



# DSCI Master Service Agreement

This Master Service Agreement ("MSA") entered into on this \_\_\_\_ day of \_\_\_\_\_ 2010 is by and between DSCI Corporation, a Massachusetts corporation, with offices at: 275 Wyman Street, Waltham, Massachusetts 02451 ("DSCI") and \_\_\_\_\_ ("Customer"), a \_\_\_\_\_ corporation, with its principal office at:

## I. TERMS OF AGREEMENT

1. This MSA contains the general conditions for the provision by DSCI of Services to the Customer and shall supersede any previously executed MSA between DSCI and Customer. Each Service shall be provisioned pursuant to DSCI's Tariffs and the Federal and/or State Terms and Conditions, and Service Description and Rate Schedules posted on the Company's website, as supplemented by the terms and conditions set forth in this MSA. Other Terms and Conditions specific to a Service, including Service Level Agreements (SLA) and pricing schedules (if applicable) are contained in a separate Network Service Order ("NSO") referencing this MSA or in Exhibits to such NSO. In the event of a conflict between the terms of documents relating to a Service, the following will be the order of priority: first, the NSO; second, this MSA, save where the specific terms of this MSA provide otherwise. Any previously executed and unexpired NSOs shall be incorporated herein as part of this MSA.

2. Term and Revenue Commitment – The terms of this MSA will remain in effect until expiration of all NSOs signed by Customer. Each month during the Term of this MSA Customer agrees to maintain a Minimum Revenue Commitment (MRC) amount as set forth in the NSO(s). This amount is determined by adding the total amount(s) of the Minimum Monthly Recurring Charge(s) (MMRC) referenced on the initial and any subsequent NSO signed by the Customer. All Services provided by DSCI, except for taxes, regulatory fees and assessments and other amounts remitted to third parties on Customer's behalf and not retained by DSCI, shall contribute toward the MRC. In the event that there is a change in business or economic circumstances which has a detrimental effect on the Customer requiring the Customer to downsize its business operations to the extent to which the Customer is no longer able to meet the MRC, DSCI agrees to renegotiate a new Terms of this MSA provided that: 1) Customer can reasonably demonstrate that such a condition exists; 2) Customer provides sixty (60) days written notification.

## II. OBLIGATIONS OF DSCI

DSCI agrees to supply Customer with Services as set forth herein and to make every reasonable effort to provide continuous service at the locations set forth in the attached NSO(s). The quality of service provided hereunder shall be consistent with common carrier industry standards, government regulations and per the terms and conditions set forth in the DSCI Tariff. DSCI will provide Customer with a monthly invoice(s) identifying all charges for the Services under this MSA. Invoices for all Services purchased and delivered pursuant to this MSA shall be sent to Customer contact and Billing Address as set forth in the NSO.

## III. SERVICES & PRICING

During the Term of this MSA, DSCI agrees to provide the Services to Customer at the location(s) designated in the attached Network Service Order Form(s). The Services shall be provisioned at the rates set forth in the Network Service Order Form(s). The parties agree that Customer may add or delete any Services by informing DSCI with thirty (30) days written notification, provided that Customer's monthly billed revenue does not fall below the MRC as set forth in Section I, Paragraph 2 preceding, and that it has met any minimum term requirement(s) as required per the terms of the NSO(s). Prices for the Services do not include any federal, state and local taxes, fees, charges and surcharges. Such taxes, fees, charges and surcharges shall include, but not be limited to, any universal service surcharges, public utility, state and FCC or other similar surcharges collected by DSCI from its customers. All such taxes, surcharges and fees shall be paid by Customer and will be added to any amounts otherwise charged to Customer unless Customer provides DSCI with an appropriate exemption certificate. Customer agrees that it will NOT use the Service(s) in ways that violate laws (federal, state, or local), infringe the rights of others, or interfere with the users, services, or equipment of the network. Customer shall use Service(s) per the terms outlined in DSCI's Acceptable Use Policy located on the DSCI website, [www.dscicorp.com](http://www.dscicorp.com).

#### **IV. BILLING & PAYMENT**

Billing for DSCI On-Net and Resale provided Services commences on the day Service is installed. In the event that the Service has not been turned up, but the local loop has been delivered, billing shall start five (5) days after the local loop has been delivered unless such delay was caused by DSCI. Customer shall pay to DSCI the charges for Service(s) at the rates set forth within thirty (30) days of the DSCI invoice date. In the event that payment on undisputed amounts is not made within thirty (30) days of the DSCI invoice date, DSCI reserves the right to: i) charge a finance fee of no more than 1½% per month or the highest rate permitted by law, whichever is lower, on any unpaid amounts; ii) refuse to process any orders for new Service; iii) terminate Service within 30 days of written notification, until such time as payments are made current; iv) charge Customer a fee, including reasonable attorney's fees, for charges incurred by DSCI in the collection of any and all unpaid amounts, including, but not limited to, past due amounts and early termination penalties.

#### **V. DISPUTED INVOICES**

In the event Customer disputes any charges on a DSCI invoice, Customer shall notify DSCI in writing, providing the billing telephone number, Circuit number, or trouble ticket number, if applicable, and an explanation for the dispute. Customer must provide notice of any dispute within ninety (90) days after the date of the invoice on which the disputed charges first appear, or Customer shall be deemed to have waived the right to dispute such charges. Customer agrees to pay all charges not in dispute per the payment terms in this MSA. An amount is not in dispute until Customer has provided DSCI with written notification providing the amount in dispute along with any supporting documentation. Dispute notifications should be emailed to [finance@dscicorp.com](mailto:finance@dscicorp.com) with a copy to Customer's Account Executive. The Parties will cooperate in good faith to resolve any such disputes within thirty (30) days after the dispute is submitted to DSCI. If such resolution of the dispute favors Customer, DSCI shall (a) credit Customer in the amount of the disputed amount if Customer previously paid such amount to DSCI, or (b) forgive such disputed amount if Customer did not previously pay such disputed amount to DSCI. If such resolution favors DSCI, payment is due within ten (10) business days that Customer is notified of such resolution.

#### **VI. PAYMENT SECURITY**

Provision of Service is contingent on credit approval by DSCI. Upon DSCI's request, Customer must provide DSCI with financial statements or other indications of Customer's financial and business circumstances. If a Material Adverse Change (as defined below) in a customer's credit worthiness should occur, DSCI reserves the right to do one or more of the following: (a) refuse or reject any new Service requests from the Customer; (b) request a deposit not to exceed one month's recurring service charge, or if Customer has previously provided security, DSCI may request additional security, with the combined total not to exceed two (2) month's recurring service charge. Customer's failure to provide the requested security within five (5) days following DSCI's reasonable request shall be considered a default. A Material Adverse Change in Customer's creditworthiness is defined as any of the following: (a) failure of Customer to make full payment of undisputed charges due hereunder within five (5) days of the Due Date on three (3) or more occasions during any period of twelve (12) months, excluding disputed invoices, or Customer's failure to make such payment within five (5) days of the Due Date in any two (2) consecutive months, excluding disputed invoices; (b) acquisition of Customer (whether in whole or by majority or controlling interest) by an entity which owes undisputed past due amounts to DSCI or any entity affiliated with DSCI, or which presents a materially greater credit risk than Customer; or (c) Customer's being subject to or having filed for bankruptcy or insolvency proceedings, or the legal insolvency of Customer. All deposits will be applied to Customer's account immediately upon twelve (12) months of continuous payments within normal credit terms.

#### **VII. LIMITATION OF LIABILITIES AND WARRANTIES**

DSCI shall not be liable for interruption, delays, errors or defects in transmission or failure to transmit when caused by acts of God, fire, war, acts of Government or others, or other events beyond its control. DSCI will not be liable to Customer for acts or omissions in the performance of Service(s) under this MSA on the part of DSCI employees or affiliates or suppliers unless the acts or omissions were due to negligence or willful misconduct. Customer shall bear the risk of loss arising from any unauthorized or fraudulent usage of any Service(s), including but not limited to domestic and international calls, provided by DSCI to the Customer. The parties agree that Customer, and not DSCI, shall bear all risk of loss arising from fraudulent or unauthorized use of the Services. Customer acknowledges and agrees that except to the extent expressly provided herein, the Service(s) are provided without any warranties, express or implied, including but not limited to warranties of merchantability or fitness for any particular purpose. In no event shall either party be liable to the other for indirect, special or consequential damages or lost profits arising out of or related to this MSA.

## VIII. TERMINATION FOR DEFAULT

1. Events of Default of DSCI. DSCI will be in default of this MSA if it has breached any material term or condition of this MSA and such breach, has not been cured within thirty (30) days after written notice of such breach (specifying in reasonable detail the nature of such breach) from the Customer. DSCI will not be considered to be in default if it is unable to provide the Services by reason of force majeure.

2. Termination for Default. In the event of a default by DSCI, Customer may terminate this MSA in part or in whole without penalty. Customer must send a notice of termination to DSCI, which notice will specify the event of default and the effective date of the termination notice. The effective date of such termination notice will be a date, which is not sooner than the last day of the cure period with respect to any event or default as to which this MSA contains a cure period.

## IX. EARLY TERMINATION

In the event Customer terminates this MSA or any NSO subject to this MSA in part or in whole without cause at any time during the Initial Term or any Renewal Period, or if DSCI terminates for Customer's default, then Customer shall be liable to pay to DSCI as liquidated damages (and not as a penalty) a termination charge, which shall become due and owing as of the effective date of cancellation or termination. Said charge shall equal any previously waived non-recurring charges plus the monthly recurring charge(s) of the terminated Service(s) times the remaining number of months in the Term of said Service(s). Customer shall also be liable for any charges DSCI incurs from third parties because of Customer's early termination.

## X. CONFIDENTIALITY OF THIS AGREEMENT

The parties hereto understand and agree that, except as expressly provided or permitted herein, the terms of this MSA shall be considered confidential and shall not be divulged to any third party without the prior written consent of the other party to the MSA. The parties recognize that unauthorized use, transfer or disclosure of the information in this MSA will cause irreparable harm and significant injury to the other party, which may be difficult to ascertain. Therefore, in the event of a breach of this confidentiality provision, the parties agree that the non-breaching party will be entitled to seek an injunction to restrain the breaching party from disclosing, in whole or in part, the existence and terms of this MSA, in addition to raising any other claims for loss or damages. Customer may disclose such information to parties with a need to know, such as advisors, provided that the Customer informs those to whom the disclosure is made Customer's obligation to keep such information confidential. DSCI may terminate this Agreement immediately without liability or further obligation in the event of any disclosure prohibited hereunder and Customer agrees to pay any applicable termination charges pursuant to Section IX preceding .

## XI. NOTICES

Except for notice regarding invoice disputes under paragraph V preceding, all notices required or given shall be by certified mail, postage prepaid, in any post office in the United States, or any certified overnight carrier, and shall be addressed to either Party at the respective address following:

If to DSCI:	DSCI Corporation One Sundial Ave. Suite 514 Manchester, NH 03103	If to Customer:
	Attn: Finance Fax: 781.861.4646	

## XII. ASSIGNMENT

This MSA may not be assigned or transferred, whether by operation of law or otherwise by Customer without the prior written consent of DSCI, except that either party may assign this MSA, and its rights and obligations including any outstanding balances owed hereunder, to any entity that agrees in writing to be bound by the terms and conditions of

this MSA, and succeeds to substantially all of such party's assets or business in connection with a merger, reorganization, sale of assets or transfer of control. Such consent shall not unreasonably be withheld.

**XIII. AMENDMENT**

This MSA may be modified or amended by the mutual consent of the parties hereto; provided, however, that no such modification or amendment to this MSA shall be binding unless in writing and signed by both parties. If, after the date hereof, the adoption of any applicable law, rule or regulation, or any change in any applicable law, rule or regulation, including the adoption or modification of any tariff provisions governing this Service, shall make the performance of this MSA unlawful or materially change the rates, terms or conditions of Service as provided in this MSA, the parties will attempt to conform the terms of this MSA to the governing law. Absent an agreement on such revised terms, either party may terminate this MSA without penalty.

**XIV. ENTIRE AGREEMENT**

The parties have read this MSA and all of its attachments and agree to be bound by its terms, and further agree that this MSA along with each NSO, subject to Section XIII above, constitute the complete statement of the agreement between them which supersedes all proposals, oral or written, and all other communications between them relating to the subject matter of this MSA.

**XV. GOVERNING LAW**

This MSA shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding its conflict of law provisions. The parties agree to submit to the exclusive jurisdiction of the courts of the Commonwealth of Massachusetts.

**IN WITNESS WHEREOF**, the parties hereto have caused this MSA to be executed by their duly authorized officers as of the day and year first above written.

<b>CUSTOMER:</b>	_____	<b>DSCI:</b>	_____
<b>BY:</b>	_____	<b>BY:</b>	_____
<b>PRINT NAME:</b>	_____	<b>PRINT NAME:</b>	_____
<b>TITLE:</b>	_____	<b>TITLE:</b>	_____
<b>DATE:</b>	_____	<b>DATE:</b>	_____