



## MANAGED HOSTING SERVICES TERMS AND CONDITIONS

In addition to the General Terms and Conditions, your use of the Managed Hosting Services is subject to the following additional Terms and Conditions:

### 1. ADDITIONAL DEFINED TERMS

Some words used in these Managed Hosting Services Terms and Conditions have particular meanings:

"Hosting Services" means Dirigo's provision for your use of the Hosted System described in the Service Description.

"Personally Identifiable Information" or "PII" means: (i) a combination of any information that identifies an individual with that individual's sensitive and non-public financial, health or other data, or attribute, such as a combination of the individual's name, address, or phone number with the individual's social security number or other government issued number, financial account number, date of birth, address, biometric data, mother's maiden name, or other personally identifiable information; (ii) any "non-public personal information" as that term is defined in the Gramm-Leach-Bliley Act found at 15 USC Subchapter 1, § 6809(4), and (iii) "protected health information" as defined in the Health Insurance Portability and Accountability Act found at 45 CFR §160.103.

"Service Commencement Date" means the date on which we provide the access codes that enable to you to send and receive information from your Hosted System.

"Support" means: (i) the management of the Hosting Services by a service delivery team that includes a Dirigo partner and support specialists with training and experience in hosted systems; (ii) availability of live support twenty four hours per day, seven days per week, year round; (iii) any specific support services described in the Service Description; and (iv) use of the Dirigo Ticketing System.

### 2. DEPLOYMENT

2.1 Deployment Guaranty. We will deploy the server(s) described in the Service Description by the date stated in the Service Description, provided that you promptly provide all information that we reasonably request from you to complete deployment. Servers are deemed deployed as of the Service Commencement Date. Your sole and exclusive remedy for our failure to deploy the servers by the guaranteed time shall be a credit equal to the amount of the set-up fee stated in the Service Description for the affected server(s). You are not entitled to a credit if you request or cause the deployment delay. This deployment guaranty does not apply to any software, other managed services, or hardware devices other than the server(s).

2.2 Delayed Deployment. If you wish to delay the deployment of a Hosted System you may do so, provided that you give us written notice of your election to delay no later than five (5) business days following the date you sign the Agreement. The requested delay may not continue for more than two (2) months following your signature on the Agreement. If you request a delay in deployment, we may charge you up to fifty percent (50%) of the monthly recurring fees for the Hosted System during the period of delay. You are not entitled to a credit under Subsection 2.1 above if you request the deployment delay. The initial term of the Agreement will begin when we deploy your Hosted System at your request, or on the second monthly anniversary of the date you sign the Agreement, whichever comes first. Following deployment we will charge you the full monthly recurring fee (plus other usage fees as applicable) for the full term of the Agreement.

### 3. ENCRYPTION OF PERSONALLY IDENTIFIABLE INFORMATION

The General Terms and Conditions require you to use reasonable security precautions in light of your use of the Services. For the Hosting Services, this includes encrypting any PII transmitted to or from, or stored on, the Dirigo servers or storage devices you use.

## 4. SERVICE LEVEL GUARANTIES

4.1 Network. We guaranty that our data center network will be available 100% of the time in a given month, excluding Maintenance. The data center network means the portion of the Dirigo network extending from the outbound port on your edge device to the outbound port of the data center border router and includes Dirigo managed switches, routers, and cabling. Upon request, we will credit your account the appropriate refund per below:

Amount of the refund as a percentage of monthly fee for affected Service.

- 99.0% to 99.999%--3% of monthly fee credited
- 98.0% to 98.999%--5% of monthly fee credited
- 95.0% to 97.999%--10% of monthly fee credited
- 90.0% to 94.999%--25% of monthly fee credited
- 89.9% or below—2.5% credited for every 1% of lost availability up to the maximum total of 50% of your monthly fee for the affected server(s).

4.2 Infrastructure. We guarantee that data center HVAC and power will be functioning 100% of the time in a given month, excluding Maintenance. Power includes UPSs, PDUs and cabling, but does not include the power supplies on your servers. Infrastructure downtime exists when a particular server is shut down due to power or heat problems. Upon request, Dirigo will credit your account 0.5% of the monthly fee for each 60 minutes of infrastructure downtime, up to 50% of your monthly fee for the affected server(s), except if the repair or replacement is required due to acts of God, including but not limited to: fire, flood, or other natural disaster..

4.3 Hardware. We guaranty the functioning of the following dedicated, Dirigo-provided hardware: (i) servers, firewalls, and load balancers; (ii) attached storage devices; and (iii) network attached storage devices. Hardware repair or replacement will begin once we identify the cause of the problem. Hardware repair or replacement is guaranteed to be started within four (4) hours of problem identification for all hardware covered by this guaranty. Upon request, we will credit your account 0.5% of the monthly fee per additional hour of downtime (after the initial four (4) hours for repair or replacement, as applicable), up to 50% of your monthly fee for the affected hardware, except if the repair or replacement is required due to acts of God, including but not limited to: fire, flood, or other natural disaster. The guaranty excludes the time required to rebuild your system, such as the time required to configure a replacement device, rebuild a RAID array, reconfigure devices from their default settings, and reload operating systems and applications.

4.4 Downtime Measurement. Downtime is measured from the time a Dirigo ticket is opened until network availability is restored, or the affected device is powered back on, as applicable. Downtime is defined as a Web site or Internet application being offline due to Infrastructure or Hardware failure.

4.5 Limitations. You are not entitled to a credit if you are in breach of the Agreement (including your payment obligations to us) at the time of the occurrence of the event giving rise to the credit until you have cured the breach. You are not entitled to a credit if the event giving rise to the credit would not have occurred but for your breach of the Agreement or misuse of your Hosted System. To receive a credit, you must contact your account manager within ten (10) days of the occurrence of the event giving rise to the credit. The Service Level Guaranties are contingent on Dirigo having full logical access to your configuration. No credit will be due if the credit would not have accrued but for your restriction of Dirigo's logical access to your configuration.

4.6 Maintenance. For the purposes of the Service Level Guaranty, Maintenance shall mean:

- a. Dirigo maintenance windows. Modification or repairs to shared infrastructure, such as core routing or switching infrastructure, that we have provided notice of at least 48 hours in advance;
- b. Scheduled customer maintenance. Maintenance of your configuration that you request and that we schedule with you in advance (either on a case by case basis, or based on standing instructions), such as hardware or software upgrades;
- c. Emergency maintenance. Critical unforeseen maintenance needed for the security or performance of your configuration or Dirigo's network.

4.7 Data Center Upgrades. We are constantly upgrading our data center facilities and for you to benefit from these upgrades, you agree that we may relocate your servers within our data centers, make changes to the provision of the Services, URLs and your IP addresses, and may establish new procedures for the use of the Services. We may also make changes to DNS records and zones on Dirigo operated or managed DNS servers as we deem necessary for the operation of the shared network infrastructure. In each case we will give you reasonable advance notice and use all reasonable endeavors to minimize the affect that such change will have on your use of the Services.

4.8 Cumulative Dollar Amount. Notwithstanding anything in this Agreement to the contrary, the maximum total credit for failure to meet the Service Level Guaranties under this Agreement for any calendar month shall not exceed 50% of your monthly recurring fee for the affected Hosted System. Credits must be requested by you, the account must be paid in full and in good standing, and are not permitted to be carried forward to future months.

## 5. TERM

The initial term of the Agreement begins on the Service Commencement Date (unless otherwise provided in Section 2.2 (Delayed Deployment)) and continues for the period stated in the Service Description. Upon expiration of the initial term, we may offer you the option of renewing the Agreement for one or more additional terms having a fixed number of months. If you do not renew the Agreement for a fixed term, it will automatically renew for successive extended terms of one month each unless and until one of us provides the other with at least thirty (30) days advance written notice of non-renewal. If you add service elements to the Hosted System by a subsequent agreement, we may use the word "coterminous" to describe the initial term of the subsequent agreement for those additional elements. If the term of an agreement is "coterminous," the initial term of that agreement shall expire on the last day of the initial term of the agreement that initially established the Hosted System.

## 6. FEES

6.1 Your first invoice will include the initial one-time set-up fee and a pro-rated monthly recurring fee from the Service Commencement Date to the last day of the calendar month. We may require you to pay this initial invoice before beginning the Hosting Services. Following the Service Commencement Date, monthly recurring fees will be billed monthly on or around the first day of each calendar month. Non-recurring fees, such as bandwidth overages, will be billed monthly in arrears.

6.2 Fees are due within five (5) days of invoice date. If you have arranged for payment by credit card or ACH, Dirigo may charge your card or account on or after the invoice date. Dirigo may suspend all Services, and services provided pursuant to any unrelated agreement, if payment of any invoiced amount is overdue, and you do not pay the overdue amount within four (4) Business Days of our written notice to your billing contact. You agree that if your Services are reinstated after a suspension for non-payment, you will pay a reasonable reinstatement fee. Dirigo may charge interest on overdue amounts at 2.5% per month (or the maximum legal rate if it is less than 2.5%). If any amount is overdue by more than thirty (30) days and Dirigo brings a legal action to collect, or engages a collection agency, you must also pay Dirigo's costs of collection, including reasonable attorney fees and court costs. If your check is returned for insufficient funds, we may charge you a fee up to the maximum amount permitted by law. Fees must be paid in U.S. Dollars. Invoices that are not disputed within 180 days of invoice date are conclusively deemed accurate.

## 7. FEE INCREASES

7.1 Increase in Producer Price Index. If during the initial term or any renewal term there is an increase in the Producer Price Index over the Producer Price Index reported for the month in which you signed your Agreement, we may increase your fees by the same percentage as the increase in the Producer Price Index; provided that we may not increase your fees under this Subsection more often than once per twelve (12) months, and we must give you at least thirty (30) days advance written notice of the increase. The "Producer Price Index" means the Producer Price Index for Finished Goods, WPUSOP3000, not seasonally adjusted, and first published as "preliminary" data by the United States Bureau of Labor Statistics in its PPI Detailed Report or successor publication. For historical information on the Producer Price Index you may visit the Bureau of Labor Statistics website. (Example: if the Producer Price Index for the month in which you sign the Agreement is 186, and then increases in a subsequent month during the term of the Agreement to 195, we may increase your fees by up to 4.8%).

7.2 Increase During Month-to-Month Term. If following the expiration of the initial term or any renewal term you do not sign a renewal of your Agreement, but continue to use your Services on a month-to-month basis as described in Section 5 (Term) above, then we may increase your fees at any time by any amount, in our sole discretion, on thirty (30) days advance written notice.

## **8. TERMINATION FOR CONVENIENCE**

You may terminate this Agreement for convenience at any time on thirty (30) days advance written notice.

## **9. EARLY TERMINATION FEE**

If you terminate this Agreement for convenience or we terminate this Agreement for your breach, in addition to other amounts you may owe, you must pay an early termination fee equal to the total monthly recurring fees for the remaining portion of the then-current term. You will not be charged an early termination fee under this Section in the event you terminate this Agreement as part of an agreement to establish a replacement for the Hosted System in a different Dirigo service segment, even if the overall fees for the replacement system are less than those for the Hosted System, provided that the replacement system is the functional equivalent of the Hosted System.

## **10. RESALE**

You may resell the Hosting Services, subject to the provisions of Section 18 of the General Terms and Conditions. If you resell any part of the Hosting Services that include Microsoft software then you must include the Microsoft terms in a written agreement with your customers.

## **11. MANAGED BACKUP**

Dirigo's managed backup services are designed to facilitate restoration of data to the server or device from which the data originated in the event the primary data is lost or corrupted. The quality of your backup depends on how your data is organized. We recommend that you test your managed backup service promptly following the Service Commencement Date, and then periodically, to determine if it is capturing your data properly. If it is not, we will work with you to maximize the accuracy of our managed backup service for your data and/or help you identify other data backup solutions that may work better for you. In the event your primary server or device hardware fails and is replaced, we may not be able to restore your backed up data exactly as it was configured on the failed device. If this risk is not acceptable to you, then we will help you identify other data backup solutions that are more reliable in this situation. The "retention" period for your backup refers to the amount of time that we will retain the backup in a useable form for restoration to the server or device from which it originated. If you wish to preserve your backup after the time that this server or device is decommissioned, you must make arrangements with us at least seventy-two (72) hours in advance of the scheduled decommissioning of the server or device. Database duplications or "cloning" for purposes other than a restoration of lost or corrupted data as described in this paragraph are not included as part of your managed backup service, but may be arranged as a Supplementary Service for an hourly fee. We may choose to use either tape or disk to collect your data, in our discretion. Provided that we do not impair the security or reliability of your backup service, you agree that we may from time to time test our backup systems, and may use copies of your data as part of these tests. We will treat duplicate data in accordance with the same security standards applicable to your backup service.

## **12. HIPAA**

If Dirigo is your "Business Associate" as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, then the HIPAA Business Associate Addendum published at <http://www.dirigodev.com/hosting/legal/HIPAABusinessAssociateAgreement.pdf> as of the date that Dirigo becomes your Business Associate is part of the Agreement.

## **13. MICROSOFT EXCHANGE (DEDICATED)**

If you purchase Microsoft Exchange service on a dedicated Hosted System, then the addendum at

<http://www.dirigodev.com/hosting/legal/MicrosoftExchangeAddendum.pdf> as of the date you sign the order or agreement for the Service is part of this Agreement.

#### **14. DATA REPLICATION**

If you purchase any Services that involve data replication at a geographically diverse site then the following applies to your use of that Service: The rate by which the data at the primary site can be transferred to the secondary site will vary depending on the amount and type of data, constraints inherent in your Hosted System, and fluctuations in bandwidth availability. Therefore, at any given time, the secondary site may not be completely up to date. In the event of a failover to the secondary site, the data that has not yet completed the transfer from the primary site will be lost. We may provide you with some guidelines on latency times based on our understanding of your data and system constraints, but these guidelines are not guaranties.

#### **15. VULNERABILITY TESTING**

Vulnerability testing services involve inherent risks, such as data corruption and impaired performance of your Hosted System. If you ask Dirigo to provide vulnerability testing services, then you agree that Dirigo is not liable to you for any damages arising from the performance of the Services as agreed.

#### **16. UNSUPPORTED CONFIGURATION ELEMENTS OR SERVICES**

If you ask us to implement a configuration element (hardware or software) or hosting service in a manner that is not customary at Dirigo, or that is in "end of life" or "end of support" status, we may designate the element or service as "unsupported," "non-standard," "best efforts," "reasonable endeavor," "one-off," "EOL," "end of support," or with like term in the Service Description (referred to in this Section as an "Unsupported Service"). Dirigo makes no representation or warranty whatsoever regarding any Unsupported Service, and you agree that Dirigo will not be liable to you for any loss or damage arising from the provision of the Unsupported Service. The Deployment and Service Level Guaranties shall not apply to the Unsupported Service, or any other aspect of the Hosting Services that is adversely affected by the Unsupported Service. You acknowledge that Unsupported Services may not interoperate with Dirigo's other services, such as backup or monitoring.

#### **17. IP ADDRESSSES**

Upon termination of the Agreement you must promptly release any Internet protocol numbers, addresses or address blocks assigned to you in connection with the Services (but not any URL or top level domain or domain name) and you agree that we may take steps to change or remove any such IP addresses.

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