

Online Service Terms

1. Online Services

- 1.1 Community Builders Australia Pty Ltd ABN 97 131 987 703 (**we**) provide a range of Online Services. These Online Service Terms apply to any Online Services we supply except where we expressly provide otherwise.
- 1.2 We have no obligation to provide any Online Services to you until we have accepted your Order for that Online Service in writing, or have commenced providing the Online Service (**Commencement Date**).
- 1.3 If an Order fails to specify the Fees applicable to an Online Service, the Fees will be calculated in accordance with our standard rates and charges applicable at the time of providing the Online Service.

2. Term

The Agreement for an Online Service begins on the Commencement Date and continues until terminated in accordance with its terms.

3. Provision of Online Services

- 3.1 Subject to the terms of this Agreement, we agree to provide you with the Online Service in accordance with the Order.
- 3.2 Unless agreed otherwise, our Online Services will be provided from Servers located in Australia.

4. Your general obligations

- 4.1 You must:
 - (a) provide us with complete and up-to-date contact and account information, including within the Online Service; and
 - (b) comply with any acceptable use policy applicable to the Online Service, as amended from time to time in accordance with its terms.

5. Intellectual Property

- 5.1 You retain ownership of any material you submit to an Online Service, such as images, logos, designs, articles, documents and client data, unless agreed otherwise in writing.
- 5.2 You grant us an irrevocable licence to use, reproduce, modify and adapt any material you provide to us to the extent such use, reproduction, modification or adaptation is reasonably required to provide the Online Services.
- 5.3 We may suspend the performance of our obligations under this Agreement if any third party alleges that any use, reproduction, modification or adaptation referred to in clause 5.2 infringes the rights of a third party.
- 5.4 Unless specified otherwise in an Order, you acknowledge and agree that all Intellectual Property used or developed by us to provide Online Services remains our sole property or the property of our licensors, regardless of whether that Intellectual Property was created in connection with your suggestions or comments on an Online Service.

6. Fees and Payments

- 6.1 You must pay us the Fees in accordance with this clause 6 or as otherwise provided in the applicable Order or Plan.
- 6.2 We may charge you additional fees at our then current rates if we are asked to provide Online Services that are not covered by the terms of an existing Order or Plan.
- 6.3 You must pay our Tax Invoices by the due date specified in the Tax Invoice.
- 6.4 You must pay us interest on any amount due and not paid by you within the time required by this Agreement at the rate of 1% per month.
- 6.5 To the full extent permitted by law, any Fees payable in advance are non-refundable unless we reject your Order. We will use our best endeavours to make refunds within 30 days of the event giving rise to the refund.
- 6.6 Unless specified otherwise in an Order, we may vary the Fees, including the frequency of the Fees, on no less than 60 days prior written notice. This variation will not apply to a period for which Fees have been paid in advance and accepted in writing by us.
- 6.7 You may terminate an Order on no less than 30 days prior written notice if you are unwilling to pay any increase in Fees notified under clause 6.6, unless we agree to waive the increase within 14 days of receipt of your notice. Any such termination will not affect the rights or obligations of either party under any Order to which the Fee increase does not apply.

7. Warranties

- 7.1 You warrant and it is a condition of this Agreement that any material you provide in connection with an Online Service will not infringe the rights of any third party (including confidentiality and Intellectual Property) or any applicable laws (including the *Privacy Act 1988* (Cth)).
- 7.2 You indemnify us, our related bodies corporate and our Personnel against any Loss arising in connection with your or your Personnel's use of the Online Services, breach of this Agreement, violation of any law or infringement of another's rights.

8. Confidentiality and Privacy

- 8.1 Except as expressly permitted or required by this agreement or for us to provide the Online Service, each party must not use any of the other party's Confidential Information.
- 8.2 Except as expressly permitted or required by this agreement or for us to provide the Online Service, each party must not disclose to any other person any of the other party's Confidential Information. Each party may disclose the Confidential Information of the other party:
 - (a) to its Personnel whose duties reasonably require such disclosure, on condition that the party making such disclosure ensures that each such person to whom such disclosure is made: (i) is informed of the confidentiality of the information and the obligations of confidentiality under this agreement; and (ii) complies with those obligations as if they were bound by them; and
 - (b) if required to do so by law or any regulatory authority, including any stock exchange on which it or any of its Related Bodies Corporate is listed.

- 8.3 We may use any personal information you provide to us for the purposes disclosed at the time of collection or as otherwise permitted under the *Privacy Act 1988* (Cth).

9. Termination and Suspension

- 9.1 Either party may terminate these Online Service Terms without cause by 30 days prior written notice to the other party, however any such termination does not terminate any Agreement incorporating these Online Service Terms that provides for a minimum term that has not yet expired.
 - 9.2 Without limiting our other rights, we may suspend the performance of our obligations under an Order if you fail to pay any amount when due, become or are in our reasonable opinion likely to become bankrupt or insolvent or if we are otherwise entitled to terminate an Order.
 - 9.3 We may terminate an Order immediately by written notice to you if at any time:
 - (a) any amount payable by you under this Agreement remains outstanding for 7 days after request by us for payment of that amount; or
 - (b) you commit a breach of or fail to perform any or all of your obligations under this Agreement and do not remedy that breach or non-performance (if capable of remedy) or make reasonable compensation in money (if not capable of remedy) within 14 days after receipt of notice requiring you to do so.
 - 9.4 You may terminate an Order with immediate effect by written notice to us if we commit a breach of or fail to perform any or all of our material obligations under that Order and do not remedy that breach within 14 days after receipt of notice requiring us to do so.
 - 9.5 Termination of these Online Service Terms or an Agreement incorporating them in accordance with clauses 9.1, 9.3 or 9.4 in no way limits or prejudices any right or remedy that either party may have as a result of any breach of an Agreement.
 - 9.6 Termination of this Agreement for any reason does not affect the rights and obligations of either party arising prior to termination. Clauses 6.3-6.5, 7, 8, 9.5, 9.6, 10 and 12-14 survive termination of this Agreement.
- ## 10. Limitation of liability
- 10.1 To the maximum extent permitted by law, our entire liability for a breach of any term, condition or warranty implied by law and that cannot be lawfully excluded,

(other than a warranty implied by Part 3-2 of the Australian Consumer Law or any corresponding provision of any State Act), is limited to the supplying of the services again or the payment of the cost of having the services supplied again, at our option.

- 10.2 Subject to clauses 10.1 and to the maximum extent permitted by law, we have no liability to you for any Consequential Loss, however caused (including by breach of contract, negligence, other tort or breach of statute), which is suffered or incurred in connection with or relating to this Agreement or otherwise arising out of the relationship between the parties, whether or not we were aware or should have been aware of the possibility of such loss or damage.
- 10.3 Subject to clauses 10.1 and 10.4, and to the maximum extent permitted by law, our total liability to you for any and all Loss (including Consequential Loss to the extent it cannot be excluded under clause 10.2), however caused (including by breach of contract, negligence, other tort or breach of statute), which is suffered or incurred by you in connection with or relating to any Order or Agreement or otherwise arising out of the relationship between the parties, is limited to the amount paid to us during the 12 months prior to the event giving rise to the liability.
- 10.4 The limitations of liability in this clause 10 do not apply to any breach by us of clause 8 or our infringement of your Intellectual Property.

11. Force Majeure

- 11.1 Each obligation of a party, other than the obligation to pay money, will be suspended during the time and to the extent that the party is prevented from or delayed in complying with that obligation by a circumstance beyond the reasonable control of the party including labour disputes, fire, floods, explosions, riots, civil disturbances, war, terrorism, unforeseeable weather conditions, natural disasters, direct government action or regulation, or acts of God that renders impossible a party's ability to perform its obligations under this Agreement (**Force Majeure**).

12. Notices

- 12.1 Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- 12.2 Any notice may be served by delivery in person or by post or transmission by facsimile or email to the address or number of the recipient specified in this Agreement or most recently notified by the recipient to the sender.
- 12.3 Any notice is effective for the purposes of this Agreement upon delivery to the recipient, or production to the sender of a facsimile transmittal confirmation report, between Business Hours in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next Business Day thereafter.

13. General

- 13.1 We may change or improve our Online Services. We may amend the terms applicable to an Online Service from time to time. We may notify you of changes to these terms or post a copy of the current terms at <http://www.communitybuilders.com.au/terms>. Your continued use of an Online Service constitutes acceptance of the amended terms.
- 13.2 We may novate, assign or sub-contract our rights and obligations under this Agreement.
- 13.3 You may novate, assign or sub-contract your rights or obligations under this Agreement only with our prior written consent, which we may withhold in our discretion.
- 13.4 Unless stated otherwise, all Fees and other charges are stated exclusive of GST, which you must also pay when invoiced by us.
- 13.5 This Agreement is governed by and construed under the law in the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts in that State.
- 13.6 Any failure or delay by any party to exercise any right under this Agreement does not operate as a waiver.
- 13.7 Any provision of this Agreement that is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions

of this Agreement or the validity of that provision in any other jurisdiction.

14. Definitions and interpretation

- 14.1 In this Agreement, unless the context requires otherwise:
- Agreement** means these terms and conditions, the applicable Order and any other document executed by the parties that expressly incorporates these Online Service Terms;
- Business Day** means any day on which banks are open and conduct normal trading operations in Sydney other than a Saturday or Sunday;
- Business Hours** means the hours between 9am and 5pm on a Business Day;
- Confidential Information** means, in relation to a party (for the purposes of this definition, the "Discloser"), any information relating to the business, property, know-how, trade secrets, products, services, clients, licensees, licensors or other affairs of the Discloser or any of its Related Bodies Corporate (if any), whenever such information is disclosed or acquired, but excluding any information which:
- is publicly known or becomes publicly known other than by breach of this agreement;
 - is disclosed to the other party without restriction by a third party and without any breach of confidentiality by the third party; or
 - is developed independently by the other party without reliance on any of the Discloser's Confidential Information;
- Consequential Loss** means any indirect, incidental, special, economic or consequential loss, cost or damage, loss of business profits, revenue or opportunities, business interruption, loss of business information (including computer data), loss of business, loss of anticipated savings, loss of goodwill or loss due to delay;
- Fees** means the amounts payable to us by you, as set out in an Order or Plan or as otherwise notified to you by us in accordance with this Agreement;
- Intellectual Property** means any industrial or intellectual property (whether in material form or not) or rights of a proprietary nature, including any copyright, invention, patent, design, trade mark, service mark, domain name, semiconductor, idea, confidential information, trade secret, know-how, database or any thing copied or derived from them;
- Loss** means claims, losses, costs, expenses and damages (including Consequential Loss and legal costs and disbursements on a solicitor and own client basis) sustained or incurred, whether directly or indirectly or consequentially or in any other way;
- Online Service Terms** means this document;
- Online Services** means services we provide to users of devices connected to a communications network using software hosted on our Servers, as specified in an Order or as otherwise supplied by us at your request;
- Order** means your request for us to provide Online Services to you, whether provided on paper, via email, through completion of an online form or otherwise;
- Personnel** means officers, employees, contractors and agents;
- Plan** means the service option that provides you with particular features or usage of an Online Service in return for you paying us particular Fees, whether communicated electronically or in printed form;
- Related Bodies Corporate** has the meaning indicated in the *Corporations Act 2001* (Cth);
- Servers** means computers connected to a communications network; and
- Tax Invoice** has the meaning given by GST law.
- 14.2 In this Agreement unless the context requires otherwise:
- clause headings are for reference purposes only;
 - the singular includes the plural and vice versa;
 - where a word or phrase is defined its other grammatical forms have a corresponding meaning; and

- (d) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it.