



## GENERAL TERMS AND CONDITIONS

### 1. HOSTING SERVICES AGREEMENT

The Hosting Services Agreement incorporates the following documents by reference: (i) the Services Description that describes the Services you are buying and related fees, (ii) these General Terms and Conditions containing the general terms and conditions applicable to all Services, (iii) the specific Managed Hosting Service Terms and Conditions and the additional terms for the particular Hosting Services you are buying, and (iv) the Acceptable Use Policy. When we use the term "Hosting Services Agreement" or "Agreement" in any of these documents, we are referring collectively to all of them. The Agreement is effective as of the time that you sign the form of Agreement prepared by Dirigo Design & Development, Inc.

<http://www.dirigodev.com/hosting/legal/ManagedHostingServicesTermsAndConditions.pdf>  
<http://www.dirigodev.com/hosting/legal/AcceptableUsePolicy.pdf>

### 2. DEFINED TERMS

Some words used in the Agreement have particular meanings:

"Acceptable Use Policy" or "AUP" means the Dirigo Acceptable Use Policy posted at the above link as of the date you sign the Agreement.

"Business Day" or "Business Hours" means 9:00 a.m. – 6:00 p.m. Monday through Friday, United States eastern time, excluding federal public holidays in the United States.

"Confidential Information" means all information disclosed by one of us to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential including: (i) for you, all information transmitted to or from, or stored on, your Hosted System, (ii) for Dirigo, unpublished prices and other terms of service, audit and security reports, and other proprietary information or technology, and (iii) for both of us, information that is marked or otherwise conspicuously designated as confidential. Information that is independently developed by one of us, without reference to the other's Confidential Information, or that becomes available to one of us other than through violation of the Agreement or applicable law, shall not be "Confidential Information" of the other party.

"Hosted System" means a combination of hardware, software and networking elements that comprise an information technology system. Depending on the Services you are buying, the Hosted System may consist of a dedicated system for your use only, or the right to use certain parts of a shared system that Dirigo maintains for many customers, or a combination of some dedicated elements and some shared elements.

"Hosting Services" means: (i) Dirigo's provision for your use of the Hosted System described in the Services Description, and (ii) Support.

"Product Terms and Conditions" means the terms and conditions for the particular Hosting Services you are buying.

"Services Description" means a written description of the Hosted System and/or Supplementary Services you are buying from Dirigo, and related fees that is incorporated by reference in the Agreement.

"Service Level Guaranty" or "Service Level Guaranties" means a guaranty or guaranties identified as a "Service Level Guaranty" or "Service Level Guaranties" in the applicable Product Terms and Conditions.

"Services" means Hosting Services and Supplementary Services, collectively.

"Supplementary Services" means those services you purchase from Dirigo other than the Hosting Services, such as design, database administration, programming, and assistance or support for the application that you operate on your Hosted System.

"Support" has the meaning stated in the applicable Product Terms and Conditions.

### **3. OUR OBLIGATIONS**

Dirigo's obligation to begin providing Services is contingent on your satisfaction of Dirigo's credit approval criteria. Dirigo will provide the Hosting Services in accordance with the Service Description, the Service Level Guaranties, and other specifications in this Agreement. Dirigo will perform any Supplementary Services in a good and professional manner. Dirigo will maintain security practices that are at least as stringent as the minimum security practices described at <http://www.dirigodev.com/hosting/legal/SecurityPractices.pdf>, and will provide the specific security services described in your Services Description. Dirigo will perform all Services in accordance with applicable law.

### **4. YOUR OBLIGATIONS**

You must use reasonable security precautions in connection with your use of the Services. You must comply with the laws applicable to your use of the Services and with the Acceptable Use Policy. You must cooperate with Dirigo's reasonable investigation of Service outages, security problems, and any suspected breach of the Agreement. You are responsible for keeping your account permissions, billing, and other account information current. You must pay when due the fees for the Services stated in the Services Description or other agreement between us.

### **5. PROMISES WE DO NOT MAKE**

5.1 We do not promise that the Services will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy, Confidential Information, and property.

5.2 We disclaim any and all warranties not expressly stated in the Agreement including the implied WARRANTIES OF MERCHANTABILITY, fitness for a particular purpose, and non-infringement. You are solely responsible for the suitability of the services chosen. Any services that we are not contractually obligated to provide but that we may perform for you at your request and without any additional charge are provided on an AS IS basis.

5.3 We do not promise to backup your data unless you have purchased backup services. If you purchase backup services, we do not promise to retain the data backup for longer than the agreed data retention period. We do not promise that backup of your data will be error-free. You are responsible for maintaining a backup of all of your code at whatever interval you see fit. Dirigo will assist you with gaining access to backup data so that you can download it to a safe place of your keeping.

5.4 We will provide Support only to your administrative or technical contacts listed on your account. We will not provide support directly to your end users unless specifically agreed in writing.

5.5 Certain Dirigo Services are designed to help you comply with various regulatory requirements that may be applicable to you. However, you are responsible for understanding the regulatory requirements applicable to your business and for selecting and using those Services in a manner that complies with the applicable requirements.

### **6. UNAUTHORIZED ACCESS TO YOUR DATA OR USE OF THE SERVICES**

Dirigo is not responsible to you or any third party for unauthorized access to your data or the unauthorized use of the Services unless the unauthorized access or use results from Dirigo's failure to meet its security obligations stated in Section 3 (Our Obligations) of these General Terms and Conditions or the Services Description. You are responsible for the use of the Services by any employee of yours, any person you authorize to use the Services, any person to whom you have given access to the Services, and any person who gains access to your data or the Services as a result of your failure to use reasonable security precautions, even if such use was not authorized by you.

### **7. TAXES ON SERVICES**

If Dirigo is required by law to collect taxes on the provision of the Service, you must pay Dirigo the amount of the tax that is due or provide Dirigo with satisfactory evidence of your exemption from the tax. You must provide Dirigo with accurate factual information to help Dirigo determine if any tax is due with respect to the provision of the Services.

## 8. OFAC MATTERS

You represent and warrant that you are not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and are not otherwise a person to whom Dirigo is legally prohibited to provide the Services. You may not use the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D: 4 and D: 3, as set forth in Supplement No. 1 to the Part 740 of the United States Export Administration Regulations, or as otherwise prohibited by law, nor may you provide administrative access to the Service to any person (including any natural person or government or private entity ) that is located in or is a national of any country that is embargoed or highly restricted under United States export regulations.

## 9. CHANGES TO THE ACCEPTABLE USE POLICY

9.1 We may change the Acceptable Use Policy to add or modify restrictions on our customers' use of the Services, provided that the changes are reasonable and consistent with hosting industry norms. If we make a change to the AUP we will publish a revised version of the AUP at <http://www.dirigodev.com/hosting/legal/AcceptableUsePolicy.pdf>. The revised AUP will become effective as to you on the first to occur of: (i) the first day of a renewal term for the Agreement that begins at least thirty (30) days after the time that the revised AUP has been posted, or (ii) your execution of a new or additional agreement for all or part of your Hosted System that incorporates the revised AUP by reference, or (iii) thirty (30) days following our written notice to you of the revision to the AUP.

9.2 If your compliance with the revised AUP would adversely affect your use of the Hosting Services, and you give written notice of your objection no later than thirty (30) days following the date that the revised AUP would otherwise have become effective to you, we will not enforce the revision to you until sixty (60) days following the date the revision would otherwise have become effective to you and you will continue to be subject to the prior version. During the sixty (60) day period, you may elect to terminate the Agreement on these grounds by giving written notice. We will not charge you an early termination fee for a termination on these grounds. If you do not elect to terminate during the sixty (60) day period, then the revised AUP will become effective as to you as of the end of the sixty (60) day period. If you terminate your Services under this Subsection, we may decide to waive that change as to you and keep your Agreement in place for the remainder of the term.

## 10. SUSPENSION OF SERVICES

We may suspend Services without liability if: (i) we reasonably believe that the Services are being used in violation of the Agreement; (ii) you don't cooperate with our reasonable investigation of any suspected violation of the Agreement; (iii) there is an attack on your Hosted System or your Hosted System is accessed or manipulated by a third party without your consent; (iv) we are required by law, or a regulatory or government body to suspend your Services; or (v) there is another event for which we reasonably believe that the suspension of Services is necessary to protect the Dirigo network of our other customers. We will give you advance notice of a suspension under this paragraph of at least three (3) hours unless we determine in our reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect Dirigo or its other customers from imminent and significant operational, legal, or security risk. If your Hosted System is compromised, then you must address the vulnerability prior to Dirigo placing the Hosted System back in service or, at your request, we may be able to perform this work for you at our standard hourly rates as a Supplementary Service.

## 11. TERMINATION FOR BREACH

11.1 You may terminate the Agreement for breach if: (i) we materially fail to provide the Services as agreed and do not remedy that failure within ten (10) business days of your written notice describing the failure, or (ii) we materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within thirty (30) days of your written notice describing the failure.

11.2 We may terminate the Agreement for breach if: (i) we discover that the information you provided for the purpose of establishing the Services is materially inaccurate or incomplete, (ii) the individual signing the Agreement did not have the legal right or authority to enter into the Agreement on behalf of the person represented to be the customer, (iii) your payment of any invoiced amount is overdue and you do not pay the overdue amount within four (4) business days of our written notice, (iv) without notice if you have made payment special arrangements to use a credit card or other third party, and the third party

refuses to honor our charges, or (v) you fail to comply with any other provision of the Agreement and do not remedy the failure within thirty (30) days of our notice to you describing the failure. We may also terminate the Agreement for breach if you violate the AUP more than once even if you cure each violation, or if your agreement for any other Dirigo service is terminated for breach of the acceptable use policy applicable to that service.

11.3 Either of us 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 the United States or any state of the United States.

## **12. CONFIDENTIAL INFORMATION**

Each of us agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights under the Agreement, or as may be required by law. Each of us agrees not to disclose the other's Confidential Information to any third person except as follows:

- (i) to each of our respective service providers, agents, and representatives, provided that such service providers, agents or representatives agree to confidentiality measures that are at least as stringent as those stated in this General Terms and Conditions;
- (ii) to a law enforcement or government agency if requested, or if either of us reasonably believes that the other's conduct may violate applicable criminal law;
- (iii) as required by law; or
- (iv) in response to a subpoena or other compulsory legal process, provided that each of us agrees to give the other written notice of at least seven (7) days prior to disclosing Confidential Information under this subsection (or prompt notice in advance of disclosure, if seven (7) days advance notice is not reasonably feasible), unless the law forbids such notice.

## **13. LIMITATION ON DAMAGES**

13.1 We are not liable to you for failing to provide the Services unless such failure results from a breach of a Service Level Guaranty, or results from our gross negligence, willful misconduct, or intentional breach of the Agreement. The credits stated in the Service Level Guaranty are your sole and exclusive remedy for our failure to meet those guaranties for which credits are provided unless such failure is due to Dirigo's willful misconduct. Termination of the Agreement is your sole and exclusive remedy for our failure to meet our support promise.

13.2 Neither of us (nor any of our employees, agents, affiliates, or suppliers) is liable to the other for any lost profits or any other indirect, special, incidental, or consequential loss or damages of any kind, or for any loss that could have been avoided by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages. In no event shall either of us be liable to the other for any punitive damages.

13.3 We are not liable to you for lost data. If you purchase backup services, you release Dirigo from liability for loss of data to the extent that the data has changed since the time that we were last required by the Agreement to perform a backup or if the backup services failed resulting in a partial or complete loss.

13.4 Notwithstanding anything in the Agreement to the contrary, except for liability based on willful misconduct or fraudulent misrepresentation, and liability for death or personal injury resulting from Dirigo's negligence, the maximum aggregate monetary liability of Dirigo and any of its employees, agents, suppliers, or affiliates in connection with the Services, the Agreement, and any act or omission related to the Services or Agreement, under any theory of law (including breach of contract, tort, strict liability, violation of law, and infringement) shall not exceed: (i) for Hosting Services in an amount that is three (3) times one month's recurring fee under the Agreement for the Services that are the subject of the claim as of the time of the occurrence of the events giving rise to the claim, and (ii) for Supplementary Services, fees paid for the Supplementary Services that are the subject of the claim.

## **14. INDEMNIFICATION**

14.1 If we, our affiliates, or any of our or their respective employees, agents, or suppliers (the "Indemnitees") is faced with a legal claim by a third party arising out of your actual or alleged gross negligence, willful misconduct, violation of law, failure to meet the security obligations required by the Agreement, violation of the AUP, violation of your agreement with your customers

or end users, or violation of Section 8 (OFAC Matters) or Section 16 (Software) of this General Terms and Conditions, then you will pay the cost of defending the claim (including reasonable attorney fees) and any damages award, fine or other amount that is imposed on the Indemnitees as a result of the claim. Your obligations under this subsection include claims arising out of the acts or omissions of your employees or agents, any other person to whom you have given access to the Services, and any person who gains access to the Services as a result of your failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by you. You must also pay reasonable attorney fees and other expenses we incur in connection with any dispute between persons having a conflicting claim to control your account with us, or any claim by your customer or end user arising from an actual or alleged breach of your obligations to them.

14.2 We will choose legal counsel to defend the claim, provided that these decisions must be reasonable and must be promptly communicated to you. You must comply with our reasonable requests for assistance and cooperation in the defense of the claim. We may not settle the claim without your consent, although such consent may not be unreasonably withheld. You must pay expenses due under this Section as we incur them.

## 15. PUBLICITY

You agree that we may publicly disclose that we are providing Services to you and may use your name and logo to identify you as our customer in promotional materials, including press releases. We will not use your name or logo in a manner that suggests an endorsement or affiliation. We will always seek permission prior to such disclosure.

## 16. SOFTWARE

16.1 General. You may not copy any software we provide for your use unless expressly permitted by the Agreement. You may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any software we provide for your use. Unless permitted by the terms of an open source software license, you may not reverse engineer, decompile, or disassemble any software we provide for your use except and to the extent that you are expressly permitted by applicable law to do this, and then following at least ten (10) days advance written notice to us. In addition to the terms of our Agreement, your use of any Microsoft® software is governed by Microsoft's license terms and any use restrictions on your use of the Microsoft software as indicated in your Services Description, such as a limitation on the number of users (a "SAL" license). If you use any non-Dirigo provided software on your Hosted System you represent and warrant to Dirigo that you have the legal right to use the software in that manner. On Dirigo's request you will certify in writing that you are in compliance with the requirements of this paragraph and any other software license restrictions that are part of the Agreement, and will provide evidence of your compliance as we may reasonably request.

16.2 Customer Provided Licenses. If Dirigo has agreed to install, patch, or otherwise manage software in reliance on your license with a software vendor (rather than Dirigo's license with the software vendor), then you represent and warrant that you have a written license agreement with the vendor that permits Dirigo to perform these activities. You agree that you will provide Dirigo with evidence of licensing as Dirigo may reasonably require prior to the scheduled deployment date, and from time to time as necessary to update the status of the license. If you fail to provide the required evidence of licensing Dirigo may, at its option, either (i) delay the deployment date for the Hosted System that was to include such software until the evidence is provided, (ii) deploy the Hosted System in reliance on Dirigo's licensing agreement with the vendor, and charge you its standard fee for the use of the software until such time as the required evidence is provided, or (iii) suspend or terminate the Agreement. Please note: Your licensed software may not be compatible with Dirigo's standard process for deploying and repairing Hosted Systems. In addition, to install the software Dirigo may require you to send the physical or electronic media provided to you by the vendor, both for deployment and again in the event of a failure of your Hosted System. You agree that Dirigo will not be in breach of any Service Level Guaranty or other obligation under this Agreement that would not have occurred but for a delay resulting from our agreement to use your licensed software.

## 17. RECOMMENDATIONS

Dirigo personnel may from time to time recommend third party software or other products and services for your consideration. DIRIGO MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING PRODUCTS AND SERVICES THAT ARE NOT PURCHASED FROM DIRIGO. Your use of any such products and services is governed by the terms of your agreement with the provider of those products and services.

## **18. WHO MAY USE THE SERVICE**

You may permit your subsidiaries and affiliated companies to use the Services if you wish, however you are responsible for the acts or omissions of your permitted users. Dirigo will provide support only to you, not to your customers, subsidiaries or affiliates. There are no third party beneficiaries to the Agreement, meaning that your customers, subsidiaries, affiliates, and other third parties do not have any rights against either of us under this Agreement.

## **19. NO HIGH RISK USE**

You may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, you may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug and Cosmetic Act.

## **20. SERVICES MANAGEMENT AGENT**

You agree that you will not interfere with any services management software agent(s) that Dirigo installs on your Hosted System. Dirigo agrees that its agents will use only a minimal amount of computing resources, and will not interfere with your use of your Hosted System. Dirigo will use the agents to track system information so that it can more efficiently manage various service issues, such as patching exceptions and product life cycles. Dirigo may also use agents to identify security vulnerabilities. Dirigo will not use the agents to view or capture your content or data. Your Services will become "unsupported" as described in the Product Terms if you disable or interfere with our services management software agent(s). You agree that Dirigo may access your Hosted System to reinstall services management software agents if you disable them or interfere with their performance.

## **21. NOTICES**

Your routine communications to Dirigo regarding the Services, including any notice of non-renewal, should be sent to David Addison or Victoria Kuhn. If you want to give a notice regarding termination of the Agreement for breach, indemnification, or other non-routine legal matter, you should send it by electronic mail and first class United States mail to:

David Addison, Managing Partner  
Dirigo Design & Development, Inc.  
P.O. Box 756  
Portland, ME 04104

Dirigo's routine communications regarding the Services and legal notices will be posted on the [www.dirigodev.com](http://www.dirigodev.com) Web site or sent to the individual(s) you designate as your contact(s) on your account either by electronic mail (including an electronic mail), United States mail, or overnight courier. Notices are deemed received as of the time posted or delivered, or if that time does not fall within a business day, as of the beginning of the first business day following the time posted or delivered. For purposes of counting days for notice periods, the business day on which the notice is deemed received counts as the first day. Notices must be given in the English language.

## **22. OWNERSHIP OF INTELLECTUAL PROPERTY**

Each of us retains all right, title, and interest in and to our respective trade secrets, inventions, copyrights, and other intellectual property. Any intellectual property developed by Dirigo during the performance of the Services shall belong to Dirigo unless we have agreed with you in advance in writing that you shall have an interest in the intellectual property.

## **23. OWNERSHIP OF OTHER PROPERTY**

You do not acquire any ownership interest in or right to possess the Hosted System, and you have no right of physical access to the Hosted System. Notwithstanding, non-routine physical access to the Hosted System will not be unduly refused. We do not acquire any ownership interest in or right to the information you transmit to or from or store on your Dirigo servers or other devices or media.

## **24. INTELLECTUAL PROPERTY INFRINGEMENT**

If Dirigo or any of its customers is faced with a credible claim that the Services infringe on the intellectual property rights of a third party, and Dirigo is not reasonably able to obtain the right to use the infringing element or modify the Services such that they do not infringe, then Dirigo may terminate the Services on reasonable notice of at least ninety (90) days, and will not have any liability on account of such termination except to refund amounts paid for Services not used as of the time of termination.

## **25. ASSIGNMENT/SUBCONTRACTORS**

Neither party may assign the Agreement without the prior written consent of the other party except as part of a bona fide corporate reorganization or a sale of its business. Dirigo may use third party service providers to perform all or any part of the Services, but Dirigo remains responsible to you under this Agreement for Services performed by its third party service providers to the same extent as if Dirigo performed the Services itself.

## **26. FORCE MAJEURE**

Neither of us will be in violation of the Agreement if the failure to perform the obligation is due to an event beyond our control, including but not limited to: significant failure of a part of the power grid, significant failure of the Internet, natural disaster, ice storm, title wave/tsunami, fire, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of significant magnitude.

## **27. GOVERNING LAW, LAWSUITS**

The Agreement is governed by the laws of the state of Maine, exclusive of its choice of law principles, and the laws of the United States of America, as applicable. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. Exclusive venue for all disputes arising out of the Agreement shall be in the state or federal courts in Cumberland County, Maine, and we each agree not to bring an action in any other venue. You waive all objections to this venue and agree not to dispute personal jurisdiction or venue in these courts. You agree that you will not bring or participate in any class action lawsuit against Dirigo or any of its employees or affiliates. Each of us agrees that we will not bring a claim under the Agreement more than one year after the time that the claim accrued.

## **28. SOME AGREEMENT MECHANICS**

These General Terms and Conditions and the applicable Product Terms are incorporated in your Agreement by reference to pages on the Dirigo Web site. Although we may from time to time revise the General Terms and Conditions, Product Terms, and Country Specific Terms posted on those pages, those revisions will not be effective as to an Agreement that you signed prior to the date we posted the revisions, and your Agreement will continue to be governed by the General Terms and Conditions and Product Terms posted on the effective date of the Agreement until the first day of any renewal or extended term that follows the date we published the revision. However, if over time you sign multiple Agreements for a single Hosted System—for example to add service elements to an existing Hosted System, then the version of the General Terms and Conditions, Product Terms and Conditions referenced in the last signed Agreement will govern the entire Hosted System, unless otherwise agreed in writing.

Unless otherwise expressly permitted in this Agreement, the General Terms and Conditions, Product Terms and Conditions, Acceptable Use Policy, and any addenda referenced in any of them, may be amended only by a formal written agreement signed by both parties. A Services Description may be amended to modify, add, or remove Services, by a formal written agreement signed by both parties, or by an exchange of correspondence, including via electronic mail or the Dirigo ticketing system that includes the express consent of an authorized individual for each of us. The pre-printed terms on your purchase order or other business forms will not become part of this Agreement.

If there is a conflict between the terms of any of the documents that comprise the Agreement, the documents will govern in the following order: signature page for Hosting Service Agreement, Country Specific Terms (if any), Services Description, Product Terms and Conditions, any addendum to the General Terms and Conditions, the General Terms and Conditions, and the Acceptable Use Policy. If any part of the Agreement is found unenforceable by a court, the rest of the Agreement will nonetheless continue in effect, and the unenforceable part shall be reformed to the extent possible to make it enforceable but still consistent with the business and financial objectives of the parties underlying the Agreement. Each of us may enforce each of

our respective rights under the Agreement even if we have waived the right or failed to enforce the same or other rights in the past. The relationship between us is that of independent contractors and not business partners. Neither of us is the agent for the other, and neither of us has the right to bind the other on any agreement with a third party. The captions in the Agreement are for convenience only and are not part of the Agreement. The use of the word "including" in the Agreement shall be read to mean "including without limitation." The words "our" and "us" refers to Dirigo Design & Development, Inc. (Dirigo), unless the context clearly indicates another meaning. The Agreement is effective when you sign it, even though the "initial term" may be defined in the Agreement with reference to the Service Commencement Date or other date.

If you have made any change to the Agreement that you did not bring to our attention in a way that is reasonably calculated to put us on notice of the change, the change shall not become part of the Agreement.

The Agreement may be signed in multiple counterparts, which taken together will be considered one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures.

March 8, 2011 revision