

COMMUNITY SITE IN A BOX – TERMS AND CONDITIONS

These terms and conditions apply to your subscription of the auCD Services, including your access to and use of the Community Site in a Box application, the hosting of your web site and email, and other services. By using any of these services, you are taken to have agreed to these terms and conditions.

1. DEFINITIONS

In this document, unless the context requires otherwise:

Additional Services means the help desk and related support services, and such other additional services that auCD may agree to provide to you from time to time, in conjunction with your use of the Community Site in a Box and the Hosting Services.

auCD means .au Community Domains Pty Ltd ACN 118 505 196 as trustee for the .au Community Domains Trust.

auCD Services means the services described in clause 3.1.

auDA means .au Domain Administration Limited ACN 079 009 340, the Australian domain name administrator.

Charges means the annual charges for the provision of the auCD Services, as published by auCD at its web site at <www.aucd.org.au> from time to time, or as agreed between auCD and you.

Commencement Date means the date on which you accept the terms and conditions set out in this document (whether in writing, or electronically), or the day on which you first access Community Site in a Box, whichever is the earlier.

CGDN means the community geographic domain name licensed to you.

Community Site in a Box means the web-based computer application containing an automated web site builder and an integrated content management system. The application has the features described at auCD's web site at <www.aucd.org.au> from time to time.

Customer Data means data owned or supplied by you to which auCD is provided access.

Force Majeure means a circumstance beyond the reasonable control of a party that prevents a party from performing its obligation under this document, but does not include an inability to make payment.

Hosting Services means the hosting of your Web Site and email addresses using the CGDN, the details and specifications for which are published by auCD at its web site at <www.aucd.org.au> from time to time, and which are subject to change from time to time.

Published Policies means the published policies of auDA from time to time.

User means a person other than auCD or you, who seeks access over the internet.

You or **your** refer to the person who has subscribed for the auCD Services.

Web Site means your Web Site that is accessible through the CGDN.

2. TERM OF DOCUMENT

2.1 This document starts on the Commencement Date, and will continue until 31st December, 2009.

2.2 The parties may agree to extend this document for subsequent terms of one year at a time.

3. AUCD SERVICES

3.1 auCD will provide you with:

- access to, and the right to use, Community Site in a Box;
- the Hosting Services; and
- the Additional Services,

to be used in conjunction with the CGDN.

- 3.2 auCD will use reasonable endeavours to ensure that sufficient capacity is maintained on its computer facilities to enable Users to access the Web Site.
- 3.3 auCD does not warrant that Users will have continuous access to the Web Site. auCD is not liable in the event that the Web Site is unavailable to you or Users due to computer downtime attributable to malfunction, upgrades or preventative or remedial maintenance activities.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Community Site in a Box contains templates to assist you in creating and editing your Web Site. You are responsible for the content and maintenance of the Web Site.
- 4.2 You must ensure that the Web Site:
- does not infringe the intellectual property rights of any person;
 - will not contain material which is obscene, offensive, upsetting, defamatory or unsuitable for people under the age of 18 years, or can be regarded as prohibited content or potential prohibited content under applicable law; and
 - does not comprise and cannot be used for any purpose or activity of an illegal, fraudulent or defamatory nature.
- 4.3 You must use the Web Site for your own purpose only. The content of the Web Site, and your use of the Web Site must comply with the applicable Published Policies.
- 4.4 You must:
- maintain the registration of the CGDN licence; and
 - comply with the Published Policies.

5. CHARGES

- 5.1 You must pay the Charges to auCD yearly in advance, or such other payment terms which may be agreed between auCD and you.
- 5.2 You are liable for any new taxes, duties or charges which may be imposed upon auCD or you subsequent to the Commencement Date in respect of this document.

6. CUSTOMER DATA

- 6.1 Subject to any lien arising because of unpaid Charges and subject further to any encumbrances arising outside of auCD's control, auCD acknowledges that the Customer Data remains your property.
- 6.2 auCD will make backup copies of the Customer Data in the manner and at intervals reasonably determined by auCD.

7. COPYRIGHT

- 7.1 You acknowledge that Community Site in a Box and documentation are the subject of copyright. You must not during or any time after the expiry or termination of this document permit any act which infringes that copyright.
- 7.2 You must:

- not copy, reproduce, translate, adapt, vary or modify Community Site in a Box without the express consent of auCD, except as expressly authorised by this document;
 - ensure that your employees, sub-contractors and other agents who have authorised access to Community Site in a Box are made aware of the terms of this document; and
 - not use Community Site in a Box for or in connection with a service bureau operation.
- 7.3 No provision of this document is to be interpreted as attempting to exclude or limit, or having the effect of excluding or limiting, the operation of the *Copyright Act* 1968. Any provision which is inconsistent with that Act will be read down or otherwise deemed to be varied to the extent necessary to preserve the operation of that Act.
- 7.4 You must indemnify auCD or the copyright owner of Community Site in a Box (as the case may be) fully against all liabilities, costs and expenses which it may incur to a third party as a result of your breach of the copyright provisions of this document.

8. CONFIDENTIALITY

- 8.1 A party must not, without the prior written approval of the other party, disclose the other party's confidential information.
- 8.2 A party is not in breach of clause 8.1 in circumstances where it is legally compelled to disclose the other party's confidential information.

9. IMPLIED TERMS

- 9.1 To the maximum extent permitted by law, any condition or warranty which would otherwise be implied in this document is hereby excluded.
- 9.2 Where legislation implies in this document any condition or warranty, and that legislation prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty is taken to be included in this document. However, the liability of auCD for any breach of such condition or warranty is limited, at the option of auCD, to one or more of the following:
- if the breach relates to goods:
 - the replacement of the goods or the supply of equivalent goods;
 - the repair of such goods;
 - the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - the payment of the cost of having the goods repaired; and
 - if the breach relates to services:
 - the supplying of the services again; or
 - the payment of the cost of having the services supplied again.

10. LIMITATION OF LIABILITIES

- 10.1 To the maximum extent permitted by law, auCD excludes all liability to you relating to its provision of the auCD Services to you.
- 10.2 You must not pursue any claim against auCD, and auCD is not liable to you for any direct, indirect, special, punitive, exemplary or consequential damages, including but not limited to damages resulting from the loss of use, lost profits, lost business revenue or third party damages, arising from any breach by auCD of its obligations under this document.

11. TERMINATION

11.1 Without reducing auCD's rights elsewhere in this document, auCD may terminate this document immediately by notice in writing if:

- your licence to use the CGDN expires, or is suspended, revoked or cancelled for any reason;
- you are in breach of any Published Policy;
- you are in breach of any term of this document and such breach is not remedied within 30 days of auCD notifying you; or
- you becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration.

11.2 If notice is given to you under clause 11.1, auCD may, in addition to terminating the document:

- retain any moneys paid;
- charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
- be regarded as discharged from any further obligations under this document; and
- pursue any additional or alternative remedies provided by law.

12. SUB-CONTRACTS

auCD may, without obtaining your consent:

12.1 sub-contract for the performance of this document or any part of this document; and

12.2 engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of services under this document.

13. GOVERNING LAW

The laws of the State of Victoria, Australia, govern this document.

Signed:

On behalf of: _____

Date: _____