



Website maintenance terms and conditions

Please read these Web Maintenance Terms carefully, as they set out our and your legal rights and obligations in relation to our web maintenance services.

You should print a copy of these Web Maintenance Terms for future reference. We will not file a copy specifically in relation to you, and they may not be accessible on our Website in future.

These Web Maintenance Terms are available in the English language only.

If you have any questions or complaints about these Web Maintenance Terms or our Services, please contact us by writing to KOODOS, 66 Rainsford Road, Stansted, Essex, CM24 8EA or by email to enquiries[no-spam]@getkoodos.com (remove [no-spam] to obtain a valid email address).

Terms:

1. Definitions and interpretation

1.1 In these Terms:

"Additional Fees" means additional Fees calculated in accordance with the provisions of the Schedule and payable by the Customer to the Company in accordance with Clause [3.5];

"Affiliate" means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company, firm or individual;

"Agreement" means these Terms and any amendments to it from time to time;

"Business Day" means any week day, other than Saturday or Sunday or a bank or public holiday in England;

"Business Hours" means between 09:00 and 17:30 on a Business Day;

"Company" means KOODOS, whose address is 66 Rainsford Road, Stansted, Essex, CM24 8EA

"Company Materials" means all works and materials (including text, images, video material, audio material, software, scripts, mark-ups, style sheets and databases) created by the Company and incorporated by the Company into the Website pursuant to these Terms;

"Confidential Information" means any information supplied (whether supplied in writing, orally or otherwise) by one party to the other party marked as "confidential", described as "confidential" or reasonably understood to be confidential;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and "Controlled" will be construed accordingly);



"Customer" means the customer for Services under these Terms.

"Effective Date" means the date of execution of these Terms as specified in the Service quote signed by the Customer;

"Fees" means the Monthly or Annual Fees and the Additional Fees;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, [failures of any third party internet service provider,] hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Helpdesk Services" means the Services described in Clause [3.1];

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, domain names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Maintenance Services" means the Services described in Clause [3.2];

"Minimum Term" means the period of 1 month for monthly subscription products and 1 Year for annual subscription products starting on the Effective Date;

"Monthly Fees" means the amount specified as such in the Schedule, which will be paid by the Customer to the Company in respect of each calendar month of Services in accordance with Clause [6];

"Personal Data" has the meaning given to it in the Data Protection Act 1998;

"Schedule" means the schedule attached to these Terms;

"Services" means the Helpdesk Services, the Maintenance Services, the Technical Support Services as detailed in Clause [3];

"Technical Support Services" means the Services described in Clause [3.3];

"Term" means the term of this Agreement;

"Website" means the Customer website; and

"Year" means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on the Effective Date or on any anniversary of the Effective Date.

1.2 In this Agreement, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.



1.3 The Clause headings do not affect the interpretation of this Agreement.

1.4 The ejusdem generis rule is not intended to be used in the interpretation of this Agreement; it follows that a general concept or category utilised in this Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.

2. Term

This Agreement will come into force on the Effective Date and will continue in force for one Year, upon which it will terminate automatically, unless terminated earlier in accordance with Clause [12].

3. Services

3.1 The Company will make available, during Business Hours, a telephone / email helpdesk facility to enable the Customer to contact the Company in relation to requests for Maintenance Services and Technical Support Services. The Company will use reasonable endeavours to respond to requests for support made through the helpdesk.

3.2 The Company will use reasonable endeavours to attempt to perform set maintenance tasks to sustain the health of the website (excluding faults and errors in, or caused by: (i) any software or system external to the Website) These shall be limited to:

- (a) Installation of RSFirewall Product
- (b) Configuration of Firewall Protection
- (c) PHP level setting & maintenance
- (d) Database maintenance
- (e) Twice weekly backups (or more often if the customers hosting space supports more)
- (f) Joomla core version updates
- (g) Joomla 3rd party component updates where possible
- (h) Malware Scanning
- (i) SEO Audit
- (j) Daily/Weekly/Monthly Uptime reporting

4. Customer Responsibilities

4.1 The Customer will provide to the Company:

- (a) the ability to access and make changes to the Website; and
- (d) all other co-operation, information and documentation reasonably required by the Company by the Company to enable or facilitate the provision of the Services.

4.2 The Customer will be responsible for procuring any third party co-operation reasonably required for the provision of the other Services.

5. Intellectual Property Rights



The Company hereby assigns to the Customer all Intellectual Property Rights in the Company Materials. These rights are assigned for the whole term of such rights together with all reversions, revivals, extensions and renewals, and this assignment includes the right to bring proceedings for past infringement of the assigned Intellectual Property Rights.

6. Fees and payment

6.1 The Company will issue invoices to the Customer:

(a) for the Monthly Fees, monthly; and

(b) for the Annual Fees, yearly.

6.2 The Customer will pay the Fees to the Company of an invoice issued in accordance with Clause [6.1].

6.3 VAT applicable to all Fees stated in or in relation to this Agreement.

6.4 Fees must be paid by the methods provided by the subscription mechanism, including, but not limited to Debit and Credit Card payments and Direct Debit

6.5 If the Customer does not pay any amount properly due to the Company under or in connection with this Agreement, the Company may:

(a) charge the Customer interest on the overdue amount at the rate of 4% per year above the base rate of Barclays Bank Plc from time to time (which interest will accrue daily until the date of actual payment and will be compounded quarterly); or

(b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

6.6 The Company may vary the Monthly Fees and/or Additional Fees by giving to the Customer at least 30 days' notice of variation.

7. Warranties

7.1 The Customer warrants to the Company that it has the legal right and authority to enter into and perform its obligations under this Agreement.

7.2 The Company warrants to the Customer:

(a) that it has the legal right and authority to enter into and perform its obligations under this Agreement; and

(b) that it will perform its obligations under this Agreement with reasonable care and skill.

7.3 All of the parties' liabilities and obligations in respect of the subject matter of this Agreement are expressly set out in the terms of this Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

8. Limitations of liability



8.1 Nothing in this Agreement will exclude or limit the liability of either party for:

- (a) death or personal injury caused by that party's negligence;
- (b) fraud or fraudulent misrepresentation on the part of that party; or
- (c) any other liability which may not be excluded or limited under applicable law.

8.2 Subject to Clause [8.1], the Company's liability to the Customer under or in connection with this Agreement or any collateral contract, whether in contract or tort (including negligence), will be limited as follows:

- (a) the Company will not be liable for any: (i) loss of profits, income or anticipated savings, (ii) loss or corruption of any data, database or software, (iii) reputational damage or damage to goodwill; (iv) loss of any commercial opportunity, or (v) indirect, special or consequential loss or damage;
- (b) neither party will be liable for any losses arising out of a Force Majeure Event; and
- (c) the Company's liability in relation to any event or series of related events will in no circumstances exceed the greater of: (i) £100; and (ii) the total amount paid by the Customer to the Company under the Agreement during the 3 month period immediately preceding the event or series of events.

9. Data protection

9.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Company under this Agreement, and that the processing of that Personal Data by the Company for the purposes of and in accordance with the terms of this Agreement will not breach any applicable laws (including the Data Protection Act 1998).

9.2 The Company warrants that:

- (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Company on behalf of the Customer; and
- (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Company on behalf of the Customer.

10. Confidentiality

10.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause [10].

10.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.

10.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.

10.4 These obligations of confidentiality will not apply to Confidential Information that:



(a) has been published or is known to the public (other than as a result of a breach of this Agreement);

(b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or

(c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a competent governmental authority, regulatory body or stock exchange.

11. Force Majeure Events

11.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under this Agreement, those obligations will be suspended for the duration of the Force Majeure Event.

11.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement, will:

(a) forthwith notify the other; and

(b) will inform the other of the period for which it is estimated that such failure or delay will continue.

12. Termination

12.1 The company provides a secure mechanism to allow the customer to manage a current maintenance subscription including termination. Customers wishing to terminate their subscription should do so using this secure method.

12.2 Notwithstanding 12.1, either party may terminate this Agreement at any time by giving at least 30 days' written notice to the other party.

12.3 Either party may terminate this Agreement immediately by giving written notice to the other party if the other party:

(a) commits any breach of any term of this Agreement, and: (i) the breach is not remediable; or (ii) the breach is remediable, but other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or

(b) persistently breaches the terms of this Agreement.

12.4 Either party may terminate this Agreement immediately by giving written notice to the other party if:

(a) the other party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;



(c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement);

(d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

13. Effects of termination

13.1 Upon termination all the provisions of this Agreement will cease to have effect, save that the following provisions of this Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses [1, 5, 6.5, 8, 10, 13 and 14.3 to 14.12].

13.2 Termination of this Agreement will not affect either party's accrued rights (including accrued rights to be paid) as at the date of termination.

13.3 If this Agreement is terminated by the Customer under Clause [12.2] but not in any other case, the Customer will be entitled to a refund of any Fees paid by the Customer to the Company in respect of any Services which were to be performed after the date of effective termination, and will be released from any obligation to pay such Fees to the Company (such amount to be calculated by the Company using any reasonable methodology).

13.4 Save as provided in Clause [13.3], the Customer will not be entitled to any refund of Fees on termination, and will not be released from any obligation to pay Fees to the Company.

14. General

14.1 Any notice given under this Agreement must be in writing (whether or not described as "written notice" in this Agreement) and must be delivered personally, sent by registered post, or sent by email, for the attention of the relevant person (or as notified by one party to the other in accordance with this Clause).

14.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

(a) where the notice is delivered personally, at the time of delivery;

(b) where the notice sent by registered post, 72 hours after posting; and

(c) where the notice sent by email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

14.3 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

14.4 If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).



14.5 Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

14.6 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

14.7 The Company may freely assign its rights and obligations under this Agreement without the other party's consent to any Affiliate of the assigning party or any successor to all or substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in this Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in this Agreement or any rights or obligations under this Agreement.

14.8 The Company may subcontract any of its obligations under this Agreement to any third party.

14.9 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under this Agreement.

14.10 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

14.11 Subject to Clause [8.1]:

(a) this Agreement will constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter;

(b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement; and

(c) neither party will have any liability other than pursuant to the express terms of this Agreement.

14.12 This Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

Customer Name: _____

Date: _____

Signed: _____

Date: _____

For KOODOS:

Signed: _____