

COCOON DEVELOPMENT LTD

TERMS AND CONDITIONS OF SALE

These terms and conditions govern the relationship between you, the Customer (as defined below), and Cocoon Development Ltd.

Please read them carefully as they have implications as regards to your legal rights and liabilities.

These Terms and Conditions apply to any form of design and development work or services carried out by Cocoon Development Ltd on behalf of any customer.

The Customer's specific attention is drawn to the terms of clauses 7 and 10.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions shall have the following meanings:

CDL: Cocoon Development Ltd a company registered in England and Wales whose Registered Office is at DOCK, Exploration Drive, Leicester, England, LE4 5NU and whose Registered Company Number is 08520111;

Advance Deposit: A deposit that is paid in advance of any work or services CDL starts that forms part of a Project Plan, Quote or accepted Purchase Order from a customer;

App: An application created as part of the Project/Services which is to be made available for download to mobile devices;

App Store: the Apple App Store, the Android Market or any similar platforms, websites etc. upon which Apps can be sold, distributed or made available;

Block Hours: Time that is booked, paid for and reserved in advance of any work or services starting for an existing customer;

Bug: an error, flaw, mistake, failure, or fault in a computer program or system forming part of the Project/Services that produces an incorrect or unexpected result that is directly under CDL's control that causes such program or system to behave in unintended ways. A bug must be accepted and agreed in writing by CDL before it can be repaired. Non-bug issues or problems will be chargeable as a Variation;

Contract: the Customer's purchase order (or similar document) and/or CDL's acceptance of it pursuant to condition 3 and subject to these Terms and Conditions incorporating the Project Plan;

Customer: the person, firm or company who purchases Services from CDL, as more specifically identified in the Project Plan;

Customer's Project Manager: the Customer's manager for the Project appointed in accordance with condition 5.1(a);

Deliverables: all products, services and materials developed by CDL in relation to the Project Plan in any media, including, without limitation, computer programs, Apps, data, diagrams, reports, codes and specifications (including drafts);

Delivery: the point at which the Deliverables are presented to the Customer in stages, project milestones or any other form as determined by CDL. The delivery of work in stages shall be subject to condition 7.10;

Fixed Pricing: For the avoidance of doubt; any fixed price quoted to any customer will apply to the original Project Plan or quotation costs agreed only. Once the Project Plan has started, the fixed price will only apply if there are no Variations to the initial Project Plan. Any delays or requested changes caused by the customer will be treated as a Variation if the incur additional time or cost to CDL;

Hosting Facilities: hosting, storing and maintaining electronic files relating to website to enable it to be available via the World Wide Web;

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all application for, and renewable or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Instalment Payments: A staged or interim invoice requesting payment that is triggered by the completion of a milestone, work after a period of time or any other deadline detailed in a Project Plan or by CDL;

Pre-existing Materials: materials which existed before the commencement of the Project;

Project: the project as described in the Project plan;

Project Milestone: a date or work stream by which is a part of the Project Plan is a completed task or deadline, as set out in the Project Plan and can be used as a trigger to invoice for an Instalment Payment;

Project Plan: the Quote and Order Form that describes the Project objectives and sets out the estimated timetable (including Project Milestones), costs, deadlines and responsibilities for the

provision of the Services by CDL in accordance with the Contract;

Services: the services to be provided by CDL under the Contract;

CDL Project Manager: CDL's manager for the Project, appointed in accordance with condition 4.4;

Variation/Variations: A Variation can apply to a Project Plan or any other work stream before or after the work has commenced. A Variation is an alteration or change to the time required, design or working specification or services that were in the original Project Plan (including, but not necessarily limited to, enhancements or new functionality) and is authorised by CDL. A Variation will be at an additional cost to the Project Plan, even if the original cost was a Fixed Price. Separate invoices can be raised for all Variations and are subject to the conditions shown in 7.5 and 7.6;

VAT: value added tax chargeable under English Law for the time being and any similar additional tax;

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 "this Agreement" or "these Terms and Conditions" is a reference to this Agreement/Terms and Conditions and the associated Project Plan as amended or supplemented at the relevant time;

1.2.4 a Clause, Condition or Paragraph is a reference to a Clause of these Terms and Conditions or a paragraph of the relevant Project Plan;

1.2.5 a "Party" or the "Parties" refer to the parties to this Agreement.

1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

1.6 References to persons shall include corporations.

2. APPLICATION OF CONDITIONS

2.1 These conditions shall:

- (a.) apply to and be incorporated in the Contract; and
- (b.) prevail over any inconsistent Terms and Conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 Any Variation of the Contract shall be in writing or email and signed by or on behalf of the Customer. Variations may incur additional costs.

3. EFFECT OF PURCHASE ORDER OR SIMILAR DOCUMENT

The Customer's purchase order (or any other similar document, including but not limited to an email or letter requesting work to be carried out) constitutes an offer by the Customer to purchase the Services specified on these conditions; accordingly, the execution and return of the acknowledgement copy of the Project Plan, purchase order form by CDL, the execution and return of the Order Specification or CDL commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in; the purchase order shall not govern the Contract.

4. CDL'S OBLIGATIONS

4.1 CDL shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Customer, in accordance in all material aspects with the Project Plan.

4.2 CDL shall use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract. For the avoidance of doubt, such performance dates are intrinsically linked to the length of time it takes for the Customer to respond to request for information/action from CDL and if such responses are not made within a time period acceptable to CDL, CDL shall not be responsible for performance dates not being met or any direct or indirect consequences relating to such performance dates not being met.

4.3 CDL shall use reasonable endeavours to respond to Customer correspondence within 1 working day of receipt of the same.

4.4 CDL may appoint a Project Manager who shall use reasonable endeavours to ensure that the same person acts as CDL's Project Manager throughout the Project, but may replace them from time to time where reasonable required.

4.5 CDL shall carry out all reasonable necessary remedial actions relating to Bugs notified by the Customer to CDL within 30 days of the Delivery of the Deliverables with no charge as part of CDL's standard 30 day warranty. Should CDL consider, in their reasonable opinion, that the issue raised by the Customer is not a Bug, CDL will charge the Customer for the time spent investigating and/or

remedying the issue as a Variation. Customers may purchase a longer warranty at an additional cost, and should make enquiries to the CDL Project Manager before the expiry of the standard 30 day warranty if this is required.

4.6 For the avoidance of doubt, should the Customer discover that they have discovered a Bug after the expiration of 30 days from the Delivery of Deliverables (pr after any additional warranty period that may have been purchased in accordance with condition 4.5 above), CDL reserve the right to charge the Customer for the time spent investigating and/or remedying the issue as a Variation.

4.7 Should CDL receive enquiries from the Customer relating to Hosting Facilities where the host is not CDL, CDL will charge the Customer for the time spent investigating and/or remedying the issue as a Variation.

5. CUSTOMER'S OBLIGATIONS

5.1 The customer shall:

- (a.) co-operate with CDL in all matters relating to the Project and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Project;
- (b.) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by CDL;
- (c.) provide in a timely manner (considered to be within one full working day) and within timescales set by CDL as required, such information as CDL may request, and ensure that such information is accurate in all material aspects;
- (d.) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services (if applicable);
- (e.) provide CDL with remote access to the Customer's information technology facilities free of charge at any time for the purposes of carrying out the Services; and
- (f.) comply with such other reasonable requests and/or instructions made or given by CDL to enable the Services be carried out.

5.2 If CDL's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, subcontractors or employees, the Customer shall be liable to pay to CDL on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to CDL confirming such costs, charges and losses to the Customer in writing.

5.3 The Customer shall not, without prior written consent of CDL, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit, or entice away from CDL or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of CDL.

6. CHANGES

6.1 The Customer's Project Manager and CDL's Project Manager shall meet or converse at least once every month (or more frequently on shorter timescale projects) to discuss matters relating to the Project, or at such other frequencies as stated in the Project Plan. If either party wishes to change the scope of the Services, they shall submit details of the requested change to the other in writing.

6.2 If either party requests a change to the scope of execution of the Services, CDL shall, within a reasonable time, provide a written estimate to the Customer of:

- (a.) the likely time required to implement the change;
- (b.) any variations of CDL's charges arising or reductions from the change;
- (c.) the likely effect of the change on the Project Plan; and
- (d.) any other impact of the change on the terms of the Contract.

6.3 If CDL request a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

6.4 If the Customer wishes CDL to proceed with the change, CDL have no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

7. CHARGES AND PAYMENT

7.1 Condition 7.2 shall apply if the Services are to be provided on a time-and-materials basis. Condition 7.3 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 7 shall apply in either case.

7.2 Where the Services are provided on a time-and-materials basis:

- (a.) the charges payable for the Services shall be calculated in accordance with CDL's standard hourly fee rates as amended from time to time; and
- (b.) CDL shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 7, unless otherwise agreed between the parties.

7.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Project Plan plus any additional costs added as a result of work carried out under a Variation. The total price shall be paid to CDL (without deduction or set-off) in payment instalments as set out in the Project Plan on its achieving the corresponding Project milestone or other deadline. On achieving a Project Milestone or other deadline, CDL shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 7.4.

7.4 Any fixed price contained in the Project Plan excludes Variations that occur after the start date and VAT (if applicable), which, if applicable, CDL shall add to its invoices at the appropriate rate.

7.5 The Customer shall pay each invoice submitted to it by CDL in full, and in cleared funds, within 14 days of the date shown on each invoice. The money can be transferred electronically to the bank account details shown on each invoice. Invoices can be raised separately for: Advance Deposits, Block Hours, Hosting Services, Support Contracts, Variations, Instalment Payments, and other work or services carried out by CDL.

7.6 Without prejudice to any other right or remedy that CDL may have, if the Customer fails to pay CDL on the due date CDL may:

- (a.) charge interest on such sum from the due date for the payment at the annual rate of 8% above the base lending rate from time to time of Bank of England, accruing on a daily basis, whether before or after any judgement. CDL may claim this interest together with compensation as provided for by the Late Payment of Commercial Debts (Interest) Act 1998;
- (b.) suspend all Services (in relation to this Project or any other project) until payment has been made in full;
- (c.) suspend, or otherwise put any Project, the Services or any Deliverables beyond use until payment has been made in full.

7.7 Time for payment shall be of the essence of the Contract.

7.8 All payments payable to CDL under the Contract shall become due immediately on termination of the Contract, regardless of any other provision. This condition is without prejudice to any right to claim for interest generally, pursuant to the law, or any specific right under the Contract.

7.9 CDL may, without prejudice to any other rights it may have, set off any liability of the Customer to CDL against any liability of CDL to the Customer.

7.10 Divisibility: CDL may deliver work and services in stages that will require payments by instalments after Project Plans have started and milestones are reached. Each invoice raised for stages and Variations and each instalment payment shall constitute a separate contract and the conditions shown in clauses 7.5 and 7.6 shall apply.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 Subject to any agreement to the contrary contained in the Project Plan, all Intellectual Property Rights and all other rights capable of passing (i.e not including open source code for example) in the Deliverables shall be owned by SDL until the instalment payment relating to a particular milestone has been made by CDL. CDL hereby licenses all such rights to the Customer until such time free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties during the Project. If CDL terminate the Contract under Condition 11.1, this licence will automatically terminate.

8.2 Once CDL have (i.) received payment in full or; (ii.) if the Contract is terminated earlier under Condition 11.1, the relevant Instalment Payment relating to a particular Milestone, in accordance services in accordance with these conditions, all Intellectual Property Rights and other rights in the

Deliverables capable of passing shall be transferred to the Customer free of charge.

8.3 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on CDL obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle CDL to license such rights to the Customer.

9. CONFIDENTIALITY AND CDL'S PROPERTY

9.1 The Customer shall keep in strict confidence all technical and commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by CDL or its agents, and any other confidential information concerning CDL's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to CDL, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

9.2 Other than those created or provided as part of the Project and/or Services which have been passed to the Customer in accordance with condition 8 or otherwise, all materials, equipment and tools, drawings, specifications and data supplied by CDL to the Customer shall at all times be and remain the exclusive property of CDL, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to CDL, and shall not be disposed of or used other than in accordance with CDL written instructions or authorisation.

9.3 This Condition 9 shall survive termination of the Contract, however arising.

10. LIMITATION OF LIABILITY

10.1 The following provisions set out the entire financial liability of CDL (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

- (a.) any breach of the Contract;
- (b.) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c.) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes the liability of CDL:

- (a.) for death or personal injury caused by CDL's negligence; or
- (b.) for fraud or fraudulent misrepresentation.

10.4 Subject to Condition 10.2 and Condition 10.3:

(a.) CDL shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:

- (i) loss of profits; or
- (ii) loss of business; or
- (iii) depletion of goodwill or similar losses; or
- (iv) loss of anticipated savings; or
- (v) loss of goods; or
- (vi) loss of contract; or
- (vii) loss of use; or
- (viii) loss or corruption of data or information; or
- (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

(b.) CDL shall not be liable for any delays encountered by the Customer in having any App available for download on the App Store. For the avoidance of doubt, CDL are not responsible or liable for presenting any App to the App Store, nor do CDL take any responsibility or liability for an App being rejected by the App Store for any reason. CDL give no assurances whatsoever that an App will be accepted by the App Store.

(c.) CDL will carry out any Project/Services using the latest versions of the relevant mobile operating systems available as at the date of the Deliverables are delivered to the Customer and shall have no responsibility or liability to the Customer for any issues encountered by the Customer relating to updates to such mobile operating systems carried out after the Delivery of the Deliverables.

(d.) CDL's total liability in contract, tort (including negligence or breach or statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

11. TERMINATION

11.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a.) the other party commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b.) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c.) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court or competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d.) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

- (e.) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- (f.) the other party ceases, or threatens to cease, to trade; or
- (g.) there is a change of control of the other party; or
- (h.) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

11.2 Termination of the Contract, however arising shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

12. FORCE MAJEURE

CDL shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business due to acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of CDL or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown or plant of machinery, fire, flood, storm or default of suppliers or sub-contractors.

13. NO WAIVER

13.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

13.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14. SERVERANCE

14.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be in any way invalid, unenforceable or illegal, then the other provisions of these Terms and Conditions shall remain in force.

14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted (otherwise known as the blue pencil test), the provision shall apply with whatever modification or partial deletion is necessary to give effect to the commercial intention of the parties.

15. STATUS OF PRE-CONTRACTUAL STATEMENTS

Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than expressly set out in the Contract.

16. ASSIGNMENT

16.1 The customer shall not, without the prior written consent of CDL, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2 CDL may at any time assign, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. This right is expressly retained in respect of trusted third party developers who may be engaged by CDL in order to deliver the Deliverables in accordance with the Project Plan.

17. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have 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).

18. THIRD PARTY RIGHTS

The Contract is made for the benefit of the parties and to it (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

19. NOTICES

Any notice under the Contract shall be sent initially via email and reconfirmed in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9:00am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

20. GOVERNING LAW AND JURISDICTION

20.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England and Wales.

20.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).