



## **SOFTWARE DEVELOPMENT AND SUPPORT SERVICES TERMS & CONDITIONS OF BUSINESS**

This agreement is between Codium Pty Ltd (we/our/us) and the Client (you/your) engaging Codium to provide software development and software support services. You accept this agreement by signing below, clicking a box indicating your acceptance or executing an order form that references this agreement or by payment of a deposit authorising work on your quoted project to begin. If you are accepting these terms and conditions on behalf of an entity, you represent that you have the authority to bind such entity and its affiliates to these terms and conditions.

These terms were last updated on January 30, 2014 and are effective between You and Us as of the date of you accepting them.

### **OUR RESPONSIBILITIES**

**Provision of Purchased Services.** We will (a) make the Services available to You pursuant to this Agreement and the applicable Order Forms, (b) provide Our standard support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased, and (c) use commercially reasonable efforts to make the Purchased Services hosted by us available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give at least 8 hours electronic notice and which We shall schedule to the extent practicable during the weekend hours between 6:00 p.m. Friday and 3:00 a.m. Monday Pacific time), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, Non-Codium Application malfunction, or denial of service attack.

**Protection of Your Data.** We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law, or (c) as You expressly permit in writing.

**Conflicts of Interest.** We will have in place and maintain processes for the early detection and mitigation of conflict of interest risks. These will include but not be limited to the following safeguards:

- (1) *Declaration* - We will declare the potential conflict of interest to the client as soon as we become aware of it as well as explain to both clients the safeguards put in place to mitigate the potential conflict of interest risk.
- (2) *Screens* - Software Engineers working on one project are prohibited from certain kinds of communication with Software Engineers working on a project for a competing client; for instance prohibiting discussion of technical requirements and coding outside of closed, project specific electronic discussion boards. Where necessary, for example on projects that require verbal group discussions, these prohibitions will be augmented by placing the Software Engineers in separate locations (on different floors or in different buildings) and putting controls on e-mail and file access.
- (3) *Project Management* - Technical Project Managers are prohibited from working on two or more projects that have been identified during the business development or requirements definition stage to pose a conflict of interest risk for clients (e.g same product in the same industry)
- (4) *Code of Ethics* - we require all of our Software Engineers to pass accreditation and maintain membership with the Australian Computer Society (ACS). As part of this, our Software Engineers subscribe the ACS' Code of Ethics which stipulates and enforces honesty and protection of client interests standards.

**Confidentiality.** "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent.

**Quality Assurance.** We provide quality assurance through 4 steps: (1) We undertake automated and manual testing of the developed application for internal signoff of its proper functioning (2) You undertake manual testing of the developed application and sign off on its proper functioning (3) We run an automated test once the application goes live (4) We give you 14 days after the application goes live to identify any final issues. Thus we demonstrate the application's functionality materially complies with the relevant Specifications to the Customer. The Customer is responsible for conducting any additional testing of the deliverables subject to any applicable Acceptance Criteria agreed on by the parties before the tests take place. If the Customer reasonably determines a submitted deliverable does not materially comply with the Acceptance Criteria, it must provide its reasons to Codium in writing within 14 Business Days of the software being made available for client testing. Codium will then use commercially reasonable efforts to promptly resolve any deficiencies raised by the Customer and submit the deliverable for re-testing. Unless otherwise agreed by Codium, the Customer agrees not to use the Software before its acceptance except to complete the tests. If the Customer uses the Software in live commercial use, acceptance of the tests will be deemed to have occurred.

**Our Personnel.** We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

## **YOUR RESPONSIBILITIES**

**Communication.** The customer must let Codium know of any defect in the operation of the Software in writing as soon as it becomes aware of the defect and agrees that Codium may resolve the defect remotely.

**IT Environment:** The client is responsible for ensuring that the IT environment in which the application is installed is in good working order and that it has sole responsibility for the availability and integrity of the that environment. The client is responsible for taking all reasonable precautions to safeguard its business and specifically its IT Environment, the Software and all software and data to minimise potential loss or disruption, including (as applicable) implementing effective audit control, working methods, firewalls, virus checking controls and data security measures including appropriate data and software back-ups.

### **Milestone Review Process**

The client will have the opportunity to review project progress at the end of each identified project stage. Codium will provide the client with a 7 day window in which the client can request a face to face or phone based meeting to review progress. This 7 day period will begin from the date Codium issues notice via email that the particular stage is ready for review. If the Client does not review progress within this period the particular stage milestone will be deemed to be signed off on by the client and the next payment installment will become due.

**Final Testing.** The client is responsible for final testing of the application to ensure it complies with their requirements before going live. Codium has a 4 step quality assurance process that requires us to test automatically and manually that the software meets requirements specifications prior to going live and after going live. Part of this quality assurance process requires the customer to test the software before it goes live and after it goes live. After carrying out this process, Codium does not accept responsibility for losses or damage arising from errors within any application. Codium also does not accept responsibility for errors, damages, losses or additional costs that relate to third party products.

**Permissions & Copyright.** The client will obtain all necessary permissions and authorities with respect to the use of all copy, graphics, logos, names and trademarks and any other material supplied by the client to Codium. Supply of said material by the client to Codium shall be regarded as a guarantee from the client that all such permissions and authorities have been sought and obtained for said material. No responsibility will be accepted by Codium for damages or losses incurred by the client from the use of material for which permission or authority has not been obtained.

**Timely Payment.** The client is responsible for paying invoices by the due date specified on the invoice in line with Codium's terms of payment. Codium incurs expenses for Software Engineering wages, software development platforms, purchase of copyright items (e.g. customer specific images, modules etc.). We incur these expenses prior to invoicing the client. Any late payments usually create cash flow challenges for us. As a result, we will postpone work on any project as soon as an invoice related to that project becomes overdue. The project due date will be extended in line with the postponement time. Invoices that become overdue by more than 21 days may be referred onto a debt collection agency and all fees incurred to recover the owed amounts are payable by the client.

**Cancellation.** Should you wish to cancel after having authorised us to begin development, Codium will invoice you for any work completed to date, as a percentage of the total work involved. You must advise Codium in writing of the request not to proceed with work.

## **FEES & PAYMENT FOR PURCHASED SERVICES**

**Invoicing and Payment.** We will invoice you as per the agreed payment schedule. Unless otherwise stated, invoiced charges are due net 14 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

**Overdue Charges.** If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 10% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future any future work on prepayment basis.

**Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 14 or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least 10 days' prior notice that Your account is overdue, before suspending services to You.

**Payment Disputes.** We will not exercise Our rights under the section "Overdue Charges" or "Suspension of Service and Acceleration" above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

## MUTUAL INDEMNIFICATION

**Indemnification by Us.** We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of a Purchased Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a "Claim Against You"), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates (ii) obtain a license for Your continued use of that Service in accordance with this Agreement. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from Content, a Non-Codium Application or Your breach of this Agreement.

**Indemnification by You.** You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of any Service or Content in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "Claim Against Us"), and will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.

## INTELLECTUAL PROPERTY

All intellectual property created by Codium is absolutely retained by Codium. Fees paid by the customer under these terms do not constitute consideration for ownership of created IP by the customer. Codium may separately negotiate custom licensing or intellectual property assignment arrangements in relation to the created IP. Such an agreement must be recorded in writing as special terms overriding the provisions of this agreement in relation to intellectual property.

Subject to the customer's compliance with all the above terms, Codium grants the customer a non-exclusive, irrevocable, perpetual and fee free license to use the software for the purpose which it was intended. This grant is also subject to the customer warranting that it will not, nor will it allow any third party to, separate out the created IP and use it for any other project or purpose, including transplanting that IP into other code, documentation or artefacts. The customer grants Codium a non-exclusive, irrevocable, perpetual, fee free license to use the customer IP, in its minimum usable form and without such customer IP being deemed to be confidential information, insofar as it is inextricable from the created IP, for the purposes of exploiting the created IP.