

**1. DEFINITIONS.** In these ToS, the following terms will have the following meanings:

a. **“Carrier”** means a designated, regulated, network operator that (1) has been licensed to establish and operate a wireless cellular communications network in a respective regulated market and (2) the Service Vendor has contracted with to enable the provisioning of the Cellular Services through its customers (such as Digi) to end user customers (such as Customer).

b. **“CDMA”** means a digital cellular network based on the Code Division Multiple Access technology.

c. **“Cellular Service(s)”** means the cellular telecommunication services made available through the Network to Customer by Digi under the applicable Service Agreement.

d. **“Device”** means any mobile radio apparatus or telecommunications equipment (including accessories enabling the transmission of data or voice) which is approved under applicable regulation and is technically and operationally compatible with the Network and the Cellular Services.

e. **“GSM”** means a cellular network based on the Global System for Mobile Communications.

f. **“Network”** means the cellular communications network made available by the Service Vendor using Cellular Services provided by various Carriers.

g. **“Service Agreement”** means an agreement between Digi and Customer under which Digi agrees to make Cellular Services available to Customer on the basis described in such agreement.

h. **“Service Fees”** means the fee specified in the Service Agreement to be paid to Digi by Customer for access to and use of the subject Cellular Services, as such may from time to time be modified by these ToS or by mutual agreement of the parties.

i. **“Service Vendor”** means a Cellular Service aggregator which (1) has contracts with multiple Carriers that allow it to provide Cellular Services across both GSM and CDMA cellular platforms, and (2) Digi has contracted with to make such Cellular Services available to its customers.

j. **“SIM”** means the Subscriber Identity Module, to be used with a Device to enable use of the Cellular Service.

k. **“ToS”** means these Terms of Service.

l. **“T-USA”** means a digital cellular network operated by T-Mobile and providing LTE Cellular Services.

## **2. PROVISION OF SERVICE, TERMS OF SERVICE.**

a. During the term of the applicable Service Agreement, provided Customer remains in compliance with the terms of the Service Agreement and these ToS, Digi will, provide the Cellular Services described in the Service Agreement within the coverage areas served by the Network (whether by the applicable Carrier's Cellular Service network or through roaming agreements), subject to the availability of such service in the such areas.

b. Any terms and conditions contained on a purchase order or other Customer documents will not apply to the extent said terms are inconsistent with or in addition to the Service Agreement or these ToS.

c. This is an agreement relating to the Cellular Services, and no separate license is granted by this document. Digi reserves all rights not otherwise expressly granted.

d. Digi reserves the right, in its sole discretion, at any time and from time to time, to replace, modify, add to or retract/delete all or any portion of these ToS. It is Customer's obligation to review the most recent version of these ToS from time to time, posted at <http://www.digi.com/legal/cellular-terms>, to ensure its continued acceptance hereof. Any revisions to these ToS will become effective, and will constitute an amendment to the Service Agreement, twenty (20) business days after such revisions are posted, unless Customer expressly accepts the revised ToS as of an earlier date. Customer's continued use of the Cellular Services after the applicable effective date of such revisions will conclusively establish Customer's

acceptance to be bound by the revised ToS.

## **3. CUSTOMER OBLIGATIONS.**

a. Customer acknowledges and agrees:

1) to ensure at least one representative is available during Digi's regular business hours (8:00am to 5:00pm Central Time, Monday to Friday, excluding applicable state, federal or provincial holidays), and otherwise available by phone or pager after hours, to provide the required information and assistance in connection with the delivery of the Cellular Services, with appropriate access to Customer's network, equipment or facilities to permit the Service Vendor and/or Digi to provide the Cellular Services;

2) to maintain the necessary services not otherwise provided by Digi under the Service Agreement as required to receive the Cellular Services from Digi and to use the Network;

3) to comply with the conditions of any publicly regulated license of the Service Vendor or relevant Carrier, together with any law, regulation, directive, ordinance and decision of any regulatory authority applicable to Customer or to the business operated by Customer, including preserving the confidentiality and privacy of protected information;

4) to be responsible for ensuring that any Device used on the Network is approved and certified for use on the Network according to the guidelines of Digi, the Service Vendor and/or the applicable Carrier, and that the Device complies with the rules and regulations of CE, GCF, PTCRB, FCC, Industry Canada, or its designees or other governing agencies or divisions that may apply in the intended country of use. Unless specifically contracted to be, neither Digi nor either the Service Vendor or applicable Carrier is responsible for any test or accreditation requirements on behalf of Customer; and

5) not to use any Customer applications (whether running on Digi Device Cloud or otherwise) with the Network or Cellular Services without the prior consent of Digi, which consent will not be unreasonably withheld or delayed. Digi will have the right to require data from Customer that demonstrates that Customer is using the Service only in connection with applications so approved by Digi.

6) that Digi, the Service Vendor or applicable Carrier may interrupt the Cellular Services at any time and for any period of time, without any liability, when Customer fails to comply with any of its obligations under these ToS, or where necessary to prevent the improper or unlawful use of the Network;

7) that Customer is acquiring Cellular Services from Digi for its own internal use as part of a complete wireless communications system, and will not use the Cellular Services or Network for any other purpose or in connection with any re-licensing, resale or redistribution to others without the prior written consent of Digi;

8) that neither Digi nor either the Service Vendor or Carrier is responsible for the selection, supply, installation, operation, or maintenance of any Devices or other equipment or software owned or licensed by the Customer and used in connection with the Cellular Services;

9) that Customer is responsible for the security of Customer authorization codes, passwords and similar means of access to Customer equipment and telecommunications systems relating to the Devices, Cellular Services or Network; and

10) that the Service Vendor and applicable Carrier each reserves the right, in its sole discretion and without any obligation, to make improvements to, or correct any error or omissions in any portion of the Network or the Cellular Services, which may or may not affect Customer's access to the Network.

b. Customer will not, directly or indirectly:

1) use the Cellular Services or any provided software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or

2) remove any proprietary notices or labels with respect to the Cellular Services or associated software or hardware.

c. Although Digi has no obligation to monitor Customer's use of the Cellular

Services, it may do so and may remove any such content or prohibit any use of the Cellular Services it believes may be (or alleged to be) in violation of applicable laws or standard policies.

d. Customer shall be responsible for maintaining the security of the Devices, Customer account, passwords (including but not limited to administrative and user passwords) and files, and Customer shall be fully responsible for all uses of the Cellular Services (and all associated Service Fees), with or without Customer's knowledge or consent and whether or not authorized by Customer.

e. Notwithstanding anything in these ToS to the contrary, Digi may, without liability to Customer, suspend or terminate any or all Cellular Services if: (a) the Customer is using a device or equipment which is defective, or illegal; (b) the Customer is causing any technical or other problems on the Network; (c) the Customer is engaging in suspected fraudulent or unauthorized use; or (d) Customer has breached any terms of the Service Agreement, these ToS, or any other contract it may have with Digi relating to the Cellular Services.

f. Customer hereby agrees to indemnify and hold harmless Digi, its officers, directors, carrier network partners, suppliers, representatives, employees and agents against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of any term of the Service Agreement or these ToS or otherwise from Customer's use of the Cellular Services.

#### 4. SERVICE FEES, BILLING AND PAYMENT

a. **Service Fees.** The Service Fees will be as specified in the Service Agreement, provided that Digi may change the Service Fees or applicable charges and institute new charges and Service Fees at any time after the end of the Initial Service Term upon thirty (30) days' prior notice to Customer (which may be sent by email).

##### b. Invoicing and Payment

1) Digi will invoice Customer for the Service Fees specified in the applicable Service Agreement, on a monthly basis, in arrears. Invoices will be issued according to one of the Digi set billing cycles. Digi reserves the right to invoice Customer in arrears for usage which involves roaming charges.

2) All invoiced amounts, whether for Cellular Services or any other charges are due in full 30 days after receipt of invoice ("**Due Date**"). If Customer has provided credit card authorization for payment of invoices, Customer's credit card shall be charged 5 days after the date of the invoice. Notwithstanding the foregoing, Digi reserves the right to require payment on an interim basis, prior to the normal billing date, in circumstances where there is an abnormal risk of loss, for example where Customer has incurred a significant amount of roaming or other charges, or in situations of suspected fraud.

3) Customer will be charged Service Fees for the balance of the month for Devices deactivated before the end of a monthly billing cycle, and will bear usage fees up to the date of deactivation. Service Fees related to Devices added during any month will be pro-rated and charged at month end, and will be due and payable as set out in the preceding subsection.

4) If any undisputed amount is not paid by the Due Date, interest will be charged for such undisputed amount at the lower of 1.5% per month (18% per annum) or the highest rate allowed by law.

5) Unless otherwise expressly agreed in writing by the parties in writing, Customer shall pay all customs, duties, and all sales, excise, license, occupation and other taxes of any kind whatsoever, if any, including regulatory and other like charges that may be imposed by the FCC or other telecommunications regulatory agency, which may become payable to any authority by reason of the provision of the Cellular Services.

6) Customer is responsible for all of its account charges, including but not limited to all usage-based charges, irrespective of whether such arise as a result of fraud, non-payment on the part of any Customer affiliates or other permitted users pursuant to these ToS, or for any other reason except as expressly provided herein.

7) Payments to Digi shall be made in lawful currency of the United States of America unless otherwise specified in the Service Agreement.

8) Customer shall be liable to Digi for all costs and/or expenses incurred directly or indirectly, including legal fees, in the collection or attempted collection of any unpaid charges owed by Customer. In addition, Digi will charge Customer for any bank charges associated with NSF checks.

c. **Credit Review.** Digi reserves the right to review Customer's credit worthiness at any time during the term of the Service Agreement, and to require a prepayment, deposit, or credit card authorization if Customer has not already provided one, before providing, continuing, or reinstating Cellular Services. Digi may require a minimum credit capability equivalent to 3 months of projected Service Fees, inclusive of taxes.

d. **Suspension of Cellular Services.** If Customer does not pay any undisputed invoice amounts by the Due Date, Digi reserves the right to suspend Cellular Services if Customer does not pay within a cure period of ten (10) business days from receipt of written notice of the overdue amount. Reconnection of Cellular Services will be at Digi's discretion, shall be subject to confirmed receipt of all overdue amounts, and may be subject to an administration fee to be charged at Digi's discretion, or Digi may terminate the applicable Service Agreement in accordance with section 5.b., below.

#### 5. TERM AND TERMINATION

a. **Term.** The term of these ToS begins on the effective date of the Service Agreement and will continue for the term specified therein (the "**Initial Term**") and will thereafter automatically renew for successive 1-year periods (each a "**Renewal Term**") unless Digi or Customer provides notice of termination at least 60 days before the end of the Initial Term or the Renewal Term, or unless otherwise terminated as provided below.

b. **Termination or Suspension by Digi.** Without incurring liability, Digi may terminate these ToS, or suspend, restrict or terminate any or all Cellular Services, upon written notice and failure to cure within the period (if any) set out in parentheses after a ground for termination:

- 1) If Customer fails to pay any undisputed Charges by the Due Date (30 days);
- 2) If Customer violates any of the material provisions of the TSA (30 days);
- 3) If Customer becomes bankrupt or insolvent, make an assignment for the benefit of creditors, or a receiver or trustee is appointed for a substantial part of Customer's assets (5 business days);
- 4) Where any law, order, or commercially reasonable impediment prohibits Digi from furnishing the Cellular Services (immediately);
- 5) Upon termination of the Service Agreement (immediately);
- 6) If Customer is in breach of obligations respecting telephone numbers provided by Digi (5 business days); or
- 7) Without cause upon at least 180 days' notice.

c. **Termination by Customer.** Without incurring liability, Customer may terminate these ToS upon written notice and failure to cure within the period (if any) set out in parentheses after a ground for termination:

- 1) if Digi violates any of the material provisions of these ToS (15 business days);
- 2) if Digi becomes bankrupt or insolvent, makes an assignment for the benefit of creditors or a receiver or trustee is appointed for a substantial part of Digi assets (30 days);
- 3) if Digi fails to maintain its agreement with the Service Vendor such that Digi is unable to provide Cellular Services to Customer (5 days); or
- 4) Without cause upon at least 180 days' notice.

##### d. Post-Termination Obligations.

1) Within 30 days after termination, Customer will remit all amounts due and owing as of the date of termination.

2) As of the date of termination, Digi will have no further obligation to provide any Cellular Services or support to Customer.

e. **Survival.** All sections of these ToS which by their nature reasonably should survive termination will survive termination, including, without limitation, accrued rights to payment, warranty disclaimers, and limitations of liability. However, upon any such termination, Customer's right to use the Cellular Services shall promptly terminate.

#### 6. DISCLAIMER AND LIMITS OF LIABILITY

a. To the extent possible, Digi will make the benefits of any warranty

it obtains from the Service Provider or the Carrier available to Customer for the Cellular Services and any SIM cards it provides to the Customer.

b. Digi makes no representation, covenant, or warranty, either express or implied, written or oral, arising by operation of statute, law, usage of trade, course of dealing or otherwise with respect to the Cellular Services, Network, or other products or services provided hereunder or in connection herewith. DIGI DOES NOT WARRANT THAT THE CELLULAR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. DIGI MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE CELLULAR SERVICES. THE CELLULAR SERVICES ARE PROVIDED "AS IS" AND DIGI DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABLE QUALITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. Without limiting the generality of the foregoing, Digi makes no representations, warranties, covenants or guarantees relating to (1) network transmission capacity; (2) whether Customer data will be transmitted in an uncorrupted form; (3) the security of any transaction, communication, facility or service; (4) the fault tolerance of the Network or Cellular Services or the suitability of same for high risk activities; (5) the compatibility of the Cellular Services or the facilities (including SIMs/Devices and associated firmware and software) with Customer's use, including Customer's content, data, programs or transmissions; or (6) Devices, telephone numbers or any third party supplied components. Any warranty relating to Devices shall be that of the manufacturer or supplier of such items to Customer or its users.

c. Customer is responsible for ensuring that the access and use of the Cellular Services and Network within the applicable jurisdiction in which Customer and its users are operating is in compliance with applicable laws and Digi makes no representations or warranties with respect thereto.

d. Digi obligations under these ToS do not extend to any maintenance, repair, rearrangement, alteration, modification or adjustment which becomes necessary due to, resulting from or in any way related to, damage, misuse or failure on Customer's part. In addition, in the event of the interruption, failure or breakdown of the Cellular Services or Network, or the loss or spoiling of Customer's programs or data, Digi makes no warranty that any of them will be restored. Customer assumes full responsibility for backing up Customer's own files and preserving Customer's own data.

e. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, FOR ANY AMOUNTS REPRESENTING THEIR RESPECTIVE LOSS OF PROFITS; LOSS OF BUSINESS; INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES (EVEN IF PREVIOUSLY APPRISED OF THE POSSIBILITY THEREOF) ARISING FROM THE PERFORMANCE OR NONPERFORMANCE UNDER THE SERVICE AGREEMENT OR THESE TOS, OR ANY ACTS OR OMISSIONS ASSOCIATED THEREWITH OR RELATED TO THE USE OF ANY PRODUCTS OR SERVICES FURNISHED BY DIGI, WHETHER THE BASIS OF THE LIABILITY IS BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), STATUTES, OR ANY OTHER LEGAL THEORY.

f. Digi disclaims any warranties and responsibility for coverage associated with the Cellular Services. Coverage locator maps depict predicted and approximate cellular coverage. The coverage areas shown do not guarantee service availability, and may include locations with limited or no coverage. Even within a coverage area, there are many factors, including customer's equipment, terrain, proximity to buildings, foliage, and weather that may impact service. Customer is responsible for determining whether the Cellular Services are available in its intended location and of a quality sufficient to meet Customer's requirements.

g. Cellular Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by third-party providers, or by other causes beyond Digi's reasonable control.

h. DIGI (AND ITS OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES) SHALL NOT BE RESPONSIBLE FOR OR LIABLE WITH RESPECT TO ANY CLAIMS OR LAWSUITS OF ANY NATURE WITH REGARD TO THE SUBJECT MATTER OF THE SERVICE AGREEMENT OR THESE TOS UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY INCLUDING BUT NOT LIMITED TO: (A) ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) ANY MATTER BEYOND DIGI'S REASONABLE CONTROL, EVEN IF DIGI HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING LOSSES OR DAMAGES; (C) PHYSICAL ATTACKS OR CYBER-ATTACKS UPON THE WIRELESS INFRASTRUCTURE OR NETWORK. OR (D) FOR ANY AMOUNTS FOR ANY REASON THAT, TOGETHER

WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE SERVICE FEES PAID BY CUSTOMER TO DIGI FOR THE CELLULAR SERVICES UNDER THE SERVICE AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

## 7. CONFIDENTIALITY

a. "Confidential Information" includes all non-public information provided by one party to the other, or obtained by one party from the other whether or not marked or identified as confidential at the time of disclosure. All Confidential Information shall remain the sole property of the disclosing party. Information will not be considered to be Confidential Information if (i) it is available to the public other than by a breach of these ToS; (ii) it is rightly received from a third party not in breach of any obligation of confidentiality; (iii) it is independently developed by a party without use of Confidential Information of the other as established by written documentation; or (iv) it is known to the recipient at the time of disclosure, provided that the recipient has no reasonable basis for concluding that such information was made available in violation of a confidentiality agreement with another party.

b. Each party agrees that it will not disclose any of the other party's Confidential Information to any third party, or use any Confidential Information disclosed to it by the other party except for the sole purpose of performing its obligations under the Service Agreement or these ToS, and that it will take all reasonable measures to maintain the confidentiality of the Confidential Information of the other party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance.

c. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information (i) on a "need-to-know" basis to its employees, or (ii) to its financial advisors, lawyers, or other advisors, who are obligated to maintain the confidentiality of such information, or (iii) to its third party consultants, contractors or other agents solely in connection with the exercise of its rights or the performance of its obligations under the Service Agreement or these ToS, and provided that such disclosure is pursuant to a non-disclosure agreement containing terms at least as restrictive as those set forth herein that restrict the further disclosure of the other party's Confidential Information. Furthermore, a party may disclose Confidential Information pursuant to the order of a court or administrative body of competent jurisdiction, or to law enforcement agencies to prevent or investigate criminal activity. Upon termination or expiration of these ToS, or at the request of the disclosing party, the receiving party shall return the Confidential Information to the disclosing party, or if requested by the disclosing party, destroy it and certify to the disclosing party that it has taken such action provided that one copy may be kept for record keeping purposes.

## 8. ARTICLE 6: PRIVACY

a. Digi, the Service Vendor and the applicable Carrier (and/or their agents and affiliates) may collect Customer Personal Information for purposes reasonably related to the provision of the Cellular Services (including keeping Customer informed about features of available services or conducting analysis in order to provide a better service). It may be necessary for Digi, the Service Vendor or the applicable Carrier to transfer, process and store billing and utilization data and other data necessary for provision of the Cellular Services. Customer agrees that Digi, the Service Vendor and/or the applicable Carrier may (i) transfer, store and process such data; and (ii) use such data for its own internal purposes and as allowed by law.

b. Digi will comply with applicable privacy legislation in connection with any such Customer Personal Information it collects. Digi may receive or disclose such information or documents about Customer to or from (1) law enforcement agencies to assist them in the prevention or investigation of criminal activity; or (2) the Service Vendor and/or applicable Carrier for purposes related to the provision of the Cellular Services. Except with Customer consent, Digi will not otherwise disclose Customer Personal Information to third parties, other than those which (3) have contracted with Digi to keep the information confidential; or (4) are subject to legal obligations to protect their personal information.

c. Customer acknowledges that any calls made to Digi customer support centers may be recorded for quality assessment or training purposes. Any such recordings will be subject to the confidentiality and privacy provisions of this Agreement.

d. For the purposes of this section, "Customer Personal Information" will

include personal information of Customer's employees, contractors, representatives and customers.

e. Upon any termination of the Service Agreement, Digi, the Service Provider and the Carrier may, but are not obligated, to delete any Customer Personal Information in their control.

#### 9. OWNERSHIP AND USE OF SIMS.

a. Service Vendor retains full title to SIMs provided to Customer.

b. Customer may not (and may not authorize any third party to): (1) decompile, disassemble, reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms or file formats or programming or interoperability interfaces of the SIMs; (2) remove any product identification, copyright, or other notices; (3) modify, incorporate into, or with other software create a derivative work of any part of the SIMs; (4) modify or otherwise alter the operation of the SIMs, or program, reprogram, or tamper with the SIMs in any manner; (5) rent, lease, lend or provide commercial hosting services with the SIMs; (6) insert the SIMs into devices bearing a Carrier mark, or that are purchased from Carrier that have been packaged with an Carrier SIM; or (7) provide SIMs, whether separately or together with an approved Device, to any individual or entity other than the expected subscriber of that SIM and device.

c. Various components, functions, routines and/or portions of the SIMs may be protected by intellectual property rights including, but not limited to, designs, copyrights, trade secrets and one or more patents or pending patent applications ("IPR"). Customer is licensed to use such IPR, if any, only to the extent that such a license is required by Customer to install the SIMs on Customer's or Subscriber's devices per instructions provided by Digi. No other rights are granted under such IPR and no right to repair or replace the SIMs is intended or provided and specifically, no right of reconstruction or repair is granted.

#### 10. FLOW-DOWN REQUIREMENTS.

Customer expressly acknowledges that the Service Vendor has entered into long-term agreements with Carriers in its primary markets. Under the terms of these agreements, the Service Vendor purchases Cellular Services and resells these services (to Digi and others) in conjunction with approved applications. Customer agrees to be bound by the following terms that arise from Digi's obligation to flow provisions down to its customers for the Cellular Services:

a. Neither the Service Agreement nor these ToS create a contractual relationship between Customer and either the Service Vendor or any Carrier and the Customer is not a third party beneficiary of any agreement between Digi and either the Service Vendor or any Carrier. In any event, regardless of the form of the action, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise and except for confidentiality obligations in these ToS, Customer's exclusive remedy for claims arising in any way in connection with the provision of Cellular Services under the Service Agreement or these ToS, for any cause whatsoever, including but not limited to any failure or disruption of Service provided hereunder, is limited to payment of damages in an amount not to exceed the amount paid by the Customer to Digi for the Cellular Services during the twelve (12) month period preceding the date the claim arose.

b. Customer expressly acknowledges and agrees that the use of any information available through the Cellular Services is at Customer's own risk and responsibility.

c. Customer has no property interest in any number assigned to it, and understands that any such number can be changed from time to time.

d. Customer understands that neither Digi nor either the Service Vendor or the Underlying Carrier guarantees the security of wireless transmissions, and will not be liable for any lack of security relating to the use of the Cellular Services.

e. Customer will also disclose to its users that the Cellular Services are provided only for the use of Customer and its users, who may not resell the Cellular Services to any other party.

f. Unless caused by the negligence of the Indemnified Party, Customer shall indemnify and hold harmless Digi, the Service Vendor, and the applicable Carrier and their respective officers, employees, and agents (each an "Indemnified Party") against any and all claims, including without limitation claims for libel, slander, infringement of copyright, or personal injury or death, arising in any way directly or indirectly in connection with the Cellular Services or the use, failure to use, or inability to use the access telephone number or access the Device through the Cellular Service. This indemnity shall survive the termination of the Service

Agreement.

g. The Service Vendor and the Carrier are third party beneficiaries of this Agreement, and may take any equitable or legal action required to enforce its provisions and the terms and conditions of this Agreement.

h. For GSM Cellular Services provided by a USA Carrier and T-USA Cellular Services, Customer understands, acknowledges and agrees that the Cellular Service may not be used for Devices to be permanently deployed in Canada.

i. For GSM Cellular Services provided by a Canadian Carrier, Customer understands, acknowledges that the Cellular Service may not be used for Devices to be permanently deployed in the USA.

#### 11. GENERAL PROVISIONS

a. **Entire Agreement; Amendment.** The Service Agreement and these ToS set out the entire agreement between the parties concerning the matters described above and supersede all prior written or oral agreements, or understandings.

b. **Assignment.** Customer shall not assign Customer's rights and obligations under these ToS without the prior written consent of Digi, which consent shall not be unreasonably withheld.

c. **Non-exclusivity:** Unless otherwise provided in the Service Agreement, nothing in these ToS shall limit either party from pursuing alternative supplier and supply relationships.

d. **Waiver.** A failure by either party to enforce any right under these ToS shall not at any time constitute a waiver of such right or any other right, and shall not modify the rights or obligations of either party under these ToS. If any provision of these ToS is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such a provision shall be deemed severed from the TSA and the other provisions shall remain in full force and effect.

e. **Force Majeure.** Other than for obligations of payment arising hereunder, neither party will be liable for delays in its performance hereunder due to causes beyond its reasonable control, including but not limited to, acts of God, public enemy, government, regulatory authorities, or courts of law or equity, or caused by civil war, insurrection or riots, fires, floods, explosions, earthquakes or other casualties, strikes or other labor troubles, or failure of third party service providers or telecommunications networks or devices, provided that the party so relieved of its obligations hereunder provides notice to the other party and takes all reasonable and necessary steps to resume performance of its obligations as soon as possible. In the event a party invokes this clause for more than a cumulative period of 60 days, the other party may terminate this agreement.

f. **Notice.** Any notice to a party required or permitted hereunder shall be sufficiently given only when provided in writing, and either personally delivered to a responsible officer of the addressee, or sent via certified or registered mail (return receipt required) or facsimile (with proof of transmission) to the party's address indicated herein and shall be deemed to have been received when such notice should have reached the addressee in the ordinary course.

g. **Applicable Laws; Venue.** The interpretation, validity and enforcement of these ToS shall be governed by the laws of the state of Minnesota (except that any conflicts-of-law principles of such state that would result in the application of the law of another jurisdiction shall be disregarded). Any legal action under or in connection with the subject matter of these ToS shall be brought only in a United States District Court in Hennepin County, Minnesota. Each Party submits to the exclusive jurisdiction of these courts and agrees not to commence any legal action under or in connection with the subject matter of these ToS in any other court or forum.

h. **Sub-Contracting.** Digi reserves the right to sub-contract any part of a Cellular Service, provided such third party agrees to be bound by the terms of these ToS and Digi retains responsibility for any such sub-contracted Cellular Services.

i. **No Agency.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Digi in any respect whatsoever.

j. **Announcements.** Digi may, in its own marketing and sales materials, including but not limited to the Digi website, [www.digi.com](http://www.digi.com), refer by names and logos to the Customer, unless Customer specifically advises Digi otherwise. Each party may publicly disclose the existence of these ToS (but not any specific material terms hereof).