

**Digium Cloud Services  
Platform Terms of Service  
Version October 7, 2014**

This Agreement is between Customer and Digium Cloud Services, LLC ("DCS"), a wholly owned subsidiary of Digium, Inc., with a mailing address of 445 Jan Davis Drive, Huntsville, Alabama 35806.

DCS provides a platform which enables software developers to integrate communications capabilities into their applications, including mobile, web-based and desktop applications ("Respoke Platform" or "Platform"). DCS provides its services subject to the terms and conditions contained in these Terms of Service (this "Agreement"). To become eligible to use services of DCS under this Agreement, you must review and accept the terms of this Agreement by clicking on the "I Accept" button or other mechanism provided. This Agreement becomes effective as of the date the "I Accept" button is clicked by Customer or the Agreement is otherwise electronically or hand signed ("Effective Date").

By accepting, Customer certifies Customer has read and understands the terms of this Agreement written in English, is consenting to be bound by all terms in this Agreement, all information submitted by Customer is complete, true, accurate, and not misleading, and if Customer is accepting this Agreement on behalf of an organization that Customer is duly authorized to bind the organization to these terms.

**1. Definitions.**

- 1.1 **"Agreement"** means these Terms of Service and any and all attachment(s), addendum(s), sales order(s), or exhibit(s) attached thereto and any and all other applicable terms and conditions and policies referenced in any of the preceding. This Agreement overrides, supplants, and supersedes any and all prior agreements and renewals between DCS and Customer regarding DCS Services.
- 1.2 **"Customer"** means the person or entity listed in the credentials during the account creation process.
- 1.3 **"Customer Application"** means a software application that interfaces with the DCS Services and includes any services (web-based or other services) made available by Customer through that application.
- 1.4 **"Customer Data"** means data and other information made available to DCS through the use of the DCS Services under this Agreement, including instant messages, call records, SMS records, and SMS message content.
- 1.5 **"Acceptable Use Policy"** means the DCS Acceptable Use Policy, a copy of which is available at <http://www.digium.com/en/company/policies>, the terms of which are incorporated herein by reference. This may be amended by DCS by publishing an updated copy at <http://www.digium.com/en/company/policies>.
- 1.6 **"DCS API"** means an application programming interface for the DCS Services (or feature of the DCS Services) provided to Customer by DCS.
- 1.7 **"DCS Properties"** means the Website, DCS API, Documentation, and technical support made available by DCS to Customer in connection with the DCS Services.
- 1.8 **"DCS Services"** means the Platform and services provided by DCS to Customer under this Agreement, including all programs, features, functions, and report formats, and subsequent updates or upgrades of any of the foregoing made generally available by DCS, including without

limitation the DCS APIs and any software provided to Customer in connection with its use of the DCS Services.

- 1.9 **"Documentation"** means all of the instructions, code samples, online help files, and technical documentation made available by DCS for the DCS Services.
- 1.10 **"Emergency Services"** means services that allow a user to connect with emergency services personnel or public safety answering points such as 911 or E911 services.
- 1.11 **"End User"** means an end user of a Customer Application.
- 1.12 **"Privacy Policy"** means the Digium (DCS's parent company) Privacy Policy available at [www.digium.com/en/company/policies](http://www.digium.com/en/company/policies), the terms of which are incorporated herein by reference. This may be amended by DCS by publishing an updated copy at <http://www.digium.com/en/company/>.
- 1.13 **"Rate Schedule"** means the schedule of fees located on the Website, as such may be updated from time to time and the terms of which are incorporated herein by reference. Fees are subscription based and priced depending on the number of potential concurrent connections, potential media relay bandwidth usage, and other related factors. Details are available in the Rate Schedule.
- 1.14 **"SLA"** means the service level agreement for the DCS Services (if one is offered) located on the Website the terms of which are incorporated herein by reference, as such may be updated from time to time by publishing an updated copy to the website. Guaranteed response time and engineering support are only provided with an SLA.
- 1.15 **"Support Terms"** means the terms of support for the DCS Services, if any support is offered, located on the Website, as such may be updated from time to time by publishing an updated copy to the Website. Other than the limited free support detailed in Section 2.7, DCS is not bound to offer any additional support to Customer unless and until Customer orders and pays for the support.
- 1.16 **"Website"** means website or websites used to host information about DCS Services, including, but not limited to Rate Schedule, Support Terms, and Acceptable Use Policy.
- 1.17 **"We", "us", and "you"**. In this Agreement, use of the words "we" and "us" shall refer to DCS, and use of the word "you" shall refer to Customer and if Customer is accepting on behalf of an organization then also to all of the organization's employees.

## 2 DCS Services

- 2.1 **Provision of Services.** DCS will make the DCS Services available to Customer in accordance with this Agreement. Subject to the terms and conditions of this Agreement, DCS grants Customer a non-exclusive, revocable right to:
- (a) Use the Documentation and DCS APIs to develop Customer Applications;
  - (b) Make the DCS Services available to End Users solely in connection with the use of each Customer Application, in accordance with the Documentation; and
  - (c) Use the DCS Properties solely in connection with and as necessary for Customer's activities hereunder.
- 2.2 **Data Storage.** Customer acknowledges that data storage is not guaranteed by DCS and agrees that DCS does not have any liability whatsoever for any damage, liabilities, losses (including any loss

of data or profits) or any other consequences that Customer may incur with respect to the loss or deletion of Customer Data.

- 2.3 **Use of DCS Services.** Customer will be solely responsible for all use (whether or not authorized) of the DCS Services and Documentation under its account, including for the quality and integrity of Customer Data and each Customer Application. Customer will ensure that it has a written agreement with each End User ("End User Agreement") that protects DCS's rights to the same extent as the terms of this Agreement. The End User Agreement must include terms concerning restrictions on use, protection of proprietary rights, disclaimer of warranties and limitations of liability. DCS agrees that, subject to the foregoing requirements, the End User Agreement need not specifically refer to DCS. Customer will promptly notify DCS if it becomes aware of any breach of the terms of the End User Agreement that may affect DCS. Customer will take all reasonable precautions to prevent unauthorized access to or use of the DCS Services and notify DCS promptly of any such unauthorized access or use.
- 2.4 **Restrictions.** Except as expressly provided in Section 2.1 (Provision of Services), Customer will not transfer, resell, lease, license or otherwise make available the DCS Services to third parties. In any event, Customer will not offer the DCS Services on a standalone basis. Customer will ensure that the DCS Services provided hereunder are used in accordance with all applicable laws, regulations and third party rights, as well as the terms of this Agreement, including DCS's Acceptable Use Policy, which is hereby incorporated into this Agreement. Specifically and without limitation, Customer will ensure that DCS is entitled to use the Customer Data as needed to provide the DCS Services and will not use the DCS Services in any manner that violates any data protection statute, regulation, order or similar law. Except as allowed by applicable law, with respect to any software provided to Customer hereunder, Customer will not reverse engineer, decompile, disassemble or otherwise create, attempt to create or derive, or permit or assist any third party to create or derive the source code of such software.
- 2.5 **Changes to Service.** Customer acknowledges that the features and functions of the DCS Services, including, the DCS APIs may change over time. It is Customer's responsibility to ensure that calls or requests Customer makes to the DCS Services are compatible with then-current DCS APIs. Although DCS endeavors to avoid changes to the DCS APIs that are not backwards compatible, if any such changes become necessary DCS will use reasonable efforts to notify Customer prior to implementation.
- 2.6 **Maintenance and Downtime.** DCS may from time-to-time suspend one or more of DCS Services for routine maintenance. DCS shall provide Customer advance notification of the DCS Services suspension. Such DCS Services suspensions are not considered an out of service condition, provided that the DCS Services are restored by the end of the period specified in the notification. This section is not intended to impact the ability of DCS to suspend or terminate a service as otherwise provided in this Agreement. DCS is not responsible for any downtime of the DCS Services for any reason except as explicitly provided in the SLA. The SLA is not available for all subscription levels.
- 2.7 **Support.** The only free support that DCS offers is monitoring and periodically responding to questions on publicly available online forums. DCS is under no obligation to respond to every question on the forums or respond within a certain time frame. To receive additional support Customer must purchase support pursuant to the support terms.

### 3 Fees

- 3.1 **Fees.** Customer agrees to pay any applicable usage fees set forth in the Rate Schedule. In addition, if applicable, Customer agrees to pay any applicable support fees in connection with Customer's order of any SLA. DCS may change the fees in the Rate Schedule with 30 days' notice to Customer. Customer may elect not to renew due to the fee change without penalty by cancelling

service within the 30 day window. Failure to elect not to renew is deemed acceptance of the changed rates.

- 3.2 **Net of Taxes.** Unless otherwise stated in the Rate Schedule, all applicable federal, state or local taxes and all use, sales, commercial, gross receipts, privilege, surcharges, or other similar taxes, license fees and surcharges, whether charged to or against DCS, will be payable by Customer. Customer will not withhold any taxes from any amounts due to DCS.
- 3.3 **Billing and Payment.** Customer shall pay all fees itemized on their sales order in full on the Effective Date of this Agreement. Thereafter, Customer shall pay, in advance of the service, those fees as stated on a monthly basis and will be invoiced from DCS per the payment terms of that invoice via credit card. The parties acknowledge that DCS shall not be extending credit to Customer. Customer is responsible for safeguarding Customer's account information and credentials, and will be liable for all costs incurred due to misuse of DCS Services arising out of compromised account information or credentials. In the event Customer fails to make full payment prior to the start of the next billing cycle ("Due Date"), Customer also shall pay a late fee in the amount of the lesser of one and one-half percent (1 1/2%) of the unpaid balance per month or the maximum lawful rate under applicable state law that shall accrue from the Due Date. Customer shall pay any amounts incurred by DCS in the collection of past-due amounts owed, including, but not limited to, reasonable attorneys' fees and costs. Further, in the event Customer fails to make full payment by the Due Date, DCS may suspend the DCS Services, take any action against Customer on account of such good faith dispute, or withhold the Services otherwise due to Customer hereunder, as a result of said withholding. Customer will not withhold payments that are not subject to the above good faith dispute requirements and the provisions of this Section shall apply to any payments which are not in dispute. Notwithstanding statements to the contrary herein, Customer has the right to withhold payment of fees related to the DCS Services being provided by DCS hereunder that Customer disputes in good faith; provided that, should this occur, Customer agrees to provide written notice to DCS within thirty (30) days of date of invoice. Customer shall not have the right to dispute any invoice after the expiration of this thirty (30) day time period. During the period of time that there is a reasonable dispute pending and Customer is withholding monies on account of such reasonable dispute, DCS shall not invoke any additional charges on account of the unpaid disputed amount is that are not subject to the above good faith dispute requirements and the provisions of this Section shall apply to any payments which are not in dispute.
- 3.4 **Regulatory-related Rate Adjustments .** In the event that Customer contracts for Services subject to federal, state, or local regulation, and notwithstanding any other provision herein to the contrary, DCS may, upon prior email or written notice to Customer when practicable, modify, change, or add to: (a) the rates, (b) the regulated Services, and/or (c) the other terms and conditions contained in the Agreement, including without limitation, surcharges and other charges, to reflect the impact of, or to effect, such regulatory activity. Digium Cloud Services makes no representations or warranties that the FCC, PUCs, or any type of governmental body, whether federal, state (provincial), or local, or any underlying providers will not make any changes to existing laws, regulations, and/or tariffs that could impair Digium Cloud Services' ability to deliver Services to Customer. If any local, state, federal, public or quasi-public governmental entity or its political subdivision imposes any taxes, fees, surcharges or other charges or obligations on Digium Cloud Services as a result of Digium Cloud Services' sale of Services or Customer's use of Services, Customer shall pay any such obligations (Additional Charges) and indemnify Digium Cloud Services for any liability or expense associated with the Additional Charges. If Additional Charges are assessable to support the federal Universal Service Fund (USF), Digium Cloud Services may elect to calculate and charge Customer in accordance with applicable regulations of the government authority having jurisdiction (USF Charges).
- 3.5 **Personally Identifiable Information**

Customer consents to the collection and processing of personally identifiable information sent by Customer through the DCS Services in order for DCS to provide, bill, and market. Personally identifiable information means information that may be used to identify Customer, including but not limited to first and last name, home or other physical address, an email address, phone number, and other contact information. Personally identifiable information and any other information sent by Customer through the DCS Services will be used as is detailed by the Privacy Policy. DCS Services also automatically receives and records information on the Platform's server logs from your browser, including your IP address, cookie information, and the page you request. You can choose not to provide DCS with certain information but this may limit the available features.

#### **Use of Google Analytics to support Display Advertising**

In order to market to anonymous visitors, DCS uses Google Analytics to support Display Advertising using data collected from site visitors they anonymously browse the Website. The Google Analytics Features implemented based on Display Advertising are Remarketing and Google Analytics Demographics and Interest Reporting. DCS uses the data from Google Analytics Features to ensure that DCS's marketing is targeting the appropriate site visitors. Site visitors may use the Ads Settings to opt-out of Google Analytics for Display Advertising and customize Google Display Network ads by going to <https://www.google.com/settings/ads>. Google Analytics' currently available opt outs are available at <https://tools.google.com/dlpage/gaoptout/>. DCS uses Remarketing with Google Analytics to advertise online. Third party vendors, including Google, may show DCS's ads on sites across the internet. DCS and third-party vendors, including Google, use first-party cookies (such as the Google Analytics Cookie) and third party cookies (such as the Double Click cookie) together to inform, optimize, and serve ads based on Customer's past visits to the Platform and Website.

#### **4 Ownership, Confidentiality, Limitation of Liability and Disclaimer of Warranties**

4.1 **Ownership Rights.** As between the parties, DCS exclusively owns and reserves all right, title, and interest in and to the DCS Services, DCS Properties and Confidential Information of DCS. As between the parties, Customer exclusively owns and reserves all right, title and interest in and to the Customer Data, Customer Applications, and Customer's Confidential Information.

4.2 **Use of Licensor Marks.** Subject to the terms of this Agreement, each party (the "Licensor") grants to the other party (the "Licensee") the right to use and display Licensor's name and certain marks (the "Licensor Marks") on its website, the Website, and in other promotional materials solely in connection with its activities under this Agreement. Licensee must contact Licensor to obtain the Licensee Marks authorized for usage under this Agreement. Licensor and Licensee shall mutually agree upon any joint press release or press announcement which may take place as a result of the execution of this Agreement. Use of the Licensor Marks will be in accordance with the Licensor's usage guidelines (DCS's usage guidelines are available under Digium, Inc.'s trademark policy available <http://www.digium.com/en/company/policies> ) and will inure to the benefit of Licensor. In its efforts, Licensee will always use the then-current Licensor Marks and will not add to, delete from or modify any of Licensor Marks. Licensee will not, at any time, misrepresent its relationship with Licensor. Licensee and will not present itself as an affiliate or other legal agent of Licensor. Representations made by Licensor regarding the DCS Services shall be consistent with the Documentation and the terms of this Agreement. The license described in this Section will terminate automatically in the event of any termination of this Agreement.

#### **4.3 Confidentiality.**

(a) Definition. "Confidential Information" means any information or data, regardless of whether it is in tangible form, disclosed by either party that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood

to be confidential given the nature of the information and the circumstances surrounding disclosure. "Confidential Information" does not include any information which: (i) is publicly available through no fault of receiving party; (ii) was properly known to receiving party, without restriction, prior to disclosure by the disclosing party; (iii) was properly disclosed to receiving party, without restriction, by another person without violation of disclosing party's rights; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

(b) Use and Disclosure. Each party agrees that it will use the Confidential Information of the other party solely in accordance with the provisions of this Agreement and it will not disclose such information to any third party without the other party's prior written consent, except as otherwise permitted hereunder. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. Each party may disclose the Confidential Information of the other party, in whole or in part to its employees, representatives, actual or potential investors and subcontractors who have a need to know and are legally bound to keep such information confidential consistent with the terms of this Section. Either party may disclose the Confidential Information of the other party as required by law, upon prior written notice to the other party (where allowed by law); provided that such party will use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law.

(c) The nondisclosure restrictions on Confidential Information survive for three years after the termination or expiration of this Agreement.

4.4 LIMITATION OF LIABILITY: DCS AND DIGIUM, INC. SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT, (EVEN IF DCS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). IN ANY CASE, DCS'S AGGREGATE LIABILITY FOR ANYTHING ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO DCS UNDER THIS AGREEMENT AND IF NO AMOUNT WAS PAID BECAUSE THE CUSTOMER WAS SUBSCRIBING TO A FREE DCS SERVICE THEN LIABILITY IS LIMITED TO \$4,000.00 USD. THE PARTIES AGREE THIS LIMITATION OF LIABILITY IS REASONABLE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO CUSTOMER, AND CUSTOMER MAY HAVE ADDITIONAL RIGHTS.

4.5 LIMITED WARRANTY AND DISCLAIMER OF ALL OTHER WARRANTIES: DCS REPRESENTS AND WARRANTS THAT THE DCS SERVICES DO NOT CONTAIN ANY VIRUSES, TIME BOMBS, OR TROJAN HORSES. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THE PARTIES DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. DCS MAKES NO WARRANTIES WHATSOEVER AS TO THE COMPATIBILITY OF THE DCS SERVICES WITH ANY HARDWARE OR SOFTWARE SUPPLIED BY CUSTOMER OR OBTAINED BY CUSTOMER FROM A VENDOR OF DCS AND DCS MAKES NO WARRANTIES OF NONINFRINGEMENT.

## **5 Termination**

- 5.1 **Term.** The term of this Agreement will commence on the Effective Date and continue for a period of one month. This Agreement will automatically renew for additional one-month terms unless either party provides notice of non-renewal no less than one day prior to the end of a renewal term.
- 5.2 **Termination.** Either party may terminate this Agreement for any reason upon written notice to the other party. Either party may also terminate this Agreement in the event the other party commits any material breach of this Agreement and fails to remedy such breach within 5 days after written notice of such breach. DCS may also suspend the DCS Services immediately upon notice for cause if: (a) Customer violates (or gives DCS reason to believe it has violated) any provision of the DCS Acceptable Use Policy; (b) there is an unusual spike or increase in Customer's use of the DCS Services for which there is reason to believe such traffic or use is fraudulent or negatively impacting the operating capability of the DCS Services; (c) DCS determines, in its sole discretion, that its provision of any of the DCS Services is prohibited by applicable law, or has become impractical or unfeasible for any legal or regulatory reason; (d) subject to applicable law, upon Customer's liquidation, commencement of dissolution proceedings, disposal of Customer assets or change of control, a failure to continue business, assignment for the benefit of creditors, or if Customer becomes the subject of bankruptcy or similar proceeding or (e) Customer fails to pay their bill or Customer's usage exceeds the amounts prepaid by Customer. DCS has no liability whatsoever for terminating this Agreement for breach including but not limited to any damages or other consequences Customer may incur related to such termination.
- 5.3 **Survival.** Upon termination or expiration of this Agreement, Customer's payment obligations, the terms of this Section 5.3 and the terms of the following Sections will survive: Section 2.2 (Data Storage), Section 2.3 (Use of DCS Services), Section 2.4 (Restrictions), Section 4 (Ownership and Confidentiality), Section 5 (Disclaimer), Section 6 (Emergency 911 calling), and Sections 8 through 26.
6. **DCS SERVICES ARE NOT INTENDED TO SUPPORT OR CARRY EMERGENCY CALLS TO ANY EMERGENCY SERVICES AND SHOULD NOT BE USED AS THE CUSTOMER'S OR END USER'S PRIMARY TELEPHONE SERVICE. ADDITIONALLY, CUSTOMER WILL NOT USE THE DCS SERVICES TO ACCESS OR ALLOW ACCESS TO EMERGENCY SERVICES. NEITHER DCS, DIGIUM INC., NOR ITS REPRESENTATIVES WILL BE LIABLE UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY CLAIM, DAMAGE, OR LOSS (AND CUSTOMER WILL HOLD DCS AND DIGIUM INC. HARMLESS AGAINST ANY AND ALL SUCH CLAIMS) ARISING FROM OR RELATING TO THE INABILITY TO USE THE DCS SERVICES TO CONTACT EMERGENCY SERVICES.**
7. **Indemnification** Customer agrees to indemnify, defend and hold DCS, Digium, Inc. and each of their respective employees, officers, directors, and representatives, harmless from and against any and all claims, losses, damages, liabilities, judgments, penalties, fines, costs, and expenses (including reasonable attorneys' fees), arising out of or in connection with any claim arising out of (i) use of the DCS Services in a manner not authorized by this Agreement, and/or in violation of applicable law by Customer, (ii) Customer's Application or Customer's Content, and (iii) Customer's violation of any term or condition of this Agreement.
8. **Force Majeure.** If DCS's performance of any obligation under this Agreement is prevented, restricted, or interfered with by causes outside of DCS's control such as acts of God, explosions, vandalism, cable cuts, storms, fires, floods or other catastrophes, power failure, national emergencies, insurrections, riots, wars, strike, lockouts, boycotts, work stoppages or other labor difficulties, or any law, order, regulation or other actions of any governmental authority, agency, instrumentality, or of any civil or military authority, then DCS shall be excused from such performance on a day-to-day basis to the extent of such restriction or interference. DCS shall use commercially reasonable efforts under the circumstances to avoid or remove such causes of nonperformance with reasonable dispatch.

- 9. Notices.** Notices made by DCS under this Agreement to Customer (ex., notices of breach and/or suspension) will be provided to Customer via a notification message displayed on Customer's account page or via the email address provided to us in Customer's registration for the DCS Services or in any updated email address Customer provide to DCS in accordance with standard account information update procedures DCS may provide from time to time. It is Customer's responsibility to keep Customer's email address current and Customer will be deemed to have received any email sent to any such email address, upon our sending of the email, whether or not Customer actually receive the email. Notices to DCS should be sent to the address appearing on the first page of this Agreement. For questions regarding the DCS Services or regarding terms of this Agreement, Customer may reach DCS via telephone at 256-428-6262.
- 10. No Endorsement.** Customer understands and acknowledges that DCS is not certifying nor endorsing, and has no obligation to certify or endorse, any of Customer's Applications or Customer's content.
- 11. Attorneys' Fees.** If a proceeding is brought for the enforcement of this Agreement (including the collection of any amounts owed hereunder) or because of any alleged or actual dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs and expenses incurred in such action or proceeding in addition to any other relief to which such party may be entitled.
- 12. Notice of Dispute.** Prior to invoking legal action against the other party due to a disagreement, claim, dispute, or controversy relating to the terms of or performance under this Agreement or arising under this Agreement in any way ("Dispute"), the party with the Dispute must send the other party written notice identifying the Dispute, which notice must contain sufficient detail so as to permit the other party to make good faith efforts to attempt to resolve the dispute. Within fourteen (14) days after receipt of the written notice, executive representatives of the parties with authority to finally settle the dispute shall meet at a mutually agreed upon location, which may occur via a telephone conference call for the purpose of determining whether they can resolve the Dispute themselves by agreement. If the parties have not been able to reach a mutually acceptable resolution on the Dispute within fourteen (14) days after the initial meeting, then the parties shall resolve the matter in accordance with the procedures of Section 13.
- 13. Dispute Resolution.** Any Dispute which the parties do not resolve in accordance with the above must go to mediation prior to either party filing suit against the other. Mediation shall be conducted in accordance with the laws and rules of the applicable jurisdiction, forum, and venue which are applied under Section 19. The parties will mutually agree upon a neutral mediator within thirty (30) days of receipt of a written request to mediate from the party with the Dispute. Neither party may unreasonably withhold consent to the selection of the mediator. If the parties are unable to agree upon a mediator, each party shall select one (1) mediator and the two (2) mediators shall select a third (3<sup>rd</sup>) mediator. This 3<sup>rd</sup> (third) mediator shall serve as the sole mediator and the other two (2) selected mediators shall no longer be involved in the mediation process following the selection of the third mediator. Each party will bear its own costs of mediation, but the parties will share the costs of the mediator equally. Each party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to finally settle the Dispute. If the Dispute remains unresolved thirty (30) days following the first date on which the parties attend a mediation session under this section, either party may then submit the Dispute to a court of competent jurisdiction. If contractual waiver of a jury trial is permitted by applicable law each party irrevocably consents to a bench trial and waives the right to a trial by jury as a means of relief for any Disputes relating to this Agreement. Neither party may take any legal action against the other, with the sole exception being that either party may obtain an injunction, until one business day following the unsuccessful conclusion of good faith efforts by both parties in mediation to resolve the Dispute. To the maximum extent permitted by applicable law, in no event shall actual damages awarded by a court exceed the amount set forth in Section 4.4 of this Agreement. All proceedings must be conducted in English.
- 14. Unsubscribing.** Customer may unsubscribe from marketing communications sent by Digium and Digium Cloud Services at any time by clicking the unsubscribe button at the bottom of any marketing

e-mail or un-subscribing via the Website or [www.digium.com](http://www.digium.com) by logging into the Customer's account, going to manage e-mail subscriptions, and changing the settings as Customer wishes.

- 15. Third Party Support.** DCS shall not be responsible for any charges incurred by Customer for Customer's engagement of a third party to perform technical support, whether related or unrelated to the DCS Services.
- 16. Independent Contractors.** Nothing in this Agreement will create, or shall be construed to create, any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties.
- 17. Severability.** If any provision of this Agreement is held to be unenforceable, the Parties shall substitute for the affected provision an enforceable provision which approximates the intent and economic effect of the affected provision and the remaining provisions of this Agreement will be unimpaired and will remain in full force and effect.
- 18. Waiver.** No failure or delay on the part of any Party in exercising any right or remedy provided in this Agreement will operate as a waiver thereof; nor will any single or partial exercise of or failure to exercise any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy provided herein or at law or in equity. Except as expressly provided herein, no remedy specified in this Agreement is intended to be exclusive of any other remedy, and each and every remedy will be cumulative and in addition to every other right or remedy provided herein or available at law or in equity.
- 19. Forum, choice of law.** This Agreement shall be governed by the laws of the USA and, to the extent that no federal law applies, the laws of the State of Alabama, USA, and by the applicable Rules which are specified in the Dispute Resolution Section of this Agreement. Forum jurisdiction and venue for any legal claims or actions arising under this Agreement shall be determined in accordance with such law. The United Nations Convention on International Sale of Goods, the application of which is expressly excluded, does not govern this Agreement.
- 20. Headings.** The headings of the sections, subsections, and paragraphs of this Agreement are inserted for convenient reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.
- 21. Assignment.** The Customer may not assign this Agreement, in whole or in part, including without limitation by operation of law, without Digium Cloud Service's prior written consent. Any attempt to assign this Agreement without such consent will be null and void. Digium Cloud Services may assign this Agreement without the Customer's consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of each Party's permitted successors and assigns.
- 22. Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the Parties related to the subject matter hereof and shall supersede and/or replace any and all prior or contemporaneous oral and written communications including but not limited to the terms of any purchase orders with conflicting or supplementary language.
- 23. Amendments.** DCS reserves the right to change the terms of this Agreement from time to time without notice by posting the updated terms to <http://www.digium.com/en/company/policies>. When DCS changes the terms, DCS will also revise the version date on the top page of this Agreement. Your continued use of the Platform after amended terms have been posted constitutes your acceptance of the updated Agreement. In the event DCS modifies this Agreement and you disagree with the modification you must provide DCS with thirty days advance written notice of your election not to renew of this Agreement as detailed under Section 3 and you must include with the notice the modification you disagree with.

- 24. Drafting.** Both Parties have had sufficient time to consult their counsel (if desired) and both Parties understand and agree to all of the terms contained herein, so this Agreement shall be fairly interpreted in accordance with its terms without any presumption or strict construction in favor or, or against, either Party arising from the identity of the drafter.
- 25. Counterparts.** This Agreement may be executed electronically, in counterparts, or facsimile copies, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- 26. Export Laws.** Export Laws means all international, national, and local laws, regulations, ordinances, and other restrictions regarding export or import, including, without limitation, the U.S. Export Administration Act and all regulations promulgated thereunder, the regulations of the Departments of Defense, State, or Commerce, or any other government agency, as well as any end-use, end user, and destination restrictions of the jurisdiction in which the Services are used. More information can be found here <http://www.bis.doc.gov/complianceand enforcement/lists tocheck.htm>. Customer represents and warrants that Customer's use of the DCS Services will always be in compliance with Export Laws. Customer is not a national of, will not use the Service in, or export Service to the following countries: Cuba, Iran, Syria, Northern Sudan, and North Korea.