

DAGI HyperCloud Services: Terms and Conditions

Description

DAGI supplies on-site and off-site back-up of business-critical devices/systems. This can include image and data back-up.

Devices could include:

Routers/Firewalls, Switches, WIFI Access Points (AP's), Network Controllers, Personal Computers (PC's – Laptop's, desktop's, etc.), tablets, Network Access Storage Device(s) (NAS), Servers (Physical and/or Virtual)

On-Going Support is defined as:

- Maintenance of, and updates to, Device O/S (Operating System)
- Real-time Remote System Health Monitoring

Optional Prepaid I.T. Technician Hour(s) (Remote and/or on-site)

Your contract may also include pre-paid technician service/support hour(s) to cover the cost of activities that are required outside of the On-Going Support. This pre-paid time could be comprised of a combination of remote support* (*Support where a DAGI technician is not at the client site) and/or on-site support^ (^Support where a DAGI technician is physically at a client site). This time can be applied during DAGI's regular business hours, Monday-Friday, 08h30-17h00, excluding holidays. Emergency/Afterhours Support rates will apply to service/support provided outside these hours.

The types of activities that may be covered within the additional support hours include:

- 1) On boarding of additional employees
- 2) Setting up a replacement device covered by the DAGI HyperCloud contract
- 3) 3rd party peripheral and/or software maintenance/troubleshooting
- 4) Device system restoration (wipe/restore/reinstall)
- 5) Advice/Help on procedures

Additional charges may be incurred should DAGI provide service(s):

- 1) for a device that is not specified under your DAGI HyperCloud Contract; and/or
- 2) not included with your DAGI HyperCloud Contract; and/or
- 3) that result in exceeding your DAGI HyperCloud contracted hour(s) in order to provide a resolution of the issue(s); and/or
- 4) for 3rd party software or applications not covered under your DAGI HyperCloud Contract; and/or
- 5) for peripherals/3rd party hardware devices not covered under your DAGI HyperCloud Contract (eg. Network/USB Printers, Merchant Services Hardware, etc.).

1. Interpretation

1.1. The following terms and conditions of service ("Terms of Service") govern the use of the services available through DAGI. Any DAGI document describing the plans, features, services or products you have selected, as well as any other document incorporated by reference (collectively, the "Materials") together with these Terms of Service constitute our agreement

with you (the “Service Agreement”). If there is any inconsistency between the Materials and these Terms of Service, these Terms of Service will prevail.

1.2. Throughout this document:

- us, we, our and DAGI means the DAGI entity named in the Service Agreement;
- service or services means the services that you subscribe to under the Service Agreement or receive from or through DAGI;
- equipment means any device, equipment or hardware used to access the services or used in conjunction with the services; and
- software means any software used to access the services or used in conjunction with the services.

1.3. Unless otherwise specified in the Service Agreement, we may change at any time charges, features, content, functionality, structure or any other aspects of the services, as well as any term or provision of the Service Agreement. If you do not accept a change to the affected services, your sole remedy is to terminate the affected services provided under the Service Agreement within thirty days of your receipt of our notice of change to the Services (unless we specify a different notice period), by providing us with advance notice of termination pursuant to section 11.2 of the Terms of Service.

1.4. By entering into the Service Agreement, you:

- acknowledge that you have read, understood and agree to the Terms of Service;
- authorize DAGI to obtain information about your credit history and agree that DAGI may provide information to others about your credit experience with DAGI;
- accept all provisions of the Service Agreement, including those set forth in the Materials and these Terms of Service;
- agree to cause all persons who use services under your account, or with your authorization, to comply with the Service Agreement;
- acknowledge that the acts or omissions of all persons who use services under your account, or with your authorization, will be treated for all purposes as your acts or omissions;
- acknowledge that you have received and had the opportunity to review a copy of the Service Agreement, including the Materials and these Terms of Service;
- confirm that the information you have provided to us is up-to-date and accurate; and agree to notify us of any change in your information.

1.5. Your account information may be disclosed to other members of the DAGI organization and to our agents/dealers in order to service your account, respond to your questions and telemarket/promote additional products and services offered by members of the DAGI organization that may interest you. Moreover, your account information may be provided to other companies to facilitate access to their services on your DAGI account. If you do not wish to receive offers or information from related DAGI entities, please contact DAGI, as stated in Section 16.

2. Charges, Account and Payment Information

2.1. Charges will commence on the date of the initial order of the services or the equipment, whichever is earlier (the "Activation Date"). You authorize DAGI to charge to your bank account, via pre-authorized debit, the initial set-up fee listed and any recurring monthly charges incurred on your account made in accordance with the DAGI Terms of Service. You acknowledge and understand that any charges to the account, including the initial set-up fee, are non-refundable.

2.2. Unless otherwise agreed to by you and us, we will bill you monthly, by pre-authorized debit, to your bank account. Except for usage based fees, all fees are due in advance on the first day of each billing period. Usage-based charges are billed in arrears. Billing for partial months is prorated. DAGI may bill you for a charge up to six (6) months from the date the charge was incurred.

2.3 Charges to your account are due and payable in full from the date of your invoice or statement. If, after receiving agreement from DAGI to do so, you are paying by mail or through a financial institution, please allow adequate time for your payment to reach us prior to the required payment date.

2.4. You are liable for all charges to your account unless otherwise stated in your Service Agreement and include charges that occur due to fraud or hacking of accounts.

2.5. If payment of an amount due on your account is not received by us by the required payment date specified by us, it will be considered a delinquent amount and will be subject to a late payment charge of 2% per month, calculated and compounded monthly on the delinquent amount (26.82% per year) from the date of the first invoice on which the delinquent amount appears until the date we receive such amount in full. You agree that we can charge any unpaid and outstanding amount, including any late payment charges, on your account to your credit card, bank account or any other payment method pre-authorized by you for payment of our charges.

2.6. Administrative charges may be levied for administration or account processing activities in connection with your account, including as a result of the following:

- collection efforts due to non-payment or having a balance over your credit limit, including unbilled usage and pending charges, fees and adjustments;
- returned or rejected payments;
- change of any identifier (e.g., phone number); and
- restoration of service.

A list of such charges is available upon request. Any questions or discrepancies regarding charges must be forwarded to us within ninety (90) days of the invoice date or other statement date. Failure to notify us within this time period will constitute your acceptance of such charges.

2.7. Unless otherwise set out in the Materials, if you agree to subscribe to one of our plans or services for a committed period of time (the “Commitment Period”), you may be subject to an early cancellation fee (ECF) for each service.

2.8. Changes to your account (e.g., monthly plan, features or identifiers) may not take effect until after your next billing date.

3. Deposit and Credit Requirements

3.1. We may require a deposit or impose other payment or credit requirements (e.g., interim payments, mandatory pre-payments) at any time and on such terms as determined in our sole discretion. You will not earn any interest on any deposits or other payments held by us. If your service is terminated, we will apply any deposits or other payments against the outstanding final balance on your account.

3.2. Upon notice to you, we may assign, change or remove a credit limit on your account at any time. Service to any or all of your accounts may be suspended at any time if your balance – including unbilled usage and pending charges, fees and adjustments – exceeds this limit. Recurring service charges continue to apply during any suspension of services.

4. Identifiers

4.1. You do not own any identifier (such as an account, calling card or PIN number, e-mail, IP or Web page address or access code) assigned to you. We may change or remove any identifier at any time upon notice to you.

5. Service Policies and Acceptable Use

5.1. We may occasionally establish policies, rules and limits (together, the “Policies”) concerning use of the services, equipment and any products, content, applications or services used in conjunction with the services or equipment. Your use of the Services is subject to these Policies, which are incorporated into these Terms of Service.

5.2. You may not use the services for anything other than the purpose for which it was supplied to you. You may not resell the services, receive any charge or benefit for the use of the services, or allow any third party to have access to such services. Also, you may not share or transfer your services without our express consent.

5.3. We reserve the right to suspend or terminate your services or any portion thereof without prior notice, based on our sole discretion; where any of your services are used in any manner that impairs the use and/or quality of DAGI Service(s) by other subscribers, is inconsistent with the Terms of Service or Policies, is contrary to any law, or during any period in which any amount payable by you to us is past due.

6. Equipment

6.1. Except for equipment that you have fully paid for, or are leasing from a third party, all equipment installed or provided by us remains our property and you agree that:

- you will take reasonable care with the equipment;
- you may not sell, lease, mortgage, transfer, assign or encumber the equipment;
- you may not re-locate the equipment without our knowledge and permission; and
- you will return the equipment to us at your own expense upon termination of the services to which the equipment related.

6.2. If the equipment is lost, stolen, damaged, sold, leased, mortgaged, transferred, assigned, encumbered or not returned, you agree to pay us the undiscounted retail value of the equipment, along with any costs incurred by us in seeking possession of such equipment.

6.3. You authorize our representatives to enter or have access to your premises as necessary at mutually agreed upon times to install, maintain, inspect, repair, remove, replace, investigate, protect, modify, upgrade or improve the operation of our services, equipment or our facilities or networks. If any of your services or accounts have been terminated, you authorize our representatives to enter or have access to your premises to disconnect the services, as applicable.

6.4. Equipment and operating systems and any related software may have to meet certain minimum requirements and be maintained (in certain ways and in certain locations) in order to access the services or the proper operation of the services. Unless otherwise specified by us, you are solely responsible for updating and maintaining your equipment and any software, as necessary, to meet such requirements. Please note that you are not entitled to customer support provided by us if you fail to properly maintain or update your equipment and software.

6.5. You must immediately notify us by any means of contact as specified in Section 16, if your equipment is lost, stolen or destroyed. If you wish to terminate your services, your obligations under the Service Agreement, including the ECF, will apply.

7. No Warranties

7.1. You acknowledge and understand that the DAGI services may not function correctly, or at all, in the following circumstances:

- if your equipment fails, is not configured correctly or does not meet DAGI requirements;
- in the event of a network outage or power failure;
- if you tamper with or move the equipment; and/or
- following suspension or termination of your services or account.

7.2. You acknowledge and understand that there is no guarantee of performance of backup services. Circumstances beyond DAGI control could interrupt service, including but not limited to: power failure or internet (WAN) failure or Local Area Network (LAN) failure.

7.3. Neither DAGI nor its affiliates, partners, licensors, dealers, representatives, suppliers and agents (and their respective employees, officers, directors, shareholders and representatives) (collectively, "DAGI Parties") are responsible or liable to you for any software, content or services provided to you or accessible by you through the services, any charges incurred in connection with such software, content or services or anything that is or can be done

with such software, content or services even if you are billed for such software, content or services. All such software, content or services, is accessed or transmitted solely at your own risk.

7.4. To the maximum extent permitted by applicable law:

- the DAGI Parties do not guarantee or warrant the performance, availability, coverage, uninterrupted use, security, pricing or operation of the services, the equipment or any products, content, applications, services, facilities, connections or networks used or provided by us or third parties (collectively, the “Offering”);
- you bear the entire risk as to the use, availability, reliability, timeliness, quality, security and performance of the Offering; and
- the DAGI Parties do not make any express or implied representations, warranties or conditions, including warranties of title or non- infringement, or implied warranties of merchantable quality or fitness for a particular purpose, with regard to the Offering.

7.5. All representations, warranties and conditions of any kind, express or implied, are excluded to the maximum extent permitted by applicable law. To the maximum extent permitted by applicable law, no advice or information, whether oral or written, obtained by you from the DAGI Parties creates any term, condition, representation or warranty not expressly stated in the Service Agreement. You are solely responsible for the following matters:

- accessing the equipment;
- maintaining the security and privacy of your property and your transmissions using the services, the equipment or our facilities or networks; and
- protecting against any breaches of security or privacy, or other risks involved in installing, using, maintaining or changing the services or the equipment.

8. Limitations of Liability

8.1. Unless otherwise specifically set out in the Service Agreement, to the maximum extent permitted by applicable law, the DAGI Parties will not be liable to you or to any third party for:

- any direct, indirect, special, consequential, incidental, economic or punitive damages (including loss of profit or revenue; financial loss; loss of business opportunities; loss, destruction or alteration of data, files or software; breach of privacy or security property damage; personal injury, death or any other foreseeable or unforeseeable loss, however caused) resulting in or relating directly to or indirectly from, or relating to the Offering or any advertisements, promotions or statements relating to any of the foregoing, even if we were negligent or were advised of the possibility of such damages.
- the performance, availability, reliability, timeliness, quality, coverage, uninterrupted use, security, pricing or operation of the Offering;
- the denial, restriction, blocking, disruption or inaccessibility of any services including equipment, local and cloud backup services.
- any lost, stolen, damaged or expired equipment, identifiers, passwords, codes, benefits, discounts, rebates or credits; and

- any claims or damages resulting directly or indirectly from any claim that the use, intended use or combination of the Offering or any material transmitted through the services infringes the intellectual property, industrial, contractual, privacy or other rights of a third party.

8.2. These limits are in addition to any other limits on the DAGI Parties' liability set out elsewhere in the Service Agreement and apply to any act or omission of the DAGI Parties, whether or not the act or omission would otherwise be a cause of action in contract or tort, or pursuant to any statute or other doctrine of law.

9. Indemnification

9.1. You will indemnify and hold harmless the DAGI Parties from and against any claims, losses, damages, costs and expenses (including, without limitation, reasonable legal fees and other litigation expenses) incurred by the DAGI Parties relating to your violation, alleged violation or misappropriation of any intellectual property, industrial, contractual, privacy or other rights of a third party or any alleged libel or slander by a third party against you.

10. Privacy and Confidentiality of your Information

10.1. Unless you provide express consent, or disclosure is required pursuant to a legal power, all your information kept by us, other than your name, address and listed telephone number, is confidential and may not be disclosed by us to anyone other than:

- you;
- a person who, in our reasonable judgment, is seeking the information as your agent;
- an agent retained by us in the collection of your account or to perform other administrative functions for us, provided the information is required for and used only for that purpose;
- an agent retained by us to evaluate your creditworthiness, provided the information is required for and is to be used only for that purpose;
- a law enforcement agency whenever we have reasonable grounds to believe that you have knowingly supplied us with false or misleading information or are otherwise involved in unlawful activities; or
- a public authority or agent of a public authority if, in our reasonable judgment, it appears that there is imminent danger to life or property which could be avoided or minimized by disclosure of the information.
- express consent to disclosure may be obtained by the following:
 - written consent;
 - oral confirmation verified by an independent third party;
 - electronic confirmation through the use of a toll-free number;
 - electronic confirmation via the Internet;
 - oral consent, where an audio recording of the consent is retained by us; or
 - consent through other methods, as long as an objective documented record of your consent is created by you or by an independent third party.

11. Term, Suspension and Termination

11.1. The terms of the Service Agreement, and any applicable Commitment Period, starts on the Activation Date and shall continue indefinitely until terminated in accordance with the provisions of the Service Agreement or applicable law.

11.2. Unless otherwise permitted by applicable law:

- you may terminate any or all of your services upon advance notice of no less than thirty (30) days by contacting DAGI at the appropriate points of contact specified in Section 16; and
- DAGI may terminate any or all of your services or accounts upon advance notice of no less than thirty (30) days to you at your mailing address or email address.

11.3. Applicable charges continue to apply until the end of the notice period or until the services are no longer accessible by you, whichever is later.

11.4. In addition to our rights to terminate your services pursuant to Sections 11.2 and 11.4, we may restrict, block, suspend or terminate any or all of your services or accounts (including 9-1-1 service, or identifiers in any way) without notice or liability to you, if:

- you are in breach of the Service Agreement, including non-payment of your charges or noncompliance with any Policies;
- you have given us false, misleading or outdated information;
- we reasonably suspect or determine that any of your account, identifiers, services or equipment is the subject of fraudulent, unlawful or improper usage or usage that adversely affects our operations or the use of our services, facilities or networks by others;
- you harass, threaten or abuse us or our employees or agents;
- you fraudulently or improperly seek to avoid payment to us;
- we need to install, maintain, inspect, test, repair, remove, replace, investigate, protect, modify, upgrade or improve the operation of the services, the equipment or our facilities or networks;
- any account or service on which your services depend is terminated for any reason; or
- we reasonably believe that there is an emergency or extreme circumstance that would warrant such action.

11.5. If we restrict, suspend, block or terminate your services or accounts:

- you must pay any amounts owing;
- we may also suspend, block or terminate, without notice or liability, your services under any other agreement or account that you may have with us or a related DAGI entity (including accounts that may be in good standing);
- you may be charged for any costs incurred by us or any related DAGI entity in connection with your breach of these Terms, including costs incurred to enforce your compliance; and

- your rates for services with related DAGI entities may change in accordance with the terms of those services.

11.6 Any notice shall be deemed to have been given on the date on which it was sent by the party giving the notice.

12. Early Cancellation Fee

12.1 The Early Cancellation Fee (ECF) is not a penalty, but rather a charge to compensate us for your failure to satisfy the contract term on which your service fees are based. The ECF shall be calculated as twenty (20) percent of the sum of the fee for services provided times the number of service periods remaining on the term specified in the contract.

13. Entire Agreement Provision

13.1. The Service Agreement, which may be amended at any time, constitutes the entire agreement between you and DAGI for the Services and supersedes all prior agreements, written or oral, with respect to the same subject matter. Please note that you cannot change these Terms.

13.2. No sales representative, dealer, agent, officer or employee of DAGI has the authority to change or modify these Terms, except pursuant to an official revised version of these Terms, and you may not rely on any such change or modification.

14. General Severability

14.1. With respect to this agreement, if any portion of the Service Agreement is unenforceable, the remaining provisions continue in full force.

15. Governing Law

15.1. The Service Agreement is governed exclusively by the laws of the province of Ontario and you submit to the jurisdiction of the courts of Ontario.

16. How to Contact Us

One of the following methods is to be used to submit support requests to ensure that your issue(s) are triaged and addressed in a timely, queued manner. Contacting a DAGI technician directly through email or phone may not result in a timely response.

Preferred Method: Email support@dagi.ca

Alternate Method: Phone Call: (888) 704-5055 or 611 from your DAGI FlexPBX Phone (Physical or Softphone)

Call 1-888-704-5055

OR

Dial *611 from your DAGI VOIP Phone

OR

Email us at **support@dagi.ca**