

**KOMODO**

# General Terms and Conditions of Business

**The Customer's attention is drawn in particular to the provisions of clause 8 (Limitation of liability)**

These General Terms of Business apply to the delivery of services by us to you pursuant to a proposal and/or specification sheet and/or a project plan enclosing these General Terms of Business and recording the engagement ("Proposal Documents").

## 1. Definitions

1.1 The meanings of the following words and phrases which are used in these General Terms of Business shall be as set out below:

**“Additional Services”** shall have the meaning ascribed to it in clause 4.3.

**“Acceptance Tests”** such acceptance tests (if any) as may be specified in the Proposal Documents to test compliance of any website developed by us with any specification set out in the Proposal Documents.

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

**“Business Hours”** the period from 9.00 am to 5.00 pm on any Business Day.

**“Client Materials”** means any information, data, plans, photographs, images, drawings, video or any other documents or multimedia (whether in a tangible or non-tangible form) supplied to us by you or by any third party on your behalf, but (unless otherwise agreed in the Proposal Documents) excluding any Source Code created by us in performing the Services and/or any IP Rights to it, other than as granted to you in accordance with clause 12.2(b).

**“Data Protection Legislation”** means: (i) unless and until the General Data Protection Regulation (EU) 2016/679 (“GDPR”) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

**“IP Rights”** patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**“Komodo Materials”** means any information, data, plans, photographs, images, drawings, video, Source Code, proprietary software or any other documents or multimedia (whether in a tangible or non-tangible form) provided or utilized by us. It also includes any work, knowledge, experience and skills of general application owned by us prior to our engagement with you or gained through performing the Services [(including, unless otherwise agreed in the relevant Proposal Documents, any Source Code)], but not including, for the avoidance of doubt, the Client Materials.

**“Other Beneficiaries”** means any and each person or organisation identified in the Proposal Documents (other than you) as a beneficiary of the Services and any product thereof.

**“Project Deliverables”** means any product or service developed or delivered by us (which may be to such specification and in such stages as set out in the Proposal Documents, or as otherwise agreed by us in writing from time to time) in relation to the Services, including as applicable (but not limited to), artwork, photographs, images, plans, drawings, visualisations, advertising copy[, computer software], reports and any other documents or materials in any tangible or intangible format, but excluding (unless agreed otherwise in the Proposal Documents) any [computer software or] Source Code.

**“Proofs”** means any initial concept screens, proofs, prototypes, drawings, visuals or any other draft materials or information supplied by us (whether screen based, print or any other electronic or other medium) in connection with the Services.

**“Services”** means the services or goods to be delivered by us under the Proposal Documents (including (but not limited to) the services that are set out in the specification sheet).

**“Services Contract”** means these General Terms of Business and the Proposal Documents, together with any documents or other terms applicable to the Services (“Additional Terms”) to which specific contractual reference is made in the Proposal Documents.

**“Source Code”** means the human-readable source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation containing sufficient information for the proper use, further development and maintenance of the relevant software.

**“we” “us” or “our”** means Komodo Design Limited (incorporated and registered in England and Wales with company number 04674423 and whose registered office is at 63 Westgate Road, Newcastle upon Tyne, Tyne & Wear, NE1 1SG).

**“you” and “your”** (and derivatives) means the addressee (or addressees) of the Proposal Documents and, in the case of a company, is deemed to include any new holding company of such company.

- 1.2 Words and expressions defined in the Proposal Documents shall, except where otherwise provided or expressly defined above, have the same meaning in these General Terms of Business and any provisions contained in the Proposal Documents dealing with construction or interpretation shall, except where otherwise provided, apply as if expressly set out herein.
- 1.3 The Proposal Documents shall set out the Services to be delivered by us and associated matters. These General Terms of Business shall be subject to variation if required in and effected by the Proposal Documents.
- 1.4 The commencement of the Services Contract is from the date you first instructed us to provide services to you. These General Terms of Business override and replace any prior agreement or any terms and conditions or similar provisions contained or referred to in any correspondence between us or any course of dealing between us. All future dealings between us shall be on these General Terms of Business unless otherwise expressly agreed by us in writing.
- 1.5 Each term (or part of a term) in these General Terms of Business shall be construed separately. If any part of these General Terms of Business is unenforceable or invalid, that shall not affect the validity or enforceability of any of the other General Terms of Business.
- 1.6 Unless otherwise agreed in writing, you alone will be our client and your subsidiaries, shareholders and directors will not be considered to be our client.
- 1.7 Where our engagement is with a company, we will only provide the Services to the directors of the relevant company in their capacity as directors and not in their capacity as shareholders of the relevant company. We will not represent any other party in the matter unless we specifically agree to do so in writing.
- 1.8 These General Terms of Business may not be varied, amended or extended except by agreement of each of us in writing and we agree that they will prevail over any inconsistent terms and conditions contained in or referred to in any document provided by you (including your purchase order, confirmation of order or specification), or as may otherwise be implied by law, trade, custom, practice or a course of dealing.

## 2. Customer co-operation

- 2.1 You acknowledge that our ability to provide the Services is dependent upon your full and timely co-operation (which you agree to provide), as well as the accuracy and completeness of any designs, specifications and/or any information or data you provide to us. Accordingly, you shall provide us (in each case, for the performance of our obligations under the Services Contract) with: (a) responses and input to any information or feedback we reasonably request from you; and (b) access to, and use of, all information, data and documentation reasonably required by us.
- 2.2 If performance of our obligations under the Services Contract is prevented or delayed by any act or omission of you (and/or any party under your control, for example your agents, employees or subcontractors) then: (a) we will be excused for any failure to carry out the Services, or otherwise comply with our obligations under the Services Contract; and (b) you will pay us on demand all reasonable costs, charges or losses sustained or incurred by us (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of opportunity to deploy resources elsewhere), subject to us confirming such costs, charges and losses to you in writing.

## 3. Project scoping and commencement

- 3.1 Before undertaking any Services, we will endeavour to confirm with you the final scope and specification of the relevant Services (including, but not limited to, scoping, confirming and clarifying any Services specified in the Proposal Documents) ("**Scoping Sign Off**").
- 3.2 You will provide us with your written approval, approving the Scoping Sign Off. Before you do signify your approval we shall, subject to clauses 3.3 and 3.5, make any minor adjustments to the Proposal Documents you request, should you require them.
- 3.3 Should you require substantive alterations and/or additions that go beyond the scope of the Proposal Documents, then we reserve the right to revise our initial cost estimate in accordance with clause 4.3 and any increased cost to our estimate shall be classed as Additional Services, which shall be requested in accordance with clause 5 and charged by us (and be payable by you) separately at our then prevailing rates.
- 3.4 Following the amendments and/or alterations detailed in 3.2, we will provide you with final Proposal Documents incorporating your requested amendments and alterations and/or written confirmation of the amendments or alterations which will be deemed to be incorporated into the Proposal Documents previously sent to you. If satisfied, you will need to provide us with your written approval, approving the Scoping Sign Off, before any substantive design, development or other work can be undertaken by us.
- 3.5 In certain retainers, a substantive part of the Services we provide will encompass scoping services (for example scoping a functional specification in a software project, or carrying out a review of your business to identify opportunities to improve performance as part of our consultancy work). Such Services shall be chargeable regardless of whether you choose to continue or discontinue the project to which the scoping relates, provided that you have been provided advance notice that such Services will be chargeable. In such retainers, 'Scoping Sign Off' shall mean confirming with you the final scope, specification and extent of our retainer with you. Nothing in this clause 3 shall operate to release you from paying our Charges in connection with substantive scoping work undertaken by us (even if you do not decide to proceed with further work on the project following scoping, in which case, such Charges will be payable in accordance with clause 10.4(b)).

- 3.6 Upon receipt of an approval of Scoping Sign Off, we shall begin to deliver the Services. Any additional work (including additional development, design work, amendments and/or a change to the scope or nature of the work) required by you after Scoping Sign Off will be classed as Additional Services, which shall be requested in accordance with clause 5 and charged by us (and be payable by you) separately at our then-prevailing rates. For the avoidance of doubt, when producing a further quotation in connection with this clause, we shall be entitled to take into account subsequent costs arising as a result of suspending the Services to accommodate the changes.

#### **4. Our charges**

- 4.1 We shall render invoices in respect of the Services (and any Additional Services, where applicable) comprising fees, expenses, disbursements, outlays (including any amounts due in accordance with clause 4.2) and VAT thereon (where appropriate) ("**our Charges**"). Details of our charges and any special payment terms are set out in the Proposal Documents.
- 4.2 We may need to enter into binding contractual commitments ("**Third Party Contracts**") on your behalf (or otherwise for your benefit), for example with hosting companies, telecommunication providers or other third parties ("**Third Party Providers**"). You acknowledge that those Third Party Contracts create rights and obligations between us and those Third Party Providers and you agree that, although you are not a party to the Third Party Contracts, you are (and at all times will be) responsible and held liable for all costs in relation to those Third Party Contracts.
- 4.3 Our Charges may differ from estimates or quotations given in the Proposal Documents, which shall be provisional only. In particular, any services we shall provide to you which are not covered in the Proposal Documents ("**Additional Services**") shall be requested in accordance with clause 5 and charged by us (and be payable by you) separately at our then prevailing rates.
- 4.4 In return for the delivery of the Services by us (and the delivery of any Additional Services, where applicable), you shall pay our Charges (without any right of set off) on presentation of our invoice or at such other time as may be specified in the Proposal Documents.
- 4.5 We reserve the right to submit invoices to you at reasonable intervals or whenever we deem appropriate, having regard to the Services Contract.
- 4.6 Unless we shall specify otherwise in writing, you shall pay any invoices rendered by us in full and in cleared funds within 30 days of the date of invoice. Payment shall be made to the bank account nominated in writing by the Company. Time of payment is of the essence.
- 4.7 If you fail to make any payment due to us under the Service Contract by the due date for payment, then, without limiting our remedies under clause 10, we may charge you interest on the overdue amount at the rate of 5% per annum above HSBC Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You shall pay the interest immediately on demand by us. Alternatively, we may at our sole discretion claim interest and fixed sums under the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.8 In the event you dispute our Charges, you will notify us within 7 days of receipt of the relevant invoice as to any amount in such Charges that may be in dispute and you shall pay any undisputed amount within such 30 day period. You agree with us that any right to dispute our Charges after the expiry of the 7 day period stipulated shall be irrevocably waived by you.
- 4.9 If any request for payment of our Charges is not met on time or if you fail to provide information or Client Materials when reasonably requested, we may cease further work on that matter and any other matter being handled by us for you or any person associated with you. In such circumstances we accept no liability for the effects of any delays.

- 4.10 Where there is more than one client set out in the Proposal Documents in respect of the Services, unless provision is made in the Proposal Documents for payment of our Charges by one of you or by a third party, all of you shall each be fully liable separately to pay our Charges as well as being so liable together as a group and we shall be entitled to call upon any of you and all of you for payment in full.
- 4.11 The existence of any agreement between us and another person that our Charges will be paid by that other person will not absolve you from discharging all your obligations to us including payment of all our Charges.
- 4.12 Unless otherwise agreed in writing: all our Charges are payable in pounds sterling; and any monies paid other than in pounds sterling will be converted into sterling at the then prevailing rate and we may make a reasonable charge for this conversion.

## **5. Provision of additional services**

- 5.1 You may, by giving us written notice, at any time during the term of this agreement, request Additional Services.
- 5.2 Within seven working days of receipt of such notice, we shall, at our standard rates then in force, prepare for you a written quote for any increase in the Charges, and of any effect that the requested change would have on any agreed timescale or completion date.
- 5.3 Within 7 working days of receipt of the written quote referred to in clause 5.2, you shall inform us in writing of whether or not you wish the requested change to be made. If the change is required, we shall not make the requested change until the parties have agreed in writing (for example by email) any changes to the Charges and any agreed timescale or completion date.

## **6. Development and acceptance of websites or applications**

- 6.1 Where we develop a website, software application or provide any other kind of software coding or programming service ("**Programming Projects**") as part of the Services, we may run Acceptance Tests at such junctures as we may specify in the Proposal Documents. The acceptance criteria for such tests shall be objective. You shall promptly provide such assistance as we may reasonably require in order to complete such acceptance tests. In the event that any acceptance tests are not successfully completed, we will be given the opportunity to retest such elements which were not successfully completed and/or (with your consent, not to be unreasonably withheld or delayed) to modify the acceptance tests or acceptance criteria. We will notify you once all acceptance tests have been successfully completed (a "**Commissioning Notification**") and will provide reasonable evidence of such completion on request. If, within 10 Business Days of receipt of a Commissioning Notification, you have not provided us with a confirmation as to whether or not the tests have been successfully completed, then you will be deemed to have served a confirmation of the successful completion of the relevant acceptance tests upon us.
- 6.2 Acceptance of the relevant Programming Project shall be deemed to have occurred on whichever is the earliest of: (i) the date that you notify (or pursuant to clause 6.1 you are deemed to have notified) us that the relevant acceptance tests have been successfully completed; or (ii) the date that the relevant Programming Product is put into commercial or operational use).
- 6.3 If any failure to pass the Acceptance Tests results from a defect which is caused by any of your acts or omissions, or by a third party for whom we have no responsibility ("**Non-Supplier Defect**"), the relevant Programming Project shall be deemed to have passed the Acceptance Tests, notwithstanding such Non-Supplier Defect. We shall provide assistance reasonably requested by you in remedying any Non-Supplier Defect by supplying Additional Services, which shall be requested in accordance with clause 5 and charged by us (and be payable by you) separately at our then prevailing rates.

- 6.4 Once we finish producing the Programming Project, you will provide us your written approval, approving the Final Sign Off. If you do not supply us with Final Sign Off, Final Sign Off of a Programming Project shall be deemed to have taken place upon the occurrence of any of the following events:
- A. you use any part of the relevant Programming Project (or any product of the same) for any purposes other than for testing, or to provide any services to third parties other than for test purposes; or
  - B. you unreasonably delay the start of the relevant Acceptance Tests or any retests for a period of seven working days from the date on which we are ready to commence running such Acceptance Tests or retests.
- 6.5 After Final Sign Off (whether written or deemed), we will endeavour to fix any defects that become apparent in a Programming Project during the first 2 months following such Final Sign Off free of charge (provided that such defects are directly attributable to our own acts or omissions). In any other case, we will use or reasonable endeavours to repair the defects, but such work shall be classed as Additional Services, which shall be requested in accordance with clause 5 and charged by us (and be payable by you) separately at our then prevailing rates.
- 6.6 You acknowledge that complex software is never wholly free from defects, errors, bugs, security vulnerabilities, or compatibility issues. Subject to the other provisions of the Services Contract, we give no warranty or representation that the website will be wholly free from defects, errors, bugs, security vulnerabilities, or compatibility issues.
- 6.7 We may include a textual credit incorporating a link to our website, in a form agreed between us (and we will both act reasonably in achieving such agreement). You must retain this credit on your website and any adapted version of it, must not interfere with the credit in any way which will have or may reasonably be expected to have a negative impact upon the value of the credit to us, and may only remove it at our request.

## **7. Search engine optimisation services**

- 7.1 If we agree to provide search engine optimisation services ("**SEO Services**") as part of the Services, then the provisions of this clause 7 shall apply.
- 7.2 We shall not be liable to you or to any person whether in contract, tort or otherwise for temporary fluctuations in listings with the search engine optimisation programming package that occur during changes to search engine algorithms.
- 7.3 We cannot guarantee an increase in traffic to the site nor an improved ranking of the site as a result of providing any SEO Services and we shall not be liable to you or to any person whether in contract, tort or otherwise for any failure to achieve the same, or for a decrease in website traffic, or lower search engine results page rankings. You acknowledge and agree that: (a) search engine algorithms will change from time to time, which may affect website rankings in the search engine results pages, and we have no control over such changes; (b) it can take months for the SEO Services to have any significant effects upon the ranking of a website in the search engine results pages; website promotion is an ongoing task and, should you terminate the Services Contract and/or stop promoting your website, that may have a negative impact upon the effects of the SEO Services.
- 7.4 You should give us advance notice of any proposed alterations to a website which has been subject to our SEO Services so that we can advise you on the likely impact of such alterations on the website's search engine placements. In any event, we shall not be liable to you or to any person whether in contract, tort or otherwise for any effects that arise in connection with such alterations. If you request us to rectify any problems, any such remedial actions will be classed as Additional Services which shall be requested in accordance with clause 5 and charged by us (and be payable by you) separately at our then prevailing rates.

- 7.5 You agree and undertake to us that you will not, at any time after receiving SEO Services, use techniques to achieve high listings including, but not limited to, cloaking, hidden text and keyword stuffing and/or any other technique that is in clear breach of the Google Webmaster Guidelines (in the form published at the time the relevant technique is actively used). You agree to indemnify and hold us harmless against any claims arising as a result of use of these techniques.

## **8. Limitation of liability**

- 8.1 We shall not be liable to you or to any person whether in contract, tort or otherwise for:

- A. any direct loss or damage suffered or incurred by you in relation to the Services provided by us unless, at the time that you used them, that loss was a reasonably foreseeable result of our negligence or failure to comply with these terms;
- B. any direct loss or damage suffered or incurred by you in relation to colour fidelity problems, display or resolution issues or any other issue in respect of the Proofs or the Services which are produced on the basis of such Proofs. You acknowledge that colours can vary between computers, monitors and print devices and colour fidelity cannot be guaranteed. You also acknowledge that performance can vary between computers and mobile devices and performance consistency cannot be guaranteed;
- C. any loss of profit, business, revenue, goodwill or anticipated savings;
- D. any indirect or consequential loss or damage (including, but not limited to, any indirect or consequential losses which result in loss of profit, business, revenue, goodwill or anticipated savings);
- E. any liability arising as a result of any term implied by common law or statute, order, regulation or any other enactment;

- 8.2 Nothing in these General Terms of Business shall exclude or limit:

- A. our liability for death or personal injury arising from our negligence or that of our servants, agents or employees; or
- B. any other liability which we are prohibited from excluding or limiting by law.

- 8.3 Subject to clauses 8.1 and 8.2:

- A. in the particular circumstances of the Services set out in the Proposal Documents, the aggregate liability to you and to Other Beneficiaries of each and all persons, in contract tort or otherwise, in respect of our professional services for any loss or damage suffered by you (or by any such other party) arising from or in connection with the Services, however the loss or damage is caused (including our negligence but not our fraud or other deliberate breach of duty) shall be limited to the amount specified in the Proposal Documents, or if no amount is specified there, to £250,000;
- B. we will not be liable (whether in contract, tort or otherwise) in respect of all and any claims brought by you against us to the extent that the matter giving rise to such claim is remediable and such matters shall have been remedied to your reasonable satisfaction within the period of 60 days following the date of service of notice by you on us of such claim.; and



- C. any advice, option, statement of expectation, forecast or recommendation supplied by us as part of the Services shall not amount to any form of guarantee that we have determined or predicted future events or circumstances.

## **9. Circumstances beyond our control**

- 9.1 Neither of us will be in breach of our contractual obligations, nor shall either of us incur any liability, if and to the extent that we may become unable to carry out all or any of our obligations under the Services Contract as a result of any event or matter beyond our reasonable control. By way of illustration and not of limitation, the following are considered as events beyond our reasonable control: strike, lock-out or other industrial dispute, public disorder, riot, revolution, mobilisation, hostilities, war (whether or not formally declared), epidemic, fire, earthquake, storm, flood and other acts of God, official regulations, orders, requirements or acts of government, governmental or administrative authority, transport difficulties, working difficulties, machine breakdowns, failure of supplies or other causes whether similar or not.
- 9.2 In the event of any such occurrence affecting one of us, then that one shall be obliged to notify as soon as is reasonably practicable the other, who shall have the option of suspending or terminating the operation of the Services Contract.

## **10. Termination**

- 10.1 Subject to clauses 10.4 and 10.5, either of us can terminate the Service Contract by giving not less than 3 months' prior written notice in writing to the other at any time.
- 10.2 We reserve the right to terminate or suspend performance of the Service Contract immediately on written notice if:
  - A. you commit any serious breach of the Service Contract or fail to remedy to our satisfaction, within 7 days of receiving a written request to do so, any other breach of this Service Contract;
  - B. you fail promptly to pay our invoices or any requested monies on account or if you fail to give us instructions as reasonably requested;
  - C. in the event that you, or any of your senior employees or staff, acting in an official capacity do anything or act which might reasonably be deemed to bring us or our products or business into disrepute or to damage in any way our public standing, goodwill, name or reputation;
  - D. in the event that you, or any of your senior employees or staff, acting in an official capacity, do any act or thing which is unlawful or unethical.
- 10.3 This agreement shall terminate immediately without notice if:
  - A. you suspend or cease trading or indicate that you intend to cease trading or become unable to pay your debts as they fall due; or
  - B. you have a receiver or liquidator appointed, or pass an effective resolution for winding up (except for the purpose of amalgamation, reconstruction or reorganisation) or a court makes an order to that effect or a similar event occurs; or
  - C. distress or execution is levied against your property

- 10.4 On termination of this agreement under clauses 10.1, 10.2 or 10.3:
- A. your right to receive the Services shall cease automatically;
  - B. you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we may submit an invoice calculated in accordance with clause 10.5, which shall be payable by you immediately on receipt;
  - C. each party shall immediately return to the other all property and materials containing Confidential Information (as defined in clause 11) belonging to the other; and
  - D. the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive shall not be affected.

10.5 We will calculate our termination Charges based on the hourly rates specified in the Proposal Documents (or, if no hourly rate is specified there, a default hourly rate of £80) and by adding together: (1) the number of uncharged hours of work incurred by us in carrying out the Services; and (2) the number of hours which would have been worked under the Services Contract, had the retainer not been terminated early, multiplied by 0.5. By way of example, if 1 hour of work had been incurred but not yet charged at the point of termination, and 1 hour would be required to complete the scope of work under the Services Contract, on an hourly rate of £80, the amount due on termination would be £120.00.

10.6 Any provision of these General Terms of Business that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Services Contract (including clauses 1 (Definitions), 4 (Our charges), 6.5 (Development and acceptance of websites or applications), 7.4 (Search engine optimisation services), 7.5 (Search engine optimisation services), 8 (Limitation of liability), 9 (Circumstances beyond our control), 11 (Confidentiality), 12 (IPR ownership and use), 14 (Data protection), 15 (Files and documents), 16 (Non-solicitation of personnel and employment liabilities), 21 (No partnership or agency), 22 (Complaints and technical dispute resolution procedure) and 23 (Law & jurisdiction)) shall remain in full force and effect.

## **11. Confidentiality**

11.1 It is agreed between the parties that:

- A. we may acquire sensitive information regarding your business and your affairs in the course of delivering the Services; and
- B. you may acquire sensitive information regarding our business and our affairs in the course of receiving the Services;

(in each case such information being, “**Confidential Information**”).

11.2 In relation to Confidential Information each party shall adhere to the respective confidentiality restrictions imposed on them by any authority in the United Kingdom with whose requirements they are bound to comply, as well as any obligations imposed on them by English law.

11.3 Each party shall be entitled to comply with any requirement of English law or with any authority in the United Kingdom with whose requirements they are bound to comply to disclose Confidential Information.

- 11.4 This clause shall not apply when Confidential Information properly enters the public domain.
- 11.5 This clause shall not prohibit our disclosure of Confidential Information where the disclosing party wishes to disclose it to their insurers or advisers, in which event they may do so in confidence only.
- 11.6 All Komodo Materials disclosed to you as part of the Services are strictly confidential and are issued on the understanding that they are for the use of the addressees only and are not to be discussed with, or shown to, any other party without our prior written consent.

## **12. IPR, ownership and use**

- 12.1 We shall at all times retain ownership of the IP Rights that subsist in the Komodo Materials and nothing contained in these General Terms of Business shall operate to pass ownership of the same.
- 12.2 Unless agreed otherwise in the Proposal Documents:
- A. you will retain ownership of any IP Rights that may subsist in the Client Materials and you grant us a non-exclusive, irrevocable, world-wide, royalty free license to use the Client Materials to enable us to provide the Services to you;
  - B. all IP Rights in the Source Code subsisting in: (1) the Project Deliverables; and/or (2) any other product of the Services, shall be our property. Subject to payment of every part of the Charges relating to the Services, we will grant you a non-exclusive, irrevocable, world-wide, royalty free license to use (but not to alter, adapt, merge, modify or re-use) such Source Code solely to the extent that it is necessary for you to use the Project Deliverables and/or enjoy the benefit of the Services;
  - C. if any Client Materials are modified and/or altered by us, the IP Rights in the original Client Materials remain your property, but IP Rights in the modifications and/or alterations ("**Modifications**") shall be our property. We will grant you a non-exclusive, irrevocable, world-wide, royalty free license to use such modifications or alterations to the extent that such Licence is necessary for you to use the Project Deliverables and/or enjoy the benefit of the Services.
- 12.3 You warrant that any Client Materials and their use by us for the provision of the Services will not:
- A. infringe the IP Rights or any other rights of any third party;
  - B. infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous) ("**Inappropriate Content**");
- and you agree to fully indemnify us for any loss, damage, costs and expenses or other claims arising from the Client Materials either infringing IP Rights (or any other rights of any third party) or constituting or containing Inappropriate Content.
- 12.4 We shall indemnify you against all damages, losses and expenses arising as a result of any action or claim that the Services infringe any IP Rights of a third party in the UK (other than any infringements referred to in clause 12.3) and only where such action or claim is directly attributable to our negligence or default.

- 12.5 The indemnities in clauses 12.3 and 12.4 are subject to the following conditions:
- A. the indemnified party promptly notifies the indemnifier in writing of the claim;
  - B. the indemnified party makes no admissions or settlements without the indemnifier's prior written consent (not to be unreasonably withheld or delayed);
  - C. the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and
  - D. the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.
- 12.6 The indemnity in clause 12.4 may not be invoked to the extent that the action or claim arises out of our compliance with any designs, specifications or instructions you may provide or stipulate to us.
- 12.7 You shall acquire ownership of the Project Deliverables and/or any other product of the Services (whether tangible or intangible, but excluding for the avoidance of doubt any Source Code produced in connection to the Services) and all IP Rights subsisting in the same on payment of every part of the Charges relating to the Services. For the purposes of delivering services to you or other clients, we shall be entitled to use, develop and share knowledge, experience and skills of general application gained through performing the Services.
- 12.8 Where, as part of providing any Services we provide you with a licence of Komodo Materials, in the absence of written terms supplied by us, such license shall be non-exclusive and revocable at any time on written notice. In respect of any software we shall license to you, you shall not, without prejudice to the generality of the forgoing:
- A. use, copy or transfer any such licensed software (or any part of it) except as expressly permitted by us in writing; or
  - B. alter, adapt, merge, modify or translate such licensed software (or any part of it) in any way for any purpose; or
  - C. reverse-engineer, disassemble or decompile such licensed software (or any part of it).

### **13. Email communication**

You should be aware that email communications may not be secure and may not be received by their addressees or with readable attachments. We cannot guarantee the security or confidentiality of information so transmitted. However the majority of our clients expect us to correspond by email. We will therefore correspond with you by email where appropriate. Please let us know in writing if you do not wish to use email.

### **14. Data Protection**

- 14.1 For the purposes of this clause 14, "controller", "data subject", "processor", "personal data", "process" and "processing" have the meanings given to them by the Data Protection Legislation.
- 14.2 We both warrant to each other that we will process personal data in compliance with the Data Protection Legislation. This clause 14.2 is in addition to, and does not relieve, remove or replace, either of our obligations under the Data Protection Legislation.

- 14.3 We both acknowledge and agree that for the purposes of the Data Protection Legislation, you are the controller and we are the processor in respect of personal data from the point at which such personal data is transferred by you to us.
- 14.4 You warrant to us that you have the legal right to disclose all personal data that you do in fact disclose to us under or in connection with the Services Contract, and that the processing of that personal data by us for the purpose of providing the Services will not breach any provision of the Data Protection Legislation.
- 14.5 If, notwithstanding our intentions (as set out at clause 14.3), we processes personal data as a controller, we shall comply with the provisions of the Data Protection Legislation which are imposed on a controller.
- 14.6 You will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to us for the duration and purposes of the Services Contract.
- 14.7 Without prejudice to the general nature of clause 14.2, we will, in relation to any personal data processed in connection with the performance by us of our obligations under the Services Contract:
- A. process that personal data only for the purposes of the Services Contract and/or for the specific purposes in each case as set out in any data protection provisions within the Proposal Documents and otherwise in accordance with your lawful, reasonable and documented instructions, unless we are required by the laws of any member of the European Union or by the laws of the European Union applicable to us to process personal data, in which case we will, to the extent permitted by such law, inform the you of that legal requirement before processing that personal data;
  - B. having regard to the state of technological development and the cost of implementing any measures, ensure that we have 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, including, amongst other things as appropriate: (i) the pseudonymisation and encryption of personal data; (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (iii) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing; and (v) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
  - C. ensure that we will not transfer personal data provided to it by you outside of the European Economic Area ("EEA") unless such transfer is undertaken in accordance with applicable Data Protection Legislation;
  - D. assist you, at your cost, in responding to any request from a data subject and in ensuring compliance you're your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- E. notify you without undue delay on becoming aware of a personal data breach; and
- F. maintain complete and accurate records and information to demonstrate our compliance with clauses 14.2 to 14.7.

14.8 In relation to Sub-processors:

- A. you acknowledge and hereby authorise us to engage in connection with the performance of the Services Contract those Sub-processors set out within the Proposal Documents and/or Annex 1 ("Approved Sub-processors"), which includes the identities of those Sub-processors and their country of location;
- B. we may amend and update the Approved Sub-processors list by providing written notice to you of any proposed new Sub-processor. You may notify us promptly in writing within ten (10) Business Days after receipt of our notice if you have a reasonable basis for objecting to a new Sub-processor. We shall not appoint (or disclose any personal data to) that proposed Sub-processor until reasonable steps have been taken to address the objections raised by you and you have been provided with a reasonable written explanation of the steps taken;
- C. prior to giving any Sub-processor access to personal data, we shall ensure that such Sub-processor has entered into a written agreement with us including terms in the contract between us and the sub-processor which are substantially the same as those set out in this clause 14 and the requirements of article 28(3) of the GDPR; and we shall remain fully liable to you for any failure by a Sub-processor to fulfil its obligations in relation to the processing of any personal data under the Services Contract; and
- D. the extent that such sub-Processing does not occur in the EEA, or in circumstances or a country that is the subject of a valid adequacy decision by the European Commission ("Restricted Country"), we may only authorise a third party to process the personal data in a Restricted Country if, when requested by you and required by Data Protection Legislation, we enter into (or procure that any relevant third party enters into) a controller to processor data transfer agreement, incorporating the standard contractual clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of protection, as set out in Commission Decision C(2010) 593 (as updated and amended from time to time).

14.9 We may, at any time on not less than 30 days' notice, revise this clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

14.10 You acknowledge that we are reliant on you as controller for direction as to the extent to which we are entitled to use and process personal data. Consequently, we will not be liable for any unauthorised or non-compliant loss, access or other processing of personal data or any claim brought by a data subject arising from any action or omission by us, to the extent that such action or omission resulted directly from your instructions or your failure to provide instructions. You will indemnify and hold us harmless against all losses, liabilities and costs (including legal and other professional costs) that we suffer or incur as a result of any claim pursuant to the Data Protection Legislation as a result of your instructions, or the your failure to provide instructions, under the Services Contract.

- 14.11 If you do not wish to receive information about us and our services, please notify us and we will ensure that your name is removed from our database for this purpose.

## **15. Files and documents**

Documents may at our discretion be retained in storage on your behalf for a reasonable period (to be determined at our sole discretion) and thereafter may without notice to you be destroyed. If you wish to ensure retention of any papers, images, code or text, then you should make specific arrangements with us. We may charge for such a service.

## **16. Non-solicitation of personnel and employment liabilities**

- 16.1 You must not, without our prior written consent, either during the term of the Services Contract or within the period of twelve (12) months following the termination or expiry of it, engage, employ or solicit for engagement or employment any of our employees or contractors personnel who have been involved in any way in the negotiation or performance of the Services Contract ("**Our Personnel**").
- 16.2 You agree that if you breach the provisions of clause 16.1 by successfully soliciting, interfering with, procuring or enticing away any of Our Personnel, you shall pay us promptly upon our written demand a sum equivalent to half the annual salary or fees paid by us to the person so solicited immediately before that person leaves our employment or ceases to be engaged by us.
- 16.3 You agree that the amount referred to in clause 16.2 represents a reasonable pre-estimate of the loss and damage which we would suffer in the event of the circumstances described in clause 16.2 arising.
- 16.4 The provisions of this clause 16 are without prejudice to our right to seek interim remedies through the court or otherwise in respect of the matters contemplated by it.]
- 16.5 We agree that when the Services Contract expires or terminates, there will be no "relevant transfer" (as defined in the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**")) and as a result, none of your employees, contractors or any other individuals ("**Your Personnel**") shall transfer their employment to us, nor will any of our employees, contractors or any other individuals ("**Our Personnel**") transfer to you. You will indemnify us for all losses, liabilities, costs (including reasonable legal costs), fees, expenses, actions, procedures, claims, demands and damages (including the amount of damages awarded by a court of competent jurisdiction) incurred by us (including all salary, redundancy, pension, recruitment and other costs) if, pursuant to TUPE upon the termination or expiry of the Services Contract (and notwithstanding the provisions of this clause 16.5), either: (1) any of Your Personnel or other individuals do transfer to us; and/or (2) any of Our Personnel or other individuals do transfer to you.

## **17. Waiver and assignment**

- 17.1 Our failure to exercise or enforce any rights available to us shall not be a waiver of any rights and does not prevent us enforcing the rights at a later date.
- 17.2 You shall not have the right to assign the benefit (or transfer the burden) of the Services Contract to another party unless (in our sole discretion) we provide our prior written consent.

## **18. Notices**

- 18.1 Any notice to be given under the Services Contract shall be in writing and shall be delivered by pre-paid first class post (or pre-paid overseas equivalent) to our respective addresses as set out in the Proposal Documents (or such other address as may be notified in writing from time to time) The sender must prove that the notice was correctly sent. Unless there is evidence to the contrary, notices delivered shall be deemed to have arrived:
- A. When posted from and to addresses in the UK, at 09:00 on the second Business Day after posting;
  - B. When posted from and to an addresses overseas, at 09:00 on the tenth Business Day after posting; and
  - C. When sent by email, the notice shall be deemed received at the time of transmission (provided the sender can produce a valid transmission report), save that, if this time of transmission falls outside of Business Hours in the place or receipt, when Business Hours resume.
- 18.2 This clause 18 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **19. Entire Agreement**

The Services Contract sets out the entire agreement and understanding between the parties in connection with the services and supersedes any prior arrangements, understandings, agreements, statements or representations (unless made fraudulently) relating to the Services. In the event of any inconsistency between the Proposal Documents and any other elements of the Services Contract, the Proposal Documents shall prevail. In the event of any inconsistency between these General Terms of Business and Additional Terms that may apply, the Additional Terms shall prevail.

## **20. Third party rights**

The Services Contract shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights. No third party shall have any right to enforce or rely on any provision of the Services Contract which does or may confer any right or benefit on any third party, directly or indirectly, expressly or impliedly. The application of any legislation giving or conferring on third parties contractual or other rights in connection with the Services Contract shall be excluded.

## **21. No partnership or agency**

Nothing in the Services Contract is intended to or shall operate to create a partnership between us, or authorise either of us to act as agent for the other, and neither of us shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).



## **22. Complaints and technical dispute resolution procedure**

22.1 Whilst we are confident that we will deal with all matters to your utmost satisfaction, if at any time you have a complaint or wish to make some comment about the service you have received, please would you discuss it in the first instance with the person with whom you usually deal. We will endeavour to deal with your complaint to your satisfaction. If however you are still unhappy about some aspect, please do not hesitate to communicate with our Managing Director, who will do his best to resolve it.

22.2 If your complaint relates to any technology underlying the Project Deliverables and/or the Services and our Managing Director has been unable to resolve it, we agree that we will refer it to an expert. We will attempt to agree the identity of a suitable expert, but if we're unable to do so, either of us may apply to the Centre for Effective Dispute Resolution (CEDR) to request an expert appointment. The expert we appoint (whether by agreement or through CEDR) ("Expert") will act as an expert and not an arbitrator and will act fairly and impartially and provide a determination which, in the absence of material failure the Expert, will be final and binding on both of us. The Expert will decide the procedure we will follow and will be requested to provide a determination within thirty (30) days after his appointment and we will provide all assistance and documentation as the Expert reasonably requires for the purpose of making a determination. Any amount payable by either of us as a result of the Expert's determination will be paid within 30 days of when the paying party is notified of the determination. The expert determination process will be conducted in private and will be confidential and the costs associated with it (including the Expert's fees and expenses) will be paid by us equally within 30 days of the Expert's determination of the complaint.

## **23. Law & jurisdiction**

The Services Contract shall be subject to and shall be governed by English law and all disputes arising out of or in connection with the Services Contract or any related matters (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English courts.

**KOMODO**