

HOSTING TERMS OF SERVICE

Digi Hosting Services



PLEASE READ THESE HOSTING TERMS OF SERVICE ("**Hosting ToS**") CAREFULLY, AS THEY REPRESENT IMPORTANT TERMS OF A BINDING AGREEMENT BETWEEN YOU AND DIGI INTERNATIONAL, INC. ("**DIGI**: OR "**WE**" AND RELATED PRONOUNS). THESE TERMS OF SERVICES DEFINE THE BASIS ON WHICH WE WILL HOST SPECIFIED APPLICATIONS AND/OR EQUIPMENT IN CONNECTION WITH OUR "DIGI DEVICE CLOUDSM" SERVICE. YOU WILL BE ACCEPTING AND AGREEING TO BE BOUND BY THESE TERMS BY: (A) EXECUTING A HOSTING AGREEMENT OR ORDER FORM THAT REFERENCES THESE TERMS, (B) CLICKING A BOX INDICATING YOUR ACCEPTANCE OF THESE TERMS, AND/OR (C) ACCESSING AND/OR OTHERWISE USING THE HOSTING SERVICE.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT ACCEPT THESE TERMS IN THEIR ENTIRETY, YOU MUST NOT INDICATE YOUR ACCEPTANCE AND MAY NOT USE THE SUBJECT HOSTING SERVICES IN ANY WAY.

YOUR ACCEPTANCE OF THESE TERMS CONSTITUTES AN ESSENTIAL PART OF THE BARGAIN BETWEEN YOU AND DIGI, WITHOUT WHICH DIGI WOULD NOT AGREE TO EXTEND THE RIGHTS SET FORTH HEREIN.

This Agreement will become effective between You and Us upon Your acceptance of these Hosting ToS on the basis described above.

The Hosting Services are provided expressly subject to these Hosting ToS, and Your rights to use the Hosting Service are conditioned upon: (i) Your compliance with all provisions of these Hosting ToS, and (ii) Your timely payment of all applicable Fees (as defined in Section 4, below).

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 Hosting ToS. It is Your obligation to review the most recent version of these Hosting ToS from time to time, posted at www.digi.com/legal/hostingterms, to ensure Your continued acceptance hereof. Any revisions to these Hosting ToS will become effective, and will constitute an amendment to this Agreement, twenty (20) business days after such revisions are posted, unless You expressly accept the revised Hosting ToS as of an earlier date. Your continued use of the Service after the applicable effective date of such revisions will conclusively establish Your acceptance to be bound by the revised Hosting ToS. If You have questions about these Hosting ToS or the Service, please contact Digi customer support at www.digi.com/support/.

1. DEFINITIONS. The following definitions will apply to capitalized terms used in this document:

- "**Device Cloud**" refers to Digi Device CloudSM service, a cloud-based infrastructure that provides TCP/IP-based communication with a Registered Device or between a Registered Device and a software application.
- "**Device Cloud Agreement**" means a separate "Account Agreement" between Digi and You regarding Device Cloud services, which incorporates by reference the most current version of the Device Cloud ToS.
- "**Device Cloud ToS**" means the Terms of Service referenced in and applicable to the Device Cloud Agreement.
- "**Hosted Application**" means a Device Cloud-compliant software application identified as such in the Hosting Agreement, which application is designed to interact with Registered Devices and/or manage and report data collected from Registered Devices.
- "**Hosted Equipment**" means the Device Cloud-compliant equipment identified as such in the Hosting Agreement, which equipment is intended to work in connection with the Hosted Application and with Registered Devices.
- "**Hosting Agreement**" means the agreement between You and Digi regarding the provision of Hosting Services by Digi. The Hosting

Agreement describes the Hosting Services and incorporates these Hosting ToS by reference.

- "**Hosting Term**" means the duration of the Hosting Agreement, which (unless earlier terminated per these Hosting ToS), will be the Initial Term identified on the Hosting Agreement plus any renewal periods created per subsection 4.1 below.
- "**Hosting Terms of Service**" or "**Hosting ToS**" refers to the most current version of these terms of service, which will be posted at www.digi.com/legal/hostingterms.
- "**Application Hosting**" means the hosting by Digi of the Hosted Application subject to the terms of the Hosting Agreement.
- "**Equipment Hosting**" means the hosting by Digi of the Hosted Equipment subject to the terms of the Hosting Agreement.
- "**Hosting Services**" means Application Hosting and Equipment Hosting, collectively.
- "**Registered Device**" has the meaning specified in the Device Cloud ToS.
- "**Third-Party Supplier**" means an infrastructure provider or entity that supplies other technologies or services used by Device Cloud, the Hosted Application or the Hosted Equipment.
- "**User**" means an individual or entity You have authorized to use the Hosting Services.

2. RELATIONSHIP TO DEVICE CLOUD ACCOUNT AGREEMENT. This Hosting Agreement and the Device Cloud Agreement are entered separately and are standalone agreements. If, however, the Device Cloud Agreement is terminated for any reason, this Hosting Agreement will, unless otherwise agreed in writing by the parties, automatically terminate at the same time as the Device Cloud Agreement.

3. THE HOSTING SERVICES

3.1 During the Hosting Term, We will provide the Hosting Services subject to (a) timely payment of all charges specified in the Hosting Agreement and (b) the terms of the Hosting Agreement. We reserve all other rights not expressly granted in the Hosting Agreement, including these Hosting ToS.

3.2 You will be solely responsible for:

- (a) maintaining the security of the Hosted Applications and Hosted Equipment to the extent they are within Your control,
- (b) all use of the Hosting Services (including payment of fees associated with those uses), whether or not authorized by You or done with Your knowledge or consent, and
- (c) all data, information or other content transmitted over or uploaded to the Hosted Applications and Hosted Equipment.

3.3 As a condition to using the Services, each User of the Hosting Services may be required to register and select a password and user name ("User ID"). You will ensure that Your Users provide accurate and complete registration information and will update their registration information, as necessary, to keep it current. Your Users may not (i) select or use as a User ID a name of another person with the intent to impersonate that person; or (ii) use as a User ID a name subject to any rights of a person other than such User without appropriate authorization. Each User ID will be assigned to (and may only be used by) one unique User and You will ensure that each User ID will not be shared with or used by any party other than the unique User to which it is assigned.

3.4 You acknowledge that, except as expressly stated, each Party retains all rights in its trademarks, service marks, software, technology and intellectual property.

3.5 If We conduct an investigation of outages, security problems, or a suspected security breach or the Hosted Application or the Hosted Equipment, You agree to provide a reasonable level of cooperation to help facilitate Our investigation, to the extent warranted by the facts of the situation. If Your cooperation requires more than a small amount of time and effort, We will discuss in good faith an appropriate level of compensation.

3.6 Applicable law requires maintenance of a level of security or privacy for certain kinds of data. You will abide by all legal requirements regarding the data You transmit through the Hosted Applications and/or Hosted Equipment.

3.7 For the security of Your own data and compliance with PCI-DSS standards, You: (i) will encrypt all Your data [including payment card data subject to the PCI-DSS and primary account numbers (PAN)] prior to transmitting it through the Hosted Application or Hosted Equipment, (ii) will not disclose the encryption key to Digi or any third party.

3.8 You represent and warrant that:

(a) in the event that You, Your Users, and/or anyone using your account data utilize(s) any aspect of the Hosted Application and/or Hosted Equipment to transmit, receive, store, or process Protected Health Information ("PHI") as that term is defined by the Health Insurance Portability and Accountability Act ("HIPAA") and/or the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") as amended and as implemented by the associated regulations (collectively, the "Acts"), You: (i) will fully comply with the Acts; (ii) will encrypt all PHI at rest and in motion and (iii) acknowledge that You do not consider Digi as a Business Associate, as defined in the Acts.

(b) each item of Hosted Equipment, has, if required by law, all approvals and certifications by the Food and Drug Administration (FDA) and/or other federal and state regulators in connection with each device.

3.9 Unless and until You notify Us in writing to the contrary, We will have the limited right to use Your company name and logo to identify You as a customer for Hosting Services in Our marketing communications and collaterals. As soon as reasonably practical after receipt of notice of termination of this right, We will cease further Use of Your name and logo, but will have no obligation to remove them from any pre-existing printed collateral materials We have in inventory.

4. RENEWAL, FEES, TAXES

4.1 At the end of the Initial Term and each renewal period, unless either Party gives the other party notice of non-renewal at least one month in advance, the Hosting Agreement will be subject to automatic renewal for a renewal period equal to that of the Initial Term.

4.2 Unless otherwise stated in writing, fees for the Initial Term will be payable upon signing of the Hosting Agreement, and fees for any renewal period will be due and payable at the inception of such period. All fees are in US dollars, unless otherwise stated.

4.3 Fees are non-cancelable and non-refundable. Unless otherwise agreed in writing, Digi reserves the right to change the amount of the fees or applicable charges and/or to institute new charges for any renewal period, provided that notice of such charges is provided at least thirty (30) days in advance of the renewal period. In addition, Digi may introduce new features and functionalities to the Hosting Services, which may be made available to You at an additional cost.

4.4 You will be responsible for the payment of taxes of any kind [including any federal, state, local or foreign taxes, duties or levies but excluding taxes based on Our net income] imposed on or based on the provision, sale or use of the Hosting Services ("Taxes"). Except where You provide us with a valid and correct tax exemption certificate applicable to the Hosting Services, we will bill You for, and You will pay, any Taxes We are obligated to collect in connection with the Hosting Services provided under this Agreement. You will not rely on Us to determine taxability and will be responsible for assessing and paying any applicable use taxes when appropriate.

5. SUPPORT SERVICES NOT INCLUDED

5.1 We will not be responsible for providing support services for the Hosted Application or the Hosted Equipment except as may be specifically agreed in writing in the Hosting Agreement or elsewhere.

6. CHANGES TO HOSTING SERVICES; TERMINATION AND SUSPENSION

6.1 If You wish to add new or changed Hosting Services to this Hosting Agreement, You and We will execute an Addendum to this Hosting Agreement to include the new or changed services. The Addendum will identify the effective date for the changed scope of the Hosting Services and any associated pricing. All other provisions of the Hosting Agreement (including those relating to its term and renewal) will remain unchanged.

6.2 We may, without liability, suspend or terminate any or all Hosting Services: (a) following a possible or actual security breach or cyber-attack

on Device Cloud or any of the Hosted Applications or Hosted Equipment; (b) in order to protect the Device Cloud network, Hosted Applications or Hosted Equipment; or (c) if required by a governmental entity.

6.3 We may, without liability, suspend or terminate any or all Hosting Services under circumstances, if any, described in the Hosting Agreement or if We, in Our discretion, determine: (a) You or Your Users are engaging in suspected fraudulent, illegal or unauthorized use of the Hosting Services, the Hosted Application or the Hosted Equipment; (b) You or any of Your affiliates are listed on a government-issued restricted persons or entities list or warning list; (c) use by You or Your Users of the Hosted Application, Hosted Equipment or Hosting Services poses a business, technological or legal risk to Digi or its customers; (d) a Hosted Application or Hosted Equipment is defective, illegal or infringing of the rights of a third party; (e) a Hosted Application or Hosted Equipment is causing technical or other problems on Device Cloud or to other hosted applications or equipment; (f) You have breached the Hosting Agreement or other contract with Digi regarding Device Cloud, the Hosted Applications or the Hosted Equipment; (g) payments in Your account are past due; (h) You fail to provide a reasonable level of cooperation in an investigation pursuant to subsection 3.6.

6.4 Either Party may terminate the Agreement if the other Party becomes insolvent or is unable to pay its debts or enters into or files (or has filed or commenced against it) a petition, arrangement, application, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or any similar laws of any state or country (a "Proceeding") provided the Proceeding is not stayed within forty-five (45) days of being filed.

6.5 Portions of the Hosting Agreement which by their nature should survive termination, will survive termination, including, without limitation, those respecting accrued rights to payment, warranty disclaimers and limitations of liability. However, upon termination, Your right to use the Hosting Services will immediately terminate.

6.6 Upon termination of the Hosting Agreement, You will (to the extent possible) reconfigure the Hosted Application and Hosted Equipment so that they are no longer attempting to communicate with Device Cloud. If You fail to do so, Digi reserves the right to remotely and without notice to You reconfigure the Hosted Applications and Hosted Equipment so that they no longer attempt to communicate with Device Cloud.

6.7 In the event You validly terminate the Hosting Agreement for cause per this section, We will refund to You a pro-rata share of any fees You paid in advance for Hosting Services through the date of termination. In no other case will We be obligated to refund any amounts paid to Us.

7. SERVICES, WARRANTY

7.1 Services may be temporarily unavailable for scheduled or unscheduled maintenance by Digi or Third-Party Suppliers, or for other causes beyond Our reasonable control. DIGI DOES NOT WARRANT THAT THE HOSTING SERVICES WILL BE UNINTERRUPTED, ERROR FREE, OR COMPLETELY SECURE. DIGI MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE HOSTING SERVICES. THE HOSTING SERVICES ARE PROVIDED "AS IS" AND DIGI DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7.2 DIGI SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY AND WARRANTIES, IMPLIED OR EXPRESS, FOR USES REQUIRING FAIL-SAFE PERFORMANCE OR FOR USES THAT REQUIRE IMMEDIATE, MISSION-CRITICAL, REAL-TIME DATA WHERE FAILURE COULD LEAD TO (A) PERSONAL INJURY OR DEATH, (B) PROPERTY DAMAGE OR (C) ENVIRONMENTAL DAMAGE. FOR EXAMPLE, THIS DISCLAIMER APPLIES TO, BUT IS NOT LIMITED TO, SOLUTIONS INVOLVING LIFE SUPPORT, MEDICAL DEVICES, NUCLEAR APPLICATIONS OR CRITICAL ASSET MONITORING. THE HOSTING SERVICES ARE NOT DESIGNED FOR AND SHOULD NOT BE USED IN ANY OF THESE OR OTHER FAIL-SAFE APPLICATIONS

7.3 Digi reserves the right to reduce the speed at which transactions are conducted to the Hosted Applications and/or Hosted Equipment (i.e. to "throttle" transactions) if the size of transactions, individually or as a group, within a predefined period of time, adversely affects the overall performance of Device Cloud or other applications or equipment.

8. INDEMNITY AND LIMITATION OF LIABILITY

8.1 You agree to indemnify and hold harmless Digi, its officers, directors, representatives, employees and agents against any damages, losses, liabilities, settlements and expenses (including, without limitation, costs and attorneys' fees) in connection with a claim or action against Digi that arises from or is based on (i) an alleged violation of the Hosting Agreement by You or otherwise from Your use of Device Cloud, a Hosted Application or any Hosted Equipment (or any of its features or associated services), (ii) any infringements (except for those subject to subsection 8.2, below) arising out of or connected to the use of the Hosted Application or the Hosted Equipment; (iii) any defects in the Hosted Application or Hosted Equipment, (iv) any personal injuries or property damage attributable to the Hosted Application or Hosted Equipment, or (v) an alleged violation of law.

8.2 In the event any claim, suit or action is brought against You that alleges the Hosting Services (as provided by Digi) infringe a third party's U.S. patent or copyright, then Digi shall provide You with indemnity through one of the following means at its sole option and expense: (i) procure for You the right to continue using the Hosting Service, (ii) modify the Hosting Service so that it is non-infringing, (iii) procure a replacement Hosting Service that has substantially the same functionality, or (iv) cease providing any Hosting Service under this Agreement and pay You the amount of Your actual damages derived from such claim, suit or action subject to a liability limits contained in these Hosting ToS. Our obligation under this subsection extend only to claims, suits or actions involving the Hosting Service itself on a standalone basis and Digi shall have no obligations under this subsection to You: (a) if Hosting Service has been modified in any way other than by Digi, (b) for claims, suits or actions involving in whole or in part the manner in which You used or are using the Hosting Service, (c) for claims, suits or actions based in whole or in part on the use of the Hosting Service in combination with other technologies, (d) for claims, suits or actions based in whole or in part on a use of the Hosting Service that violates the law, (e) for claims, suits or actions based in whole or in part on the use of the Hosting Service in a manner for which it was not intended, or (f) for claims, suits or actions arising out of the use Hosted Application or the Hosted Equipment. THIS SECTION STATES OUR ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM, SUIT OR ACTION ALLEGING INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

8.3 We may use Third-Party Suppliers for data transport and storage. You acknowledge that storage technologies provided by Third-Party Suppliers may utilize multi-tenancy architecture, which may allow parties not associated with Digi or a Third-Party Supplier to store or transmit data within the same framework used to store or transmit Your data. You also acknowledge that the transmission and storage of Your data may result in Your data crossing through or residing in multiple political jurisdictions. Each of these jurisdictions may have unique provisions relating to the privacy of Your data and information.

8.4 You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of privacy, privacy data, Confidential Information, and property. You also acknowledge that there are risks inherent with transmitting log-in credentials, either for Device Cloud, the Hosted Application, or the Hosted Equipment, over a public network.

8.5 EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 8.2, NEITHER DIGI NOR ITS OFFICERS OR EMPLOYEES WILL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY CLAIM OR ACTION RELATED TO HOSTED SERVICES (OR TO ANY OF THEIR FEATURES OR ASSOCIATED SERVICES) UNDER ANY THEORY, WHETHER UNDER THE LAWS OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANOTHER THEORY. UNDER NO CIRCUMSTANCES WILL DIGI BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. DIGI WILL NOT BE LIABLE FOR (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 THE REASONABLE CONTROL OF DIGI, EVEN IF DIGI HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING LOSSES OR DAMAGES; (C) ATTACKS ON OR HACKS OF YOUR DATA, THE HOSTED APPLICATION OR THE HOSTED EQUIPMENT, WHETHER IN TRANSIT OR IN STORAGE; (D) PHYSICAL ATTACKS OR CYBER-ATTACKS UPON DEVICE CLOUD, ITS NETWORK OR THE NETWORKS OR FACILITIES OF THIRD-PARTY SUPPLIERS, A HOSTED APPLICATION OR ANY HOSTED EQUIPMENT; (E) THE BREACH OF OR LOSS OF PRIVACY OF E-MAIL ADDRESSES,

REGISTRATION OR IDENTIFICATION INFORMATION, DISK SPACE, COMMUNICATIONS, CONFIDENTIAL OR TRADE-SECRET INFORMATION, OR ANY OTHER CONTENT STORED ON DIGI EQUIPMENT, TRANSMITTED OVER NETWORKS ACCESSED BY DEVICE CLOUD, OR OTHERWISE CONNECTED WITH THE USE OF THE HOSTED SERVICES, THE HOSTED APPLICATION OR THE HOSTED EQUIPMENT.

8.6 YOU ACKNOWLEDGE THAT A GOVERNMENTAL ENTITY MAY (A) INTERCEPT YOUR DATA OR (B) REQUIRE DIGI TO DISCLOSE YOUR DATA OR INFORMATION.

8.7 THE PARTIES AGREE THAT IN NO CASE WILL THE LIABILITY OF DIGI UNDER THIS AGREEMENT OR IN CONNECTION WITH THE HOSTING SERVICES EXCEED THE AGGREGATE AMOUNT OF FEES YOU HAVE PAID UNDER THE HOSTING AGREEMENT OVER THE TWELVE (12) MONTH PERIOD PRECEDING THE ACCRUAL OF A CLAIM UPON WHICH LIABILITY IS BASED.

8.8 THE PRICE STATED FOR THE SERVICES IS A CONSIDERATION IN LIMITING DIGI'S LIABILITY.

8.9 NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE HOSTING AGREEMENT OR THESE HOSTING TOS MAY BE BROUGHT BY YOU MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

9. LEGAL COMPLIANCE, DATA PROTECTION AND CONFIDENTIALITY.

All provisions of the Device Cloud Agreement which relate to any of the following:

- protection, handling and transmission of data;
- privacy and security;
- confidentiality of information; and
- compliance with laws, regulations, policies and standards

are hereby incorporated herein by reference and will apply to the Hosted Applications, the Hosted Equipment, and the Hosting Services on the same basis as they do to Device Cloud services.

10. GENERAL

10.1 Digi will not be liable for any failure or delay in the performance of its obligations hereunder on account of strikes, terrorist activity, shortages, riots, insurrection, fires, floods, power outages, storms, cybercrime, explosions, war, governmental action, labor conditions, earthquakes, terrorism, supplier bankruptcy or default, failure, delay or interruption by third parties, including without limitation, communications providers, or any other cause which is beyond its reasonable control.

10.2 You represent that You are not a government agency and are not acquiring the Hosting Services pursuant to a government contract or with government funds.

10.3 If any provision of the Hosting Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Hosting Agreement will otherwise remain in full force and effect and be enforceable.

10.4 Your rights and obligations under the Hosting Agreement are not assignable or transferable and cannot be sub-licensed to another party by You except with Our prior written consent. Digi may transfer, assign or subcontract any of its rights and obligations under the Hosting Agreement without consent.

10.5 The Hosting Agreement is the complete and exclusive statement of the understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of the Hosting Agreement. All waivers and modifications of the Hosting Agreement must be in writing and signed by both parties, except as otherwise provided herein.

10.6 No agency, partnership, joint venture, or employment is created as a result of the Hosting Agreement. You do not have authority to bind Digi in any respect.

10.7 The Hosting Agreement will be governed by the laws of the State of Minnesota, without regard to its conflict of laws provisions. For purposes of jurisdiction over a claim under the Hosting Agreement, Your data are presumed to have resided or to have been transmitted exclusively within the state of Minnesota. Any action or proceeding arising out of or related to the Hosting Agreement may only be brought in the state or federal courts in Minnesota and exclusive venue will be in the Court having jurisdiction over

the Hennepin County, MN. Each Party hereby consents to the exclusive jurisdiction of such courts with respect to such matters. English is the governing language for: (i) Device Cloud; (ii) the Hosting Agreement; (iv) negotiations related to the Hosting Agreement or Your use of Device Cloud and (v) the resolution of disputes related to the Hosting Agreement or Your use of Device Cloud, including negotiations, litigation, mediation or arbitration. Versions of the Hosting Agreement or Hosting ToS that have been translated into languages other than English may be provided for convenience, but the English version is the only version that defines the rights and obligations of the parties.