

## General terms and conditions for supply of services

### 1. Interpretation

1.1. The definitions and rules of interpretation in this clause apply in these terms and conditions.

**Business Day** means a day other than a Saturday, Sunday or public holiday in England.

**Company** means Kayo Digital Ltd (company number 07335084) whose registered office is at The Innovation Building, 940 Heeley Close, Kent Science Park, Sittingbourne, Kent ME9 8HL.

**Company's Project Manager** means the Company's manager for the Services, appointed in accordance with clause 3.6.

**Contract** means the contract between the Company and the Customer for the supply of Services in accordance with these Conditions and any applicable Supplementary Terms together with the Quotation, any proposal, specifications and any variations which have been agreed between the Company and the Customer, the Company's charge out rates and other documents as agreed between the Company and the Customer.

**Conditions** means these terms and conditions as amended from time to time.

**Customer** means the person, firm or company who purchases Services from the Company.

**Customer's Project Manager** means the Customer's manager for the Services appointed in accordance with clause 4.1.2.

**Deliverables** means all products and materials developed by the Company in relation to the Services in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).

**Design Services** means the design services provided by the Company to the Customer.

**Development Services** means the system design and development services provided by the Company to the Customer.

**Digital Marketing Services** means the search engine optimisation, keyword advertising, pay per click and other digital marketing services to be provided by the Company to the Customer.

**Hosting Services** means the system hosting services to be provided by the Company to the Customer

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks, 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 without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order** means the Customer's acceptance for the supply of Services (pursuant to a purchase order or otherwise) as set out in the Quotation.

**Pre-existing Materials** means materials which existed before the commencement of the Services.

**Quotation** the written quotation, proposal or project plan (as varied and agreed between the Company and the Customer) detailing the Services to be supplied by the Company to the Customer.

**Services** means the services to be provided by the Company under the Contract which may include Support Services, Hosting Services, Development Services, Digital Marketing Services and/or any other services.

**Supplementary Terms** means the supplementary terms and conditions relating specifically to Support Services, Hosting Services, Development Services and Digital Marketing Services.

**Support Services** means the support and maintenance services provided by the Company to the Customer.

**VAT** means value added tax chargeable under English law for the time being and any similar additional tax.

1.2. Clause and paragraph headings shall not affect the interpretation of these Conditions or the Supplementary Terms where applicable.

1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders

1.7. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.8. A reference to writing or written includes e-mail.

1.9. References to clauses are to the clauses of these Conditions.

## **2. Application of Condition**

2.1. These Conditions and where applicable, the Supplementary Terms shall:

2.1.1. apply to and be incorporated in the Contract; and

2.1.2. prevail over any inconsistent terms or 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. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Company unless in writing and signed by a duly authorised representative of the Company.

2.3. A Quotation shall not constitute an offer, and is only valid for a period of 30 Business Days from the date of issue.

2.4. The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions, the Supplementary Terms (where applicable) and the Quotation.

2.5. An Order shall only be deemed to be accepted when the Company issues written acceptance of the Order or the Company commences the supply of the Services (whichever is the earlier), at which point and on which date the Contract shall come into existence.

2.6. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

## **3. Company's obligation**

3.1. The Company shall provide the Services to the Customer in accordance with the Quotation in all material respects.

3.2. The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Quotation but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

3.3. The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.

3.4. The Company warrants to the Customer that the Services will be provided using reasonable care and skill and in accordance with all applicable laws and regulations in force from time to time.

3.5. If the Customer postpones the performance date for the provision of the Services or the Company is otherwise unable to perform the Services as a result of the Customer's failure to comply with its obligations under the Contract, then except where such failure or delay is caused by a force majeure event or by the Company's failure to comply with its obligations under the Contract, the Company reserves the right to charge the Customer for all related costs and expenses.

3.6. The Company shall appoint the Company's Project Manager who shall have authority to contractually bind the Company on all matters relating to the Services. The Company shall use reasonable endeavours to ensure that the same person acts as Company's Project Manager throughout a particular project, but may replace him from time to time where reasonably necessary in the interests of the Company's business.

## **4. Customer's obligation**

4.1. The Customer shall:



- 4.1.1. ensure that the terms of the Quotation, scope of work and/or any information in the specification are complete and accurate;
- 4.1.2. co-operate with the Company in all matters relating to the Services and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Services;
- 4.1.3. provide in a timely manner all information, data and carryout any testing, as is requested by the Company;

4.2. If the Company'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 in all circumstances be liable to pay to the Company 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 the Company confirming such costs, charges and losses to the Customer in writing.

4.3. The Customer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of 12 months after the termination of the Contract, solicit or entice away from the Company or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Company and who has had contact with the Customer during the Contract.

4.4. Any consent given by the Company in accordance with clause 4.3 shall be subject to the Customer paying to the Company a sum equivalent to 30% of the then current annual remuneration of the Company's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

## 5. Change Control

5.1. The Customer's Project Manager and the Company's Project Manager shall meet at such intervals as are agreed between them to discuss matters relating to the Services. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

5.2. If either party requests a change to the scope or execution of the Services, the Company shall, within a reasonable time, provide a written estimate to the Customer of:

- 5.2.1. the likely time required to implement the change;
- 5.2.2. any variations to the Company's charges arising from the change;
- 5.2.3. the likely effect of the change on the Services or any project plan; and
- 5.2.4. any other impact of the change on the terms of the Contract.

5.3. If the Company requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

5.4. If the Customer wishes the Company to proceed with the change, the Company has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, any project plan and any other relevant terms of the Contract to take account of the change.

## 6. Charges and payment

6.1. Clause 6.2 shall apply if the Services are to be provided on a time-and-materials basis Clauses 6.3 and 6.4 shall apply if the Services are to be provided for a fixed price. The remainder of this clause 6 shall apply in either case.

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

- 6.2.1. the charges payable for the Services shall be calculated in accordance with the Company's standard daily fee rates as amended from time to time;
- 6.2.2. the Company's standard daily fee rates are calculated on the basis of an eight hour day worked between 9.00 am and 5.00 pm on Business Days;
- 6.2.3. the Company shall be entitled to charge at an overtime rate of 200% of the normal rate for part days and for time worked by the Company outside the hours referred to in clause 6.2.2 on a pro-rata basis;
- 6.2.4. the Company shall ensure that all members of the project team complete time sheets recording time spent providing the Services, and the Company shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 6.2.5; and

6.2.5. the Company shall invoice the Customer monthly in arrear for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 6.

6.3. Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Quotation. The total price shall be paid to the Company in instalments as set out in the Quotation or as otherwise agreed between the parties. All amounts due under the Contract shall be paid by the Customer to the Company in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Company 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 clause 6.4.

6.4. Any fixed price contained in the Quotation excludes:

6.4.1. the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Company in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Company for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Company; and

6.4.2. VAT, which the Company shall add to its invoices at the appropriate rate.

6.5. Where a price has been quoted, this is a best estimate based on the information given to the Company by the Customer and/or which is available at that time and may be based on a number of assumptions. If it materialises that in the Company's reasonable opinion, the information provided and/or assumptions made are incorrect, inaccurate or have changed and/or that the proposed scope of Services is not feasible, the Company shall be entitled to charge the Customer for any additional Services provided to those detailed in the Quotation together with all related costs and expenses incurred by the Company.

6.6. Unless otherwise specified, the Customer shall pay each invoice submitted to it by the Company in full, and in cleared funds, within 14 days of receipt.

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

6.7.1. charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays bank, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and

6.7.2. suspend all Services until payment has been made in full.

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

6.9. All payments payable to the Company under the Contract shall become due immediately on termination of the Contract, despite any other provision. This clause is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

6.10. The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.

6.11. For the avoidance of doubt, all payments made as 'deposits' are strictly non-refundable.

## **7. Intellectual Property Rights**

7.1. All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Company unless otherwise agreed in writing by the Company. The Company hereby licenses all such rights to the Customer 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. If the Company terminates the Contract under clause 10.1, this licence will automatically terminate.

7.2. Any material or content provided by the Customer to the Company to enable it to perform the Services shall remain the sole property of the Customer. The Customer hereby grants to the Company a licence to use such material or content to enable the Company to provide the Services in accordance with the Contract.

7.3. The Customer shall indemnify the Company against all damages, losses and expenses arising as a result of any action or claim that the Customer's materials or content infringe the Intellectual Property Rights of a third party.

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

## **8. Confidentiality and Company's property**

8.1. The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Company or its agents, and any other confidential information concerning the Company'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 the Company, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

8.2. All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Customer shall at all times be and remain the exclusive property of the Company, 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 the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

8.3. This clause 8 shall survive termination of the Contract, however arising.

## **9. Limitation of liability**

9.1. The following provisions set out the entire financial liability of the Company (including without limitation any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

9.1.1. any breach of the Contract howsoever arising;

9.1.2. any use made by the Customer of the Services, the Deliverables or any part of them; and

9.1.3. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

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

9.3. Nothing in the Contract excludes the liability of the Company for death or personal injury caused by the Company's negligence; or for fraud or fraudulent misrepresentation.

9.4. Subject to clause 9.2 and 9.3:

9.4.1. the Company shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

(a) loss of profits; or

(b) loss of business; or

(c) depletion of goodwill or similar losses; or

(d) loss of anticipated savings; or

(e) loss of goods; or

(f) loss of contract; or

(g) loss of use; or

(h) loss or corruption of data or information; or

(i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses,

9.4.2. the Company's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), 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 in the preceding 6 months.

## **10. Termination**

10.1. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract or part of the Services without liability to the other if:

10.1.1. the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;



10.1.2. the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

10.1.3. the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

10.1.4. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

10.1.5. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; Insolvency Act 1986;

10.1.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

10.1.7. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

10.1.8. the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

10.1.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

10.1.10. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

10.1.11. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1.4 to clause 10.1.10 (inclusive);

10.1.12. there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

10.2. Any provision of these Conditions or the Supplementary Terms (where applicable) that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract, shall remain in full force and effect.

10.3. Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

## **11. Force majeure**

11.1. The Company shall not in any circumstances have any 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 by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company 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 of plant or machinery, fire, flood, storm or default of contractors, sub-contractors or other third party.

11.2. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 60 days, the Company may terminate the Contract by giving 14 days' written notice to the Customer.

## **12. Waiver**

12.1. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **13. Rights and remedies**

13.1. The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

### **14. Severance**

14.1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.2. If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **15. Entire agreement**

15.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

15.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

### **16. Assignment**

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

### **17. Third party rights**

17.1. No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

### **18. Notices and communication**

18.1. Any notice given to a party under or in connection with this Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office.

18.2. Any notice shall be deemed to have been received:

18.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

18.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

18.3. This clause 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. For the purposes of this clause, "writing" shall not include e-mail. Notwithstanding this, the parties may communicate in respect of any other matter referred to in the Contract (other than notices) by e-mail (unless specified otherwise).



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**19. Governing law**

19.1. The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

**20. Jurisdiction**

20.1. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including noncontractual disputes or claims).