



embado ltd
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Please find below the embado ltd general terms and conditions.

Please visit www.embado.com/terms for other terms and conditions.

GENERAL TERMS AND CONDITIONS

Contract Period This Agreement shall commence on the date set out on the execution page of this Agreement and continue for [3 months] and thereafter renew automatically on a monthly basis unless and until terminated by either party with 30 days notice.

Additional charges The Fees cover only the costs of those activities expressly set out in these agreement. Travel time, materials and any additional work, as well as any variations to the Sections which entail additional costs for Us, will be charged in addition to the Fees at our standard rates.

Late payments will incur interest at 3% over the base rate of Barclays Bank plc from the due date paid. All prices are quoted exclusive of VAT.

Further Obligations You shall co-operate in good faith with Us in the provision of the Service and shall report to Us any suspected faults in the Service which You may become aware of as soon as such suspected faults come to Your attention.

You shall not use the Service or any domain or user name so as to impersonate any other entity or to infringe the rights of any other person, whether statutory or common law, in a trade mark or name.

Credit and Publicity You will have prior approval of all publicity material produced by Us which uses any of Your trade marks or logos and, subject to such approval, consent to such use. We will have prior approval of all publicity material produced by You relating to the Service, where such publicity material uses any of Our marks or logos, and, subject to such approval, consent to such use. Approval will be deemed to have been given by the relevant party if it is supplied with a copy

of the relevant material and does not object within 7 days.

Help for Users All questions and complaints from individuals accessing the Web site relating to the goods, services, editorial content, and nature and content of the Web Site are the exclusive responsibility of You and shall be handled by You.

Warranties You warrant and undertake that the Materials (or any part) or other materials supplied by You or the Users and used as part of the Web Site are not obscene, libellous, defamatory, or contravene any applicable law, or code of conduct (as varied from time to time) and shall not infringe the copyright design, privacy, publicity, data protection, trade mark, moral right or any other rights (together "IPRs").

To the extent that the storage, reproduction, broadcast or transmission of the Material or any messages or other communications to/from Your e-mail address shall entitle third parties (including without limitation collecting societies such as the Performing Right Society and the Mechanical Copyright Protection Society, and their equivalents in any part of the world) to any payments in relation to such storage, reproduction or transmission, such payments shall, as between You and Us, be borne by You.

We warrant that the materials and design contributed by Us to the Work are not obscene or defamatory, and shall not infringe the IPRs of any third party.

We also warrant that the Work will be provided with reasonable care and skill and in a professional and timely manner. Notwithstanding this, You acknowledge and agree:

(a) that We do not monitor or control the content of messages or newsgroups forming part of the Web Site;

(b) that it is technically impossible to provide the Service free of faults and that We do not undertake to do so.

Except as set out expressly in this agreement, We make no representations, terms, conditions or warranties either express or implied, by statute or otherwise, in relation to the provision of the Service or other service under this Agreement, including but not limited to implied warranties, conditions or other terms of completeness, accuracy, satisfactory quality and fitness for a particular purpose and that all such representations, terms, conditions and warranties are expressly excluded.

Exclusion and Limitations You agree that We shall not be liable in contract, tort, negligence, statutory duty or otherwise for;

(a) consequential, indirect or special loss or damage whatever arising from or in any way connected with this Agreement;

(b) direct loss or damage (including loss or damage which is reasonably foreseeable or occurs naturally in the course of things) resulting from any acts, omissions, failures or delays by Users, whether fraudulent or not;

including without limitation damage for loss of business loss of sales, non payment of sums due, loss of profits, business interruption, loss of reputation, loss of business information, or any other pecuniary loss (even where We have been advised of the possibility of such loss or damage).

You also agree that (except in relation to such liability as has been expressly excluding in the paragraph immediately

above) the maximum aggregate liability of Us in contract, tort, negligence, statutory duty or otherwise (even where We have been advised of the possibility of such loss or damage), for any loss or damage whatever arising from or in anyway connected with:

(a) any failure by Us to process information, orders or messages from Users correctly, accurately or in a timely manner; and

(b) any non-routing, misrouting, or non-delivery of information, messages or orders from Users, or any scrambling or distortion of data or information contained therein; and

(c) any liability not excluded by this Agreement; shall, in respect of any one or more events or series of events (whether connected or unconnected) take place within any twelve month period be limited to the sum paid by You in such period. This limit shall also apply in the event that any exclusion or other provision contained in this Agreement is held to be invalid for any reason and We become liable for loss or damage that could otherwise have been limited.

Nothing in this Agreement shall exclude:

(a) Our liability for death or personal injury arising from Our negligence or that of Our servants, agents or employees acting in the course of their duties; or

(b) any other liability which it is prohibited from excluding by law.

Data Protection You hereby warrant and undertake that as regards any Personal Data as defined in the Data Protection Act 1984 ("the Act") which is or is to be stored or processed or dealt with in any way hereunder You are and will continue to be duly registered in respect of the same under the Act and will at all times comply with the provisions of the Act insofar as they concern such data and the proper performance by Us of our obligations hereunder or of any additional services which We may provide at Your request shall not result in any offence being committed or liability arising to Us under the Act.

Branding All goodwill arising in connection with the name Embado and the logos for Us shall belong to Us. The address and Uniform Resource Locator ("URL") of the Web site together with any electronic mail address supplied by Us shall belong to Us.

Subject to the above, Your Web Site name, all goodwill arising out of use of Your Web Site name, and Your logo used in connection with the Web Site will belong to You.

Intellectual Property Rights You shall grant Us for the term of this agreement a royalty free licence to use, copy, modify, publish and otherwise deal

with the Materials in the manner contemplated by this agreement.

Subject to the above all IPRs in the Work and the Service will remain Our property. We hereby grant to You a non-exclusive, royalty free, non transferable licence to use the Work and the elements comprising the Web Site for the service provided by You to the Users.

All the IPRs in the existing and new scripts used by Us in the production of the Web Site will remain Our property. You shall not delete any copyright legends or other statements of ownership from any of the scripts in the Web Site. We do not give any warranties in relation to the search engine scripts created by third parties and used in the provision of this Service.

If any third party software is used in the provision of the Service, then each party will be responsible for ensuring that they have a licence to use such third party software.

Save as provided above the IPRs in the Materials will remain Your property.

Indemnity You shall indemnify and on demand keep Us fully and effectively indemnified from and against all liability, claims, losses, costs, expenses, loss of profits, business interruption, and other pecuniary or consequential loss (including reasonable legal costs and expenses) suffered or incurred by Us as a result of:

(a) any claims or actions by Users and any failures of the security of the Service or the Web Site, in each case where the same does not result from any breach by Us of our obligations hereunder; and

(b) Your breach of this Agreement.

No Agency You agree that, in relation to goods and services purchased by Users from You via the Web Site, You shall enter into a binding legal relationship directly with such Users to the exclusion of Us, and that We shall not be party to any such legal relationship. You agree that shall not be Your agent (or the agent of any of your suppliers) in relation to Users, and We accept no responsibility or liability for any agreements, arrangements, or contracts made (or not made), or dealings between You and Your Users.

Suspension and Termination by Us Without prejudice to any of Our other rights, We shall have the right to immediately terminate this Agreement and/or suspend or restrict the Service (including restricting Your and the Users access to the Web Site), if:

(a) You do not pay to Us by the due date any sum due;

(b) You are suspected in Our reasonable opinion, of involvement with fraud or attempted fraud or any other criminal

offence in connection with the use of the Service;

(c) You do not comply within the time we shall have stated in a request by Us to discontinue advertising, marketing or supplying goods or services or to stop the use of the e-mail facilities provided by Us for electronic messages for specified purposes or by specified persons where in each case such activity is, in Our reasonable opinion, in breach of an applicable law, regulation, or code;

(d) You commit any breach of this Agreement and, if it is capable of being remedied, fail to remedy such breach within [15] days from the date of the first notice specifying the nature of the breach;

(e) You become insolvent, cease to trade (or in the reasonable opinion of Us are likely to cease to trade) or have a liquidator, receiver, administrator or administrative receiver appointed or enter into any arrangement with Your creditors or are wound up otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of Your obligations, or are unable to pay Your debts as they fall due within the meaning of section 123 of the Insolvency Act 1986, or are made bankrupt, or undergo a similar or analogous event in any jurisdiction; and We shall not be liable for any losses incurred by You as a result of such suspension, termination, or restriction.

Termination by You Without prejudice to any of Your other rights, You shall have the right to immediately terminate this Agreement if:

(a) We commit any material breach of this Agreement and, if it is capable of being remedied, fail to remedy such breach within 15 days from the date of the first notice specifying the nature of the breach;

(b) We become insolvent, cease to trade (or in the reasonable opinion of You are likely to cease to trade) or have a liquidator, receiver, administrator or administrative receiver appointed or enter into any arrangement with Our creditors or are wound up otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of Our obligations, or are unable to pay Our debts as they fall due within the meaning of section 123 of the Insolvency Act 1986 or are made bankrupt or undergo a similar analogous event in any jurisdiction; and You shall not be liable for any losses incurred by Us as a result of such termination.

Post-Termination After expiry or termination of this Agreement for any reason:

(a) Each party will on request by the other return or supply to the other all documents, disks and other material in its possession containing any confidential

information of or copyright material of the other. We will (at Your option) either destroy or return the Materials;

(b) Each party will immediately cease using the other's trade marks and (unless otherwise agreed) any intellectual property of the other save for ongoing general promotional purposes.

Force Majeure Neither party shall be liable for any breach of its obligations hereunder (other than any obligation to pay money) and no right of termination shall arise where the breach results from causes beyond its control and the party concerned has acted and continues to act reasonably and prudently to prevent and to minimise the effect of such causes.

Confidentiality Each party will at all times keep confidential and will not disclose without the prior written consent of the other any business, systems or other confidential information of the other party or use any such information other than for the purposes contemplated by this Agreement (except that each party may disclose such information to those of its employees, agents and sub-contractors who need to know the same for such purpose and under conditions of confidentiality non-disclosure and non-use equivalent to those imposed on the parties by this clause). These obligations of confidentiality non-disclosure and no-use do not apply to any information which is publicly available through no fault of the party disclosing or using the information, or which was known to that party before receipt from the other party, or received from other source without obligation as to confidentiality, or which is required to be disclosed by law or regulating authority.

Personal This Agreement is personal to You and Your rights may not be assigned, sub-licensed or transferred in any way without Our prior written consent.

Acceptance Where Acceptance of Work is required We shall carry out Acceptance Tests on the Web Site. Acceptance shall mean that tests for determining whether the Web Site meets the description of Work and Specification. If the Web Site shall have successfully passed the Acceptance Tests in all material respects then You shall promptly issue a certificate to that effect.

If the Web Site fails the Acceptance Tests then We shall use Our reasonable commercial endeavours promptly to remedy the cause of such failure whereupon the Web Site shall be resubmitted to acceptance testing. The Work and the Web Site shall be deemed to have passed the Acceptance Tests if the Web Site is used in a live environment with Users or if within 7 days of the last Acceptance Tests You have not notified Us that the Web Site has failed the Acceptance Tests.

This Contract Prevails Neither of us has entered into this agreement on the basis of, or has relied on, any statement or representation (whether negligent or innocent) except those expressly contained in this Agreement. This paragraph shall not apply to any statement or representation made fraudulently.

This Agreement constitutes the entire understanding between the parties concerning the supply and use of the Service, and replaces, supersedes, and cancels all previous arrangements, understandings, representations or agreements relating thereto. These terms shall apply and prevail over any terms and conditions (whether conflicting or not) contained or referred to in any documentation submitted or provided by You.

Notices Any notices required to be given under this Agreement shall be in writing and shall be sent by first class registered post, recorded airmail, e-mail, fax or by hand, at the address specified in this Agreement.

Applicable Law The construction, validity and performance of this Agreement shall be governed by the laws of England and Wales and this Agreement shall be subjected to the non-exclusive jurisdiction of the English courts.

Changes to the Terms We reserve the right, on reasonable notice, to change these terms from time to time.