



The world's smartest call-for-service systems

Standard Terms & Conditions May 2019

## 1. Interpretation

1.1. The definitions and rules of interpretation in this clause apply in the Terms.

**Additional Terms:** as may be detailed in the Service Schedule from time to time.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Business Hours:** 9.00 am to 5.00 pm local UK time, each Business Day unless notified otherwise to the Customer.

**Commencement Date:** as set out in the Service Schedule.

**Confidential Information:** all and any information, however it is conveyed that relates to the business, affairs, developments, trade secrets, know how, personnel and suppliers of a party, including all Intellectual Property Rights.

**Configuration Fee:** as set out in the Service Schedule.

**Configuration Requirements:** the Customer’s requirements as notified to Dinggly prior to commencement of the Services as detailed in the Service Schedule.

**Contract:** these Terms and the Service Schedule.

**Customer:** as set out in the Service Schedule.

**Customer Data:** the data inputted by the Customer or Dinggly on the Customer’s behalf for the purpose of using the Services or facilitating the Customer’s use of the Services.

**Data:** the Customer Data and Performance Data.

**Dinggly:** as set out in the Service Schedule.

**Documentation:** the document made available to the Customer by Dinggly which sets out a description of the Services and the user instructions for the Services.

**Enhancement:** as detailed in the Support and Maintenance Policy.

**Hardware:** the hardware provided by Dinggly for use with the Services.

**Hardware Fee:** the Rental Hardware Fee or the Purchase Hardware Fee.

**Fees:** the fees payable by the Customer to Dinggly for the Services, including the Configuration Fee, Hardware Fee and Software and Support Fee.

**Installation:** as defined in clause 3.1.

**Intellectual Property Rights:** intellectual property rights being, all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Performance Data:** the data generated by the Customer’s use of the Services, including performance reporting.

**Portal Address:** as set out in the Service Schedule or such other web address notified by Dinggly to the Customer from time to time.

**Purchase Hardware Fee:** where the Customer elects for the Purchase Option in accordance with clause 9.1, the fee as set out in the Service Schedule.

**Purchase Option:** as defined in clause 9.1.

**Rental Hardware Fee:** where the Customer elects for the Rental Option in accordance with clause 9.1, the fee as set out in the Service Schedule.

**Rental Option:** as defined in clause 9.1.

**Service Schedule:** the service schedule for the Services signed by or on behalf of the Customer which is accepted by Dinggly pursuant to clause 2.3.

**Services:** the subscription services provided by Dinggly to the Customer under the Contract via the Hardware, as more particularly described in the Documentation.

**Software and Support Fee:** as set out in the Service Schedule.

**Support and Maintenance Policy:** Dinggly’s policy for providing support in relation to the Services as made available on the administrator page via the Portal Address.

**Term:** has the meaning given in clause 17.1.

**Update/Updated:** any improvements, modifications or corrections to the functionality of the Services that are generally made available at no additional cost to Dinggly’s customers who purchase the Services as detailed in the Support and Maintenance Policy.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging,

altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2. References to “includes” or “including” shall be deemed to have the words “without limitation” inserted after them.

1.3. Unless otherwise stated, references to “days” means calendar days.

## 2. Contract process

2.1. Following any request from the Customer for Services from Dinggly, Dinggly may send the Customer a Service Schedule.

2.2. If the Customer wishes to proceed with the provision of Services in accordance with the Service Schedule the Customer must return a signed copy of the Service Schedule and/or a purchase order, signed by an authorised party on behalf of the Customer prior to the commencement of work by Dinggly, as confirmation that the Service Schedule accurately sets out the Customer’s requirements.

2.3. No order for Services shall be deemed to be accepted by Dinggly until the earlier of Dinggly (a) accepting such offer in writing or (b) providing the Services at which point a “Contract” for the provision of Services under these Terms will come into effect.

2.4. Each Service Schedule signed by the Customer, or request for Dinggly’s Services from the Customer, shall be deemed to be an offer by the Customer to purchase the Services subject to these Terms:-

2.4.1. to the exclusion of all other terms and conditions (including any terms and conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document); and

2.4.2. constitutes a separate Contract.

2.5. If there is any conflict or inconsistency between the following documents, to the extent of any conflict or inconsistency only, the following order of priority shall apply:-

2.5.1. the Service Schedule (including any Additional Terms); and

2.5.2. these Terms.

2.6. Dinggly may, at any time, and in its sole discretion, modify these Terms. Any such modification will be effective immediately on notification to the Customer. The Customer’s continued use of the Services following any such modification constitutes the Customer’s acceptance of the modified Terms.

## 3. Initial configuration

3.1. The Customer shall provide Dinggly with details of any Configuration Requirements as is required by Dinggly to provide the initial set up of the Services (“Installation”).

## 4. Services, Hosting, Maintenance and Support

4.1. Subject to the Customer paying for the Services in accordance with clause 10.1, the restrictions set out in this clause 4 and the other terms of the Contract, Dinggly hereby grants to the Customer a non-exclusive, non-transferable right to use the Services and the Documentation during the Term solely for the Customer’s internal business operations.

4.2. Dinggly agrees, during the Term, to provide the Services and make available the Documentation to the Customer on and subject to the terms of the Contract.

4.3. Dinggly shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:-

4.3.1. planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time unless otherwise agreed with the Customer (“Maintenance Window”); and

4.3.2. unscheduled maintenance performed outside Business Hours, provided that Dinggly has used reasonable endeavours to give the Customer at least 6 Business Hours’ notice in advance.

4.4. Dinggly will, as part of the Services and at no additional cost to the Customer, provide the Customer with Dinggly’s standard customer support services during Business Hours in accordance with Dinggly’s Support and Maintenance Policy in effect at the time that the Services are provided. Dinggly may amend the Support and Maintenance Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at Dinggly’s then current rates.

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4.5. Where any Update to existing functionality is produced by Dinggly, Dinggly may roll out the Update to the Customer provided the Customer has paid all Fees due and owing under the Contract as at the date of the roll out of the Update.

4.6. Any Enhancements will be offered to the Customer but may be subject to additional payment and/or payment of an additional/increased fee as agreed between the parties.

### 5. Work carried out outside the agreed scope of Services / changes to specifications etc

5.1. Where the Customer requests additional work, Dinggly may ask the Customer to sign a new Contract for Additional Services in which case clause 5.3 shall apply or such request may be treated as a variation to the Contract, in which case clause 5.2 shall apply.

5.2. If during the Contract the Customer asks for any changes to the Services or the Contract; requirement change or specification including:-

- 5.2.1. changes to the Service Schedule;
- 5.2.2. changes to the Services;
- 5.2.3. additional Hardware;
- 5.2.4. an Enhancement; and/or
- 5.2.5. changes to the Customer's requirements including Configuration Requirements;

which in Dinggly's reasonable opinion gives rise to:-

- 5.2.6. a service which Dinggly has not already agreed to provide to the Customer; or
- 5.2.7. a change to the Services or specifications that Dinggly has already agreed to provide to the Customer,

then:-

5.2.8. Dinggly will endeavour to notify the Customer as soon as possible of any impact on Services Dinggly is currently carrying out for the Customer in relation to estimated timescales and prices;

5.2.9. where it is reasonably possible Dinggly will endeavour to notify the Customer of any additional costs before Dinggly commences any work; and

5.2.10. unless otherwise agreed any work carried out by Dinggly which is outside the scope of any agreed Services will be charged at Dinggly's prevailing time and materials rates in place from time to time.

5.3. Requesting Additional Services

5.3.1. The Customer from time to time may request Dinggly to supply additional services which are not included in the Service Schedule (i.e. "Additional Services"). Dinggly shall endeavour to comply with the Customer's request and where Dinggly agrees to provide any such Additional Services:-

- (i) the details of those Additional Services shall be as agreed between Dinggly and the Customer from time to time; and
- (ii) unless otherwise agreed by Dinggly in writing these Terms shall apply to the provision of such Additional Services.

### 6. Data

6.1. The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for:-

- 6.1.1. the legality, reliability, integrity, accuracy and quality of the Customer Data; and
- 6.1.2. any losses of data, programs, breaches of security, viruses and disabling or harmful devices that the Customer's personnel may download or otherwise experience introduced by the Customer.

6.2. Dinggly shall follow its archiving procedures for Data as set out in its Back-Up Policy available on request, as such document may be amended by Dinggly in its sole discretion from time to time.

6.3. In the event of any loss or damage to Data, the Customer's sole and exclusive remedy shall be for Dinggly to use reasonable commercial endeavours to restore the lost or damaged Data from the latest back-up of such Data maintained by Dinggly in accordance with the archiving procedure described in its Back-Up Policy. Dinggly shall not be responsible for any loss, destruction, alteration or disclosure of Data caused by any third party (except those third parties sub-contracted by Dinggly to perform services related to Data maintenance and back-up).

6.4. The Customer grants Dinggly a licence to collect, hold, control, use and transmit Customer Data obtained from and about the Customer, its personnel and users during the course of the Customer using the Services.

### 7. Dinggly's obligations

7.1. Dinggly undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.2. The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Dinggly's instructions, or modification or alteration of the Services by any party other than Dinggly or Dinggly's duly authorised contractors or agents or any changes, faults or errors with any network or systems on which the Services rely.

7.3. If the Services do not conform with clause 7.1, Dinggly will use all reasonable commercial endeavours to correct any such non-conformance or provide the Customer with an alternative means of accomplishing the desired performance provided that always that the non-compliance has not been caused by the Customer. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.

7.4. Notwithstanding the foregoing, Dinggly:-

7.4.1. does not warrant that the Customer's use of the Services will be uninterrupted or error-free or that the Services, Documentation and/or the information obtained by the Customer through the Services, including the Performance Data, will meet the Customer's requirements; and

7.4.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.5. The Contract shall not prevent Dinggly from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.

7.6. Dinggly warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

### 8. Customer's obligations

8.1. The Customer shall and shall procure that the Customer's personnel comply with the Customer's obligations under the Contract including those as detailed in this clause 8, or as may be agreed from time to time ("Customer Responsibilities").

8.2. The Customer acknowledges that Dinggly's ability to provide the Services are dependent upon the full and timely co-operation of the Customer as well as the accuracy and completeness of any information and data the Customer provides to Dinggly including Customer Data. Accordingly the Customer shall:-

8.2.1. provide Dinggly with access to and use of all information, data, documentation, personnel and such systems and software of the Customer reasonably required by Dinggly for its performance of its obligations under the Contract; and

8.2.2. provide all necessary co-operation in relation to the Contract.

8.3. The Customer shall:-

8.3.1. comply with all applicable laws and regulations with respect to its activities under the Contract. The Customer's use of the Services may, from time to time, be governed by statutory or regulatory rules and requirements external to the terms and conditions of the Contract and it shall be the Customer's exclusive responsibility to ensure that their use of the Service is in compliance with any such laws and regulations;

8.3.2. carry out all other Customer Responsibilities in a timely and efficient manner;

8.3.3. ensure that the Customer's personnel use the Services and the Documentation in accordance with the Contract and shall be responsible for any breach of the Contract;

8.3.4. obtain and shall maintain all necessary licences, consents, and permissions necessary for

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- Dinggly, its contractors and agents to perform their obligations under the Contract, including without limitation the Services;
- 8.3.5. ensure that its network and systems comply with the relevant specifications provided by Dinggly from time to time;
- 8.3.6. ensure that it keeps any access details (including any passwords) to access the Services secure. If the Customer knows or suspects that anyone other than the Customer's authorised personnel knows the access details, or otherwise requires Dinggly to change any passwords, the Customer must notify Dinggly; and
- 8.3.7. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Dinggly's data centres, and all problems, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 8.4. The Customer shall not, nor allow anyone on their behalf:-
- 8.4.1. use or redistribute the Services for the purpose of conducting the business of an Application Service Provider;
- 8.4.2. redistribute or reproduce the Services through any network;
- 8.4.3. allow any unauthorised third party to access the Services;
- 8.4.4. make changes of any kind to the Services; or
- 8.4.5. attempt to correct any fault or perceived fault in the Services.
- 8.5. If any staff working on Dinggly's behalf have to attend the Customer's premises to provide training or support, the Customer will provide the following without charge:-
- 8.5.1. working accommodation for Dinggly's staff;
- 8.5.2. reasonable access to and use of the Customer's appropriate computer terminals and such of the Customer's peripheral equipment as necessary for training or support to be carried out to such an extent and at such reasonable time as Dinggly may request having regard to the Customer's own requirements; and
- 8.5.3. telephone for calls reasonably necessary to carry out the work.
- 8.6. The Customer shall take all reasonable precautions to protect the health and safety of staff working on Dinggly's behalf while on the Customer's site.
- 8.7. When attending the Customer's premises Dinggly personnel will obey all reasonable orders given by the Customer where such orders are given in the interest of the health and/or safety of persons and/or property and where such orders are given pursuant to the Customer's security in all respects. Dinggly personnel shall comply with the Customer's own safety/security regulations and all other rules of conduct while in the Customer's premises.
- 8.8. In the event of any delays in the Customer's provision of such assistance as agreed by the parties under the Contract, without prejudice to any other rights or remedies of Dinggly, Dinggly:-
- 8.8.1. shall not be liable for any failure or delays in carrying out its obligations under the Contract resulting from the Customer's failure or delay to fulfil any of the Customer Responsibilities; and/or
- 8.8.2. may adjust any agreed timetable or delivery schedule as reasonably necessary.
- 8.9. The Customer shall continue to pay the Fees to Dinggly in accordance with the Contract notwithstanding any failure by Customer to comply with this clause 8.
- 8.10. The Customer shall remain liable to Dinggly for any acts of omissions of any Customer personnel (whether tortious, contractual; or otherwise) as if such acts or omissions had been committed or omitted by the Customer itself.
- 9. Hardware**
- 9.1. As set out in the Service Schedule the Customer shall either purchase the Hardware ("**Purchase Option**") or rent the Hardware during the Term ("**Rental Option**").
- 9.2. If the Hardware is provide under the Rental Option:-
- 9.2.1. the Hardware shall at all times remain Dinggly's property, and the Customer shall have no right, title or interest in or to the Hardware (except the right to possession and use of the Hardware subject to the terms of the Contract);
- 9.2.2. the Hardware shall be the Customer's responsibility during the Term and any further term during which the Hardware is in the Customer's possession, custody or control until the Hardware is redelivered to, or collected by, Dinggly;
- 9.2.3. the Customer shall as soon as reasonably practicable give written notice to Dinggly in the event of any loss, accident or damage to the Hardware arising out of or in connection with the Customer's possession or use of the Hardware;
- 9.2.4. during the Term the Customer shall:-
- 9.2.4.i) comply with any product care requirements as set out in the Documentation or otherwise notified to the Customer by Dinggly;
- 9.2.4.ii) make no alteration to the Hardware and shall not remove any existing component(s) from the Hardware unless the component(s) is/are replaced immediately; and
- 9.2.4.iii) not attempt to service or repair the Hardware in any circumstances;
- 9.2.5. subject to clause 9.4, where there is fault with the Hardware, provided the Customer has notified Dinggly in accordance with clause 9.2.3 and has complied with clause 9.2.4, Dinggly will, at its option, repair or replace the Hardware at no charge to the Customer;
- 9.2.6. where the Hardware is not covered by clause 9.2.5, any repair or replacement of Hardware shall be chargeable to the Customer and shall be paid for by the Customer within 30 days of receipt on an invoice from Dinggly in respect of such charges;
- 9.2.7. at the end of the Term, the Customer shall immediately either deliver the Hardware to an address as Dinggly require, or allow Dinggly or its representatives access to any premises where the Hardware is located for the purpose of removing the Hardware. Until it has been returned or repossessed, the Customer shall:-
- 9.2.7.i) not make any further use of the Hardware;
- 9.2.7.ii) be solely responsible for the safe keeping of the Hardware; and
- 9.2.7.iii) pay any additional fees as notified to the Customer by Dinggly.
- 9.3. If the Hardware is provided under the Purchase Option:-
- 9.3.1. title to the Hardware shall not pass to the Customer until Dinggly receives payment in full (in cash or cleared funds) for the Hardware and all other sums that are or that become due to Dinggly from the Customer for the Hardware or on any account, in which case title to these Hardware shall pass at the time of payment of all such sums;
- 9.3.2. until title to the Hardware has passed to the Customer, the Customer shall:-
- 9.3.2.i) store the Hardware separately from all other goods held by the Customer so that they remain readily identifiable as Dinggly's property;
- 9.3.2.ii) not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware; and
- 9.3.2.iii) maintain the Hardware in satisfactory condition and keep them insured on Dinggly's behalf for their full price against all risks with an insurer that is reasonably acceptable to Dinggly. The Customer shall obtain an endorsement of Dinggly's interest in the Hardware on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow Dinggly to inspect the Hardware and the insurance policy.
- 9.3.3. if before title to the Hardware passes to the Customer the Customer becomes subject to any of the events listed in clause 17.2.4 to 17.2.10 inclusive, then, without limiting any other right or remedy Dinggly may have, Dinggly may at any time:-
- 9.3.3.i) require the Customer to deliver up all Hardware in its possession that have not

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- been resold, or irrevocably incorporated into another product; and
- 9.3.3.ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Hardware are stored to recover them;
- 9.3.4. Dinggly warrants that for a period of 12 months that the Hardware shall conform with the Documentation ("**Warranty Period**");
- 9.3.5. the Customer shall as soon as reasonably practicable give written notice to Dinggly in the event of any loss, accident or damage to the Hardware arising out of or in connection with the Customer's possession or use of the Hardware;
- 9.3.6. during the Warranty Period the Customer shall:-
- 9.3.6.i) comply with any product care requirements as set out in the Documentation or otherwise notified to the Customer by Dinggly;
- 9.3.6.ii) make no alteration to the Hardware and shall not remove any existing component(s) from the Hardware unless the component(s) is/are replaced immediately; and
- 9.3.6.iii) not attempt to service or repair the Hardware in any circumstances;
- 9.3.7. subject to clause 9.4, where there is fault with the Hardware, provided the Customer has notified Dinggly in accordance with clause 9.3.6 and has complied with clause 9.3.7, during the Warranty Period Dinggly will, at its option, repair or replace the Hardware at no charge to the Customer;
- 9.3.8. where the Hardware is not covered by clause 9.3.7, any repair or replacement of Hardware shall be chargeable to the Customer and shall be paid for by the Customer within 30 days of receipt on an invoice from Dinggly in respect of such charges;
- 9.3.9. following expiry of the Warranty Period, the Customer shall then be responsible for the continued maintenance of the Hardware. Any repair or replacement of Hardware carried out by Dinggly shall be chargeable to the Customer and shall be paid for by the Customer within 30 days of receipt on an invoice from Dinggly in respect of such charges.
- 9.4. The Customer acknowledges that Dinggly shall not be responsible for any loss of or damage to the Hardware arising out of or in connection with any negligence, misuse, mishandling of the Hardware or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify Dinggly on demand against the same, and against all losses arising out of or in connection with any failure by the Customer to comply with the terms of the Contract.
- 9.5. Where clauses 9.2.6, 9.3.7 or 9.3.8 applies, if the Customer doesn't repair or replace the Hardware as necessary to remedy the fault ("**Defective Hardware**"), Dinggly shall not be liable for any failure to provide the Services to the extent caused by the Defective Hardware and the Customer shall continue to pay the Fees to Dinggly in accordance with the Contract.
- 10. Fees and payment**
- 10.1. The Customer shall pay the Fees to Dinggly for the Services in accordance with this clause 10 and the Service Schedule.
- 10.2. Prior to the Commencement Date the Customer must complete all standing order paperwork requested by Dinggly.
- 10.3. Prior to Installation, the Customer must pay to Dinggly:-
- 10.3.1. the Configuration Fee;
- 10.3.2. the Rental Hardware Fee or the Purchase Hardware Fee;
- 10.3.3. the annual Software and Support Fee; and
- 10.3.4. any other amounts notified by Dinggly to the Customer.
- 10.4. On each anniversary of the Commencement Date, the Customer must pay to Dinggly:-
- 10.4.1. the annual Rental Hardware Fee (if applicable); and
- 10.4.2. the annual Software and Support Fee.
- 10.5. If Dinggly has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Dinggly:-
- 10.5.1. Dinggly may, without liability to the Customer, disable the Customer's account and access to all or part of the Services and Dinggly shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 10.5.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of National Westminster Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.6. All amounts and fees stated or referred to in the Contract:-
- 10.6.1. shall be payable in pounds sterling unless otherwise stated;
- 10.6.2. are non-cancellable and non-refundable (unless expressly stated otherwise in these Terms); and
- 10.6.3. are exclusive of value added tax, which shall be added to Dinggly's invoice(s) at the appropriate rate.
- 10.7. Dinggly shall be entitled to increase the Fees at any time upon 30 days' prior notice to the Customer.
- 11. Proprietary rights**
- 11.1. The Customer acknowledges and agrees that Dinggly and/or its licensors own all Intellectual Property Rights in the Services, Documentation and Performance Data. Except as expressly stated herein, the Contract does not grant the Customer any rights to, or in, Intellectual Property Rights in respect of the Services or the Documentation.
- 11.2. Dinggly confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the Contract.
- 11.3. Customer Intellectual Property Rights
- 11.3.1. The Customer grants Dinggly a royalty free non-exclusive licence to copy, store, process and use the Customer's Intellectual Property Rights ("**Customer IPR**") and any Customer Data recorded via the Services solely for purposes connected with performing Dinggly's obligations under the Contract.
- 11.3.2. All Customer IPR shall remain vested in the Customer at all times.
- 11.3.3. The Customer grants Dinggly a non-exclusive, transferrable irrevocable royalty free licence to use the Customer IPR to the extent that it comprises any Intellectual Property Rights in the Hardware.
- 11.3.4. Dinggly may licence any third party that it has engaged to provide any part of the Services to use the Customer IPR for the purpose of providing the Services.
- 11.3.5. The Customer warrants that any Customer IPR it provides to Dinggly with under this Contract do not infringe the Intellectual Property Rights of any third party.
- 11.3.6. The Customer shall indemnify Dinggly and keep Dinggly indemnified and hold Dinggly harmless in respect of all costs, or losses sustained or incurred by Dinggly (including any legal costs, any direct, indirect or consequential losses, loss of profit and loss of reputation), that arise directly or indirectly from a breach of the warranty in clause 11.3.5.
- 11.4. Nothing in this clause 11 shall restrict the right of the Customer to ownership, copying and use of the Customer Data in any way.
- 12. Confidentiality**
- 12.1. Both parties shall keep all Confidential Information belonging to the other confidential and shall not use or disclose the Confidential Information except where required to by law or for the purpose of delivering the Services including the procurement of third party services in relation to the Services.
- 12.2. The Customer gives Dinggly permission to name the Customer as one of Dinggly's clients on its website or any other marketing materials provided Dinggly seeks the Customer's prior approval prior to making any use of the Customer's name and brand marks public. Dinggly will only ever refer to high level details and will not reveal sensitive details about the Customer's business, software or applications, unless otherwise agreed.
- 13. Data protection**
- 13.1. In this clause the terms:-

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- 13.1.1. "process", "personal data", "data processor", "data controller", "data subject" shall have the meanings given to them in the Data Protection Legislation;
- 13.1.2. "Data Protection Legislation" shall mean any law, statute, regulation, rule or other binding restriction regarding the protection of individuals with regards to the processing of their personal data to which a party is subject, including the GDPR and any code of practice or guidance published by the Information Commissioner's Office from time to time; and
- 13.1.3. "GDPR" shall mean Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016 and any and all national legislation implementing the same into UK law from time to time.
- 13.2. Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 13.3. The parties acknowledge that for the purposes of the Data Protection Legislation, if and to the extent that Dinggly processes personal data in connection with the Services, the Customer is the data controller and Dinggly is the data processor.
- 13.4. The Data Processing Appendix sets out the scope, nature and purpose of processing by Dinggly, the duration of the processing and the types of personal data and categories of data subject.
- 13.5. Without prejudice to the generality of clause 13.2, the Customer will:-
- 13.5.1. provide complete, accurate and lawful written instructions to Dinggly to govern the processing of personal data as initially set out in the Data Processing Appendix;
- 13.5.2. ensure that the Customer has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Dinggly for the duration and purposes of this Contract;
- 13.5.3. notify Dinggly without undue delay on becoming aware of a personal data breach which has or may have an impact on the processing carried out by Dinggly or the written instructions for processing including the Data Processing Appendix.
- 13.6. Without prejudice to the generality of clause 13.2, Dinggly shall, in relation to any personal data processed in connection with the performance by Dinggly of its obligations under this Contract:-
- 13.6.1. process that personal data only on the Customer's written instructions (including the instructions in the Data Processing Appendix) unless Dinggly is required by the laws of any member of the European Union or by the laws of the European Union applicable to Dinggly to process personal data ("Applicable Laws"). Where Dinggly is relying on Applicable Laws as the basis for processing personal data, Dinggly shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Dinggly from so notifying the Customer;
- 13.6.2. notify the Customer if Dinggly believes that any data processing instruction it receives from the Customer is in breach of the Data Protection Legislation and Dinggly shall not be obliged to follow such instruction (and shall not be liable for any delays in performing its obligations under this Contract) until such time as agreement can be reached between Dinggly and the Customer as to how to proceed. If such agreement cannot be reached within 30 days of Dinggly's notification to the Customer, either party may terminate this Contract on notice to the other party;
- 13.6.3. ensure that Dinggly has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by Dinggly);
- 13.6.4. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- 13.6.5. not transfer any personal data outside of the European Economic Area unless the Customer's prior written consent has been obtained and the following conditions are fulfilled:
- (iii) the Customer or Dinggly have provided appropriate safeguards in relation to the transfer;
- (iv) the data subject has enforceable rights and effective legal remedies;
- (v) Dinggly complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- (vi) Dinggly complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 13.6.6. assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 13.6.7. notify the Customer without undue delay on becoming aware of a personal data breach;
- 13.6.8. at the Customer's written direction, delete or return personal data and copies thereof to the Customer on termination of this Contract unless required by Applicable Law to store the personal data;
- 13.6.9. maintain complete and accurate records and information to demonstrate Dinggly's compliance with this clause 13; and
- 13.6.10. at the Customer's costs and on reasonable notice to Dinggly, allow for audits by the Customer or its designated auditor.
- 13.7. The Customer consents to Dinggly appointing third-party processors of personal data under this Contract and Dinggly shall provide the Customer with a list of current sub-processors on request. Dinggly confirms that it has with the third-party processor a written agreement substantially on that third party's standard terms of business. As between the Customer and Dinggly, Dinggly shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 13.
- 13.8. Any changes made or additions to the Customer's requirements in respect of the Customer's data processing requirements shall be dealt with via clause 5.
- 14. Warranties**
- 14.1. Each party warrants that it has all necessary power and authority to enter into the Contract.
- 15. Indemnity**
- 15.1. The Customer shall defend, indemnify and hold harmless Dinggly against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:-
- 15.1.1. the Customer is given prompt notice of any such claim;
- 15.1.2. Dinggly provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

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- 15.1.3. the Customer is given sole authority to defend or settle the claim.
- 15.2. Dinggly shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:-
- 15.2.1. Dinggly is given prompt notice of any such claim;
- 15.2.2. the Customer provides reasonable co-operation to Dinggly in the defence and settlement of such claim, at Dinggly's expense; and
- 15.2.3. Dinggly is given sole authority to defend or settle the claim.
- 15.3. In the defence or settlement of any claim, Dinggly may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 15.4. In no event shall Dinggly, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:-
- 15.4.1. a modification of the Services, Hardware or Documentation by anyone other than Dinggly; or
- 15.4.2. the Customer's use of the Services, Hardware or Documentation in a manner contrary to the instructions given to the Customer by Dinggly; or
- 15.4.3. the Customer's use of the Services, Hardware or Documentation after notice of the alleged or actual infringement from Dinggly or any appropriate authority.
- 15.5. Clause 15.2 states the Customer's sole and exclusive rights and remedies, and Dinggly's (including Dinggly's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## 16. Limitation of liability

- 16.1. This clause 16 sets out the entire financial liability of Dinggly (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:-
- 16.1.1. arising under or in connection with the Contract;
- 16.1.2. in respect of any use made by the Customer of the Services, Documentation or Hardware any part of them; and
- 16.1.3. in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 16.2. Except as expressly and specifically provided in the Contract:-
- 16.2.1. the Customer assumes sole responsibility for results obtained from the use of the Services, the Documentation and Hardware by the Customer, and for conclusions drawn from such use. Dinggly shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Dinggly by the Customer in connection with the Services, or any actions taken by Dinggly at the Customer's direction;
- 16.2.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and
- 16.2.3. the Services and the Documentation are provided to the Customer on an "as is" basis.
- 16.3. Nothing in the Contract excludes the liability of Dinggly:-
- 16.3.1. for death or personal injury caused by Dinggly's negligence; or
- 16.3.2. for fraud or fraudulent misrepresentation.
- 16.4. Subject to clause 16.2 and clause 16.3:-
- 16.4.1. Dinggly shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of

business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and

- 16.4.2. Dinggly's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total Fees paid for the Services during the 12 months immediately preceding the date on which the claim arose (or to the date of the event giving rise to the claim if the Services have been provided for less than 12 months).

## 17. Term and termination

- 17.1. The Contract shall, unless otherwise terminated as provided in this clause 17, commence on the Commencement Date and shall continue for the Initial Term and, thereafter, the Contract shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:-
- 17.1.1. either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or
- 17.1.2. otherwise terminated in accordance with the provisions of the Contract;
- and the Initial Term together with any subsequent Renewal Periods shall constitute the Term.
- 17.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:-
- 17.2.1. the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- 17.2.2. the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
- 17.2.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 17.2.4. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 17.2.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 17.2.6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 17.2.7. the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 17.2.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 17.2.9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and

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- such attachment or process is not discharged within 14 days;
- 17.2.10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.2.3 to clause 17.2.9 (inclusive);
- 17.2.11. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 17.2.12. there is a change of control of the other party.
- 17.3. On termination of the Contract for any reason:-
  - 17.3.1. all licences granted under the Contract shall immediately terminate;
  - 17.3.2. the Customer shall uninstall or otherwise remove any means of access to the Services;
  - 17.3.3. Dinggly shall invoice the Customer for all Services performed and for any expenses incurred to the date of termination and all sums due under this Contract shall become immediately payable;
  - 17.3.4. if Dinggly has received a prepayment from the Customer this will be offset against any amounts owing as detailed in clause 17.3.3 above. Any surplus will then be refunded to you subject to clause 17.3.5;
  - 17.3.5. where the Customer has made a prepayment and terminated before work has started, Dinggly will refund the prepayment less 10% of the prepayment as an administration fee;
  - 17.3.6. the Customer shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
  - 17.3.7. the Customer shall comply with clause 9.2.7, if applicable;
  - 17.3.8. Dinggly may destroy or otherwise dispose of any of the Customer Data in its possession unless Dinggly receives, no later than 10 days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Dinggly shall use reasonable commercial endeavours to deliver the back-up to the Customer within 10 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Dinggly in returning or disposing of Customer Data; and
  - 17.3.9. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination shall not be affected or prejudiced.

**18. General**

- 18.1. Dinggly shall not be liable for any failure or delay in performing its obligations if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for more 14 days, Dinggly shall be entitled to terminate the Contract by giving 7 days notice in writing.
- 18.2. The Customer shall not partially or wholly assign or sub-contract any of its obligations under the Contract.
- 18.3. Dinggly may perform any or all of its obligations under the Contract through sub-contractors, agents or other third parties, without the Customer's written consent.
- 18.4. The Contract represents the entire agreement between the parties and supersedes all earlier warranties, representations, statements or agreements (whether written or oral). The Customer acknowledges that in entering into the Contract, the Customer has not relied on any, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as expressly set out in the Contract as a warranty.
- 18.5. Any notice under the Contract or required by statute, law or regulation shall be delivered in person, sent by registered mail, properly posted and fully pre-paid in a envelope to the respective parties at their respective registered or principal offices.
- 18.6. The parties intend that any person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 (“**Act**”) to enforce any term of the Contract, but this does not affect any right or remedy of a third party which exists, or is available, apart from the Act.
- 18.7. If any provision is found by any Court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity shall not affect the rest of the Contract, which shall remain in full force and effect.
- 18.8. Failure by Dinggly to exercise or enforce any of its rights or remedies under the Contract shall not constitute a waiver of any such right or remedy, nor shall it prevent the exercise or enforcement of the right or remedy at any time.
- 18.9. If the Customer is unhappy with any aspect of the Services, please contact Dinggly on the contact details set out on its website.
- 18.10. Unless otherwise expressly stated, nothing in these Terms shall create a partnership or agency between the parties.
- 18.11. If a dispute arises between the parties in relation to the Contract in any way, the parties shall first try in good faith to amicably resolve the dispute within 28 days of the dispute arising.
- 18.12. Subject to clause 18.11, the Contract and any dispute arising out of or in connection with its subject matter or formation shall be governed by and construed in accordance with English law and the parties submit to the courts of England & Wales having exclusive jurisdiction in relation to such.