D3UC by telephone at 973-330-8800.

If you signed up for a minimum commitment period, you will be responsible for all charges for the entire minimum commitment period. If you cancel your service before such period expires, all such fees will immediately be due and you authorize D3UC to immediately bill all such fees to your payment method.

You understand and agree that cancellation of your subscription is your sole right and remedy with respect to any dispute with D3UC. This includes, but is not limited to, any dispute related to, or arising out of: (1) any term of this Agreement or D3UC's enforcement or application of this Agreement; (2) any policy or practice of D3UC, including any D3UC Privacy Policy, or D3UC's enforcement or application of these policies; (3) the amount or type of fees, applicable taxes, billing methods, or any change to the fees, applicable taxes, or billing methods.

In the event that you subscribe to ancillary services provided by D3UC, your election to cancel telephone service or any termination with D3UC shall also cancel such ancillary Services. In the event that D3UC is providing data backup, voicemail recording, call recording, or other such ancillary service to you, all of your data, including all recordings, will be deleted on or after the date that you cancel such service.

You may also cancel individual Services on your account by contacting D3UC or your Marketing Agent during normal business hours. You acknowledge that the cancellation will be effective on the date you specify, but not earlier than 30 days after you provide notification to D3UC.

3. D3UC'S RIGHT TO TERMINATE OR MODIFY SERVICES.

D3UC may modify the terms of this Agreement or the Services, including but not limited to the price or nature of the Services, upon notice to you. Your continued use of the Services constitutes your agreement with the modified terms of this Agreement. In the event D3UC modifies the Agreement or the Services, you may terminate the Services as provided in Section 2, above. D3UC may terminate this Agreement and any Services at any time upon notice to you, provided that in the event you have not violated any term of this Agreement, you will be entitled to receive the Services for any period for which you have already paid, or a pro-rata refund at D3UC's sole discretion. This Agreement will automatically terminate if you fail to comply with any term. No refund will be provided if you have violated any term of this Agreement. No notice shall be required from D3UC to effect such termination. Upon any termination of this Agreement (whether by you or D3UC), you shall immediately discontinue use of the Services. Your obligation to pay accrued charges and fees shall survive any termination of this Agreement.

4. SERVICE USE RESTRICTIONS.

- 4.1 Compliance with Laws.** You agree that you shall only use the Services in a manner that complies with all applicable laws in the jurisdictions in which you use the Services, including, but not limited to, applicable restrictions concerning copyright and other intellectual property rights and restrictions concerning call recording, call monitoring, call interception and/or direct marketing or telemarketing. You may only use the Services for your own use. You may not use the Services in any way to provide, or as part of, any commercial service or application or in any way interfere with the users, services or equipment of the network. You may not attempt to, in conjunction with any device, software program or service, circumvent technological measures employed to control access to the Service. In addition to any other remedies available in equity or law to D3UC, failure to comply with any of the terms and conditions in this Section 4 (Service Use Restrictions) shall result in immediate termination of the Services.
- 4.2 Fair Use.** D3UC's Services are for normal, reasonable business use and consistent with the types and levels of usage by typical customers on the same business calling plan. While most reasonable uses of our Services in connection with the terms of this provision ("Fair Use Policy" or "Policy") are permitted by D3UC, unauthorized or excessive use beyond that normally experienced by typical business customers may cause extreme network capacity and congestion issues and interfere with our network and third party networks with whom we connect for call initiation and completion services. Such unauthorized or excessive use may manifest itself in increased busy signals for our customers and others, and may result in service termination. Any use of the Services or any other action that causes a disruption in the network integrity of D3UC services or its vendors, whether directly or indirectly, is strictly prohibited and may result in termination of the Services.

A. Evaluation of Usage

D3UC evaluates customer usage in comparison to typical levels of permissible usage engaged in by our customers. Each of the following is impermissible under D3UC's business plans and considered outside of normal use:

- i. Resale to others
- ii. Auto-dialing or fax/voice blasts
- iii. Without live dialogue, including use as a monitor or for transcription purposes
- iv. Continuous or extensive call forwarding
- v. Continuous connectivity
- vi. Constant dialing
- vii. Iterative dialing
- viii. Fax broadcast
- ix. Fax blasting
- x. Telemarketing involving practices that are in violation of any law or regulation, including the Telephone Consumer Protection Act (47 U.S.C. § 227) and implementing rules and regulations.

You agree that you will NOT use the Services in ways that violate laws, infringe the rights of others, or interfere with the users, services, or equipment of the Services. You agree and represent that you are purchasing the Services and/or the equipment for your own internal use only, and shall not resell or transfer the Services without the advance express written permission of D3UC.

D3UC reserves the right to review usage of unlimited usage plans to ensure that you are not abusing such plans. You agree to use unlimited voice plans for normal voice-related communications with aggregate usage that falls within the range of similarly situated business customers. You agree not to employ methods or use devices to take advantage of unlimited plans by using the Services excessively or for means not intended by D3UC. D3UC may terminate service immediately if it determines, in its sole discretion, you are abusing an unlimited plan. You agree that D3UC has the right to terminate your service or charge you additional fees if your usage is considered abusive in the sole discretion of D3UC.

B. Excessive Usage fees

If it is determined that your usage is abusive, you agree to pay a per minute fee for use in excess of those levels at the then current rate established by D3UC, of \$.05 per minute or D3UC's actual cost, whichever is higher. At D3UC's sole option, your service may be immediately terminated. THIS OVERAGE FEE APPLIES TO ALL PLANS INCLUDING THE UNLIMITED PLANS.

C. For Lawful and Appropriate Purposes Only; D3UC's Rights

You may not use our Service or devices in any way that is illegal, fraudulent, improper or inappropriate. The following is a non-exhaustive list of examples of illegal, fraudulent, improper, or inappropriate uses of our Service and or devices:

- i. Threatening;
- ii. Abusive;
- iii. Harassing;
- iv. Defamatory;
- v. Libelous;
- vi. Deceptive;
- vii. Fraudulent; and/or
- viii. Invasive of another's privacy or any similar behavior

D. Prohibited Use

You may not use any automated means to manipulate our Service or use our Service to violate any law, rule, regulation or any third parties intellectual property or personal rights. You shall not use our Service or our device to:

- i. Impersonate another person;
- ii. Send bulk unsolicited messages;
- iii. Use robots, data mining techniques or other automated devices or programs to catalog, download, store or otherwise reproduce or distribute information from our Service or use any automated means to manipulate our Service;
- iv. Violate any law, rule or regulation;
- v. Violate any third party's intellectual property or personal rights, or
- vi. Exceed your permitted access to our Service

We may monitor the use of our Service for violations Terms of Service. We may remove or block all communications if we suspect a violation of this agreement, or if we think it necessary in order to protect our Service, D3UC, its affiliates, directors, officers, agents, and employees from harm.

We reserve the right to review your account and take further action, including, but not limited to, immediate suspension of your Service if account usage is beyond normal standards for typical customers on the same calling plan, impermissible or detrimental to other customers' ability to use the Service or adversely affects our or third party network providers' operations. We may assess abnormal usage based on comparisons to the usage patterns and levels of our other customers on the same plan(s). If we determine that you are engaging in abnormal or impermissible usage, we will use commercially reasonable efforts to inform you and may provide you with the opportunity to correct the improper usage. If we afford you the opportunity to correct your abnormal usage patterns and you fail to immediately conform to normal use, we may exercise our right to transfer your service to a more appropriate plan, charge applicable rates for that plan, implement other limitations or suspend or terminate your service with or without notice. If we believe that our Service has been used for an unlawful purpose, we may immediately terminate your Service with or without notice and/or forward the relevant communication and other information to the appropriate authorities for investigation and prosecution. We reserve all of our legal rights.

E. Right to Disclose Information

If we believe that you have used our service or device for unlawful purpose, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You consent to our forwarding of any such communications and information to these authorities. In addition, you hereby agree to the disclosure of your name, telephone number, credit card information, and other personal information, any communications sent or received by you, and any other information that we may have about your account, including but not limited to, types of service, length of service, MAC address(es), IP address(es), email address(es), registered 911 address, and all other account information, as follows:

- i. In response to law enforcement or other governmental agency requests;
- ii. As required by law, regulation, rule, subpoena, search warrant, or court order;
- iii. As necessary to identify, contact, or bring legal action against someone who may be misusing the service, the device, or both;
- iv. To protect D3UC's rights and property; or
- v. In emergency situations where disclosure of such information is necessary to protect D3UC's customers or third parties from imminent harm.

F. Changes

D3UC reserves the right to change this Policy at any time upon notice to you. Changes shall become effective upon the later of the date specified in the notice or when a revised Policy is posted to D3UC's website.

5. PERSONAL INFORMATION AND PRIVACY.

In accordance with Section 222 of the Communications Act and the Federal Communications Commission's ("FCC") Protecting Customer Information Rules (47 C.F.R. § 64.2001, et seq.), D3UC has established the policies and procedures outlined at d3uc.com/privacy-notice for collecting, accessing, using, and storing Customer Proprietary Information ("Customer PI").

6. NOTIFICATION OF SERVICE CHANGES.

From time to time, D3UC may send you emails or text messages (SMS) describing new or changed Services, and how to access them, to the email addresses or SMS mobile phone numbers you provide. If you provide us with your cell phone number, you consent to receiving service-related information from us via SMS. You will receive service related emails or SMS messages even if you have opted out of receiving other emails or other SMS messages from D3UC. If you do not want to receive service-related emails or SMS messages, you may cancel the Service at any time as provided in this Agreement. You also agree that you are solely responsible for the SMS charges that your wireless provider may charge for both sending any SMS to us and for receiving any account-related SMS from us.

7. PORTED TELEPHONE NUMBERS ON SERVICE DISCONNECTION.

- 7.1 Single line Accounts.** You may be able to take, or "port," your current telephone number(s) to another service provider. You will remain responsible for all charges and fees until you notify D3UC of your election to cancel services in accordance with Section 2. Until you notify us of your intention to cancel, your Service and your Agreement with us will not terminate, you will remain a D3UC customer, and you will continue to be responsible for all charges and fees associated with your D3UC Service. You will not receive any refund or partial refund or any credits for any charges already billed to your account.
- 7.2 Multiple-line Accounts.** If you request that a new service provider port a number from us and you have multiple numbers assigned to your account and/or additional equipment on your account, you are required to inform us of your intent to terminate the specific affected Services on your account or we will continue to bill for such Services. You will continue to be responsible for all the charges and fees associated with the remaining Services on your D3UC account. You will not receive any refund or partial refund or any credits for any charges already billed to your account.
- 7.3 Request for D3UC to Port numbers.** If you request that D3UC port a number from an existing service provider to D3UC, D3UC will use commercially reasonable efforts to assist you in porting that number. You acknowledge that service providers require verification of identity, as well as authorization and other reasonable information in order to port any numbers to D3UC. You must correctly complete a letter of authorization, provide us with a copy of your most recent bill from such service provider, and provide us with any other information required by such service provider to port your number to D3UC. FAILURE TO PROVIDE ANY INFORMATION REQUESTED BY D3UC OR THE THIRD PARTY SERVICE PROVIDER WILL DELAY THE PORTING OF THE NUMBER TO D3UC. D3UC SHALL NOT BE RESPONSIBLE FOR ANY DELAY IN THE PORT OF YOUR NUMBER AND WILL NOT PROVIDE CREDIT FOR ANY SUCH DELAYS.

8. DISCLAIMER OF WARRANTY & LIMITATION OF LIABILITY.

THE SERVICES ARE PROVIDED AS-IS WITHOUT WARRANTY OF ANY KIND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. D3UC FURTHER DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. YOU ASSUME THE ENTIRE RISK ARISING OUT OF THE USE OF THE SERVICES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN NO EVENT SHALL D3UC, ITS SUPPLIERS, DISTRIBUTORS, RESELLERS, OR RETAILERS BE LIABLE (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) FOR ANY DIRECT, CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, COMPUTER FAILURE, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SERVICES EVEN IF D3UC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH D3UC RELATED TO THIS AGREEMENT OR THE SERVICES/CONTENT SHALL BE CANCELLATION OF THE SERVICES. IN THE EVENT A COURT AWARDS DIRECT DAMAGES DESPITE THE FOREGOING, SUCH DAMAGES SHALL NOT EXCEED THE LESSER OF \$250.00 OR THE AMOUNT YOU PAID TO D3UC WITHIN THE LAST SIX (6) MONTHS. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

9. INDEMNIFICATION.

YOU AGREE TO HOLD HARMLESS, INDEMNIFY AND DEFEND D3UC, ITS OFFICERS, DIRECTORS, EMPLOYEES, DISTRIBUTORS, RESELLERS, RETAILERS, AND SUPPLIERS FROM AND AGAINST ANY LOSSES, DAMAGES, FINES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS) ARISING OUT OF OR RELATING TO ANY CLAIM THAT YOU HAVE VIOLATED ANY TERM OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE REQUIREMENTS SET FORTH IN SECTIONS 4.1 and 4.2 OF THIS AGREEMENT.

10. NO ASSIGNMENT.

This Agreement is personal to you (or the company which you represent), and may not be assigned without D3UC's express written consent. If you are agreeing on behalf of a company, you represent that you are authorized to bind the company under this Agreement.

11. OTHER IMPORTANT PROVISIONS.

- 11.1 Dispute Resolution And Binding Arbitration.** PLEASE READ THIS CAREFULLY - IT AFFECTS YOUR RIGHTS. ⁽¹⁾_(SEP)
This section provides for mandatory resolution of disputes through final and binding arbitration before a neutral arbitrator instead of in a court by a judge or jury. Any arbitration under this agreement will take place on an individual basis; class arbitrations and class action lawsuits are not permitted.

Arbitration

D3UC and you agree to arbitrate any and all disputes and claims between you and D3UC. Arbitration means that all disputes and claims will be resolved by a neutral arbitrator instead of by a judge or jury in a court. This agreement to arbitrate is intended to be given the broadest possible meaning under the law. It includes, but is not limited to:

- i. disputes and claims arising out of or relating to any aspect of the relationship between you and D3UC, whether based in agreement, tort, statute, fraud, misrepresentation or any other legal theory;
- ii. disputes and claims that arose before this or any prior agreement (including, but not limited to, claims relating to advertising);
- iii. disputes and claims that may arise after the termination of this agreement;
- iv. disputes and claims that are currently the subject of individual litigation;
- v. disputes and claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- vi. disputes and claims concerning the scope of this arbitration provision.

Informal Resolution of Disputes

D3UC can resolve most customer concerns quickly and to your satisfaction. If you have a dispute or claim against us, you should first contact D3UC by telephone at 973-330-8800 or by email at notice@d3uc.com. In the event your dispute or claim is not resolved to your satisfaction, you may seek to have that dispute or claim resolved through mandatory arbitration as set forth below.

Formal Notice of Disputes

A party who intends to seek arbitration must first send to the other party a written Notice of Dispute. A Notice of Dispute must be sent to D3UC by certified mail addressed to: D3UC, Attn: Imran Dalvi, CFO with a copy by email to notice@d3uc.com. A Notice of Dispute must be sent to you by certified mail or overnight express delivery with verification at the last mailing address that you registered with D3UC and a copy by email to you at the last email address you registered with D3UC. The Notice of Dispute must describe the nature and basis of the dispute or claim and set forth the specific relief sought. If you and D3UC do not reach an agreement to resolve the dispute or claim within thirty days after the Notice of Dispute is received, you or D3UC may commence an arbitration proceeding by downloading or copying a form from <http://www.adr.org>.

Arbitrator and Arbitral Rules

The arbitration shall be administered by the American Arbitration Association ("AAA"). You may contact the AAA by telephone at 1-800-778-7879, by email at Websitemail@adr.org, or by mail at 1633 Broadway, 10th Floor, New York, New York 10019. The arbitration shall be governed by the AAA's Commercial Dispute Resolution Procedures and Supplementary Procedures for Consumer Related Disputes ("AAA Rules"), as modified by this Agreement.

Location and Procedure of Arbitration

Unless you and D3UC mutually agree otherwise, all hearings conducted as part of the arbitration shall take place at a location, convenient to you, in the county or parish of your billing address. If your claim is for \$10,000 or less, you or D3UC may request that the arbitration be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim is in excess of \$10,000, the right to a hearing will be determined by the AAA Rules.

Fees and Costs

You are responsible for all costs that you incur in the arbitration, including, but not limited to, attorneys or expert witness fees. If a party elects to appeal an award, the prevailing party in the appeal shall be entitled to recover all reasonable attorneys' fees incurred in that appeal. Notwithstanding anything to the contrary in this arbitration provision, D3UC shall pay all fees and costs which it is required by law to pay.

Waiver of Jury Trial

You and D3UC agree that, by entering into this agreement, you and D3UC are waiving the right to a trial by jury.

Waiver of Class Actions

You and D3UC agree that the arbitrator may award relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. YOU AND D3UC AGREE THAT YOU AND D3UC MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. You and D3UC agree that, unless you and D3UC agree otherwise, the arbitrator may not consolidate more than one person's or entity's claims, and may not otherwise preside over any form of a representative or class proceeding.

Exceptions to Arbitration Agreement

You and we agree:

- i. you may take your dispute to small claims court, if your dispute qualifies for hearing by such court;
- ii. if you fail to timely pay amounts due, we may assign your account for collection, and the collection agency may pursue in court claims limited strictly to the collection of the past due debt and any interest or cost of collection permitted by law or the Agreement;
- iii. you or we may take any disputes over the validity of any party's intellectual property rights to a court of competent jurisdiction;
- iv. any dispute related to or arising from allegations associated with fraudulent or unauthorized use, theft, or piracy of service may be brought in a court of competent jurisdiction; and
- v. either you or we may seek any interim or preliminary relief from a court of competent jurisdiction, necessary to protect the rights or property of you or D3UC, pending the completion of arbitration.

Modification of Arbitration Provision

Despite any provision in this Agreement to the contrary, if D3UC makes any substantive change to this arbitration provision, you may reject any such change by sending us written notice within thirty days of the change to the Arbitration Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision.

- 11.2 Complete Agreement.** This Agreement shall constitute the complete and exclusive agreement between us, notwithstanding any variance with any purchase order or other written instrument submitted by you, whether formally rejected by D3UC or its Marketing Agents or not. The terms and conditions contained in this Agreement may not be modified by you except in a writing duly signed by you and an authorized representative of D3UC. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability of such provision under other circumstances, or of the remaining provisions hereof under all circumstances. This Agreement will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.
- 11.3 Equipment.** You may be required to purchase telecom equipment in order to utilize the Services. Procuring and maintaining that equipment is your sole responsibility. D3UC may, at your request, facilitate the provision of equipment from a third party supplier or resell certain equipment. While we suggest and resell some equipment brands and facilitate your purchase of some equipment as an accommodation, the equipment manufacturer and not D3UC shall be responsible for any equipment defects, if applicable. D3UC will pass through all original equipment manufacturer warranties for the equipment to you. D3UC shall have no liability to you of any nature regarding such equipment. Equipment may not be returned to D3UC for any reason. ALL EQUIPMENT SALES ARE FINAL.

12. EMERGENCY SERVICES- 911 DIALING & NON-VOICE SYSTEMS.

12.1 Non-Availability of Traditional 911 or E911 Dialing Service. At D3UC 911 dialing service operates differently than traditional 911. You agree to inform any business invitees, guests and other third persons who may be present at the location where you utilize the Service of the non-availability of traditional 911 or E911 dialing from your D3UC's Service and equipment. The physical location where you utilize the Service must be the actual physical street address where the equipment is located, not a P.O box, mail drop or similar address.

12.2 Description of 911-Type Dialing Capabilities – Activation Required. D3UC offers 911-type dialing service in certain areas within the U.S. (but may not offer such service in certain areas of the U.S. or non-U.S. locations) that differs from traditional 911 services. When you dial 911 your call is routed from the D3UC network to the Public Safety Answering Point (PSAP) or local emergency service personnel designated for the address that you listed at the time of activation. If you make changes to your 911 address using the D3UC online web user interface, your call may be routed to a different PSAP or local emergency service personnel, who may ask you to provide your location and other information.

Calls dialed by handset extensions included in your account with D3UC will be routed from the D3UC's network to the PSAP or local emergency service personnel designated for the address that you listed at the time of activation. If your equipment is used in multiple locations, or in the event that one or more items of equipment are used in multiple locations, end users designated as administrators on your account may, at your option, create additional service locations and associate your equipment to specific locations for the purposes of routing calls to the local PSAPs for such locations. Individual end users may assign and re-assign their current location on an as-needed basis, provided however, that the Administrator has previously activated that functionality. It is your sole responsibility to make these changes and to ensure that all business invitees, household residents, guests and other third persons who may be present at the physical location(s) where you utilize the Service are aware.

For any D3UC extensions assigned to a non-US 911 location (subject to applicable local law), calls placed to 911 will be routed to a US-based call center that may not be able to offer local emergency assistance to the caller.

12.3 Service Outage. You acknowledge and agree that (a) 911 dialing does not function in the event of a power failure or disruption. If an interruption in the power supply occurs, the Service and 911 dialing will not function until power is restored and you may have to reset or reconfigure equipment prior to utilizing the Service or 911 dialing; (b) service outages or suspension or termination of service by your broadband provider and/or ISP or by D3UC will prevent all Service including 911 dialing; (c) service outages due to suspension of your account as a result of billing issues will prevent all Service, including 911 dialing; (d) if there is a service outage for any reason, such outage will prevent all Service, including 911 dialing; and (e) D3UC's liability is limited for any Service outage and/or inability to dial 911 from your line or to access emergency service personnel.

12.4 Possibility of Network Congestion and/or Reduced Speed for Routing or Answering 911. You acknowledge and agree that (a) network congestion and/or reduced speed in the routing of a 911 communication made utilizing your equipment may be greater than that experienced when using traditional 911 dialing over traditional public telephone networks; (b) 911 dialing from your equipment will be routed to the general telephone number for the local emergency service provider (which may not be answered outside business hours), and may not be routed to the 911 dispatcher(s) who are specifically designated to receive incoming 911 calls at such local provider's facilities when such calls are routed using traditional 911 dialing; and (c) the general telephone number for the local emergency service provider may produce a busy signal or may take longer to answer, as compared to those 911 calls routed to the 911 dispatcher(s) who are specifically designated to receive incoming 911 calls using traditional 911 dialing.

12.5 Automated Number Identification. Technical limitations may make it impossible for the Public Safety Answering Point (PSAP) and the local emergency personnel to identify your phone number when you dial 911. The local emergency operators answering the call may not see your telephone number or your registered address. The emergency center may not be equipped to receive, capture or retain your telephone number and registered address, so you must be prepared to give them this information. Until you give the operator your phone number, he/she may not be able to call you back or dispatch help if the call is dropped or disconnected, or if you are unable to speak. D3UC's system is configured to send the automated number identification information; however, one or more telephone companies that route the traffic to the PSAP, and the PSAP itself, may not be able to receive the information and pass it along. You acknowledge and agree that PSAP and emergency personnel may or may not be able to identify your phone number in order to call you back if (a) the call is unable to be completed; (b) the call is dropped or disconnected; (c) you are unable to speak to tell the dispatcher the location of your phone number and/or (d) the Service is not operational for any reason.

12.6 Limitation of Liability and Indemnification Related to E911 Services. D3UC relies on third parties for the forwarding of information underlying such routing. D3UC and its third party provider(s) disclaim any and all liability in the event such forwarded information or routing is incorrect. D3UC and its officers, directors or employees may not be held liable for any claim, damage, loss or other cause of action, and you hereby waive any and all claims, damages, loss or causes of action, arising from or relating to D3UC's 911 dialing.

You agree to defend, indemnify and hold harmless D3UC, its officers, directors, employees, affiliates, agents and its third party provider(s) from any and all third party claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of, or resulting from (a) your failure to correctly activate 911 calling; (b) your provision to D3UC of incorrect information in connection with your 911 calling or service; (c) misrouted 911 or E911 calls as a result of your errors or omissions; or (d) the absence, failure or outage of the Service, including 911 dialing and/or inability of any user of your Service to dial 911 or to access emergency service personnel.

- 12.7 Alternative 911 Arrangements.** You acknowledge and agree that (a) D3UC does not offer primary line or lifeline services; (b) the equipment and Services do not support 911 emergency dialing or other emergency functions; and (c) users of the Services, who may place calls using your phone services, need to be notified of the 911 limitations.

D3UC ADVISES YOU TO MAINTAIN AN ALTERNATIVE MEANS OF ACCESSING TRADITIONAL 911 SERVICES SUCH AS TRADITIONAL TELEPHONES AND CELLULAR PHONES. YOU SHOULD ALWAYS HAVE AN ALTERNATIVE MEANS OF ACCESSING TRADITIONAL 911 OR E911 SERVICES.

13. CONSENT TO USE OF ELECTRONIC SIGNATURES AND RECORDS

As a convenience and courtesy to you, D3UC provides access to its Services online which may require you to enter into agreements or receive notices electronically. Accordingly, you acknowledge and agree that by clicking “I Agree” or “I Accept” anywhere on a D3UC website:

- 13.1** You agree to conduct electronically the particular transaction into which you thereby enter including, without limitation, entering into this Agreement;
- 13.2** You have read and understand the electronic copy of contracts, notices and records, including, without limitation, this Agreement;
- 13.3** You agree to, and intend to be bound by, the terms of the particular transaction into which you thereby enter; and
- 13.4** You are capable of printing or storing a copy of electronic records of transactions into which you enter including, without limitation, this Agreement and any amendments hereto.

14. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of the State of New Jersey without regard to conflicts-of-laws principles.