

auDA COMMERCIAL GEOGRAPHIC NAMES BALLOT

TERMS AND CONDITIONS

1. THESE TERMS AND CONDITIONS

1.1 Definitions

Applicant means a person who lodges an application with a Participating Registrar to participate in the Ballot.

auDA means .au Domain Administration Ltd ACN 079 009 340.

auDA Published Policies means auDA's published policies that are published on auDA's website at <www.auda.org.au> from time to time.

Ballot means a ballot for the release of a Geographic Name, as described in these Terms.

Business Day means Monday to Friday, excluding public holidays in Melbourne, Australia.

Eligibility Criteria means the criteria described in Clause 2.1.

Geographic Names means the geographic domain names in each of com.au and net.au which are the subject of the Ballots conducted in connection with these Terms.

GST has the meaning given under the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Participating Registrar means any domain name registrar which participates in the Ballot process and is listed as a participating registrar on auDA's website.

Personal Information has the meaning given under the *Privacy Act 1988* (Cth).

Release Fee means \$825.00 (including GST).

Release Period means 30 days, starting from the date of the notification under Clause 4.7.

Tax Invoice has the meaning given under the GST Law.

Term has the meaning under Clause 1.4.

Terms means these Terms as amended or varied by auDA from time to time.

1.2 Interpretation

The following rules of interpretation apply to these Terms unless the context requires otherwise.

- 1.2.1 The singular includes the plural and conversely.
- 1.2.2 A gender includes all genders.
- 1.2.3 If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- 1.2.4 A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- 1.2.5 A reference to a Clause, Schedule or Annexure is a reference to a clause, schedule or annexure of these Terms.
- 1.2.6 A reference to a **month** is a reference to a calendar month.
- 1.2.7 A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- 1.2.8 A reference to conduct includes an omission, statement or undertaking, or other representation whether or not in writing.
- 1.2.9 A reference to **dollars** or **\$** is to Australian currency.
- 1.2.10 The meaning of general words is not limited by specific examples introduced by **including** or **for example**, or similar expressions.

1.3 Application

These Terms govern the participation of Applicants in the Ballots. By lodging an application for a Ballot, Applicants agree to be bound by these Terms.

1.4 Term

These Terms apply for the duration of the Ballots conducted under Clause 4.

1.5 Inconsistency of Terms

These Terms apply in addition to any other terms or conditions of Participating Registrars. Where any inconsistency exists between these Terms and any other auDA or Participating Registrar terms or conditions, policy or practice relating to the Ballot process, these Terms will prevail to the extent of any such inconsistency. These Terms also prevail over any other terms, conditions or policy of a third party relating to the Ballot process.

1.6 Business Day

If a payment or other act is required under these Terms to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next Business Day.

2. ELIGIBILITY

2.1 Eligibility Criteria

In order to be eligible to participate in a Ballot, an Applicant must satisfy the eligibility requirements for the Geographic Name that is the subject of the Ballot application, as set out in auDA's [Domain Name Eligibility and Allocation Rules for the open 2LDs \(auDA Published Policy No. 2002-07\)](#).

The Applicant must also continue to satisfy these requirements at all times during which it is licensed to use such a Geographic Name as a domain name.

2.2 Application

2.2.1 Applicants must complete and lodge an application form for each Ballot within the lodgement period specified. Details of the lodgement deadlines for the Ballots are available on the Participating Registrar or auDA's websites and will be updated from time to time during the Ballot process. It is the responsibility of all Applicants to keep informed about Ballot times. Late applications will not be accepted.

2.2.2 Lodgement of an application for a Ballot does not guarantee that the relevant Geographic Name to be drawn under that Ballot will be released to the Applicant.

2.2.3 Incomplete or illegible Ballot applications will not be accepted.

2.2.4 Notwithstanding that an Applicant may be eligible to apply for a Ballot on multiple grounds, Applicants may not lodge more than one application for a Ballot. auDA may reject all applications for a Ballot which contravene this Clause.

2.2.5 The fact that a Ballot application is accepted by a Participating Registrar or by auDA, is not to be taken as an indication that the Applicant meets the requirements for participation in the Ballot.

2.3 Fees

2.3.1 No fee is payable to participate in the Ballot.

2.3.2 A Release Fee is payable to auDA (through the relevant Participating Registrar as auDA's agent) in the event the Applicant is successful in the Ballot, and the Geographic Name which is the subject of the Applicant's Ballot application is released to the Applicant in the manner set out in these Terms. Please see Clause 4.8.

2.3.3 A further domain name registration fee is payable by the Applicant to the Participating Registrar if the Applicant proceeds to register the Geographic Name that is released to the Applicant.

2.4 auDA Discretion

auDA or a Participating Registrar may, in its absolute discretion, refuse to accept any application for a Ballot where it reasonably considers that the application is not being made in good faith.

2.5 Applicant Warranties

Each Applicant warrants to auDA and the relevant Participating Registrar that:

- 2.5.1 it has full power and authority to lodge its application in the name of the Applicant and perform its obligations under these Terms;
- 2.5.2 it satisfies and will at all times during registration of a Geographic Name as a domain name, satisfy the Eligibility Criteria;
- 2.5.3 it will comply with these Terms; and
- 2.5.4 all information provided in its Ballot application is true, accurate and not misleading in any material aspects, whether by omission or otherwise.

2.6 No Warehousing

Notwithstanding that an Applicant may meet the Eligibility Criteria, the Applicant must not participate in any Ballot for the purpose of removing any Geographic Name from the availability of others, transferring them for direct or indirect, immediate or deferred gain or profit or for any other reason which can be considered to be in bad faith.

3. PARTICIPATION

3.1 Withdrawing an Application

Once an application for a Ballot has been lodged with auDA or a Participating Registrar, Applicants may not cancel, change or otherwise withdraw that application.

3.2 auDA Discretion

auDA or a Participating Registrar may, in their absolute discretion, remove any Applicant from participation in any Ballot, or revoke an Applicant's entitlement to apply for registration of a released Geographic Name as a domain name, where either reasonably considers that the Applicant:

- 3.2.1 has provided false or inaccurate information in any application;
- 3.2.2 breaches any of these Terms or any applicable auDA Published Policies; or
- 3.2.3 ceases at any time to meet the Eligibility Criteria.

4. CONDUCT OF BALLOT

4.1 The Ballots

4.1.1 Each Geographic Name in com.au and net.au that is available at the start of the Ballots, will be the subject of a separate Ballot. Applicants must make a separate application for each Ballot.

4.1.2 auDA reserves the right to determine the Geographic Name to be drawn under a Ballot.

4.2 Release – Applicant is the only applicant

Where the Applicant is the only applicant for a Geographic Name that is the subject of a Ballot, that Geographic Name will be released to that Applicant, provided that the Applicant pays the Release Fee.

4.3 Release – No applicant

Where there is no applicant for a Geographic Name, no Ballot will be conducted in relation to that Geographic Name, and that Geographic Name will be withdrawn from the Ballot process.

4.4 Release – Multiple applicants

Where there is more than one Applicant for a Geographic Name that is the subject of a Ballot, that Geographic Name will be the subject of a random draw between all the applicants for that Ballot, and released to one of the applicants, provided that the successful Applicant pays the Release Fee.

4.5 Date of random draw

The Ballot will be drawn within 30 days of the closing date of the lodgement period.

4.6 Ballot Results Binding

All releases following a Ballot are final and binding on Applicants. No Applicant may seek to challenge or enter into correspondence in respect of the results of any Ballot.

4.7 Notification to Successful Applicants

If a Geographic Name is released to an Applicant, the relevant Participating Registrar will notify the Applicant, within 14 days of the draw of the Ballot, by sending confirmation to the email or other contact addresses indicated in the Applicant's application form, together with a Tax Invoice requiring payment of the Release Fee.

4.8 Release Fee

4.8.1 The Release Fee is payable by the Applicant for release of a Geographic Name. Upon receiving notification under Clause 4.7, the Applicant must pay the Release Fee to the Participating Registrar within 14 days of the date of the Tax Invoice.

- 4.8.2 Upon notification under Clause 4.7, the Release Fee will be a debt due and owing by the Applicant to the relevant Participating Registrar.
- 4.8.3 The Applicant will not be released from its obligation to pay the Release Fee until the Release Fee has been paid.
- 4.8.4 Participating Registrars have the right to enforce payment of any outstanding Release Fee directly against an Applicant.
- 4.8.5 Participating Registrars may choose to accept payment of the Release Fee by cheque, money order or credit card (Visa, Mastercard and Bankcard), and to enter into any other payment arrangements with the Applicant. If insufficient funds are available or payment of the Release Fee cannot be completed in full, the relevant application will be void and the Applicant may be charged any reasonable administrative fees.

4.9 Second Round Ballot

If a successful Applicant (the **Original Successful Applicant**) does not pay the Release Fee according to Clause 4.8.1, then:

- 4.9.1 the Geographic Name which is the subject of the Ballot will be returned to the Ballot process as set out in this Clause 4, but excluding the participation of the Original Successful Applicant;
- 4.9.2 the original release of the Geographic Name to the Original Successful Applicant will be revoked; and
- 4.9.3 the Original Successful Applicant remains liable to auDA for the payment of the Release Fee, and auDA is entitled to recover the Release Fee as a debt due and owing.

4.10 Entitlement to Apply for Registration as a Domain Name

- 4.10.1 Upon payment of the Release Fee, the Applicant has the right during the Release Period to apply to the relevant Participating Registrar to register a released Geographic Name as a domain name. A domain name registration fee is payable by the Applicant to the relevant Participating Registrar to register such a Geographic Name.
- 4.10.2 Applicants acknowledge that no release of a Geographic Name automatically entitles them to registration of the Geographic Name as a domain name. Such rights will only arise upon successful application to the relevant Participating Registrar.
- 4.10.3 Notwithstanding any notification under Clause 4.7, auDA and the Participating Registrar are not responsible for any rejection of any application to register any released Geographic Name as a domain name, including but not limited to any refund of the Release Fee.

4.11 Release Fee Non-refundable

The Release Fee is non-refundable. auDA and any Participating Registrar will not be required to refund the Release Fee in any circumstances.

4.12 Failure to Register within the Release Period

Where a successful Applicant fails to apply during the Release Period for registration of a released Geographic Name as a domain name, the Applicant's right to apply for registration of that Geographic Name will lapse automatically at the end of the Release Period.

4.13 auDA Discretion

auDA reserves the right in its absolute discretion to cancel or postpone any Ballot or the entire Ballot process at any time, including without limitation, the withdrawal of any Geographic Name from a Ballot.

5. LIABILITY

5.1 Effect of Legislation

Nothing in this Clause is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.

5.2 Exclusion of Implied Warranties

Any representation, warranty, condition or undertaking which (but for this Clause) would be implied in these Terms by law, is excluded to the fullest extent permitted by law.

5.3 Limitation of Liability

The liability of auDA or any Participating Registrar for breach of a condition or warranty implied by the *Trade Practices Act 1974* (Cth) is, to the fullest extent permitted by law, to be limited at their option to:

5.3.1 in the case of goods, the replacement of the goods, the supply of equivalent goods, payment of the cost of replacing the goods or the payment of the cost of acquiring equivalent goods; or

5.3.2 in the case of services, the supply of the services again or the payment of the cost of having the services supplied again.

5.4 General Exclusion of Liability

Neither auDA or any Participating Registrar is liable to any Applicant in any way for any action, claim, loss, damage, cost or expense (including but not limited to legal costs) arising under or in connection with these Terms in contract, tort, statute or otherwise, whether direct, indirect, consequential, economic or otherwise (including, without limitation, loss of data, loss of profit, loss or corruption of data, business interruption or indirect costs) suffered by any Applicant as a result of any act or omission whatsoever of auDA or the Participating Registrar (including negligence), its employees, agents or sub-contractors, including but not limited to cancellation,

postponement or any other changes to a particular Ballot or the entire Ballot process.

5.5 Indemnity by Applicants

Each Applicant agrees to release, hold harmless and indemnify auDA and Participating Registrars to the maximum extent permitted by law from and against all liability whatsoever (including, without limitation, from negligence) in connection with these Terms.

6. INTELLECTUAL PROPERTY

- 6.1 All rights (including copyright) in any data contained on auDA's website or accessed by Applicants in the course of any Ballot, including without limitation in all Geographic Names included in the Ballots, remain with auDA or its third party licensors. Applicants will obtain no right or interest in any Geographic Name other than as expressly set out in these Terms.
- 6.2 Applicants must not use any data they access in connection with these Terms except as expressly authorised by these Terms.
- 6.3 Applicants must not alter or remove any mark of ownership, copyright, patent, trade mark or other property right which is contained on auDA's website or in any other material accessed by or made available to Applicants in connection with the application for or conduct of any Ballot.

7. PRIVACY

By lodging an application for a Geographic Name, Applicants acknowledge and agree that:

- 7.1 auDA and the Participating Registrars may use any Personal Information they provide in their application form (including but not limited to the Applicant's IP address) for the purposes of conducting the Ballots, including but not limited to notifying successful Applicants, verifying the identity of Applicants and securing payment from successful Applicants; and
- 7.2 auDA may disclose their Personal Information to 3rd parties it engages to assist it with the conduct of the Ballots, including, but not limited, to the Participating Registrars.

8. GENERAL

8.1 Entire Agreement

These Terms contain the entire understanding between auDA and Applicants for all Ballots and supersedes all prior agreements, representations, explanations, commitments and understandings, express or implied.

8.2 Assignment

The rights and obligations of Applicants under these Terms are personal. They cannot be assigned, encumbered or otherwise dealt with and no Applicant may attempt, or purport to do so.

8.3 Agency

The Participating Registrars are entitled to act as agents of auDA solely in respect of the receipt of applications for Ballots from Applicants, notification of releases to successful Applicants and the payment of the Release Fees. auDA is not responsible for any acts or omissions of any Participating Registrar under or in connection with these Terms.

Unless expressly permitted by these Terms, no third party (including Participating Registrars) will be entitled to act as a representative or agent of auDA in respect of any aspect of the Ballots. auDA will not be bound by any third party which makes any representations (written or otherwise) whatsoever in respect of any matter arising from, or in connection with, these Terms or the Ballot process.

8.4 auDA Directions

Applicants must at all times during their participation in any Ballot, promptly comply with all reasonable directions and requests from auDA in connection with the Ballot process or these Terms.

8.5 Governing Law and Jurisdiction

These Terms are governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with all matters concerning these Terms.

8.6 No Waiver

No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

8.7 Severability

Any provision of these Terms which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of these Terms nor affect the validity or enforceability of that provision in any other jurisdiction.