

Updated: October 1, 2020; Effective from October 1, 2020

## 1. Agreement

THESE TERMS SHOULD BE READ CAREFULLY, AS THEY AFFECT THE PARTIES' LEGAL RIGHTS BY, AMONG OTHER THINGS, LIMITING DullTech'S LIABILITY FOR THE SERVICE AND PERMIT DullTech TO CHANGE THESE TERMS.

These \*.common.garden Terms of Service and all policies and documentation expressly incorporated herein (collectively, these "**Terms**") govern the access to or use, downloading, initiation, or administration (collectively, "**Use(s)**" or "**Using**") of the \*.common.garden service, including related software applications, (the "**Service**") by you and, if you are Using the Service on behalf of or for the benefit of any legal entity or business, such entity or business (collectively, "**You**" or "**Your**"). This is a legally-binding contract between You and Constant Dullaart ("**DullTech**"), a Dutch corporation located at Vinkenstraat 76c, 1013JV Amsterdam, Netherlands, for the Use of the Service.

By Using the Service, You agree to and accept these Terms, and, if You are Using the Service on behalf of or for the benefit of any legal entity, You represent and warrant to DullTech that You have the authority to bind such legal entity to these Terms and enter into these Terms on such entity's behalf. IF YOU DO NOT HAVE SUCH AUTHORITY OR DO NOT AGREE TO THESE TERMS, THEN YOU SHOULD NOT ACCEPT THESE TERMS, ACCESS, USE, DOWNLOAD, INITIATE, OR ADMINISTER THE SERVICE OR AUTHORIZE OR PERMIT ANY OTHER PERSON OR ENTITY TO DO SO.

## 2. The Service

The Service is provided as-is and without support, and DullTech makes no commitment or guarantee – and shall have no obligation – relating to any availability/unavailability, uptime/downtime, performance, reliability, functionality, features, or other operation/inoperation of the Service (including without limitation any integration or other feature of the Service designed to interoperate with any third-party offering ("**Integration**"). You acknowledge and agree that (a) the Service will not be uninterrupted, error-free, or available 100% of the time, (b) content may be transmitted, streamed, communicated, recorded, received and/or stored by other users or participants in Your meetings may export, save, store, record, or copy such content by or on behalf of You or other users in a variety of ways (including without limitation via third-party integrations or local or external download), (c) the Service is not intended to, and should not, be used for back-up or long-term storage of data, and (d) DullTech shall not be responsible for any such exported content or any loss of such stored content. Use of mobile applications may utilize underlying third-party cellular and/or data services and thus may use such services' allotted units and/or result in usage or other charges associated with such third-party services.

DullTech may – in its sole discretion, at any time, with or without notice, and without any obligation or liability to You or any other party – suspend, terminate, limit, change, modify, downgrade, and/or update the Service (in whole or in part), including without limitation any feature, functionality, Integration or component thereof.

THE SERVICE SHALL NOT, AND IS NOT INTENDED TO, BE USED FOR ANY APPLICATION WHERE FAILURE, INTERRUPTION, OR MALFUNCTION MAY

REASONABLY BE ANTICIPATED TO RESULT IN BODILY INJURY, LOSS OF LIFE, OR SUBSTANTIAL DAMAGE TO PROPERTY, INCLUDING WITHOUT LIMITATION TO SUPPORT OR CARRY EMERGENCY CALLS TO EMERGENCY SERVICES (e.g. E911 or 112 numbers). DullTech is not liable for any claims, damages or loss which arise from this limitation.

### 3. Use of the Service

You agree to Use the Service in accordance with these Terms and in accordance with any and all applicable laws and regulations, including by obtaining all required consents, licenses, rights, authorizations, and/or permits. You shall be solely responsible and liable for Your Use of the Service, including without limitation for any and all content transmitted, streamed, communicated, recorded, received, and/or stored to or through the Service by You (“**Your Content**”). To the extent that You choose to use any software applications provided by DullTech in relation to the Service, You agree that You will promptly install all upgrades, bug fixes, patches, and other corrections relating to the Service made available by DullTech.

You agree not to:

- take any action or omission that would reasonably be expected to (i) disrupt or compromise the integrity or security of the Service or the privacy of any other user(s) of the Service or (ii) cause imminent and material damage to the Service, DullTech, or any other user(s) of the Service;
- Use the Service:
  - for any fraudulent, criminal, defamatory, harassing, or tortious purpose, or to participate in or promote any illegal activity;
  - to breach, violate, or infringe intellectual property, privacy, or other rights, or to misappropriate the property, of any third-party;
  - to transmit, distribute, or store any material that contains viruses, time bombs, Trojan horses, worms, malware, spyware, or similar programs or materials;
  - to transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value;
  - to transmit or broadcast unsolicited, or “junk” or “spam,” marketing or promotional materials or messages through pre-recorded voice messages, SMS, facsimile, or other means, in breach of any applicable laws or regulations; or
  - to transmit, distribute, display, store, or share inappropriate or obscene content or material (involving, for example, nudity, bestiality, pornography, offensive language, graphic violence, or criminal activity).
- attempt to hack or gain unauthorized access to the Service or any network, environment, or system of DullTech, or any of other user(s) of the Service;
- remove, obscure, modify, or alter any branding, logos, and/or legal notices displayed in or along with the Service; or
- trunk or forward extensions or numbers associated with the Service to a private branch exchange or key system or to other numbers that can process multiple calls simultaneously.

In conjunction with or immediately after the Use of the Service, DullTech may present users with information about or solicitations or advertisements for DullTech or DullTech services (“**Branding**”). If you are integrating the Service with another service, product, or application for

third-party users, or otherwise providing it to or making it available to third-party users for commercial purposes, you shall allow such Branding to be viewed and interacted with by such third-party users for a period of at least 15 seconds from when first presented, and you shall not otherwise remove, obscure, modify, or alter any such Branding.

Using the Service does not give You ownership of any intellectual property rights in the Service or any DullTech or third-party content You access. You may not use DullTech or third-party content from the Service unless You obtain permission from its owner or are otherwise permitted by law. Other than displaying the branding contained in the Service, these Terms do not grant You the right to use any branding or logos used in the Service or that otherwise belong to DullTech.

You can stop using the Service at any time. DullTech may – in its sole discretion, at any time, with or without notice, and without any obligation or liability to You or any other party – suspend, alter, or stop providing the Service to You or any other party for any or no reason, including without limitation if You do not comply with these Terms or if we are investigating suspected misconduct.

#### 4. **Your Content**

You retain ownership of any intellectual property rights that You hold in Your Content. When You transmit, stream, communicate, record, receive, and/or store content to or through the Service, You give DullTech (and those we work with) a worldwide license to use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes we make so that Your content works better with the Service), communicate, publish, publicly perform, publicly display, and distribute such content **solely for the limited purpose of operating and enabling the Service to work as intended for You and for no other purposes**. Make sure You have the necessary rights to grant us this license for any content that You submit to or through the Service.

If You submit a name or photo to associate with Your use of the Service, we may display Your name and photo in conjunction with Your Use. We will respect the choices You make to limit sharing or visibility of Your name and/or photo in the settings. For example, You can choose to set Your settings so that Your name and photo do not appear.

If You submit feedback or suggestions about the Service, we may use Your feedback or suggestions without obligation to You.

#### 5. **Privacy**

The [\\*.common.garden privacy policy](#) explains how we treat Your personal data and protect Your privacy when You Use the Service. By using the Service, You agree that DullTech can use such data in accordance with its privacy policy.

#### 6. **Software Applications for the Service**

When the Service requires or includes downloadable software applications, this software may update automatically on Your device once a new version or feature is available. DullTech gives You a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use any software application provided to You by DullTech as part of the Service. This license is for the sole purpose of enabling You to use the Service as provided by DullTech, in the manner permitted by these Terms.

Open source software is important to DullTech. Jitsi open source software is available subject to the Apache License, Version 2.0. Other software used in the Service may be offered under the same or other open source license that we will make available to You at [www.jitsi.org](http://www.jitsi.org) and/or [www.github.com/jitsi](http://www.github.com/jitsi) (or any other site designated by DullTech). There may be provisions in the applicable open source license that expressly override some of these Terms.

## **7. Third-Party Offerings and Integrations**

Your relationship with third-party providers of offerings that interoperate or are used with the Service (e.g., third-party applications for which an Integration is available) shall in each case be governed by Your agreement with that third-party provider and shall be outside the scope of these Terms. DullTech shall in no way be responsible or liable for such third-party provider, its actions or omissions, or its offerings.

## **8. Representations, Warranties, and Disclaimers**

You affirm that You are of legal age and are otherwise fully able and competent to enter into these Terms, and to abide by and comply with these Terms. Although we cannot absolutely control whether minors gain unauthorized access to the Service, access may be terminated without warning if we believe that You are underage or otherwise ineligible.

DullTech provides the Service using a commercially reasonable level of skill and care, and we hope that You enjoy using it. There are certain things that we do not promise about the Service.

OTHER THAN AS EXPRESSLY SET OUT IN THESE TERMS, NEITHER DullTech NOR ITS SUPPLIERS OR DISTRIBUTORS MAKE ANY SPECIFIC PROMISES, WARRANTIES, OR COMMITMENTS ABOUT THE SERVICE. FOR EXAMPLE, DullTech DOES NOT MAKE ANY COMMITMENTS ABOUT THE CONTENT WITHIN THE SERVICE, THE SPECIFIC FUNCTIONS OF THE SERVICE, OR THEIR RELIABILITY, AVAILABILITY, OR ABILITY TO MEET YOUR NEEDS. WE PROVIDE THE SERVICE “AS IS”.

SOME JURISDICTIONS PROVIDE FOR CERTAIN WARRANTIES, LIKE THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TO THE EXTENT PERMITTED BY LAW, WE EXCLUDE ALL WARRANTIES.

## **9. Liability for the Service**

WHEN PERMITTED BY LAW, DullTech, AND ITS SUPPLIERS AND DISTRIBUTORS, WILL NOT BE RESPONSIBLE FOR LOST PROFITS, REVENUES, OR DATA, FINANCIAL LOSSES OR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES.

TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF DullTech, AND ITS SUPPLIERS AND DISTRIBUTORS, FOR ANY CLAIMS UNDER THESE TERMS, INCLUDING FOR ANY IMPLIED WARRANTIES, IS LIMITED TO TEN DOLLARS (USD\$10).

IN ALL CASES, DullTech, AND ITS SUPPLIERS AND DISTRIBUTORS, WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE THAT IS NOT REASONABLY FORESEEABLE. THE EXCLUSIONS AND LIMITATION SHALL APPLY REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE FAILURE OF

THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, AND ON A CUMULATIVE (RATHER THAN PER-INCIDENT) BASIS.

#### **10. Business Uses of the Service**

If the Service is being Used on behalf of a business, such business will hold harmless and indemnify DullTech and its affiliates, officers, agents, and employees from any claim, suit or action arising from or related to the Use of the Service or violation of these Terms, including any liability or expense arising from claims, losses, damages, suits, judgments, litigation costs and attorneys' fees.

#### **11. Other (but Still Important)**

We may modify, change, amend, replace or update these Terms or any additional terms that apply to the Service at any time and in any manner by updating the web page on which these Terms reside or otherwise notifying You. You should look at these Terms regularly. Any such modification, change, amendment, replacement or update shall be effective on the date of such update to the applicable web page (or on the date of such notification, where such notification is used by DullTech in lieu of such update), or on such later date specified by DullTech. If You do not agree to the modified terms for the Service, You should discontinue Your Use of the Service.

These Terms do not create any third-party beneficiary rights.

If You do not comply with these terms, and we do not take action right away, this does not mean that we are giving up any rights that we may have (such as taking action in the future).

If it turns out that a particular term is not enforceable, this will not affect any other terms.

The laws of the State of California, U.S.A., excluding California's conflict of laws rules, will apply to any disputes arising out of or relating to these Terms or the Service. All claims arising out of or relating to these Terms or the Service will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA, and You and DullTech consent to personal jurisdiction in those courts.