

# Codeias Limited – Terms & Conditions (T&Cs)

## **1 Interpretation**

- 1.1 "Company" means Codeias Limited (Company Number: 09554715, VAT Number: GB211809729), First Floor, Office 23, Strawberry Fields Digital Hub, Euxton Lane, Chorley, Lancashire, PR7 1PS.
- 1.2 "Client" means any person or organisation with who the Company engages to perform Service(s). "Conditions" means these terms and conditions.
- 1.3 "Agreement" means the Order Form which forms the Agreement made subject to these Conditions.
- 1.4 "Chargeable Day" means one person working on a calendar day for up to 7.5 hours.
- 1.6 "Order Form" means the Company's standard order form relating to the Services for the Client.
- 1.7 "Services" means the products and/or services described to the Client by the Company in writing as detailed in the Order Form.
- 1.8 "Specification" means the specific details of the Service as laid out in the Order Form and any associated documents produced and referenced by the Company.
- 1.9 "Update System / Connect System" means the Company's proprietary software/platform through which Client websites can be managed and updated.
- 1.10 "Over-usage" means excessive use, use which exceeds the specification of a Service, or use at a level at which the Company reasonably believes will/is affecting the Service of other clients or its systems/network.

## **2 Acceptance of Order Forms**

- 2.1 The Company reserves the right to refuse/reject any Order Form for any reason.
- 2.2 Client's Order Forms shall be deemed to be accepted by the Company on; written confirmation by the Company or; commencement of the work detailed within the Order Form, whichever comes first.

## **3 Domain Names**

- 3.1 Domain Name registrations/renewals requested by the Client are subject to the appropriate governing bodies, and the Company's suppliers', terms and conditions and regulations. These being third party companies/organisations through which the Company from time to time registers domain names on behalf of its clients. Copies of the appropriate third party's terms and conditions are available on request.
- 3.2 Domain Names registrations/renewals will remain the property of the Company until paid for in full. In the event of non-payment of the Company's domain name registry/renewal fees by the Client within 60 days of invoice the Company shall be deemed to have full/exclusive ownership of the domain name in question.
- 3.3 Where a Domain Name is being transferred to the Company's control the Client shall be responsible for any third party fees incurred in doing so. The Client indemnifies the Company against any costs/liabilities in transferring domain names to or from the Company's control.
- 3.4 Domain name renewals will only be actioned by the Company when so instructed by the Client. Whilst the Company has procedures in place to notify the Client of domain name renewal dates. It is the responsibility of the Client to instruct the Company to renew any domain names, whether or not they have received any reminders from the Company.
- 3.5 Where a Client's Domain Name is not registered by the Company but held elsewhere and pointed to the Company's hosting/systems it is the Client's sole responsibility to ensure that any Domain Name changes/additions requested by the Company are completed in a timely manner.
- 3.6 Instructions for the registration of domain names are carried out by the Company acting as the Client's agent to the appropriate supplier and/or naming authority.
- 3.7 The Company cannot guarantee that they will be able to register any requested domain name and until the Company has given specific confirmation of the registration the Client cannot assume that the registration has been affected.
- 3.8 The Company gives no warranty that any domain names registered on behalf of the Client will not infringe the rights of any third party and the Client agrees to indemnify the Company in respect of any such infringements.

## **4 Hosting**

- 4.1 Whilst reasonable effort will be made to maintain consistent service the Company cannot guarantee 100% availability of its hosting, network and server systems.
- 4.2 Should the Client's embark on Over-usage of any service/system provided by the Company, the Company shall make appropriate upgrade recommendations to the Client. If the Over-usage continues the Company has the right to limit or suspend affected services, immediately, without notice, as it sees fit.
- 4.3 In the event of any loss or corruption of data the Company will make reasonable effort to restore files from available backups where available. However the Company can make no guarantee as to the availability, validity or age of backups.
- 4.4 Hosting packages are subject to the appropriate governing laws and the Company's suppliers' terms and conditions and acceptable use policies. The Client agrees to indemnify the Company for any losses suffered by due to the Client's breach of the same.
- 4.5 The Client agrees to perform good housekeeping when using the Company's hosting, servers and network. Examples being deleting old emails from the hosting no later than 30 days after receiving them.
- 4.6 The Client agrees to fully indemnify the Company of any claims arising out of the content of any website or system hosted by the Company on behalf of the Client.

## **5 Design and Development**

- 5.1 Where the Client's project includes design work, this will be prepared based on the Client's reasonable instructions within the defined confines of the project time and budget. This will then be presented to the Client for approval. All design work must be signed off by the Client prior to being further developed into a website by the Company.

## **6 Update System / Connect System / Divoola System**

- 6.1 The Update System / Connect System / Divoola System is licensed by the Company on a subscription basis and remains the sole property of the Company. Nothing in this agreement shall constitute the transfer of any rights or Intellectual Property of the update system to any third party. The Client agrees to indemnify the Company from any losses due to their breach of this clause.
- 6.2 Whilst additions and developments are made to the Update System as part of its continual development, the Company makes no assurances as to the number or type of feature that it will add or adjust over a given period.

## **7 Approval**

- 7.1 During the course of a Design and/or Development project the Client may be required to approve works before subsequent stages of the service can commence. The Company only accepts approval in the form of a signature on the Company's appropriate approval form. Once approved, subsequent changes to approved or work connected to approved work may incur additional charges.

## **8 Client / Agency Responsibilities**

- 8.1 The nature of the Company's Services is such that feedback, works, approvals and other materials and/or actions are often required before work by the Company can proceed. It is the responsibility of the Client to:
  - 8.1.1 Allocate adequate resources and co-operate with the Company to ensure completion of the Service.
  - 8.1.2 Ensure that requested information/approval/feedback are provided in a timely manner.
- 8.2 The Company shall not be liable for any costs incurred by the Client in carrying out its duties under this or any other Agreement.

## **9 Time Scales and Estimates**

- 9.1 Whilst every effort is made to ensure that delivery time scales are achieved, due to the fluid nature of projects they should be considered as estimates only. In all cases time-scales and estimates shall not be deemed to be of the essence.

## **10 Agencies / Resellers**

- 10.1 Under no circumstances shall the Company accept a 'pay when paid' arrangement. All invoices shall be due by the Client with the payment terms agreed regardless of any non-payment of third parties.
- 10.2 The Company shall have no liability to the Client of insolvency of any third party.

## **11 Liability**

- 11.1 Nothing in this Agreement shall limit the Company's liability for death or personal injury.
- 11.2 Except for the Company's liability under clause 11.1 (to which no limit applies), the Company's liability arising under or in connection with the Agreement or Services (whether such liability arises from negligence, breach of contract or otherwise) shall not exceed the total amounts paid by the Client in the present year at the prices paid in the applicable Order Form.
- 11.3 Notwithstanding clause 11.1, in no case will the Company be liable to the Client or any third party for or in respect of any indirect, special or consequential loss or damage (whether financial or otherwise), or for any loss of data, profit, revenue, service, contracts or business whatsoever caused (whether arising out of any negligence or breach of the Agreement or otherwise), even if the same was foreseeable, or the possibility thereof is or has been brought to the attention of the Company.
- 11.4 No action or proceeding against the Client or the Company arising out of or in connection with the Agreement shall be commenced more than one year after the Services rendered, and the parties acknowledge that this clause constitutes an express waiver of any rights under any otherwise-applicable longer statute of limitations.

## **12 Payment and Accounts**

- 12.1 All prices quoted by the Company in any correspondence are exclusive of VAT, unless explicitly stated otherwise. VAT will be charged on all invoices at the prevailing rate.
- 12.2 All payments shall be due to the Company on presentation of invoice or as stated on the Order Form.
- 12.3 Where a Service has been significantly delayed due to the actions or non actions of the Client the Company reserves the right to invoice for any outstanding payments of the Service prior to the completion of the Service.
- 12.4 The Company reserves the right to charge interest and compensation on late payments in accordance with the Late Payment of Commercial Debts Act 1998 (amended 2002).
- 12.5 The Client must raise any invoice queries to a the Company within ten working days of the invoice date. In the event of a queried invoice the Client must put in writing the invoice number(s), amounts being queried and reasons why. All other un-queried amounts on the same and any other invoice(s) must be paid on the due date.
- 12.6 Late payments will result in the delay of a project / task deadline date, but will not affect given timeframes.
- 12.7 The website, graphics and any programming code remain the property of Codeias until all outstanding monies are paid in full. Any scripts, cgi applications, php scripts, or software (unless specifically agreed) written by Codeias remain the copyright of Codeias and may only be commercially reproduced or resold without the permission of Codeias.
- 12.8 Completed projects / tasks will not be released in the instance of outstanding monies under any circumstances. Where developments are put live without the permission and consent of Codeias, we will seek to have the development removed from public access through contact with the hosting provider, domain owner and related parties.
- 12.9 Monthly fees are due in advance in addition to final payments to be paid by standing order or BACS.

## **13 Force Majeure**

- 13.1 Should either party be unable to perform any non-monetary obligations required of it pursuant to the Agreement because of any cause beyond that party's reasonable control, including without limitation, industrial disputes of whatever nature, power loss, telecommunications failures, acts of God, or any other force majeure event, then the non-performing party's obligation to perform shall be suspended for such period as that party is unable to perform, provided that written notice of such force majeure event is given within ten days of the party's first recognition of delays arising from the occurrence of such event.

## **14 Usage**

- 14.1 The Client agrees to accept and abide by the Company's acceptable use policy.
- 14.2 The Client agrees to refrain from sending menacing, offensive, abusive or annoying messages through the Company's systems.

## **15 Suspension**

- 15.1 Without prejudice to the Company's right under clause 16, the Company reserves the right to suspend any or all of it's Services to the Client, including but not limited to; web/email hosting, access to systems and web development work, in the event of:
  - 15.1.1 Failure of the Client to make any payment to the Company on its due date for payment on any amount invoiced to the Client by the Company.
  - 15.1.2 The Client doing or allowing anything to be done which jeopardises the Company's systems or any network to which they are from time to time connected.
  - 15.1.3 The Client is otherwise in breach of these terms and conditions.
- 15.2 In the event of a suspension under clause 15 the Company shall have no liability for any direct, indirect, consequential costs incurred by the Client or third party.

## **16 Term and Termination**

- 16.1 The agreement shall remain in force for a minimum period of 12 months from the date services commenced.
- 16.2 Termination can be effected, for whatever reason, as follows:
  - 16.2.1 By the Client: The Client may terminate the Agreement for whatever reason by giving 3 months written notice which may expire at any time after the initial 12 month minimum period. Email notification will not be accepted as notice of termination of Agreement.
  - 16.2.2 By the Company: The Company may terminate the Agreement at any time forthwith if the Client commits any breach of the Agreement, including but not limited to, non-payment of any fees when due. The Company will have the right to terminate the Agreement for whatever reason giving 1 months written notice.
  - 16.3 On termination the Company reserves the right to delete any/all files previously held as part of the terminated, or connected, Services. Not deleted files may be returned to the Client at their request at the discretion of the Company.
  - 16.4 Pro-rata refunds will not be issued for services that are terminated before the end of the invoiced period.

## **17 Intellectual Property**

- 17.1 Rights Reserved: The Company reserves any and all of its copyright, trade marks, trade names, patents and other intellectual property rights created, developed, subsisting or used in or in connection with any deliverables, software, Services or the Specification which are the sole property of the Company.
- 17.2 Restrictions: The Client shall not transfer its license nor sub license the deliverables or the software, except where permitted pursuant to the terms of the Agreement. The Client shall not (and shall not allow any third party to) (i) allow any product identification, copyright, trademark, or other notices, (ii) sell, provide, lease, lend, distribute over the internet or (iii) load or use portions of the software (whether or not modified or incorporated into or with other software) on or with any machine or system that is not physically kept at the facilities of the Client or within third party facilities contracted by Client.
- 17.3 The Client shall not disassemble, decompile, or otherwise reverse engineer the Services provided however, that in the case of decompilation, Client may incidentally decompile the Services only if it is essential so to do in order to achieve interoperability of the Services with another software program ("Permitted Purpose") and provided the information obtained by the Client during such decompilation is only used for the Permitted Purpose and is not disclosed or communicated to any third party to whom it is not necessary to disclose or communicate such information without the Company prior written consent and is not used to create any software which is substantially similar to the Services nor used in any manner which would be restricted by copyright.

## **18 General**

- 18.1 The Client grants the Company non-exclusive, royalty-free, worldwide license to:
  - 18.1.1 Add a message to the Client's website to identify that it has been designed, developed or otherwise worked upon by them.
  - 18.1.2 Use screen shots of the Client's website within it's promotional and marketing material as the Company sees fit.
- 18.2 Should the Company put forward/recommend any third party company, organisation or product to the Client the Client acknowledges that such action is for information only and it is the exclusive responsibility of the Client to perform adequate checking of the third party as to the reliability and suitability of the same.
- 18.3 If these Conditions or any part thereof shall be adjudged for any reason to be void, unenforceable or ineffective but would be adjudged to be valid effective and enforceable if part of the wording were deleted or a provision were reduced in scope the Agreement shall continue with such modifications as may be necessary to make its provisions (or if such be the case its remaining provisions) valid, effective and enforceable.
- 18.4 The Client shall not attract, recruit, employ, sub contract or otherwise engage the services of the Company's employees, sub contractors or agents without the express written permission of the Company. In the event of the Client doing so they agree to pay the greater of £5,000 or 20% of the employee's annual salary/charges to the Company in respect of loss of business and alternative recruitment/sourcing costs.
- 18.5 Clause headings are for ease of reference and are not part of the Agreement and accordingly shall not affect its Conditions.
- 18.6 The Client shall not assign or transfer any of its rights or obligations under these Conditions or the Agreement without the prior written consent of the Company.
- 18.7 No forbearance, delay or indulgence by the either party in enforcing the provision of this Agreement will prejudice or restrict the rights of that party nor will any waiver of its rights operate as a waiver of any past or subsequent breach.
- 18.8 The allowance of time to pay or any other indulgence or waiver by the Company shall in no manner affect or prejudice its right to payment together with interest provided under this Agreement.
- 18.9 All Services are provided on the conditions in this Agreement to the exclusion of any other terms and conditions and no terms and conditions contained in any document sent by the Client to the Company shall be of any effect with respect to the Agreement unless expressly accepted by a Director of the Company in writing (delivered via post). The Client acknowledges that the Client has not relied on and shall not be entitled to rescind the Agreement or to claim damages or any other remedy on the basis of any representation, warranty, undertaking or statement which is not set out in these Conditions or the Agreement including any representation made by or on behalf of the Company in relation to the Services which has induced the Client to enter into the Agreement with the Company.
- 18.10 The Company reserves the right to vary these Conditions without notice as a result of changes required by its insurers, operation or administration problems, new legislation, statutory instruments, Government regulations or licences.
- 18.11 The Company may, from time to time, review, edit and adjust these Conditions giving not less than one month written notice to the Client. Once agreed to the new Conditions shall be the sole Conditions between the Client and the Company in place of any previous documents/versions.
- 18.12 These Conditions and the Agreement are subject to and governed exclusively by the laws of England under the jurisdiction of the Courts of England.