

## Member Company Terms and Conditions

### Advertising Conditions

PLEASE READ THE FOLLOWING NOTES AND CONDITIONS CAREFULLY AS THE CONDITIONS WILL FORM THE BASIS OF THE CONTRACT FOR ADVERTISING.

#### 1. Definitions

In these Conditions:

**"Advertisement"** means the advertisements referred to on the Advertisement Order;

**"Advertisement Order"** means a document or electronic communication which you complete and submit to us, under which you offer to purchase one or more Services from us;

**"Amendment"** means a change to the Content of an Advertisement;

**"Charges"** means our charges for performing the Services;

**"Conditions"** means these contractual conditions;

**"Confirmation of Order"** means a document or electronic communication that we issue to you to confirm acceptance or cancellation of your Advertisement Order;

**"Content"** means any and all of the text, graphics, images, logos, photographs, layout, design, shading and colouration constituting or intended to be in an Advertisement;

**"Contract"** means the advertising conditions set out in this document, the rate card, the confirmation of order and the advertisement order.

**"Created Material"** means any material or item created by us for you as part of the provision of Services, including by way of example and not limitation the HTML code for, or the screen designs of, a web site;

**"Database"** means an electronic database in which details relating to you or Advertisements may be stored for the purposes of our providing the Services;

**"Domain Name"** means an internet domain name as may be registered through a Registry;

**"Effective Date"** means the date on which the Services are first provided by us to you or made available to Users;

**"Financial Services Regulatory Regime"** means the regime (regulated by the Financial Services Authority pursuant to the Financial Services and Markets Act 2000 and other laws) which governs the conduct of business and the advertising and promotion of financial products and services;

**"IPRs"** means (a) all copyrights, patents, rights in trade marks, design rights, database rights, rights in know-how, trade secrets, rights in confidential information (whether registered or unregistered); (b) applications for registration, and the right to apply for registration, renewal, extension, division or reissue, for any of these rights; (c) and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

**"Malware"** means any software designed to infiltrate or damage a computer system, without the owner's informed consent, including but not limited to "trojans", "worms", "logic bombs" and "cancelbots" as the same may be generally understood within the computing industry from time to time and any other malicious and unwanted software;

**"Proprietary Material"** means any of your (or a third party's) copyrighted material, brand names, trade or service marks, devices or logos;

**"Rate Card"** means a price list issued by us from time to time giving the prices of certain Advertisements and other details relating to aubd.co.uk services. You may obtain a copy of the Rate Card from our representative;

**"Register"** means any one of the Domain Name registers, operated and maintained by a Registry, comprising a Domain Name and registrant data;

**"Registry"** means any of the Domain Name registries or registrars operating under the ICANN protocols;

**"Services"** means the services we agree to perform under a Contract;

**"Third Party Data"** means data we obtain for use under licence from third party organisations and which may be used to assist in the provision of Services and which may be displayed to Users in association with other material relating to you including by way of example and not limitation cartographic data used to display location maps;

**"us"** means AUBD Ltd., a company registered in England and Wales under number 06393966, whose registered office is at Bradbury House, 12 Shakespeare Street, Nottingham, NG1 4FQ; and "we" and "our" has a corresponding meaning;

**"User"** means a person who uses aubd.co.uk;

**"aubd.co.uk"** means the internet website currently located at the URL <http://www.aubd.co.uk/>, which is owned

and operated by us;

"you" means the person, company or other organisation (named on the Advertisement Order as the customer)

## **2. The Contract, Commencement and Duration**

**2.1.** When you order Services from us, you enter into a Contract, with us. The Contract is made up of:

**2.1.2.** these Conditions;

**2.1.3.** the Rate Card;

**2.1.4.** Confirmation of Order; and

**2.1.5.** the Advertisement Order.

**2.2.** In the case of conflict between any of these documents, priority shall be given in the order in which they appear above. The Contract applies to the exclusion of all other written or verbal representations. Except as expressly provided in these Conditions, none of our employees or agents have authority to agree any change to a Contract.

**2.3.** The Contract shall not be formed unless and until we send you a Confirmation of Order.

**2.4.** Unless it is terminated earlier in accordance with these Conditions, the Contract will continue for:

**2.4.2.** in relation to each of the Services, the duration specified in the Rate Card for such Services, such duration commencing on the Effective Date; or

**2.4.3.** where no duration is specified in the Rate Card, until the provision of the Services has been fulfilled.

## **3. Our Responsibilities**

**3.1.** Subject to these Conditions, we shall:

**3.1.2.** endeavour to make [aubd.co.uk](http://aubd.co.uk) available to Users; and

**3.1.3.** provide or arrange the provision of the Services using the reasonable skill and care of a competent provider of services of the types of Services ordered.

## **4. Your Responsibilities**

**4.1.** Subject to these Conditions, you shall:

**4.1.2.** pay our Charges for each Service you have ordered in accordance with Condition 5;

**4.1.3.** advise us of and send to us any Content that we require from you;

**4.1.4.** where the nature of a Service requires your periodic attention, including without limitation file clearing and maintenance to your own computer hardware or systems to receive or maintain that Service, perform and take such appropriate steps;

**4.1.5.** ensure that all Content provided to us by you is legal, decent, honest and truthful, and complies with: (i) The British Code of Advertising, Sales Promotion and Direct Marketing; (ii) any and all guidance, codes or other regulations made available by any competent authority having jurisdiction over or responsibility for the regulation

of advertising, including, without limitation, Ofcom, the Independent Committee for the Supervision of Telephone Information Services, or the Advertising Standards Authority; and (iii) our advertisement policies, which can be obtained from our representative;

**4.1.6.** ensure that all Content provided to us complies in all respects with the provisions of all statutes and statutory instruments applicable to any Advertisement intended for display on a Service, (including without limitation) the Trade Description Act 1968, the Consumer Credit Act 1974, Local Government (Miscellaneous Provisions) Act 1976, the Surrogacy Arrangements Act 1985, Financial Services and Markets Act 2000 ("FSMA"), FSMA (Financial Promotion) Order 2005 and the Consumer Credit (Advertisements) Regulations 2004;

**4.1.7.** ensure that all and any requests for Amendments to your Advertisement are made to AUBD Ltd in writing on your own business stationery (communications sent using corporate email accounts are acceptable). AUBD Ltd does not accept any liability or responsibility for failure to action a request for Amendment where such request is, in AUBD Ltd's reasonable opinion, garbled, indecipherable, unclear or has not been received by AUBD Ltd;

**4.1.8.** supply all Content in a suitable format as specified; and

**4.1.9.** ensure that all electronic files have been produced using properly licensed software and are free from Malware.

**4.2.** To the extent that that the provision of Services relates to an Advertisement that is linked to a website designated by you, you grant to us the right to access and index such website, or any portion thereof, by automated means including web 'spiders' or 'crawlers' except where technical measures have been employed preventing such access.

**4.3.** You hereby agree, undertake and warrant that if you place an Advertisement Order or otherwise request the display of any Advertisement using our Service which consists of or includes a financial promotion (other than a financial promotion to which an exemption under the FSMA (Financial Promotion) Order 2005 applies), you will ensure that prior to first display of the relevant Advertisement on our Service, the Content of each such Advertisement will have been approved in writing for the purposes of s21 of FSMA by a person authorised by the Financial Services Authority.

**4.4.** If you place an Advertisement Order or otherwise request the display of any Content which consists of or includes anything within the Financial Services Regulatory Regime, within seven days of a request from us, you must provide or arrange the provision of:

**4.4.2.** proof that you are authorised by the Financial Services Authority or that you are an appointed representative and

**4.4.3.** a certified copy of the authorised person's written approval as required by Condition 4.3; or

**4.4.4.** an explanation of the applicable exemption or other reason why s21(1) of FSMA does not apply.

We may make such a request any time after submission of your Advertisement Order.

**4.5.** You hereby agree, undertake and warrant that if you place an Advertisement Order or otherwise request display of any Content which consists of or includes content governed by the Consumer Credit (Advertisements) Regulations 2004 ("CCAR"):

**4.5.2.** you hold any credit licence as may be required pursuant to the Consumer Credit Act 1974;

**4.5.3.** the final Content to be displayed by us in an Advertisement complies in each and every respect with the CCAR, and any amendments, re-enactments or substitutions in force as at the proposed date that the

Advertisement is to be first displayed on the Service has been certified as compliant and suitable for display on our Service by a person of appropriate expertise; and

**4.5.4.** any Annual Percentage Rate ("APR"), including any typical APR, in the Content has been certified as correct and suitable for display on our Service in writing by a person of appropriate expertise such as your auditor, compliance officer or chartered accountant.

**4.5.5.** you will notify us immediately if you become aware of any event or matter occurring which causes, or could cause, the display of the Content or any part of the Content in an Advertisement to constitute an offence under s46(1) and/or s47(1) of the Consumer Credit Act 1974.

**4.6.** Further if you place an Advertisement Order or otherwise request publication of any Content which consists of or includes content governed by the CCAR, within seven days of a request from us, you will provide or arrange the provision of:

**4.6.2.** proof that you are licensed by the Office of Fair Trading in accordance with Condition 4.5(a);

**4.6.3.** a certified copy of the certificate of compliance in accordance with Condition 4.5(b); and/or

**4.6.4.** a certified copy of the calculations carried out in accordance with Condition 4.5(c) and the written certification in accordance with Condition 4.5(c).

**4.6.5.** We may make such a request any time after submission of your Advertisement Order.

**4.7.** Even though a Contract is in place between you and us, we may refuse to publish any Advertisement or any part thereof where:

**4.7.2.** we consider that the Content is contrary to or infringes the terms of any law or the right of any person or that it may mislead members of the public or that members of the public might find it offensive prejudicial or inflammatory or that it is likely to subject us to prosecution, criticism or embarrassment; and/or

**4.7.3.** you have failed to provide any information or document requested by us pursuant to Condition 4.4 and/or Condition 4.6;

**4.7.4.** you have notified us that the display of Content on our Service may constitute an offence under s46(1) and/or s47(1) of the Consumer Credit Act 1974 pursuant to Condition 4.6 and you fail to provide suitably amended, and (where relevant) certified, Content within the time specified by us or where such notification has been given in insufficient time to enable us to process any amendment to the Content.

**4.8.** We reserve the right to delete any Proprietary Material from an Advertisement where we have reasonable grounds to believe that the owner or controller of such Proprietary Material has withheld or withdrawn permission for your use of the same. In these circumstances, deletion shall not be deemed to be a breach of our obligations under the Contract.

**4.9.** You warrant that, where any Advertisement contains indications, offers and promotions that are time sensitive including, by way of example and not by way of limitation, prices, those indications, offers and promotions will be presented in a way so as not to mislead users of our Services.

## **5. Payment**

**5.1.** We will send you an invoice for the Charges and (in the absence of any other specific arrangement between you and us in relation to your Advertisement Order) you must pay us the whole amount shown on demand.

**5.2.** Charges are in Pound Sterling (£) exclusive of VAT which, if payable, will be added to your invoice and which you must pay in addition.

**5.3.** Payment shall mean the receipt by us at our principal place of business (or elsewhere as we may direct) of cash, or the crediting to our bank account of a cheque or money transferred electronically or through the clearing bank's BACs system.

**5.4.** If a reduction is shown in respect of a promotional offer on an Advertisement Order and you continue to meet all the terms of eligibility relating to that promotional offer then the Charges shall be reduced by the amount shown but not otherwise. Terms of eligibility of promotional offers will be made available on request.

## **6. Limitation of Liability**

**6.1.** You acknowledge and agree that computer and telecommunications systems are not uninterrupted or fault free and we do not make any representation or warranty in relation to such systems. You further acknowledge and agree that occasional periods of downtime for repair, maintenance and upgrading may be required and we cannot therefore guarantee uninterrupted provision of Services. We will take all commercially reasonable steps to minimise any such periods of interruption or non-availability.

**6.2.** You acknowledge and agree that we make no warranty and give no representation of any kind in relation to Third Party Data and we accept no responsibility or liability for inaccuracy in or arising out of Third Party Data.

**6.3.** Nothing in the Contract shall limit or exclude liability in respect of death or personal injury caused by negligence, or fraudulent misrepresentation.

**6.4.** Save as provided in this Condition 6, we shall not be liable, to the maximum extent permitted by applicable law, for any of the following losses or damage (whether arising in contract, tort (including negligence) strict liability, or otherwise, and whether such losses or damage were foreseen, foreseeable, known or otherwise):

**6.4.2.** loss of revenue;

**6.4.3.** loss of actual or anticipated profits (including for loss of profits on contracts);

**6.4.4.** loss of anticipated savings;

**6.4.5.** loss of business;

**6.4.6.** loss of opportunity;

**6.4.7.** loss of goodwill;

**6.4.8.** loss of reputation;

**6.4.9.** loss of, damage to or corruption of data or software;

**6.4.10.** wasted expenditure; or

**6.4.11.** any indirect or consequential loss or damage (including, for the avoidance of doubt, where such loss or damage is of the type specified in Conditions 6.4.2 to 6.4.10).

**6.5.** Save as provided in Condition 6.3, our entire liability under the Contract shall not exceed the total Charges paid by you for the Service that is the subject of the claim.

**6.6.** All conditions and warranties stated in the Contract shall replace all other conditions, warranties or other terms concerning the supply or purported supply of, failure to supply or delay in supplying the Services which but for this Condition 6.6 have effect between us and you or would otherwise be implied into or incorporated into the Contract, whether by statute, common law or otherwise, all of which shall be excluded to the maximum extent permitted by law (including, without limitation, the implied conditions, or warranties).

**6.7.** Save as provided in Condition 6.3, if we make an error in, or omission of or from an Advertisement (provided that such error or omission does not arise as a result of a failure by you to comply with your obligations under the Contract), we will correct this as soon as reasonably practicable upon receipt of written notification and without charge to you. Further, we may reduce the Charges for such Service as is fair and reasonable having regard to the nature of the error or omission or extend the duration of the Contract without charge to you. Save as provided above, this represents the full extent of our liability to you in respect of errors in or omissions from Advertisements.

**6.8.** Save as set out in the Contract, if we fail to comply with our obligations under the Contract as a result of an event outside of our reasonable control, we will have no liability to you as a result of such failure. We will promptly notify you as soon as reasonably practicable (and in any case, within fourteen (14) days) and we will take all reasonable steps to eliminate or mitigate the consequences of such an event, and where relevant, resume performance of our obligations affected by that event as soon as practicable.

## **7. Indemnities**

**7.1.** You will at all times and on demand fully indemnify us and keep us fully indemnified from and against any losses, and/or liabilities in relation to any proceedings, claims, demands, damages, fines, costs, expenses and charges, which are incurred or suffered by us or our employees or agents arising out of your conduct, including, but not limited to, any breach of the Contract claims, threatened or made against us arising as a result of your non-compliance with any of your representations, warranties or obligations set out in the Contract.

## **8. Changes to the Services**

**8.1.** We are committed to the constant improvement of our products and services. Notwithstanding our right to suspend or terminate the Services in accordance with Conditions 9 and 11, we may modify [aubd.co.uk](http://aubd.co.uk) or any of the Services from time to time without prior notice but in so doing we will try not to diminish the value and utility of the Services to any material degree. If we consider, acting reasonably, that such modification is likely to have a serious detrimental effect on your financial position, we will notify you of such modification and you shall have the option to:

**8.1.2.** agree to the modification and continue to receive the Services; or

**8.1.3.** terminate the Services and you will be entitled to a refund of that part of any Charges you have already paid to us which relates to a period after the date that the Services have terminated.

**8.2.** We may from time to time amend these Conditions. Save where we are acting because of a legal requirement or a court order, we will publish a notice in advance advising you of any changes. The changes will apply from the date shown in the notice. You agree to visit [aubd.co.uk](http://aubd.co.uk) regularly to find out about any changes. If you do not agree with any legal change to these Conditions you may notify us in writing within fourteen (14) days of the date of the notice being posted on [aubd.co.uk](http://aubd.co.uk) to terminate the Contract, and thereafter, we will give you a proportionate refund of the Charges for the remaining period.

## **9. Suspension of the Services**

**9.1.** Without prejudice to any other rights we may have, we may suspend the Services in whole or part, and without notice, in circumstances where:

**9.1.2.** we (in our sole discretion) consider the Advertisement or other material (including without limitation a weblink or your linked website) is unlawful, misleading, offensive, prejudicial or inflammatory; is likely to expose

us to claims or liability, lead us into prosecution, criticism, or disrepute or cause us embarrassment; infringes our rights or the rights of third parties or if the display of an Advertisement or other material does or would, in our reasonable opinion, be likely to mislead, offend, or disadvantage a User or otherwise misrepresents the nature of the goods or service being advertised or the place or places from which you conduct business; or

**9.1.3.** you fail to pay our Charges in accordance with Condition 5; or

**9.1.4.** you fail to comply with the AUBD Customer Charter; or

**9.1.5.** you fail to comply with the procedures for using the AUBD brand; or

**9.1.6.** we have reasonable grounds to believe that the rights' owner of any IPRs within the Advertisement or material has withheld, withdrawn or failed to give his permission for your use of the same.

**9.2.** The period during which we may suspend the Services will continue until the circumstances giving rise to our right to suspend the Services ceases to subsist or until the Contract is terminated in accordance with Condition 11.

**9.3.** In the event we take action under Conditions 9.1.2 to 9.1.6, you will continue to be obliged to pay any Charges owing or that arise during the period when the Service is suspended.

## **10. IPRs**

**10.1.** You warrant that you:

**10.1.2.** are the owner of all IPRs in any Content provided to us; or

**10.1.3.** you have been duly authorised to use such IPRs and to allow us to use them on your behalf;

**10.1.4.** and you grant us a worldwide right to use, free of charge, such IPRs for the purpose of providing the Services including without limitation the right to hold, reproduce, publish, adapt, sub-license, modify, transmit and disclose any Content by any means, and across any media including, without limitation, on websites, mobile services, or any other information, education or entertainment service displaying aubd.co.uk content, whether such media or service is owned by or operated by AUBD Limited or a third party. Where Content comprises in whole or in part material that has previously been published in other media such as, by way of example and not limitation, printed directories, you warrant that you have all rights, authority, licences and consents necessary to order the reproduction of that material in the media channel that is the subject of the Advertisement Order.

**10.2.** We may:

**10.2.2.** disclose to such persons as we reasonably consider to be the owner of IPRs in Content provided by you, your intention to use such IPRs and you give your irrevocable consent to such disclosure;

**10.2.3.** ask you to provide us with suitable documentary evidence that will reasonably satisfy us of your entitlement to make use of IPRs, and to permit us to make use of IPRs on your behalf, and you agree to provide such evidence upon request.

**10.3.** Nothing in these Conditions provides for any transfer or assignment of ownership of any IPRs. We own all IPRs in aubd.co.uk and the Database. All IPRs in Created Material, shall be owned by us, whether or not the Created Material is derived or developed from material supplied as Content. Ownership of the IPRs in Created Material does not pass to you and you will not be entitled to use Created Material in any form or in any media unless otherwise provided in this Contract.

## **11. Termination**

**11.1.** Without prejudice to Conditions 8 and 9, we may terminate any or all of the Service or part thereof, at any time by providing you not less than fourteen (14) days notice of such termination. In the event of such termination, you will be entitled to a refund of that part of any Charge you have already paid to us which relates to a period after the date that the Services or part thereof have terminated.

**11.2.** We may terminate all or part of the Services with immediate effect by giving written notice to you if:

**11.2.2.** you commit a material breach of any provision of the Contract, or a series of breaches of the Contract which when taken together amount to a material breach of the Contract, provided that in the case of a breach which is capable of remedy you fail to remedy the breach within fourteen (14) days of receiving a written request to do so;

**11.2.3.** you cease or threaten to cease to carry on the whole or any part of its business or is unable to pay its debts as they fall due;

**11.2.4.** if you are a limited company, you convene a meeting of your creditors or a resolution is passed or proposed for your voluntary winding up or a petition for your compulsory winding up is presented or proposed; if you are a person, firm or a partnership, you, or any one of you, convene a meeting of your creditors or a resolution is passed or proposed for an individual voluntary arrangement for you or any one of you, or a petition for your, or any one of your, bankruptcy is presented or proposed;

**11.2.5.** an administrator, receiver, manager or supervisor of a composition or scheme is appointed or applied for; by you or any one of you;

**11.2.6.** you undergo a change in control (other than as a result of reorganisation, amalgamation or reconstruction without insolvency);

**11.2.7.** you are the subject of a receiving order in bankruptcy (or in Scotland are sequestrated or in Northern Ireland are adjudicated bankrupt) or suffer execution, distress, any form of diligence or seizure to be levied or effected on or against your premises, assets or effects; or

**11.2.8.** we suffer from any event or circumstance which is beyond our reasonable control or which it could not reasonably be expected to have taken into account at the date of the Contract, and which results in or causes our failure to perform any or all of our obligations under the Contract.

**11.3.** Conditions 2, 4, 6, 7, 10, 11, 13 and 14 survive termination of a Contract.

## **12. Unsolicited Goods and Services Act 1971**

**12.1.** You acknowledge and agree that any Advertisement Orders requiring the inclusion of an Advertisement or other details relating to you in a Database may constitute an entry in a directory within the meaning of Section 3 of the Unsolicited Goods and Services Act 1971 as amended from time to time and that the Advertisement Order shall be construed as the note of agreement required by the same Section 3.

## **13. General**

**13.1.** You shall not assign or otherwise dispose of all or any of your rights or obligations under the Contract without obtaining our prior written consent.

**13.2.** Failure of either party to assert its rights in relation to any breach of the Contract shall not constitute a waiver of such rights, nor will any such waiver be implied.

**13.3.** Each provision of these Conditions shall be construed separately and shall be severable from these Conditions. If any provision of these Conditions (or portion thereof) is invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of these Conditions will not be affected or impaired.



**13.4.** The headings of these Conditions are for convenience only.

**13.5.** Any communication to be given in connection with the matters contemplated by the Contract shall, except where expressly provided otherwise, be in writing and shall either be delivered by hand or sent by first class pre-paid recorded post. Delivery by courier shall be regarded as delivery by hand. Any notices served under the Contract shall be deemed to have been served as follows:

**13.5.2.** if personally delivered to the registered office of one of the parties, on delivery; and

**13.5.3.** if sent by first class pre-paid recorded post, 48 hours after the same was delivered to the postal authorities.

**13.6.** Each party agrees that in entering into the Contract it has not relied on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as expressly set out in the Contract for which its sole remedy shall be for breach of contract under the terms of the Contract. Nothing in this Condition shall, however, operate to limit or exclude any liability for fraud.

**13.7.** A person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. We contract in our own name and on our own behalf.

**13.8.** The Contract constitutes the entire agreement between you and us with respect to the subject matter hereof, and supersedes all prior discussions, agreement or understanding between you and us.

**14. Governing Law and Jurisdiction**

The Contract is made and shall be subject to the laws of England and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.