

WEB DESIGN/ HOSTING SERVICES AGREEMENT TERMS & CONDITIONS

The following are the terms and conditions for a Curves Club web site and use of Caorda Tools. By clicking the 'I accept' button on the sign-up page or by logging in to any Caorda Tool, you accept these terms and conditions.

PLEASE READ THESE TERMS AND CONDITIONS OF USE CAREFULLY.

CAORDA SOLUTIONS, a registered partnership in the province of British Columbia and having a place of business at 2535 Eastdowne Road, Victoria, British Columbia, V8R 5W3 ("Caorda")

WHEREAS:

- A. Caorda is in the business of providing Web design services, development services and hosting services to a wide variety of businesses and organizations;
- B. You wish to obtain the services provided by Caorda; and
- C. Caorda agrees to provide the services on your behalf, on the terms and conditions contained in this Agreement.

NOW THEREFORE, you agree as follows:

DEFINITIONS

1.01 In this Agreement:

"Agreement" means this agreement entitled "Web Design/Hosting Services Agreement";

"Caorda Tools" means a suite of products provided by Caorda which includes all applications and tools used to manage the Web Site and allows the Client to perform functions commensurate with the terms of the Agreement;

"Client Content" means all items and/or information provided to Caorda or entered by the Client for uploading to or downloading from the Client's Web Site;

"Client" means the party who are accepted these terms and conditions by clicking the "I accept" button during the sign up process.

"Confidential Information" means any information and all technical and non-technical information regarding Caorda or the Client, whether in oral, written, graphic or electronic form, and provided to the other party, including, but not limited to technical processes and formulas, application technology, trade secrets, know-how, software programs and all related manuals, technology assessments, database contents, documentation, and other non-public information owned by either Caorda or the Client;

"Contaminant" means a computer virus, worm, lock, mole, time bomb or any other code or instruction which may modify, delete, damage, disable or disrupt the operation of any computer software or hardware;

"Effective Date" means the date of execution of this Agreement;

"Event of Default" means each of the events specified in paragraph 13.02 of this Agreement;

"Expiry Date" means the end date of the Term as set out in paragraph 3.01 of this Agreement;

“Fees” means the fees as set out in Schedule “A” to this Agreement which are payable by the Client to Caorda for the Services Caorda renders to the Client under this Agreement;

“Hosting Services” means those services as described in Schedule “A” to this Agreement where Caorda houses, serves and maintains on its servers the Client’s Web site and various Web Pages for certain Fees;

“Services” means the planning, information design, Web development, storage, project management, update services, and customization and hosting services as described in Schedule “A” to this Agreement which Caorda provides to the Client, and includes, without limitation the Hosting Services;

“Source Code” means the instructions written in a particular programming language for the Caorda Tools and the Web Design and that can be compiled into an object code or machine language;

“Term” means the period set out in paragraph 3.01 of this Agreement;

“Web Design” means all visual element of the Web Site including graphics, logos and navigation that Caorda creates for the Client;

“Web Page” means an electronic partition of a single page or section within a Web Site; and

“Web Site” means an electronic message designed for the purposes of electronic transfer via the Internet to promote products, services and information, to an audience with its various Web Pages and Web Design and on which the Client Content appears.

CAORDA SERVICES

- 2.01 During the Term of this Agreement, Caorda will provide the Services to the Client as described in Schedule “A” to this Agreement on the terms and subject to the conditions contained in this Agreement.

TERM

- 3.01 The Term of this Agreement will commence as of the Effective Date and is for three years unless terminated pursuant to Section 13.
- 3.02 The Term of this Agreement will be automatically extended for another year unless the Client gives Caorda written notice no less than 60 days prior to the Expiry Date.

PAYMENT

- 4.01 The Client will pay Caorda the Fees which are described in Schedule “A” of this Agreement for the Services.
- 4.02 The Client will be responsible for and will pay all applicable taxes pursuant to this Agreement.
- 4.03 Caorda will invoice the Client, via mail, facsimile or e-mail, for the Fees set out in Schedule “A” of this Agreement.
- 4.04 The Client agrees and acknowledges that the Fees may be subject to change upon written notice to the Client delivered at least 60 days prior to the effective date of the fee change.
- 4.05 The Client agrees and acknowledges that all amounts invoiced for Services rendered by Caorda are due upon receipt of invoice.
- 4.06 The Client will pay Caorda interest of 1.5% per month, compounded monthly, on overdue funds owing on invoices after 30 days from when the Client receives the invoice.

CAORDA'S RESPONSIBILITIES

- 5.01 During the Term, Caorda will:
- (a) provide to the Client all hardware, software, materials and other items necessary for implementing this Agreement and will own all right, title, and interest in and to such items with the exception of the Client Content;
 - (b) maintain enterprise servers and the necessary software licensing to provide the Hosting Services to the Client;
 - (c) perform regular on-site daily backups of both static and dynamic Client data;
 - (d) scan all e-mail for Contaminants and SPAM and will block, delete or quarantine such e-mail in accordance with the rules implemented from time to time on the SPAM firewall; and
 - (e) provide other services commensurate with Schedule "A" of this Agreement.
- 5.02 Caorda may, in its sole discretion, change the hardware and or software referred to in paragraph 5.01(b) as long as there is no material change in functionality of the Client's Web Site.
- 5.03 Caorda assumes no responsibility for third parties who break encryption coding so that data being transmitted is visible to others.
- 5.04 In the event Contaminants are detected in the Client's local client environment managed by Caorda, Caorda may be required to secure the systems by denying access to infected users. If the Contaminant infection is traced back to the Client, the Client will be invoiced according to Caorda's current price list for remedying the Contaminant.
- 5.05 In the event the Client is using Caorda servers to disseminate SPAM e-mail, Caorda may be required to deny access to the e-mail of the Client causing SPAM. The Client will be invoiced according to Caorda's current price list for remedying a SPAM infraction.
- 5.06 Caorda reserves the right to invoice the Client for unreasonable disk space and bandwidth usage when such usage significantly exceeds the majority of other clients with similar sites and functionality and where such usage is not included in Schedule "A" to this Agreement.
- 5.07 Caorda is not responsible for:
- (a) any outage at the Client's premises including internal network ("LAN"), local infrastructure or facilities as well as any faulty routers belonging to other organizations;
 - (b) any third-party hardware or software malfunction of servers, routers, Internet connections and firewalls between the Client and Caorda's data centre; and
 - (c) the legality of any information disseminated and the Client remains solely responsible for information content, legality and accuracy.
- 5.08 Caorda reserves the right to perform maintenance on its servers:
- (a) every Sunday night between 11:00 pm and 2:00 am the following Monday Pacific Standard Time; or
 - (b) outside of peak business times and Caorda will notify the Client at least 2 business days prior to the scheduled maintenance.
- 5.09 In the event of an emergency, Caorda reserves the right to perform maintenance on its servers without notifying the Client.

- 5.10 In the event of a server failure, Caorda will implement, within 2 hours of discovering or being notified about the failed server, a backup server with the latest backed up copy of the Client's Web Site.
- 5.11 If Caorda's primary hosting facility is destroyed, Caorda will, within 1 business day of being notified of the disaster, restore from the off-site backup, the Client's Web Site.

CLIENT'S RESPONSIBILITIES

- 6.01 The Client will assume complete responsibility for all the Client Content as it appears on the Client's Web Site and is solely responsible for its choice of content.
- 6.02 The Client will use every responsible measure to ensure that the Client Content is free from viruses, worms, Trojan horse, and any other malicious code.
- 6.03 The Client agrees and acknowledges that Caorda will not knowingly disseminate any information or permit the Client to place information with Caorda that Caorda, in its sole discretion, believes may be in violation of any provincial, federal or municipal law, legislation or regulations.
- 6.04 The Client agrees and acknowledges that there is no guarantee of security on the Internet and no guarantee that the Web Site or the Client Content will be secure.
- 6.05 The Client will not:
- (a) reverse engineer, disassemble, decompile, or otherwise attempt to derive the Source Code from the Caorda Tools or the Web Design or any component thereof; and
 - (b) grant access to the Caorda Tools to any third party except as necessary to provide services to the Client's customers.
- 6.06 The Client will not without the prior written consent of Caorda publish, release or disclose the existence of this Agreement or any of its terms or any information supplied to, obtained by or which comes to the Client as a result of this Agreement except insofar as such publication, release or disclosure is necessary to enable the Client to exercise its rights and obligations under this Agreement.

INDEPENDENT CONTRACTOR STATUS

- 7.01 Caorda will perform all Services under this Agreement as an independent contractor and not as an agent of the Client. Nothing in this Agreement will be construed to create any legal partnership, joint venture, agency or any other relationship between Caorda and the Client. Neither Caorda nor the Client will at any time have the power to bind the other party.

REPRESENTATIONS AND WARRANTIES

- 8.01 The Client represents and warrants to Caorda that:
- (a) the Client has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement;
 - (b) all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by the Client;
 - (c) this Agreement has been legally and properly executed by the Client and is legally binding upon and enforceable against the Client in accordance with its terms;
 - (d) all information, statements, documents, and reports furnished or submitted by the Client to Caorda

in connection with this Agreement are true and correct;

- (e) the Client has no knowledge of any fact that materially adversely affects the Client's properties, assets, condition (financial or otherwise), business or operations or its ability to fulfill its obligations under this Agreement;
- (f) the Client has no knowledge of any untrue or inaccurate representation or assurance, whether verbal or written, given by the Client to Caorda in connection with this Agreement;
- (g) the Client is the owner, valid licensee, or authorized user of the Client Content and element thereof;
- (h) the use of the Client Content will not infringe the copyright, trade secret, trademark or other proprietary or intellectual property right of any third party, or constitute a defamation, invasion of privacy, or violation of any right of publicity or other third party right; and
- (i) the Client Content complies with all legislation, rules and regulations of all applicable jurisdictions including without limitation, potential liability for posting or transmitting data which is threatening, obscene, indecent, defamatory or in violation of export control laws.

8.02 Caorda makes no warranties, express, implied or statutory in this Agreement including, but not limited to implied warranties of merchantability and fitness for a particular purpose of the servers or in connection with the performance of this Agreement.

PROPRIETARY RIGHTS AND INTELLECTUAL PROPERTY

- 9.01 The Client acknowledges that Caorda has full proprietary right and title to the Caorda Tools, the Web Design and the Source Code and Caorda has exclusive ownership, including copyright, in the Caorda Tools, the Web Design and the Source Code.
- 9.02 Caorda grants to the Client a non-exclusive, non-assignable license to use and modify the Web Design within the Client's organization as long as the Client's Web Site is functional.
- 9.03 The Client agrees to display on the Client's Web Site the words "Designed by" or "Powered by" with the Caorda logo and hyperlink such logo to www.Caorda.com as long as the Client's Web Site is functional.
- 9.04 The Client acknowledges and agrees that upon termination of this Agreement, the Client will not receive any Source Code.
- 9.05 If the Client hires Caorda to provide customized services as described in Schedule "A" to this Agreement, Caorda will, upon termination of this Agreement:
 - (a) provide to the Client the compiled version of the customized source code; and
 - (b) grant a non-exclusive, non-assignable license to the Client to use the compiled version of the customized source code within the Client's organization as long as the Client's Web Site is functional.
- 9.06 The Client acknowledges and agrees that any rights not specifically granted by Caorda to the Client in this Agreement remain with Caorda.

LIMITATION OF LIABILITY

- 10.01 Neither party will be liable to the other for any incidental, consequential, exemplary, special, or punitive damages of any kind or nature or any damages resulting from loss of use, data, profits, goodwill, work stoppage, computer failure or malfunctions, or any and all other commercial damages or losses arising out

of or in connection with this Agreement or the use or performance of the Services regardless of whether either party has been advised of the possibility of such damages.

INDEMNIFICATION

- 11.01 Notwithstanding anything to the contrary in this Agreement, the Client agrees to indemnify and hold Caorda, its affiliates, directors, officers, employees, agents and licensors harmless from any and all claims, actions, losses, lawsuits, liabilities, expenses, costs, damages and fees (including attorney's fees) arising from or relating to the following:
- (a) any claim inconsistent with the Client's representations and warranties contained in this Agreement;
 - (b) any claim based upon alleged errors, omissions, or misstatements in any of the Client Content;
 - (c) any claim arising out of or relating to the Client's Web Site, the Client Content, a commercial transaction conducted via the Client's Web Site, or otherwise under this Agreement (including, but not limited to, any claim resulting from any content posted to the Client's Web Site by the Client or the Client's employees, agents or any other third party); and
 - (d) any injury to person or property, arising out of or caused by a product, service, or information, whether or not defective, that is sold or distributed from the Client's Web Site.

CONFIDENTIALITY/ EQUITABLE RELIEF

- 12.01 Each party will keep strictly confidential, and will cause and require its employees, agents and consultants to keep strictly confidential, any and all information which it or any of its employees or agents may acquire pursuant to, or in the course of performing its obligations under any provision of this Agreement; provided, however, that such obligation to maintain confidentiality will not apply to information which at the time of disclosure was in the public domain not as a result of acts by the receiving party.
- 12.02 Each party acknowledges that the unauthorized disclosure or use of Confidential Information of the other party would cause irreparable harm and significant injury to the non-disclosing party that may be difficult to compensate. Accordingly, each party hereto agrees that the non-disclosing party will have the right to seek and obtain temporary and permanent injunctive relief in addition to any other rights and remedies it may have. For purposes hereof, the obligation of confidentiality will not apply to information that is:
- (a) in the public domain at the time of disclosure;
 - (b) has been lawfully obtained by the disclosing party from a third party under no obligation of confidentiality; or
 - (c) is required to be disclosed pursuant to a duly authorized subpoena, court order, or government authority, whereupon the non-disclosing party will provide prompt written notice to the disclosing party prior to such disclosure, so that the disclosing party may seek a protective order or other remedy.
- 12.03 Notwithstanding any other provision of this Agreement, each party hereto agrees to indemnify the other party for all costs and damages of any kind whatsoever, including, without limitation, lawyers' fees and expenses, incurred by such other party as a result of any breach of confidentiality by the indemnifying party of its obligations under this Section 12.

DEFAULT AND TERMINATION

- 13.01 Either party can terminate this Agreement upon written notice of as least 60 days to the other party.

13.02 Any of the following events will constitute an Event of Default:

- (a) the Client fails to observe, perform or comply with any provision of this Agreement;
- (b) the Client assigns, sells or in any manner disposes of or encumbers all or any of the rights acquired under this Agreement; or
- (c) any representation or warranty made by the Client in accepting this Agreement is untrue or incorrect.

13.03 On the happening of an Event of Default, or at any time thereafter, Caorda may do any one or more of the following:

- (a) pursue any remedy available to it at law or in equity;
- (b) waive the Event of Default;
- (c) deliver written notice to the Client specifying the Event of Default and requiring rectification within 30 days of the date of delivery of such notice, or within any other such reasonable period as specified by Caorda in such notice; and
- (d) take any other measure at Caorda's sole discretion if the cause of the Event of Default requires immediate action from Caorda.

13.04 Where an Event of Default is not remedied within 30 days of delivery of notice, or such other period as specified by Caorda, under paragraph 13.03(c) above, Caorda, in its sole discretion, may:

- (a) terminate this Agreement by notice in writing to the Client;
- (b) remove the Client's Web Site from the World Wide Web; and
- (c) assess the Client de-installation fees of \$150 per site.

13.05 Within 30 days after the date of termination of this Agreement:

- (a) the Client will pay any outstanding Fees that are due to Caorda; and
- (b) each party will either return the other party's Confidential Information in its possession (including all copies) or will, at the disclosing party's direction, destroy the other party's Confidential Information (including all copies) and certify its destruction to the disclosing party.

13.06 If the Client wishes to migrate the Web Site to another provider, Caorda will create for the Client an HTML version of the Web Site without the Caorda Tools.

13.07 Caorda reserves the right to invoice the Client for the work required in paragraph 13.05 based on the size of the Web Site and Caorda. Caorda will notify the Client of the associated cost prior to commencing such work and the Client will pay such cost before Caorda releases the Web Site to the Client.

ASSIGNMENT

14.01 The Client will not without the prior written consent of Caorda, assign or sublicense, either directly or indirectly, this Agreement or any right of the Client under this Agreement.

NOTICES

- 15.01 Any notice, document, waiver, statement, report or demand that either party may desire or be required to give or deliver to the other will be in writing and conclusively deemed validly given or delivered to and received by the addressee, if delivered personally on the date of delivery or, if mailed on the fifth business day after mailing in North America by prepaid post addressed,

Caorda Solutions
2535 Eastdowne Road
Victoria, British Columbia, V8R 5R1

Attention: Lorne Neil, VP Sales & Marketing, Senior Partner

- 15.02 Either party may, from time to time, advise the other by notice in writing of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified will, for purposes of the preceding section, be deemed to be the address of the party giving such notice.
- 15.03 In addition to paragraphs 15.01 and 15.02, any notice, approval, consent, waiver, statement or other document may be delivered by facsimile transmission from a party and will be conclusively deemed to have been given to and received by the intended recipient when so transmitted if transmitted by facsimile numbers that the parties may, from time to time, advise.

NON-WAIVER

- 16.01 No provision of this Agreement and no breach by the Client of any such provision will be considered to have been waived unless such waiver is in writing signed by Caorda.
- 16.02 The written waiver by Caorda of any breach by the Client of any provision of this Agreement will not be deemed to be a waiver of such provision or of any subsequent breach by the Client of the same or any other provision of this Agreement.

GENERAL

- 17.01 Time is of the essence of this Agreement.
- 17.02 This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- 17.03 The Schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 17.04 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and this Agreement supersedes and replaces any agreements or undertakings regarding the subject matter of this Agreement entered into, made or given by the parties prior to the date of this Agreement is deemed to come into force.
- 17.05 If any provision of this Agreement is found to be invalid, illegal or unenforceable it will be severable from this Agreement and the remaining provisions will not be affected thereby and will be valid, legal and enforceable.
- 17.06 All provisions of this Agreement in favour of Caorda and all rights and remedies of Caorda, either in law or equity, will survive the termination of this Agreement.
- 17.07 In this Agreement wherever the singular is used it will be construed as if the plural had been used where the context or the parties so require and vice versa.
- 17.08 Any alteration or amendment to the terms and conditions of this Agreement must be in writing and duly

executed by both parties.

- 17.09 This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one and the same document. Delivery of an executed signature page to this Agreement by facsimile will be effective to the same extent as if such party had delivered a manually executed counterpart.
- 17.10 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia, Canada. Each party agrees to submit to the exclusive jurisdiction of the courts of British Columbia, Canada, in connection with any action to enforce the provisions of this Agreement, to recover damages or other relief for breach or default under this Agreement, or otherwise arising under or by reason of this Agreement.

SCHEDULE "A"

SERVICES AND PRICING

Annual Hosting and Service Fees

| Description | Details | Annual Fee |
|---|------------------|---------------|
| Annual Hosting, Support and Product Fees for hosting package including | | \$250.00/year |
| Site Configuration | | |
| • User Accounts | 1 | |
| • Workflow | Yes | |
| • Web Page Limit | 100 | |
| • Callouts | 1 | |
| • Templates | Yes | |
| • Use Legal | Yes | |
| • Navigation Structure | Yes | |
| • Levels of Navigation | 2 | |
| • Permit Page Redirect | Yes | |
| • Permit Site Preview | Yes | |
| • Permit HTML Editing | Yes | |
| • Display Font Selection | No | |
| • Contest Entry Form | Yes | |
| Reports and Stats | | |
| • Web Stats Report Package | Standard | |
| • Number of Reports | 10 | |
| • Report Time Span | 30 Days | |
| Email | | |
| • Accounts | 2 | |
| • Mail box Limit | 50MB per account | |
| • Total Postoffice Size | 250MB | |
| • Web admin | 0 | |
| Miscellaneous options | | |
| • Automatic Domain name registration and renewal | \$20 per domain | \$20.00/year |
| • DNS Service | | |
| * Fees as outlined here do not include taxes | | |