



## Code Club Aotearoa Terms of Service

**PLEASE READ THIS DOCUMENT CAREFULLY. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS. IT ALSO CONTAINS A DISCLAIMER OF WARRANTY AND A LIMITATION OF LIABILITY CLAUSE.**

### 1. ABOUT CODE CLUB

- 1.1. Code Club is a registered New Zealand charitable trust providing educational materials free of charge to volunteers who wish to assist in providing supervised educational sessions to children within the context of the school environment. By volunteering to provide supervised educational sessions to children, you acknowledge and agree that such activities are not promoted, underwritten or provided by or in partnership with Code Club. These Terms of Service set out the terms on which we, CODE CLUB AOTEAROA CHARITABLE TRUST offer the educational materials (the “Materials”).
- 1.2. References to “Code Club”, “we” and “us” are references to Code Club Aotearoa Charitable Trust. References to “you” are to the person accessing, downloading or using the Materials.
- 1.3. Please review these Terms of Service carefully and make sure that you understand them before using the Materials or organising or hosting an educational session. If you do not agree to these Terms of Service, you must cease use of the Materials immediately and must not organise or host an educational session.
- 1.4. By using or downloading the Materials and/or providing educational sessions to children, you accept and agree to be bound by these Terms of Service.
- 1.5. Code Club may at any time modify these Terms of Service. We will notify you of any changes to these Terms of Service by posting a notice on our website at [www.codeclub.org.nz](http://www.codeclub.org.nz) (the “Website”). By continuing to use the Materials after changes to these Terms of Service are made and posted on the Website, you agree to be bound by such changes. You can review the most current version of our Terms of Service at any time by clicking on the "Terms of Service" link located at the bottom of the Code Club website at [www.codeclub.org.nz](http://www.codeclub.org.nz). The most current version displayed on that page will supersede all previous versions.

### 2. YOUR CONDUCT

#### VOLUNTEERING AT AN EDUCATIONAL ESTABLISHMENT

- 2.1. You acknowledge and agree that working with children is a regulated activity in New Zealand. You understand that if we become aware of any breach of any of the undertakings in clause 2.2 or of any warranty set out in paragraph 2.3 becoming untrue, or if we reasonably believe that any such undertaking may have been breached or that any

warranty may have become or be about to become untrue, we shall be permitted to notify the educational institution at which you volunteer and any law enforcement agency without informing you of such notification.

- 2.2. Prior to commencing any volunteer activity using the Materials, you undertake and agree to:
- (a) notify the educational institution which you intend to host the educational session that you intend to hold the session there;
  - (b) provide to such educational establishment a current, original and valid Police Vetting Check showing that you have no criminal record;
  - (c) only perform volunteer activities using the Materials in a supervised environment in the presence of a qualified teaching professional employed by the educational institution at which you perform the sessions;
  - (d) immediately inform us and the educational institution at which you perform the sessions of the occurrence of any matter set out in paragraph 3 below.
- 2.3. You represent and warrant that:
- (a) you have never been convicted in any jurisdiction of any offence of violence, sexual impropriety, or any offence against a child or other vulnerable person; and
  - (b) you are not currently under investigation in respect of any matter falling within the offences detailed in (a) and you are not aware of any circumstances that could result in you being investigated, cautioned or arrested in respect of any such matter; and
  - (c) you are either aged 18 years or over or you are aged 16 years or over and are supervised by a responsible adult who has read and complied with the provisions of this clause 2.
- 2.4. You acknowledge and agree that we may notify the educational establishment stated by you to be hosting the educational session that you are operating an educational session and request that they supervise all activities undertaken by you.

#### PROVIDING A CLUB AT A NON-EDUCATIONAL ESTABLISHMENT

- 2.5. You acknowledge and agree that working with children is a regulated activity in New Zealand. You understand that if we become aware of any breach of any of the undertakings in clause 2.5 or of any warranty set out in paragraph 2.6 becoming untrue, or if we reasonably believe that any such undertaking may have been breached or that any warranty may have become or be about to become untrue, we shall be permitted to notify any law enforcement agency without informing you of such notification, bar you from attending the club you have organised, cancel the club you operate and/or require a third party of our choosing to replace you.
- 2.6. Prior to commencing any volunteer activity using the Materials, you undertake and agree to:

- (a) provide to Code Club a current, original and valid Police Vetting Check showing that you have no criminal record;
- (b) only perform volunteer activities using the Materials in a safe environment in the presence of another adult who has provided a current, original and valid Police Vetting Check to Code Club;
- (c) immediately inform Code Club at which you perform the sessions of the occurrence of any matter set out in paragraph 3 below;
- (d) procuring that the parent or guardian of each child attending a club or activity organised by you has completed the disclaimer on the Website. The disclaimer can be found at [new.codeclub.nz/download/11](http://new.codeclub.nz/download/11)

2.7. You represent and warrant that:

- (a) you have never been convicted in any jurisdiction of any offence of violence, sexual impropriety, or any offence against a child or other vulnerable person; and
- (b) you are not currently under investigation in respect of any matter falling within the offences detailed in (a) and you are not aware of any circumstances that could result in you being investigated, cautioned or arrested in respect of any such matter; and
- (c) you are aged 18 or over.

2.8. The parent or guardian of each child attending a club or activity organised by you must have registered on our Website in respect of your session. You must not (and undertake not to) allow any child whose parent has not completed registration to attend any session.

#### APPLICABLE TO ALL EDUCATIONAL SESSIONS

2.9. You hereby indemnify Code Club against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Code Club arising out of or in connection with:

- (a) any breach of the warranties contained in clause 2 or any other provision of the these Terms of Service; and
- (b) the enforcement by Code Club of any term of these Terms of Service;
- (c) any claim made against Code Club for personal injury, death or harm to any person as a result of any club or activity organised, supervised or in relation to which you are otherwise involved.

2.10. This indemnity shall apply whether or not Code Club has been negligent or at fault.

### **3. DEALING WITH COMPLAINTS**

- 3.1. Although extremely unlikely, a volunteer may be accused by a child or a child's parent or guardian of inappropriate behaviour towards a child or other person. This can be extremely distressing and upsetting to the volunteer.
- 3.2. In order to reduce the possibility of this occurring, please read and comply with our guidelines on "Working Safely with Children" which can be found on the Website at: <https://www.new.codeclub.nz/download/14> . A key theme is to avoid being alone with any child. This includes taking a child to the toilet, looking after a child whose parents are late at the end of a session, or driving a child home. You should always ensure that there is another responsible adult around at all times where you are potentially in any of the above situations. A further key theme is to avoid touching a child in any way other than (where necessary) explaining before touching the child what you are going to do and if you do need to touch a child only touch the child on the upper arm between the elbow and shoulder. In the unlikely event that a child is violent and you need to restrain them to protect yourself or other children you may only use reasonable force to restrain them.
- 3.3. Where a child or a child's parent or guardian does make a complaint of inappropriate behaviour, you must contact us immediately and must take all reasonable steps to distance yourself from the session and the child in question. To the extent that a child makes a complaint, you must tell the adult supervising your session and that adult must speak to the parent or guardian of the child at the earliest opportunity.
- 3.4. We try to deal with complaints ourselves so as to bring a quick conclusion to any complaint. We deal with all complaints fairly and without prejudice. Please review our "Complaints Handling Procedure" which can be found on the Website at [new.codeclub.nz/download/12](https://www.new.codeclub.nz/download/12)
- 3.5. By volunteering to start a club or activity or otherwise using the Materials, you agree to be bound by our Complaints Handling Procedure and to co-operate fully with it.

### **4. OUR RIGHTS**

- 4.1. In providing you with access to the Website and/or the Materials, we reserve the following rights, and in downloading the Materials you grant to Code Club and agree that we shall have the following rights:
  - (a) the right to refuse or withdraw your access to the Website and/or Materials for any reason at any time (with or without notice) if in Code Club's sole and absolute discretion you violate or breach any of these Terms of Service;
  - (b) the right without notice to remove or amend the Materials or any part of them for any reason whatsoever in our sole and absolute discretion; and
  - (c) to communicate with the education establishment and/or non-educational establishment at which you volunteer at any time for any reason without notifying you.

### **5. INTELLECTUAL PROPERTY**

- 5.1. Code Club and/or its licensor(s) are the sole owners of the Materials and Website. The

Materials are licensed under a Creative Commons Attribution-NonCommercial- ShareAlike 3.0 Unported licence details of which can be found at <http://creativecommons.org/licenses/by-nc-sa/3.0/>. This licence permits you to use and modify the Materials for non-commercial use only and grants you a limited license solely for that purpose. This means that you may not sell, license, modify, copy, distribute or transmit the Materials (or any part of them) for any commercial purpose or for any reason other than to provide voluntary educational sessions to children in accordance with these Terms of Service.

- 5.2. Any unauthorized use of the Materials will result in the automatic termination of the license.

## **6. ELECTRONIC COMMUNICATIONS**

- 6.1. You consent to receiving electronic communications and notices from Code Club. You agree that any notice, agreement, disclosure or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing.

## **7. PRIVACY**

You provide us with information when you register on the Website and/or download the Materials. We may store such information and use it to improve the Materials and/or the services we provide through the Website. We may disclose such information to any educational establishment or non- educational establishment (as applicable) at which you volunteer and any law enforcement agency or CRB umbrella entity as we see fit in our sole and absolute discretion.

## **8. NO WARRANTY & LIABILITY LIMIT**

- 8.1. Code Club provides the Materials and Website "as is" and without any warranty or condition, whether express, implied or statutory. Code Club specifically disclaims any implied warranties of title, merchantability, fitness for a particular purpose and non- infringement. Code Club assumes no liability or responsibility for any errors or omissions in the Materials; any losses or damages arising from the use of the Materials; or any harm to your reputation or losses resulting from any disclosure of information about you by us as permitted in these Terms of Service. We reserve the right to deliver the Materials and Website in our sole and absolute discretion.
- 8.2. **In no event shall Code Club, its shareholders, directors, officers, employees or agents be liable (jointly or severally) to you for loss of use or any special, incidental, indirect or consequential damages arising out of or in connection with the Materials or these Terms of Service, on any theory of liability, and whether or not advised of the possibility of damage. Code Club does not seek to exclude liability for death or personal injury caused by our negligence, or fraud or fraudulent misrepresentation. If any applicable authority holds any portion of this section to be unenforceable, then liability will be limited to the fullest possible extent permitted by applicable law.**
- 8.3. **From time to time you may use or access services, promotions and websites of third parties. In using or accessing third party services, promotions and websites, you agree to be bound by the terms of service of such third parties governing their services, promotions and websites and hereby acknowledge that we shall not be responsible for the provision of services, accuracy of promotions or content of websites belonging or operated by third parties.**

- 8.4. **By permitting you to download the Materials we are not representing or warranting that you are suitable to, or permitted by law to, volunteer to provide supervised educational sessions to children. It is solely your responsibility to ensure that you are compliant with applicable law. We provide guidance on getting Police Vetting Checks performed by an umbrella body and on the requirements for adults to provide supervised educational sessions to children. We shall not be liable if this guidance turns out to be incorrect or misleading or if you fail to comply with our recommendations or those of any third party.**

## **9. GENERAL**

- 9.1. You agree that these Terms of Service and any claim, dispute or controversy arising out of in connection with these Terms of Service or their subject matter or formation (including non-contractual disputes or claims), or the Materials shall be governed by and construed in accordance with New Zealand law. Any dispute or claim arising out of or in connection with such matters (including non-contractual disputes or claims) will be subject to the exclusive jurisdiction of the courts of New Zealand.
- 9.2. Code Club may change or discontinue provision of the Materials or the Website at any time without prior notice. We reserve the right to terminate these Terms of Service for any reason, without notice, and these Terms of Service shall automatically terminate in the event that you violate any of the terms of Service set forth herein (without prejudice to our accumulated rights against you). In the event of any termination, you will immediately cease use of the Materials and Website.
- 9.3. These Terms of Service are agreed between you and us. No person shall have any rights under or connection with these Terms of Service under the New Zealand Contracts (Privity) Act 1982.
- 9.4. If any court or competent authority decides that any term of these Terms of Service is held to be invalid, unlawful or unenforceable to any extent, such term shall, to that extent only, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by law.
- 9.5. Headings are for reference purposes only and in no way define, limit, construe or describe the extent or scope of such section.
- 9.6. Our failure to enforce any provision of these Terms of Service shall not constitute a waiver of that or any other provision and will not relieve you from the obligation to comply with such provision.
- 9.7. These Terms of Service set forth the entire understanding and agreement between you and Code Club with respect to the subject matter hereof.