

## TERMS AND CONDITIONS

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### GENERAL

These terms and conditions are deemed to be incorporated into all agreements (express or implied) ("**Agreement**") for the provision of the services as agreed between the Customer and the Company with respect to the development of a Web Site for the Customer ("**Web Site Services**"). DanaWeb may from time to time alter this Agreement and such altered terms and conditions will apply [**one month from the date the Customer is notified of the alteration**].

### WEBSITE SERVICES

DanaWeb agrees to provide to the Customer the Web Site Services from the date that the parties agree as being the commencement date ("**Commencement Date**") in accordance with the terms of this Agreement.

### CUSTOMERS OBLIGATIONS

The Customer must provide to DanaWeb as soon as reasonably practicable after signing the order form, [**all data, information and materials ("Customer Materials") that DanaWeb reasonably requires to perform the Web Site Services.**] The Customer must immediately notify DanaWeb if any of the Customer's Material is incorrect. DanaWeb is not responsible for any deficiency in the Web Site which is attributable to the Customer's failure to provide correct Customer Materials to DanaWeb either under this clause or otherwise. The Customer must ensure that the Customer Materials do not infringe any third party intellectual property right; are not obscene, offensive, upsetting, defamatory, personally offensive or in any way unsuitable for people under the age of 18 years; and are not illegal, fraudulent or defamatory in nature. The Customer must indemnify DanaWeb for any damage or loss incurred, claim or demand brought against DanaWeb, as a result of any breach by the Customer of this clause.

### TESTING AND ACCEPTANCE

DanaWeb will present the Web Site as a test site on an agreed date ("**Test Date**"). DanaWeb may undertake further design, set up and correction work during the twenty business day period following the Test Date ("**Correction Period**"). DanaWeb is responsible for the drafting and preparation of Web Site text and up to 30 pictures on the Web Site pages (including the home page and up to 10 additional sub-pages), and for the programming and submission of 10 relevant search words in relation to the Web Site to search engines. DanaWeb does not guarantee the effectiveness of the search words or the search results that may be achieved by using them. Following the end of the Correction Period, DanaWeb will provide the Customer with a password to access and use the Web Site in accordance with this Agreement. The Customer is responsible for editing and maintaining the Web Site. DanaWeb reserves the right to disclaim a task if it unexpectedly shows to be too excessive. In this case the client will not be invoiced. DanaWeb will provide the Customer with access to a free help hotline service and with a single hard copy user manual for the Content Management System.

### WEB HOSTING

DanaWeb reserves the right to choose the web hosting service provider ("**Web Host**") for the Web Site. The Customer acknowledges that the functionality of the Content Management System depends on the Web Host. [**Bandwidth usage will be at such reasonable limits as DanaWeb may determine from time to time**]. The Customer may acquire excess bandwidth usage for an additional charge. With the establishment of a domain name the Customer exempts DanaWeb from any responsibility that might be caused by violating other businesses or peoples trademark rights. It is not permitted for the Customers to keep large archives of files that can be downloaded for free from the Web Site. The client will not be charged for excessive traffic; but DanaWeb reserves the right to terminate the Customer's subscription after an inconceivable amount of data traffic.

### CHARGES AND PAYMENT

The Customer must pay DanaWeb the Charges in the manner and at the times set out in this Agreement. Charges for Web Site Services are payable annually by the Customer to DanaWeb and must be paid, in the case of the first payment, [**within eight days from the Commencement Date**], and for each subsequent annual period at least three months prior to the anniversary of the Commencement Date as server space must be reserved. DanaWeb is not obliged to perform, and may suspend, any Web Site Services if the Customer fails to make payment when due. DanaWeb may charge the Customer an additional fee at its standard rate for any extraordinary support and services.

Charges for: a Web Site with flash functions must be paid [**prior to the design and production of the Web Site/or provision of the Web Site Services**]; the reservation of a domain name are payable once every two years; the reservation of a domain name are due [**prior to the design and production of the Web Site or provision of the Web Site Services**], each subsequent payment for the reservation of a domain name are due at least three months prior to the second anniversary date of the previous payment. If the Customer terminates this Agreement with DanaWeb during any two year period in which a reservation payment has been made, the Customer retains the right to use the domain name reserved for the remainder of the two year reservation period.

Payment of Charges is due within eight days from the date of invoice for payment. If the Customer fails to pay the Charges when due, DanaWeb may charge the Customer interest on the overdue amount at the rate of 2% per month. The Customer acknowledges that this interest payment is a genuine pre-estimate of DanaWeb's loss as a result of the Customer's failure to pay the overdue amount on time. For any overdue payment DanaWeb will send a maximum of three overdue notices to the Customer. If the Customer fails to pay the outstanding Charges *after the third overdue notice*, DanaWeb may immediately terminate this Agreement without prejudice to any other right DanaWeb may have at law. The Customer will reimburse DanaWeb for all reasonable out-of-pocket expenses incurred by DanaWeb in connection with this Agreement. It is the Customers responsible to inform DanaWeb of any changes in their contact details.

All Charges are exclusive of GST and the Customer must pay to DanaWeb an additional amount equal to the GST payable in relation to the Charges.

### CONFIDENTIALITY

Each party must not, without the other party's prior written approval, disclose that other party's confidential information except as required by law or where such information is already in the public domain through no breach of confidence.

### INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights in the Web Site [**will vest in the Customer upon payment of the Charges**]. Notwithstanding the foregoing the Customer acknowledges nothing in this clause is intended to affect DanaWeb's pre-existing ownership of all its intellectual property rights of any materials (including DanaWeb's software, documentation, templates and data) or know-how used by DanaWeb in the performance of the

Web Site Services or which is incorporated into the Web Site; or [*the User interface of the Web Site*]. If it is determined by any independent tribunal of fact or law or if it is agreed between the parties to the dispute that an infringement of intellectual property rights by Dana Web in the proper performance of the Web Site Services has occurred (except to the extent that such infringement relates to the Customer Materials), DanaWeb will at its expense and option modify the Web Site in order to avoid continuing infringement; procure for the Customer the right to continue the use the infringing Web Site; or if the solutions in either of the preceding paragraphs cannot be achieved, dismantle and discontinue the Web Site. The customer is entitled to copy the layout and content of the Web Site but is not entitled to keep the Content Management System. DanaWeb reserves the right to use subscription information for the purpose of statistics as well as using the completed work as reference for sales and marketing purposes.

#### STANDARD OF PERFORMANCE

DanaWeb will perform the Web Site Services in a proper and workmanlike manner. Nothing in this clause will affect DanaWeb's right to exercise its own judgment and utilise its creative skills as it considers most appropriate in order to perform the Web Site Services.

#### INDEMNITY

Neither party will be liable to the other for any special, incidental, consequential, or indirect damages including loss of savings, profits or data (howsoever arising). Subject to the foregoing, the Customer indemnifies DanaWeb, its employees and agents against all actions, claims and demands which may be instituted against DanaWeb arising out of a breach of this Agreement by the Customer or the negligence or wrongful acts or omissions of the Customer, its employees, agents or contractors.

#### TERMINATION

The Customer may terminate this Agreement any time after the expiry of 12 months following the Commencement Date by notice in writing to DanaWeb, provided such notice is given at least three months before the anniversary of the Commencement Date. In the event that the Customer terminates this Agreement, [**subscriptions**] to the Web Site Services will be terminated and any pre paid subscriptions to the Web Site Services will not be refunded to the Customer. [*DanaWeb may terminate this Agreement or the provision of a particular Web Site Service on one months written notice to the Customer. In this situation, pre paid subscriptions to the Web Site Services will be refunded to the Customer. Notwithstanding the foregoing, DanaWeb may terminate the offering of a Web Host on three months written notice.*] Except as otherwise set out in this Agreement, either party may terminate this Agreement immediately upon notice in writing to the other if the other becomes or threatens to become or is in jeopardy of becoming subject to any form of insolvency or administration or fails to remedy a material breach of this Agreement within 30 days of being notified in writing of such breach. Any payment obligation accrued prior to the date of termination will survive termination of the Agreement. On termination, each party will immediately return to the other the confidential information and materials belonging to that other party.

#### FORCE MAJEURE

Neither party will be liable for any delay or failure to perform its obligations under this Agreement if such delay is due to an event outside of the reasonable control of that party ("**Force Majeure**"). If a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended. If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 30 days, either party may immediately terminate the Agreement on providing notice in writing to the other party.

#### ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersede all prior representations, agreements, statements and understandings, whether verbal or in writing.

#### WAIVER

No right under this Agreement will be deemed to be waived except by notice in writing signed by each party. Any failure by DanaWeb to enforce any clause of this Agreement or any forbearance, delay or indulgence granted by DanaWeb to the Customer, will not be construed as a waiver of DanaWeb's rights under this Agreement.

#### VARIATION

DanaWeb may at any time vary this Agreement, provided that DanaWeb gives the Customer one months notice that the terms and conditions have changed. The Customer is deemed to have accepted the Agreement, as varied, provided it does not before the expiry of the one month period, notify DanaWeb of its non-acceptance of the proposed varied terms. On receipt of such notice, the Agreement is deemed to automatically terminate and any prepaid subscription will be refunded to the customer.

#### GOVERNING LAW

These terms and conditions will be governed by and construed according to the law of the jurisdiction in New South Wales.

#### NOTICES

Notices under this Agreement may be delivered to a party by hand, by mail, by facsimile or by email to the addresses, email addresses or facsimiles as specified for the relevant party on the Order Form or as advised from time to time.

Notice will be deemed given in the case of hand delivery, upon written acknowledgment or receipt by an officer or other duly authorised employee, agent or representative of the receiving party; in the case of posting, three days after dispatch; in the case of facsimile, upon receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission; in the case of an e-mail, on receipt of a successful delivery report by the machine from which the e-mail was sent.