
ADDITIONAL TERMS & CONDITIONS

These Additional Terms and Conditions ("Additional Terms") are applicable to Customer's Services and together with the Master Service Agreement ("MSA") and the Incorporated Agreements constitutes the entire agreement between Customer and DCT pursuant to Section 9 of the MSA. Capitalized terms in these Additional Terms will have the same meaning given to them in the MSA, unless a different definition is provided below.

1. **Credit.** DCT reserves the right to conduct a review of Customer's credit rating, credit history, and payment history at any time prior to the Effective Date or at any time during the MSA Service Term. At any time, DCT may, as a condition of providing new Services or continuing to provide existing Services, require Customer to tender a deposit (or to increase or renew the amount of an existing deposit). Such assurance of performance shall take the form of a deposit equal to the total of all estimated usage-based charges, Monthly Recurring Charges ("MRCs"), and Non-Recurring Charges ("NRCs") for the applicable Service(s) for up to two (2) months or such lesser amount as DCT otherwise requires. Notwithstanding any provision in the MSA or these Additional Terms to the contrary, DCT shall have the right to use any deposit provided pursuant to this Section as DCT sees fit for any purpose and in its sole discretion, and shall not be liable to Customer for the payment or accrual of any interest thereon. DCT shall be entitled to apply the deposit against any and all unpaid amounts that are past due, and shall refund to Customer any remaining amount still held as a deposit upon expiration or termination of the MSA, these Additional Terms or the Incorporated Agreements. Any request for a deposit shall be honored by Customer within five (5) business days of request by DCT, and failure to remit such deposit within the foregoing period shall constitute cause for DCT to suspend all Services in addition to any other rights and remedies it may have herein or at law or equity.
2. **Service Installation.** Customer will arrange to grant at no cost to DCT and its agents and contractors access to and use of Customer's facilities (including appropriate space, power, and environmental conditions) to the extent reasonably necessary for the installation, connection, provision, removal, and maintenance of any DCT Provided Equipment relating to the Services. Customer will not allow or cause any DCT Provided Equipment to be rearranged, moved, modified, repaired or relocated without DCT's written consent, nor will Customer create or allow any liens or other encumbrances to be placed on any such DCT Provided Equipment. All DCT Provided Equipment will be provided for the sole purpose of use in connection with the Service(s), shall remain the exclusive property of DCT or its supplier, respectively, and shall be immediately returned to DCT upon termination of the Service(s) to which the equipment relates. Customer shall be responsible for ensuring that any DCT Provided Equipment is maintained in a secure location, and Customer shall be fully liable for any and all costs and charges associated with damage to or loss of DCT Provided Equipment including, but not limited to, all costs associated with replacement equipment, facilities, and systems. DCT shall be responsible for the replacement of any equipment deemed to be defective through no fault of Customer or any other third party accessing the Services through Customer or installing the Services on behalf of Customer.

DCT may be required to provision part of the service using local loop facilities from the Local Exchange Carrier (LEC) or underlying access provider operating in each Local Access and Transport Area (LATA). DCT charges to the customer may include rates charged by the LEC or underlying access provider, and are subject to change upon notice to the Customer. DCT cannot guarantee rates from third party providers until orders are placed and a firm order commitment date (FOC) is confirmed. If prior to FOC, the rate (s) for the underlying facility change from the rate used in calculating the price reflected on the order form, then DCT may revise the pricing provided to Customer, including all resulting monthly recurring charges (MRC) and/or non-recurring charges (NRC) and will provide Customer with notice of such new pricing for approval to proceed.

- a. **Demarcation points and building entry.** DCT will install all DCT provided bandwidth services to the demarcation point (demarc). If customer requires or requests a demarc to be extended, additional charges will apply. Installation of Services may include the need for the customer to provide additional conduit, core drills, backing boards, power or other facilities within the building, or between the building and the street. Some of these needs cannot be identified until after the installation has begun.
 - b. **Inside wiring and connections.** The Customer is responsible for providing any necessary internal wiring or extensions to all DCT Equipment required to use this service. This includes but is not limited to all connections between routers, switches, demarcs, phones, analog devices and punchdown blocks. Some of these needs cannot be identified until after the installation has begun. Note that this applies to installation of wiring and making final wiring connections, as well as physical placement of all equipment within Customer's facility. If any of these services are performed by DCT, additional charges will apply.
3. **Operating and Performance Matters.**
 - a. Any failure of performance or delay attributable to Customer or Customer's agents, representatives, or other contractors, or any failure, incompatibility, or unavailability on the part of Customer's equipment or network, facilities, or systems provided by Customer's other contractors ("Third Party Equipment"), shall not serve to delay the Service Activation Date or otherwise excuse Customer from being

required to make payment for the Service at such time as DCT would be ready to provide the Service, regardless of whether Customer is ready to use the Service.

1. In the event that DCT installs dedicated connectivity between DCT and Customer, including, but not limited to, T1s, DS3s, Ethernet services, and fiber connectivity ("Dedicated Access"), and there has been any delay attributable (in DCT's sole discretion) to Customer or any other third party that delays the Service Activation date for more than five (5) business days past the date of the installation of the Dedicated Access, DCT reserves the right to begin invoicing Customer for the Dedicated Access, and Customer agrees to pay for such charges.
 2. In the event that there has been any delay attributable (in DCT's sole discretion) to Customer that delays the Service Activation Date of any Services for more than sixty (60) days past the date of the Sales Order executed by Customer, DCT reserves the right to begin invoicing Customer for all or a portion of the Services ordered, and Customer agrees to pay for such charges. Notwithstanding the foregoing, these charges will not apply in the event that DCT and Customer had previously agreed in writing to a phased installation of the Services.
- b. Following the Service Activation Date, DCT will provide as much advance telephonic, written, or electronic notice as reasonably practicable with regard to any scheduled maintenance with respect to the Services. Notwithstanding the foregoing, in the event of an emergency, DCT shall have the right to perform maintenance and/or restoration of its network, DCT Provided Equipment, and the Services, without advance notice.
 - c. DCT will provide to Customer procedures and processes for reporting repair, problem, and maintenance requirements associated with the Services. If, upon responding to a Customer-initiated service call, DCT determines that the source of the trouble or failure is a failure, malfunction, or inadequacy on the part of Customer, Customer's equipment, or any other of Customer's suppliers or contractors or third party equipment, Customer shall compensate DCT at its then-prevailing rates for time, labor and materials expended during the service call.
4. **Security.** Customer remains responsible for its own network security and security violation response procedures. While a virtual private network ("VPN") or Managed Network Service ordered from DCT may enhance Customer's ability to prevent unauthorized access to its network and data, and may aid Customer in detecting potential security breaches and network irregularities, Customer understands and acknowledges that no Service is guaranteed to ensure Customer's network security or to prevent security incidents, and that DCT is not responsible for any unauthorized third party or Customer employee access to Customer's facilities or data. Neither DCT nor its vendors will be liable for unauthorized access to Customer's premise equipment or for unauthorized access to or alteration, theft or destruction of Customer's data files, programs, procedures or information through accident, fraudulent means or any other method regardless of whether such damage occurs as a result of DCT's or its vendor's negligence.
 5. **Professional Services.** All labor apart from standard installation, configuration and training, as specified in the Agreement will be considered Professional Services. If DCT agrees to provide Professional Services, these services may be provided pursuant to a fixed charge negotiated between DCT and Customer. Otherwise DCT's standard rate for Professional Services applies. DCT has no obligation to provide such Professional Services and may recommend third party resources outside of DCT.
 6. **IP Addresses.** If necessary, DCT will provide a mutually agreeable number of public IP address assignments to Customer for use solely in connection with the Service. Customer shall not obtain any property or other proprietary interest in any IP address assignments provided hereunder, and DCT may at any time withdraw or reclaim any IP address(es) and provide alternative IP address assignments for use in connection with the Service. DCT will reclaim any and all DCT provided IP addresses associated with the Service(s), at the end of the Term, or in the event of an early termination of the Services or the MSA for any reason whatsoever.
 7. **Service Configuration.** DCT will configure the Service(s) for Customer prior to the activation of the Services; provided, however, that Customer shall have sole responsibility for configuration with respect to all of its own customer equipment, third party equipment, and other networks, systems, equipment, facilities, or property not provided by DCT. Customer acknowledges and agrees that Customer is solely responsible for obtaining all local permits, landlord consents, access licenses and permissions, letters of authorization, and other consents and waivers necessary for installation and activation of all network, systems, facilities, and equipment necessary for DCT to provide the Services and for Customer to make use of the Services.
 8. **Relocation of Services.** If Customer moves from the location that their Service was originally installed in, the following conditions will apply:
 - a. Customer will provide DCT a minimum notice of 120 business days prior to the move date. Previously installed Services impacted by a move are governed by the same rules for new Service installation as outlined in Section 2 of these Terms and Conditions.

- b. Customer will arrange for the move of all DCT Provided Equipment (including, but not limited to telephone handsets, switches and routers) as well as any third party equipment necessary for the operation of the DCT service at the new location.
 - c. Customer will pay DCT's then-current charges for Professional Services to facilitate the move of DCT Services for customer. The Professional Services provided will include DCT's provisioning and reprogramming of DCT Provided Equipment.
 - d. After the move, Customer will be required to reclaim any and all remaining unused DCT Provided Equipment at Customer's old location and is responsible for returning said equipment to DCT. Customer will continue to be billed for the DCT Provided Equipment at Customer's old location until such time that it has been returned to DCT.
 - e. If DCT is required to terminate any Dedicated Access at Customer's old location and install new Dedicated Access into a new location, the following conditions apply:
 1. Customer agrees to pay any non-recurring charges assessed to DCT for such reconfiguration.
 2. If the Dedicated Access at the old location is under a term, Customer agrees to reimburse DCT for aggregate fees, charges, expenses, and taxes payable by DCT (including, but not limited to, liquidated damages, and disconnection, early cancellation or termination charges payable to third parties) in connection with the termination of the Dedicated Access at the old location; provided, however, DCT shall use its commercially reasonable best efforts to obtain a waiver of, or to otherwise avoid, any such charges.
 3. Customer acknowledges that DCT's costs for Dedicated Access are based on geography, and in the event of such a move DCT's monthly-recurring cost for the new Dedicated Access may be greater than the cost of the current Dedicated Access. In the event that the monthly recurring cost of the new Dedicated Access is greater than the current cost, DCT reserves the right to charge customer an additional access fee, and Customer agrees to pay such fee.
 4. Customer understands that DCT is required to commit to a term on new Dedicated Access, and as such Customer agrees that the Service Term for the Services installed at the new location will be the greater of (i) 12 months or (ii) the time remaining on the Service Term associated with the Agreement at the original service location.
 5. Customer is liable for the monthly recurring Dedicated Access charges at both locations during any "overlap" period, and is liable for the monthly recurring Dedicated Access charges at old location for an additional thirty (30) days after the date that Customer has notified DCT in writing to disconnect the Dedicated Access at the old location.
9. **Equipment Returns.** Customer must obtain a Return Merchandise Authorization (RMA) form from DCT Customer Service before returning DCT Provided Equipment and equipment must be returned within fourteen (14) business days after receipt of RMA. Equipment may not be returned by Customer for any reason without prior approval of DCT. Any exchanges not related to trouble reports or service modifications will incur a restocking fee equal to 20% of DCT's then current replacement price. Any equipment returned to DCT must be delivered, prepaid and packaged appropriately in original packaging or equivalent for safe shipment to DCT Telecom Group, Inc., 27877 Clemens Rd. Westlake, OH 44145. Returns may be refused and sent back to the Customer at the Customer's own cost, or accepted at the sole discretion of DCT and based on the condition of the product as it is received. If during the shipping process, loss or damage occurs to the equipment, the Customer will bear financial responsibility.
10. **DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE SET FORTH IN THE MSA, THESE TERMS AND CONDITIONS AND THE INCORPORATED AGREEMENTS, DCT MAKES NO WARRANTIES, REPRESENTATIONS OR OTHER AGREEMENTS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, TO CUSTOMER OR ANY THIRD PARTY WITH RESPECT TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY SERVICE PROVIDED OR NOT PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH REPRESENTATIONS, WARRANTIES OR OTHER AGREEMENTS ARE HEREBY EXCLUDED AND DISCLAIMED. CUSTOMER ACKNOWLEDGES AND ACCEPTS THE REASONABLENESS OF THE FOREGOING DISCLAIMERS. FOR PURPOSES OF THIS SECTION, ALL REFERENCES TO A PARTY HERETO SHALL INCLUDE ITS AFFILIATES, AGENTS, SUPPLIERS, OTHER CONTRACTORS, OFFICERS, DIRECTORS, SHAREHOLDERS, AND EMPLOYEES.

In addition, Customer agrees that all information provided with respect to the Service, the Service itself, and any equipment provided in connection with the Service are provided on an "AS IS" and "AS AVAILABLE" basis. DCT shall not be liable to Customer for any loss or damage sustained by Customer, its interconnecting carriers or its customers or end users, by reason of any failure in or breakdown of DCT's communication facilities or those of Customer, underlying carriers, or third parties associated with providing the Service under this Agreement, or for any interruption or degradation of the Service whatsoever.

11. **Indemnity.** Each Party (each, an "Indemnifying Party") shall protect, defend, indemnify, and hold harmless the other Party, its officers, directors, trustees, employees, contractors, and agents (each, an "Indemnified Party") from and against any and all liabilities, allegations, claims, losses, damages, expenses (including reasonable attorney's fees and costs), judgments, and causes of action arising from or related to: (i) damage to

property, personal injury or death caused by Indemnifying Party's fault or negligence, (ii) any breach by the Indemnifying Party of this Agreement, and (iii) any claim made by the Indemnifying Party's employees against the Indemnified Party.

DCT shall protect, defend, indemnify, and hold harmless Customer and its officers, directors, trustees, employees, contractors, and agents from and against any and all liabilities, allegations, claims, losses, damages, expenses (including reasonable attorney's fees and costs), judgments, and causes of action arising from or related to the Services misappropriating, infringing, or violating any patent, copyright, trademark, trade secret, or other intellectual property right of any third party. DCT shall have the exclusive right to choose reputable counsel and, at its sole cost and expense, to defend, contest, litigate and settle any matter with respect to which indemnification is claimed under this Section.

Customer shall protect, defend, indemnify, and hold harmless DCT and its officers, directors, trustees, employees, contractors, and agents from and against any and all liabilities, allegations, claims, losses, damages, expenses (including reasonable attorney's fees and costs), judgments, and causes of action arising from or related to: (i) claims by Customer's employees, users, or any other third party accessing a Service through Customer, (ii) claims that the content of any communication or transmission through a Service infringes or misappropriates the intellectual property right of any third party, or (iii) Customer's use of a Service.

Each Party acknowledges the additional Service-specific indemnity provisions as set forth in the applicable Service Exhibits.

12. **Responsibilities.** In addition to any Service-specific responsibilities set forth elsewhere in the MSA, these Additional Terms or the Incorporated Agreements, the Parties acknowledge and agree that: (a) each Party shall comply with all applicable laws, rules, and regulations relating to its business operations and (b) networks, equipment, facilities, and systems used by Customer or Customer's agents, other contractors, employees or users in connection with any Service shall not: (i) interfere with or impair service over DCT Provided Equipment; (ii) impair the privacy of any communications carried over DCT's Services; or (iii) create hazards to the employees, agents, or contractors of DCT or to the public. In addition to any other remedies available hereunder, DCT may, in its reasonable discretion and without liability, suspend Service if Customer does not comply with the foregoing sentence. Under no circumstances shall the Service be resold by Customer, and DCT shall have no liability to Customer's employees, users, or any other third parties accessing the Service through Customer.
13. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY OTHER PROVISION IN THE MSA OR INCORPORATED AGREEMENTS TO THE CONTRARY, WITH THE EXCEPTION OF ANY CANCELLATION CHARGES OR EARLY TERMINATION CHARGES ASSESSED PURSUANT TO SECTION 3(a) OR 3(d) ABOVE, THE PARTIES AGREE THAT THE TOTAL LIABILITY FOR EITHER PARTY UNDER THE PARTIES' AGREEMENTS FOR ANY SERVICES IS AS FOLLOWS: (i) TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, OR PUNITIVE DAMAGES WITH RESPECT TO ANY CLAIM ARISING UNDER OR RELATING TO THESE ADDITIONAL TERMS OR THE INCORPORATED AGREEMENTS INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFIT OR ANY OTHER BUSINESS LOSS INCLUDING GOODWILL, LOSS OF USE OF ANY PROPERTY, COST OF SUBSTITUTE PERFORMANCE, EQUIPMENT OR SERVICES, DOWNTIME COSTS AND CLAIMS FOR SUCH DAMAGES, REGARDLESS OF WHETHER DAMAGES ARE CAUSED BY WILLFUL MISCONDUCT, NEGLIGENT ACT OR OMISSION, OR OTHER WRONGFUL ACT ARISING FROM OR RELATED TO THESE ADDITIONAL TERMS OR THE INCORPORATED AGREEMENTS AND REGARDLESS OF WHETHER THE PARTY WAS ADVISED OF OR COULD HAVE FORESEEN THE POSSIBILITY OF SUCH DAMAGES; (ii) A PARTY'S ENTIRE LIABILITY FOR ANY CLAIM, LOSS, EXPENSE, OR DAMAGE ARISING UNDER OR RELATING TO THESE ADDITIONAL TERMS OR THE INCORPORATED AGREEMENTS SHALL IN NO EVENT EXCEED THE SUM ACTUALLY PAID BY CUSTOMER TO DCT FOR THE AFFECTED SERVICE TO WHICH THE CLAIM, LOSS, EXPENSE OR DAMAGE RELATES DURING THE THREE (3) MONTH PERIOD PRECEDING THE DATE SUCH CLAIM, LOSS, EXPENSE OR DAMAGE FIRST AROSE; (iii) THE FOREGOING LIMITATIONS ARE IN ADDITION TO (AND NOT IN LIEU OF) ANY LIMITATIONS SET FORTH ELSEWHERE IN THE THESE ADDITIONAL TERMS OR THE INCORPORATED AGREEMENTS, AND THEY APPLY TO ALL CAUSES OF ACTION AND CLAIMS OF ANY KIND BY ANY PERSON OR ENTITY ARISING OUT OF OR RELATED TO THESE ADDITIONAL TERMS OR THE INCORPORATED AGREEMENTS INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE, MISREPRESENTATION, OR ANY OTHER TORT. THE PARTIES ACKNOWLEDGE AND ACCEPT THE REASONABLENESS OF THE FOREGOING LIMITATIONS OF LIABILITY. FOR PURPOSES OF THIS SECTION, ALL REFERENCES TO A PARTY HERETO SHALL INCLUDE ITS AFFILIATES, AGENTS, SUPPLIERS, OTHER CONTRACTORS, OFFICERS, DIRECTORS, SHAREHOLDERS, AND EMPLOYEES.
14. **Fraud.** Customer shall bear the risk of loss arising from any unauthorized or fraudulent use of the Services. Customer shall pay for unauthorized or fraudulent use, or attempted use of services, whether or not a terminating connection was achieved. In no event will DCT be liable for fraudulent calls originating from any Customer owned or operated equipment, or for equipment provided by third party vendors that may be installed at the Customer premises in connection with the Service. Customer shall protect, defend, indemnify, and hold harmless DCT, its officers, directors, employees, contractors, and agents, from and against any and all liabilities, allegations, claims, losses, damages, expenses (including reasonable attorney's fees and costs), judgments, and causes of action arising from or related to fraudulent calls or usage of the Service(s). DCT shall be entitled to take immediate action without notice or liability to Customer as it deems necessary in its sole discretion to prevent fraudulent calls or other usage of the Service; provided, however, that DCT is under no obligation to take such action.

15. **Disputes.** If Customer reasonably and in good faith disputes any portion of DCT's invoice, Customer shall, within fifteen (15) days of the Payment Date, submit written or electronic notice to DCT of such dispute, identifying in specific detail the reason for the dispute and the amount being disputed. Electronic notice of any dispute shall be sent to billing@4dct.com. If Customer does not deliver such written or electronic notice within Fifteen (15) days of the Payment Date, the invoice will be deemed correct and Customer shall have waived its rights to dispute the invoice. Customer's dispute as to any portion of the invoice shall not excuse Customer's obligation to pay the undisputed portion of the invoice on time. The Parties shall negotiate in good faith to resolve any disputes within fifteen (15) days following DCT's receipt of Customer's timely written or electronic notice. Any amounts that DCT determines to be in error shall be adjusted on the next month's invoice, or if the disputed amount has already been paid, a credit shall be posted to Customer's account. Any disputed amounts that DCT determines to be correct as billed shall be due and payable by Customer, along with any interest charges that DCT may impose pursuant to the MSA.
16. **Termination.**
- a. If Customer cancels in whole or in part any Service before the Service Activation Date for such Service, Customer shall pay (as liquidated damages and not as a penalty) a cancellation charge ("Cancellation Charge") equal to: (i) the NRCs applicable to the Service(s) cancelled; (ii) one month's MRC for the Service(s) cancelled; and (iii) the aggregate fees, charges, expenses, and taxes payable by DCT (including, but not limited to, disconnection, early cancellation, liquidated damages, or termination charges payable to third parties) in connection with the cancellation of the Service(s).
 - b. DCT may terminate the MSA, cancel or terminate any and all Services, or suspend Services without any liability at any time upon: (i) any failure of Customer to timely pay any and all amounts due hereunder that is not cured within five (5) business days following written or electronic notice thereof; (ii) any other breach by Customer of any provision of the MSA, these Additional Terms or the Incorporated Agreements that is not cured within thirty (30) days following written or electronic notice thereof; (iii) any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or similar event with respect to Customer; or (iv) any governmental prohibition or required alteration of the Service provided hereunder necessitating such termination. In the event that Customer has multiple accounts with DCT, a default under one account will be deemed a default under all accounts, and in the event of a default all Services under all accounts may be subject to suspension and/or termination.
 - c. Customer may cancel or terminate any and all Services without any liability at any time: (i) upon any breach by DCT of any provision of the MSA, these Additional Terms and/or the Incorporated Agreements that is not cured within thirty (30) days following written or electronic notice thereof; (ii) upon any governmental prohibition or required alteration of the Service provided hereunder necessitating such termination; or (iii) pursuant to the terms detailed in any Service Level Agreement provided for in the Incorporated Agreements.
 - d. Except as otherwise expressly provided for in Subsection (a) above (relating to cancellations by Customer prior to the Service Activation Date of a particular Service), if (i) Customer cancels or terminates a Service prior to the end of the Service Term for any reason other than that listed in Subsection 3(c) above; or (ii) DCT terminates Service(s) for any reason provided in Subsection 3(b)(i)(ii) and (iii) above or as otherwise expressly permitted by the MSA, these Additional Terms or the Incorporated Agreements, then in addition to any other rights or remedies available to DCT hereunder, at law, or in equity, Customer shall pay DCT early termination charges ("Early Termination Charges") (as liquidated damages and not as a penalty) equal to:
 1. all previously waived NRCs specified on the Sales Order (if applicable);
 2. the replacement cost for any and all unreturned DCT Provided Equipment;
 3. the Term Plan Monthly Minimum specified on the Sales Order multiplied by the number of months remaining in the Service Term as defined in section 3 of the MSA.
 - e. If any Service is suspended or terminated by DCT because of any non-payment or other breach of the MSA, these Additional Terms or the Incorporated Agreements by Customer, no service interruption shall be deemed to have occurred. If DCT initiates legal action to pursue collection of any amount due under the MSA, these Additional Terms or the Incorporated Agreements, the non-prevailing Party shall be responsible for and agrees to pay for any and all reasonable attorneys' fees and expenses incurred by the prevailing Party. DCT may terminate the MSA, these Additional Terms or the Incorporated Agreements if Customer does not cure the cause of a Service suspension. In such event, Customer will pay all Early Termination Charges that would apply as per Subsection 3(d) above.
 - f. Customer must continue to pay all charges for Services until any disconnection upon cancellation or early termination occurs, and until such time that all DCT Provided Equipment has been returned to DCT. All Cancellation Charges and Early Termination Charges are due and payable within fifteen (15) days of the effective date of cancellation or termination, as applicable. Customer acknowledges and agrees that, due to the manner in which DCT provides Service(s) to customer, DCT may be required to commit to terms and conditions with numerous other providers of communications services where each agreement may have different term and volume commitments, early termination charges, cancellation charges, and other provisions making calculation of DCT's damages difficult or impossible to ascertain. Customer acknowledges and agrees that the Cancellation Charge and Early Termination Charges are reasonable liquidated damages payable to DCT, and do not represent or constitute a penalty.

- g. Upon cancellation, termination, or expiration of all Services provided under the MSA, these Additional Terms or the Incorporated Agreements, DCT shall owe Customer no further duties, obligations, or consideration; provided, however, that cancellation, termination, or expiration shall not affect the rights, obligations, or liabilities of either Party that have arisen before the date of cancellation, termination, or expiration.
- h. Cancellation of service(s) that are month to month or no longer subject to a term commitment require thirty (30) days written notice. Notice can be sent via electronic mail to customerservice@4dct.com or via a nationally recognized overnight delivery service or first class mail to:

Customer Service
DCT Telecom Group, Inc.
27877 Clemens Road
Westlake, OH 44145

17. **Force Majeure.** Neither Party will be in default or otherwise liable for any service outage, other interruption or unavailability of service, delay, or failure of its performance under the MSA, these Additional Terms or the Incorporated Agreements (except with respect to payment obligations hereunder for Services) to the extent such service outage, other interruption or unavailability of service, delay, or failure arises by reason of an act of God, the elements, adverse weather conditions, fire, flood, riots, strikes, catastrophic accident, war, governmental requirement or any action of government in its sovereign capacity, act of civil or military authority, action or inaction of a supplier or other third party, inability to secure materials, labor or transportation, or any other cause or circumstance of a similar nature to the foregoing, beyond the reasonable control and without the fault or negligence of the affected Party (each constituting an "Force Majeure Event"). Any such Force Majeure Event shall suspend the MSA, the Additional Terms or the Incorporated Agreements, as applicable, until the Force Majeure Event ceases.

18. **Miscellaneous.**

- a. DCT may cooperate with law enforcement organizations that have lawfully requested pursuant to a valid subpoena or court order, information regarding Customer or any end user of Customer and provide such organizations with any information requested, including, but not limited to, names, email addresses, mailing or contact addresses, IP addresses, telephone numbers, call detail records, or call content. Customer agrees to cooperate with DCT in investigating suspected violations.
- b. In no event will DCT be liable for fraudulent calls originating from Customer owned or operated equipment, for claims arising out of equipment provided by third party vendors that may be installed at the Customer premises in connection with the Services, or for damages associated with or arising from any service, channels, or equipment, which it does not furnish.
- c. Customer acknowledges that there are federal and state statutes governing the electronic recording of telephone conversations and that DCT will not be liable for any illegal use of the service. It is the customer's responsibility to determine if the electronic recordings are legal under applicable federal and state laws. Customer will indemnify and hold DCT harmless for any claims, damages, fines or penalties arising out of Customer's failure to adhere to applicable electronic recording laws.

19. **General.**

- a. **Assignment.** DCT may assign the MSA, these Additional Terms or the Incorporated Agreements, in whole or in part, to any subsidiary, parent, or affiliated company, or to a successor company pursuant to any reorganization or merger of its business, or to any successor pursuant to any sale or transfer of all or substantially all of its assets. Any other assignment by either Party without the prior written consent of the other Party (which consent will not be unreasonably withheld or denied) shall be null and void and, in the case of an unauthorized assignment by Customer, shall entitle DCT to suspend the Services provided hereunder without liability and shall otherwise constitute a breach of the MSA, these Additional Terms or the Incorporated Agreements. The rights and obligations under the MSA, these Additional Terms or the Incorporated Agreements shall survive any merger or sale of either Party and shall be binding upon the successors and permitted assignees of each Party.
- b. **Governing Law.** The MSA, these Additional Terms or the Incorporated Agreements are deemed to be made in the State of Ohio and will be governed by the laws of the State of Ohio, without regard to choice of law provisions. The Parties further consent to exclusive jurisdiction and venue in the state and federal courts located in Cleveland, Ohio. Each Party waives all defenses of lack of personal jurisdiction and forum non-conveniens. Process may be served on either Party in the manner authorized by applicable law or court rule.

- c. **Construction; Severability.** In the event that any provision of the MSA, these Additional Terms or the Incorporated Agreements conflicts with the law under which they are to be construed, or if any provision is declared invalid by a court with jurisdiction over the Parties to the MSA, these Additional Terms or the Incorporated Agreements, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. Each provision of the MSA, these Additional Terms or the Incorporated Agreements is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect.
- d. **Waiver.** Failure of either Party to enforce any of the provisions of or its rights under the MSA, these Additional Terms or the Incorporated Agreements, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment of any rights.
- e. **Confidentiality.** Each Party agrees not to use any Confidential Information (as defined herein) of the other Party except to the other Party's benefit and in performance of its obligations under the MSA, these Additional Terms or the Incorporated Agreements, and not to disclose such information to third parties (other than, as determined by the receiving Party in good faith, those contractors, agents, advisors, and attorneys with a "need to know" and who are subject to obligations that will similarly limit the use and disclosure of the information). Each Party further agrees to use the same means to protect Confidential Information of the other Party as it uses for its own confidential information, provided that in no event shall a Party use less than reasonable care. "Confidential Information" includes not only proprietary or confidential information that is marked or otherwise identified as such, but also information that should reasonably be expected to be considered confidential or proprietary by the disclosing Party regardless of marking or identification. Confidential Information shall not include any information that: (i) is now or becomes available in the public domain through no breach of the MSA, these Additional Terms or the Incorporated Agreements; (ii) can be shown through documented evidence to have been in the possession of the receiving Party as of the date of execution hereof or prior to the date of disclosure by the disclosing Party; (iii) can be shown through documented evidence to have been independently learned by the receiving Party from a third party without breach of the MSA, these Additional Terms or the Incorporated Agreements; (iv) can be shown through documented evidence to have been independently developed by the receiving Party; or (v) is required by law or order of a court, administrative agency or other governmental body to be disclosed by the receiving Party. Confidential Information is and shall remain the sole and exclusive property (or, where applicable, valid license) of the disclosing Party. The Parties acknowledge that unauthorized disclosure or use of any Confidential Information could cause irreparable harm and significant injury to the disclosing Party, the extent and consequences of which may be difficult to assess. Therefore, if a Party believes its Confidential Information may be, or has been, disclosed contrary to the terms of this Section, that Party shall be entitled to seek specific performance, injunctive and/or other equitable relief by a court of competent jurisdiction as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any exercise by the non-breaching Party of its right to equitable relief or specific performance shall not constitute a waiver by the non-breaching Party of any other rights which it may have to monetary damages or other relief. Notwithstanding the requirements and obligations of this Section, DCT shall have the right to issue a press release and/or otherwise publicly disclose that it has entered into an agreement to provide services to Customer.
- f. **Third Party Beneficiaries.** The representations, covenants, obligations, rights, and agreements of the Parties set forth in the MSA, these Additional Terms or the Incorporated Agreements are not intended for, nor shall they be for the benefit of or enforceable by, any third party or person not a party to the MSA, these Additional Terms or the Incorporated Agreements including, without limitation, Customer's employees, users, and customers. DCT shall have no relationship with any third party that may obtain access to the Services through Customer. The Parties further acknowledge and agree that no fiduciary relationship arises under the MSA, these Additional Terms or the Incorporated Agreements.
- g. **Headings; Interpretation.** The headings used in the MSA, these Additional Terms or the Incorporated Agreements are for convenience only and do not in any way limit or otherwise affect the meaning of any terms of the MSA, these Additional Terms or the Incorporated Agreements. The MSA, these Additional Terms or the Incorporated Agreements shall be construed fairly according to its terms, without regard to the drafter of any provision hereof.
- h. **Use of Customer Proprietary Network Information ("CPNI").** DCT is committed to protecting the confidentiality of Customer's Service information, and has the duty to do so under Federal law. Federal law gives Customer a right to protection of all information pertaining to the Services received from DCT, such as how many Services are used, the types of Services used, technical characteristics, and related billing information. From time to time, DCT may have the opportunity to offer Services that will better meet Customer's needs by using information about the Services already being purchased from DCT. Use of Service-related information for this purpose may enhance DCT's ability to make Customer aware of new or alternative Services that are tailored to Customer's needs. By signing the MSA, Customer expressly consents to allow DCT to use CPNI as described in this paragraph.

- i. **Access to and Use of Customer Proprietary Network Information (CPNI) by Third Parties.** If Customer subscribed to DCT's service through the use of an independent contractor or a third party, DCT may share Customer's CPNI (see subsection h above for a definition of "CPNI") with such third parties for administrative, customer service and billing purposes. For purposes of illustration only, the compensation of such entities may be tied to the amount Customer is billing with DCT. In such instances and in other similar circumstances, DCT may share CPNI with these third parties. By signing the MSA, Customer expressly consents to allow DCT to share CPNI with third parties and to allow such third parties to use CPNI as described in this paragraph.
- j. **Acceptable Use.** Customer and any and all third parties obtaining access to the Services through Customer shall comply with DCT's Acceptable Use Policy (the "AUP"). The current, complete AUP is located under the resources tab at <http://www.4dct.com/information/current-customers/>. DCT reserves the right to amend the AUP from time to time and to suspend the affected Services immediately upon a violation of the AUP. Customer shall be responsible to ensure compliance on the part of its employees, its contractors, and all other third parties obtaining access to the Services through Customer, and agrees to indemnify, defend, and hold harmless DCT from any losses, damages, costs or expenses resulting from any liabilities, allegations, claims, losses, damages, expenses (including reasonable attorney's fees and costs), judgments, and causes of action arising out of or relating to any alleged or actual violation of the AUP by Customer or any user or other third party obtaining access to the Service through Customer.
- k. **Independent Contractors.** Except as specifically and expressly provided herein, the Parties shall be considered independent contractors for the purposes of the MSA, these Additional Terms and the Incorporated Agreements. The relationship between DCT and Customer shall not be that of partners, agents, or joint ventures for one another, and nothing in the MSA, these Additional Terms or the Incorporated Agreements shall be deemed to constitute a partnership, agency agreement, or joint venture between them for any purpose whatsoever.
- l. **Survival.** Provisions contained in the MSA, these Additional Terms or the Incorporated Agreements that by their sense and context are intended to survive completion, performance, termination, suspension, cancellation, or expiration of the MSA, these Additional Terms or the Incorporated Agreements shall survive.