

The Monastery – Terms of Use

Welcome to The Monastery (“*we*”, “*us*”, “*our*”). This document is our Terms of Use. We have prepared it in plain English to make it easy to understand and so that hopefully you don’t need to use a dictionary to decipher it.

This document is a legally binding agreement governed by California law that regulates your engagement of our services when you engage us to perform professional services like consulting, software development and design services. Unless we otherwise agree in writing, no other terms or conditions shall apply and if you don’t agree to our Terms of Use we will not provide you with any of our services.

These Terms of Use are divided into two sections. Firstly, we set out below the “core terms” that apply to all of our services. In section 2, we set out our general terms and conditions that also apply to all of our services.

We may change these Terms of Use or the amount of our fees from time to time so please check back regularly to make sure that you understand this document.

Section 1 – Core Terms

Professional Services: We provide various professional services, including software application design and development services, user experience (UX) services and consulting services. Each different matter for which you engage us to perform professional services will be classified as a *project* and will be allocated a project name or number by us. Your engagement of us under these Terms of Use to perform professional services only commences once you have paid an invoice that we have issued which expressly refers to these Terms of Use. Our invoices will set out the amount of time that we will spend providing our professional services for you (*Block of Time*). For example, you can engage our application design services in blocks of hours or weeks.

Once you have used up a Block of Time, your engagement of our professional services shall be deemed to have come to an end until you buy a further Block of Time.

Up-front Payment: So that we can focus on delivering great services rather than chasing bills and engaging debt collectors, unless we agree otherwise, all of our services must be paid for in advance together with all applicable taxes, duties and charges. Please contact us if you would like to discuss an alternative payment arrangement.

Agile Process: When you engage us to perform professional services for a Block of Time, we will work on your current list of requirements until your Block of Time has been fully utilized. While we may give you feedback and recommendations, it is up to you to guide us as to the work that you would like us to carry out. For example, you may as you see fit from time to time change the priority of your project requirements, delete project requirements or add new project requirements. At any Sprint meetings that we schedule with you, you may select requirements to be included in a current Sprint backlog and we will estimate whether we think we can complete those requirements during the current Sprint without exceeding your purchased Block of Time or whether you will need to purchase additional Blocks of Time. However, we don't provide fixed fee quotes and any estimates that we provide are a "best guess" only, are non-binding and subject to change from time to time. We charge you for all time spent on your projects, including, for example, time spent attending Sprint meetings, providing estimates, providing support, carrying out development and integration, providing maintenance and defect fixes, participating in design activities and providing status reports. All time spent by each The Monastery staff member on your Projects will accrue against any Block of Time that you have purchased.

No Guarantee of Delivery or Performance: As we operate on a time and materials basis only, are constrained by the Blocks of Time that you purchase, and operate on an agile basis as described above, we cannot commit to deliver any specific project requirements and we do not

guarantee or represent that the modifications we make or the code we develop will not have an adverse effect on the performance or operation of your application. In rare circumstances our services may have an adverse effect on the performance and operation of your application and result in other unintended consequences. Any proposals, project visions and other documents or representations provided which set out your objectives or our capabilities to fulfil your project requirements are a guide only and our completion or satisfaction of those objectives and requirements may or may not be possible during the limited time that you engage us to provide services under these Terms of Use. It may necessary for you to purchase additional Blocks of Time in order for us to fix defects and other problems associated with your application.

Co-operation is Key: In our experience the prospects of successful project completion are exponentially increased when there are regular and high levels of co-operation and interaction between our development team and your project team members. We expect your project team members to be available as often as we require them to be in order to answer any questions that we may have about your project, to prioritize project requirements and provide access to systems and other information that we may require from time to time in connection with your projects. You will need to assign a member of your project team to the position of “Project Owner”, who will be your main representative for your projects. We will be entitled to assume that he or she may perform your obligations and exercise your rights under these Terms of Use (including by giving approval where required and prioritizing your requirements), without the need for us to seek any other approval from you. Your “Project Owner” must be fully familiar with your business and the project, actively participate in all Sprint meetings that are held by us, and dedicate such efforts to your projects as we may require from time to time.

Backup, Security and Archiving: It is your (and not our) responsibility to backup, secure and archive the code for your application so please make sure that you have and implement an appropriate backup, security

and archiving strategy.

Section 2 – Our General Terms

Intellectual Property Rights: All copyright, patents, designs, trade marks, trade names, rights to confidential information and any other intellectual proprietary right or form of intellectual property, and the right to apply to register and enforce all or any of the foregoing rights (together, *IPRs*) in any software that we develop for exclusive use in your project and deliver to you (*Delivered Software*) are and shall remain owned exclusively by you to the extent that we are lawfully entitled to transfer those rights to you. If we agree to develop software for your exclusive use in your project we will notify you on the relevant invoices that we issue to you in advance. However, irrespective of what our invoices stipulate, in some situations we won't be able to transfer IPRs in the deliverables that we deliver to you, for example where the deliverables include open source software (as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>)) and in those circumstances we will have no obligation to do so. All IPRs in any software development tools (i.e. software that we use to develop other software) and in software that we have developed prior to your engagement of our services, and software that we develop outside the scope of the work you engage us to carry out for your project (including software we have developed or do develop for any other customer) belong to us and is never transferred or licensed to you other than in circumstances where they are licensed in the form that we supply the software to you (if at all) and then only on a non-exclusive, non-assignable and non-sub licensable basis and solely for your use integrated into the Delivered Software. All IPRs in our services and any suggestions you make regarding them remain with us and our licensors and we do not assign or license you to use any of them. You hereby irrevocably assign to us all of your rights, title and interest in and to all of those suggestions and agree to provide any assistance we may require to document, perfect and maintain our rights in all such services and suggestions.

Third Party IPR Claims: To the best of our knowledge our Delivered Software will not infringe the IPR of any person. If we are wrong about that, we will indemnify you for any losses suffered by you from third party claims that your use of Delivered Software infringes any such rights, unless the claim arises with respect to software that we did not develop, a software feature requested by you, modification or use of Delivered Software in a manner that we have not approved in writing, or the use of an old or obsolete version of Delivered Software. If we provide you with replacement software to replace any infringing Delivered Software you must immediately cease using that infringing software. We won't indemnify you unless you do so, and you give us all relevant records, your full cooperation and complete control of the defense and settlement of the claim.

Your Content: We are not responsible for any of your content or data that you or any other person transmit, store in, upload, download or process in connection with any software we develop for you or deliver to you (*your content*). You license us to use your content to the extent necessary for us to use it in order to provide services to you under or in connection with these Terms of Use. You are solely responsible for the correctness, technical operation, and all permissions and authorizations required in connection with your content to process and use your content) including any permissions and authorizations relating to the use of personal information. You are also solely responsible for handling and processing any claims and notices relating to your content and you are responsible for any use of your content by you or any other person (whether such use is authorized or not). If we incur any loss or damage resulting from or in any way connected with your content, you must indemnify us for all such loss and damage.

Our Liability: Our liability under these Terms of Use is limited in a few different ways: First, we will not be liable for any claims made for a particular project in excess of the amount of money you pay us for that project; and we will not have any liability for our provision of a service in excess of the amount of money you pay us for that service; second,

we will not have any liability for any matter beyond our reasonable control such as third party software failures, telecommunications network faults, non-performance or interruptions of software, hardware failures, service failures caused by third parties (including failures of Amazon services), adverse weather events and labor disputes; third, we will not be liable for software bugs, non-performance or downtime of software, applications or hardware, or for loss of profits, loss of revenue, loss of or unauthorized access to or alteration, deletion of, or failure to store, content or data, or for loss of goodwill, losses connected with software crashes and other unintended consequences of using our services, or other indirect or consequential losses even if we were advised of the possibility or likelihood of those losses; and fourth for any breach by us of any applicable guarantee under schedule 2 to the *Competition and Consumer Act 2010* (our liability will be limited to one or more of the following as determined by us: if the liability concerns goods, (i) the replacement of the goods, or the re-supply of the goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (iv) the payment of the cost of having the goods repaired; and if the liability concerns services: (i) the supplying of the services again; or (ii) the payment of the cost of supplying the services again. You must indemnify us for any loss or damage we incur arising out of or relating to any third party claim concerning your use of our services, your breach of these Terms of Use, your content or a dispute between you and any third party.

Confidentiality: If you provide us with any information that the law deems to be confidential, we will do our best to keep it confidential other than where it is necessary for us to disclose the information for the purposes of performing our services for you. For example, we will need to disclose your credit card details to our payment gateway provider. If we give you any information that the law considers to be confidential you must do your best to keep it confidential and must not use it except for the purposes of the project that we delivered it for. You and we will return to each other or destroy each other's confidential information upon completion of the relevant project except where doing so would

breach any applicable law. To avoid any doubt, you and we will have no obligation of confidence regarding any information that is disclosed by one of us (*giver*) to the other (*receiver*) that is independently developed by the receiver or obtained by the receiver without breaching any obligation of confidence and nor will either of us have or have had any obligation of confidence regarding any information in the public domain.

Advertising: If you engage us to perform any services you will be deemed to have given us your permission to list you as a client on our website and in our other marketing materials.

Relationship: We do not work exclusively for any particular client or clients. We work for many different clients across many different industries some of whom may be your competitors. Unless we otherwise expressly agree to do so, we do not work as employees, partners or in any other form of relationship with our clients other than as independent contractors. You cannot transfer your rights under these Terms of Use and you are responsible for your use of our services and for any other person that uses any of the services we provide to you. You are also responsible for any action that you permit, assist or facilitate any person or entity to take related to these Terms of Use.

Non Solicitation of Employees: Our employees are important to us. You cannot employ, engage or entice away from employment with The Monastery any person who is an employee of The Monastery who you had any dealings with at

The Monastery. This restriction lasts for 6 months after you cease to receive any services from The Monastery. Also, this restriction prevents you from directly employing, engaging or enticing away any The Monastery employee directly or indirectly (i.e via another entity or any third party). If you breach your obligations under this clause, you must pay The Monastery compensation in an amount equal to 20% of the employee's final year annual remuneration package with The Monastery or \$20,000 USD, whichever is greater.

Termination and Dispute Resolution. Either one of us can terminate a project and your engagement of all or any of our services at any time by sending a written notice to the other party confirming the decision to terminate. If a project is terminated we will first apply any balance of any Block of Time you have purchased and paid for but not used against outstanding invoices if any and then refund the balance, if any. You may only exercise your right to this refund on one occasion only and only within 60 days of termination by [notifying us in writing](#) that you wish to exercise your rights to that refund. However if you have a problem with our performance or our services generally we would prefer to resolve the matter amicably rather than have our services terminated or either party waste time and money on legal action. If you have any problems with our services, please contact us. In our view, legal action, if it is ever necessary, should only be left as a last resort. If legal action is commenced, it may only be initiated in a court located in California.

Contacting Us. If you wish to make any enquiries with us about our services, we invite you to [contact us](#) at your convenience. We are available to speak to you during standard operating hours.