



**Maddocks**

**Date**        /        /2003

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**Registrar Agreement**  
[Approved Version 2 – 13 November 2003]

**.au Domain Administration Limited**  
ACN 079 009 340  
and

**The Registrar Described In Item (i) Of Schedule C**

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# Registrar Agreement

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DATE / /2003

## BETWEEN

**.AU DOMAIN ADMINISTRATION LIMITED ACN 079 009 340**  
of 107 Faraday Street, Carlton, Victoria

(auDA)

## AND

**THE REGISTRAR DESCRIBED IN ITEM (i) OF SCHEDULE C**

(Registrar)

## RECITALS

- A. auDA is a non-profit organisation that is the industry self-regulatory body responsible for the administration of the .au ccTLD. ICANN (the Internet Corporation for Assigned Names and Numbers) delegated the .au ccTLD to auDA on 25 October 2001.
- B. auDA is committed to exercising its responsibilities to the Registrar and the Australian Internet community in an open and transparent manner, and to apply standards and policies in a way which are not arbitrary, unjust or inequitable. These commitments are reflected in clause 19 of this document.
- C. The Registrar wishes to be auDA Accredited and to provide the Registrar Services for the Designated 2LD.
- D. This document records the agreement between auDA and the Registrar in respect of, amongst other things, the provision by the Registrar of the Registrar Services for the Designated 2LD.

## THE PARTIES AGREE

### 1. DEFINITIONS

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In this document unless expressed or implied to the contrary:

**2LD** means a .au second level domain, that is, a name at the second level of the .au domain name hierarchy (for example, com.au).

**Accreditation Certificate** means a notice from auDA certifying that the Registrar has:

- (a) met the Accreditation Criteria; and
- (b) passed the Interface Tests,

in respect of the Designated 2LD.

**Accreditation Criteria** means the requirements specified by auDA from time to time in relation to the minimum criteria which must be satisfied by a person in order for that person to be auDA Accredited.

**ACDC** means the Australian Commercial Disputes Centre.

**Agreement** means the agreement between auDA and the Registrar recorded in this document.

**auDA** means .au Domain Administration Limited ACN 079 009 340, the regulatory body responsible for administering the .au ccTLD and its associated sub-domains.

**auDA Accredited** means to be accredited by auDA as having:

- (a) met the Accreditation Criteria; and
- (b) passed the Interface Tests,

in respect of the Designated 2LD, as evidenced by the issue of an Accreditation Certificate by auDA to the Registrar.

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

**ccTLD** means country code top level domain in the domain name hierarchy (for example, .au in Australia, .uk in the United Kingdom).

**Centralised WHOIS Service** means the WHOIS Service of all 2LDs which are made available to the public by auDA.

**Code of Practice** means an industry code of practice, the development of which will be facilitated by auDA, which together with the Published Policies, regulates or will regulate the practices of participants in the domain names industry towards other participants in the industry, or towards consumers in the industry.

**Commencement Date** means the date of this document.

**Confidential Information** means all information and materials about the other party or a third party, in any form, which comes into a party's possession pursuant to, or as a result of or in performance of this document, excluding information:

- (a) which at the time of its first disclosure under this document was in the public domain; or
- (b) which, after disclosure under this document, comes into the public domain otherwise than by disclosure in breach of this document; or
- (c) which is received by either party from a third party who has the right to provide the information and which is not itself subject to confidentiality; or
- (d) which was already in the party's possession or knowledge without restriction prior to its disclosure; or
- (e) which the party is required by law to disclose.

**Designated 2LD** means the 2LD described in item (iii) of Schedule C.

**Domain Name** means a domain name in the Designated 2LD.

**Domain Name Application** means an application by a Registrant for a Domain Name Licence, or the renewal of an existing Domain Name Licence.

**Domain Name Licence** means the licence to use a Domain Name for a specified period of time, as evidenced by a certificate of registration issued by the Registrar to the Registrant.

**Effective Control** means, unless otherwise stipulated in the Published Policies:

- (a) in respect of a company incorporated pursuant to the provisions of the *Corporations Act 2001*:
  - (i) control of a majority of the board of directors of the Registrar; or
  - (ii) control of more than 50% of the voting rights attaching to shares in the Registrar; or
  - (iii) control of the disposal of more than 50% of the issued share capital of the Registrar, or

including the exercise of such control by a person as a result of that person having a relevant interest (as defined in the *Corporations Act 2001*) so that such person, either alone or with an associate (as defined in the *Corporations Act 2001*) of that person can exercise the relevant control; and

- (b) in all other cases, as determined by auDA in the Published Policies.

**Events of Default** has the meaning given in clause 23.1.

**Fees** means the fees payable by the Registrar to auDA set out in Schedule A, which comprise:

- (a) the Licence Fee; and
- (b) the Reseller Fee (if applicable); and
- (c) the Reseller Notification Fee (if applicable).

**GST** has the same meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999*.

**Insolvency Event** means any of the following events:

- (a) a party, being an individual, commits an act of bankruptcy;
- (b) a party becomes insolvent;
- (c) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to a party or a party enters into a scheme of arrangement with its creditors or is wound up;
- (d) a party assigns any of its property for the benefit of creditors or any class of them;
- (e) an encumbrance takes any step towards taking possession or takes possession of any assets of a party or exercises any power of sale; or
- (f) a distress, attachment or other execution is levied or enforced against a party in excess of \$10,000.00.

**Intellectual Property Rights** means all and any patents, patent applications, trade marks, service marks, trade names, domain names, registered designs, unregistered design rights, copyrights, know how, trade secrets and rights in confidential information, URLs and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.

**Interface Tests** means the registrar/registry interface and other tests conducted by auDA, to ensure that the Registrar's system can properly interface with the Registry Operator's system for the processing of Registry Data.

**Licence Fee** means the fee payable by the Registrar to auDA set out in paragraph (a) of Schedule A.

**National Privacy Principles** has the same meaning as in the *Privacy Act 1988* (Cth).

**Published Policies** means those specifications and policies established and published by auDA from time to time, as the self-regulatory body responsible for the administration of the .au ccTLD, in accordance with its constitution.

**Registrant** means a holder of, or an applicant for, a Domain Name Licence, and includes its agent.

**Registrant Agreement** means the agreement to be entered into, or renewed, between the Registrar and a Registrant in relation to an approved Domain Name.

**Registrant Data** means the data submitted by the Registrar to the Registry under clause 11.1.

**Registrar** means the party to this document in its capacity as a registrar for the Designated 2LD.

**Registrar Services** means the provision of the services set out in this document in respect of the Designated 2LD, consisting of the following services:

- (a) to apply to the Registry to register a Domain Name on behalf of a Registrant;
- (b) to provide all associated services to such Registrants, including services relating to the maintenance, transfer, modification, renewal and cancellation of a Domain Name or Domain Name Licence; and
- (c) to provide services otherwise required by the Published Policies.

**Registry** means a database consisting of primary and secondary nameservers and WHOIS servers, containing the Registry Data and a mechanism for accessing that data, in relation to the Designated 2LD.

**Registry Access Protocol** means the protocol used to create, modify or delete Domain Name registrations, as set out in the *Registry Technical Specification*, published by auDA from time to time at its web site.

**Registry Data** means all data maintained in electronic form in the Registry, including without limitation:

- (a) Zone File data;
- (b) Registrant contact information;

- (c) technical and administrative contact information;
- (d) all other data submitted by registrars in electronic form; and
- (e) other data concerning particular registrations or nameservers maintained in electronic form in the Registry database.

**Registry Operator** means the operator of the Registry.

**Related Entity** has the same meaning as in the *Corporations Act 2001* (Cth).

**Reseller** means a person appointed by the Registrar to sell domain name services and provide customer services to Registrants on behalf of the Registrar.

**Reseller Fee** means the fee payable by the Registrar to auDA set out in paragraph (b) of Schedule A, if applicable.

**Reseller Notification Fee** means the fee payable by the Registrar to auDA set out in paragraph (c) of Schedule A, if applicable.

**Reseller Licence** means any contract, arrangement or understanding between the Registrar and a Reseller in relation to the Reseller acting as agent for the Registrar.

**Term** means the period during which this document has effect, as set out in clause 2.1.

**WHOIS Service** means the protocol used to provide a public information service in relation to data in a registry.

**Zone File** means a file that contains the mapping between each domain name in the Designated 2LD and the Internet addresses of computers that can resolve sub-domains of the domain name to physical Internet addresses.

## **2. DURATION OF AGREEMENT**

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### **2.1 Duration**

This document has effect on and from the Commencement Date, and continues until it is terminated:

- 2.1.1 by auDA under clause 23; or
- 2.1.2 by the Registrar under clause 2.2 or clause 23.

### **2.2 Registrar may Terminate**

- 2.2.1 The Registrar may, at any time, terminate this document by giving auDA 30 days prior notice in writing of its intention to do so.
- 2.2.2 The provisions in clause 24 apply in relation to such termination.
- 2.2.3 For clarity, Fees paid by the Registrar to auDA are not refundable, regardless of the time of such termination.

### **3. REGISTRAR'S ACCREDITATION**

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#### **3.1 Requirement for Accreditation**

The Registrar must be auDA Accredited for the duration of the Term. The parties' entry into this document does not mean, on its own, that the Registrar is auDA Accredited.

#### **3.2 Registrar Service**

Upon being auDA Accredited, the Registrar is entitled to:

- 3.2.1 operate as a registrar in the Designated 2LD; and
- 3.2.2 provide Registrar Services in the Designated 2LD, on a non-exclusive basis.

#### **3.3 Non-Exclusivity**

The Registrar acknowledges and agrees that there is no limit upon auDA as to the number of registrars which auDA may accredit.

#### **3.4 Warranties**

The Registrar represents and warrants to auDA:

- 3.4.1 on the Commencement Date, that it meets the Accreditation Criteria; and
- 3.4.2 as a continuing warranty during the Term, that it continues to meet the Accreditation Criteria.

#### **3.5 Continuous Disclosure**

The Registrar must promptly notify auDA if the Registrar becomes aware:

- 3.5.1 that it does not meet any of the Accreditation Criteria; or
- 3.5.2 of any circumstance, fact or thing that affects its ability to continue to meet the Accreditation Criteria.

#### **3.6 Acknowledgments**

The Registrar acknowledges that:

- 3.6.1 the Registry Operator may begin accepting or processing Domain Name Applications by the Registrar on a date which is later than the Commencement Date; and
- 3.6.2 auDA may post on its web site, the Registrar's name and contact information, and a link to the Registrar's web site.

## **4. LOSS OF REGISTRAR'S ACCREDITATION**

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### **4.1 Loss of Accreditation**

The Registrar's auDA Accreditation is automatically terminated when this document terminates.

### **4.2 auDA may Suspend or Terminate Accreditation**

auDA may suspend or terminate the Registrar's auDA Accreditation if auDA considers that an Event of Default has occurred in respect of the Registrar.

### **4.3 Consequences of Loss of Accreditation**

4.3.1 In the event that the Registrar's auDA Accreditation is terminated because an Event of Default occurred in respect of the Registrar, the Registrar must not apply to auDA to be auDA Accredited from the date of such termination for a period as determined by auDA, but not exceeding 12 months.

4.3.2 auDA is entitled to waive the restriction referred to in clause 4.3.1.

## **5. WARRANTIES**

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### **5.1 Information Provided to auDA**

The Registrar represents and warrants to auDA that all written information and reports which it has furnished, or will furnish, to auDA in connection with this document (including during the process of seeking to be auDA Accredited):

5.1.1 are true, accurate and not misleading in all material respects, whether by omission or otherwise; and

5.1.2 where appropriate, contain forecasts and opinions all of which were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it and are fair and reasonable.

### **5.2 auDA's Reliance**

The Registrar acknowledges that auDA has entered into this document in reliance upon the representations and warranties in this document.

## **6. USE OF auDA NAME AND LOGO**

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### **6.1 Grant of Licence**

auDA grants to the Registrar a non-exclusive, worldwide, royalty-free licence to:

6.1.1 state that it is accredited by auDA as a registrar for the Designated 2LD;

6.1.2 use the logo specified by auDA to indicate that the Registrar is accredited by auDA as a registrar for the Designated 2LD; and

6.1.3 link to pages and documents within auDA's web site, provided they are not framed by any other materials.

## 6.2 Other Use not Permitted

- 6.2.1 Other than in accordance with clause 6.1, the Registrar is not permitted to use auDA's name or logo or trademark.
- 6.2.2 The rights granted under this clause 6 are personal to the Registrar and must not be transferred or assigned or sub-licensed to any other person.

## 7. GENERAL OBLIGATIONS OF REGISTRAR

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### 7.1 Registrar Services

When performing the Registrar Services for the Designated 2LD, the Registrar must do so in accordance with this document.

### 7.2 Compliance with Published Policies

- 7.2.1 Subject to clause 7.2.2, the Registrar must comply with all Published Policies, as if they were incorporated into, and form a part of, this document.
- 7.2.2 If, after the Commencement Date, auDA:
- 7.2.2.1 introduces new Published Policies; or
  - 7.2.2.2 makes changes to any existing Published Policies,
- then the Registrar must comply with those new or changed Published Policies as soon as practicable, but in any event within 30 days after auDA notifies the Registrar of the new or changed Published Policies.
- 7.2.3 auDA may notify the Registrar of the new or changed Published Policies by:
- 7.2.3.1 following the procedures described in clause 27; or
  - 7.2.3.2 posting the new or changed Published Policies on auDA's website.
- 7.2.4 If the Registrar does not comply with any new or changed Published Policies within the 30 day period (referred to in clause 7.2.2), this failure alone will not cause the Registrar to be in breach of this document.

### 7.3 [Not Used].

### 7.4 Compliance with Code of Practice

auDA will facilitate the development of a Code of Practice. When the Code of Practice is developed, then:

- 7.4.1 the Registrar must comply with the Code of Practice as if it were incorporated into, and forms a part of, this document; and
- 7.4.2 if the Code of Practice is declared by regulations under the *Trade Practices Act 1974*, the Registrar agrees to be bound by such Code of Practice.

## **7.5 Inconsistencies**

In the event of any inconsistencies between the provisions of this document and the provisions in the Published Policies and Code of Practice, then to the extent of the inconsistencies, the various documents will be interpreted in the following order of priority:

- 7.5.1 the Published Policies (highest level of priority); and
- 7.5.2 the Code of Practice; and
- 7.5.3 this document.

## **7.6 No Limitation**

Subject to clause 7.5, nothing in this clause 7 limits or otherwise affects the Registrar's obligations as provided elsewhere in this document.

# **8. PAYMENT OF FEES**

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## **8.1 Obligation to Pay**

The Registrar must pay the Fees to auDA in the manner set out in Schedule A.

## **8.2 GST**

- 8.2.1 All fees referred to in this document are exclusive of GST, unless otherwise stated.
- 8.2.2 All applicable GST must be paid by the Registrar to auDA at the same time and in the same manner as the relevant fee is paid or given under this document.

## **8.3 Timely Payment**

The Registrar must make all payments to auDA under this document in a timely manner, despite any dispute which may exist between auDA and the Registrar.

## **8.4 Interest on Late Payment**

The Registrar must pay interest on late payments to auDA at:

- 8.4.1 the rate which is the aggregate of 2% per annum and the prevailing base lending rate published by the Commonwealth Bank of Australia from time to time in the *Australian Financial Review*; or
- 8.4.2 if that rate is not available or cannot be determined, such other rate which may be reasonably determined by auDA.

## **8.5 No Set-Off**

The Registrar must not exercise any right of set-off on any account as against auDA.

## **8.6 Tax invoice**

auDA must provide a tax invoice to the Registrar no later than 14 days after the receipt of the Fee.

## **9. APPLICATION FOR DOMAIN NAME LICENCE**

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### **9.1 Consideration by Registrar**

Whenever the Registrar receives a Domain Name Application, the Registrar must:

- 9.1.1 consider whether the Domain Name Application complies with the Published Policies; and
- 9.1.2 use reasonable endeavours to verify the information provided to the Registrar in the Domain Name Application.

### **9.2 Compliance with Published Policies**

Where the Registrar:

- 9.2.1 is satisfied that a Domain Name Application complies with the Published Policies, the Registrar must approve the Domain Name Application; or
- 9.2.2 is not satisfied that a Domain Name Application complies with the Published Policies, the Registrar must reject the Domain Name Application.

### **9.3 Approved Domain Name Applications**

The Registrar must, in relation to each approved Domain Name Application:

- 9.3.1 ensure that the Registrant is bound by the Registrant Agreement in respect of that approved Domain Name; and
- 9.3.2 thereafter submit the Registrant Data to the Registry.

### **9.4 Final Check by Registry Operator**

The Registrar acknowledges that even if the Registrar has approved a Domain Name Application, that Domain Name Application may still be rejected by the Registry Operator in performing the final integrity checks.

### **9.5 Rejected Domain Name Applications**

The Registrar must, in relation to each rejected Domain Name Application, notify the Registrant that the Domain Name Application has been rejected, and provide the Registrant with written reasons for such rejection.

### **9.6 Certificate of Registration**

As soon as:

- 9.6.1 the Registrar approves a Domain Name Application; and

9.6.2 the Registrant Data is accepted by the Registry, or placed in the Registry database,

the Registrar must provide a certificate of registration to each Registrant, in a form prescribed by auDA.

## **10. REGISTRANT AGREEMENTS**

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### **10.1 Registrant Agreement**

The Registrar must:

10.1.1 enter into a binding and enforceable Registrant Agreement with each of its Registrants upon approval of the Domain Name Application; and

10.1.2 comply with the provisions of the Registrant Agreements.

### **10.2 auDA Provisions**

All Registrant Agreements must contain:

10.2.1 the provisions set out in Schedule B; and

10.2.2 in a prominent location, a summary of the main provisions in the document.

### **10.3 No Inconsistent Terms**

Subject to any inconsistency between the following documents (in which case clause 7.5 will apply to resolve the inconsistency), the Registrar must not make any contract or arrangement, or arrive at any understanding with a Registrant, which contains terms or conditions which are inconsistent with the provision of:

10.3.1 this document; and

10.3.2 any Published Policies; and

10.3.3 the Code of Practice.

### **10.4 Make Information Available to Registrant**

The Registrar must, at auDA's request, inform its Registrants by email about new or changed Published Policies or Code of Practice.

### **10.5 Registrar's Agency**

The Registrar agrees and covenants to act as agent for auDA for the sole purpose, but only to the extent necessary, to enable auDA to receive the benefit of rights and covenants conferred to them under the Registrant Agreement.

## **11. REGISTRANT DATA**

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### **11.1 Submit to Registry**

In respect of each approved Domain Name Application, the Registrar must promptly submit to the Registry, or must place in the Registry database operated by

the Registry Operator, the mandatory information required under the Registry Access Protocol.

### **11.2 Updated Registrant Data**

The Registrar must, within five Business Days after receiving any updated Registrant Data information from the Registrant, submit the updated Registrant Data to the Registry, or place the updated Registrant Data in the Registry database.

### **11.3 Access to Registrant Data**

The Registrar must not sell or otherwise grant access to any Registrant Data to any person, other than in order to comply with its obligations under this document, unless:

- 11.3.1 authorised by auDA; and
- 11.3.2 in compliance with any conditions of use specified by auDA; and
- 11.3.3 in compliance with any Published Policies.

### **11.4 Information to be Publicly Available**

The Registrar must ensure that a document containing the following information be publicly available, and be easily accessible to the public (such as through its web site):

- 11.4.1 the terms and conditions of the Registrant Agreement;
- 11.4.2 if the document is made available through the Registrar's web site, it must contain the auDA logo and link to the auDA homepage;
- 11.4.3 the service levels provided to Registrants and a statement of commitment to those service levels.

## **12. TRANSFER BETWEEN REGISTRAR**

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### **12.1 Transfers**

The Registrar must ensure that its Registrant can easily transfer registered Domain Names to another registrar in accordance with the Published Policies.

### **12.2 Acknowledgement**

The parties acknowledge that the Published Policies will include, but are not limited to, such matters as:

- 12.2.1 the maximum fees chargeable by the Registrar;
- 12.2.2 when fees are not chargeable by the Registrar;
- 12.2.3 the conditions pursuant to which the Registrar must transfer; and
- 12.2.4 the conditions pursuant to which the Registrar does not have to transfer.

## **13. NON-SOLICITATION OF REGISTRANTS**

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### **13.1 Use of Registry or Centralised WHOIS Service Information**

The Registrar must not use information obtained from the Registry or auDA's Centralised WHOIS Service to solicit business from, or to otherwise make contact with, a Registrant, unless:

- 13.1.1 the Registrar is the registrar of the Registrant, as identified in the Registry; or
- 13.1.2 the Registrant has previously contacted the Registrar in respect of the registration of a Domain Name; or
- 13.1.3 the Registrant is otherwise a customer of the Registrar and has authorised the Registrar to use information obtained to accept business from or contact with the Registrant; or
- 13.1.4 both the Registrant and the Registrant's registrar (as identified in the Registry) have consented in writing to such use of the information.

### **13.2 No Application**

The Registrar must not submit a Domain Name Application to the Registry or provide any other Registrar Services to a Registrant unless:

- 13.2.1 the Registrar is the registrar of the Registrant, as identified in the Registry; or
- 13.2.2 the Registrant has asked the Registrar to provide such services.

## **14. REGISTRAR'S OTHER OBLIGATIONS**

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### **14.1 Positive Covenants**

The Registrar must:

- 14.1.1 act in good faith in its dealings with auDA, the Registry Operator, other registrars and each Registrant;
- 14.1.2 do all things necessary to ensure that during the Term, it continues to meet the Accreditation Criteria;
- 14.1.3 immediately give auDA notice of any security breaches affecting the Registrar or any part of its systems;
- 14.1.4 within two Business Days, give notice to auDA if the Registrar becomes aware or has cause to believe that a Registrant is no longer entitled to a Domain Name Licence;
- 14.1.5 provide to auDA (at auDA's request) and to the Registry Operator (at all times), all information related to each approved Domain Name, including information relating to the renewal, transfer, modification, or cancellation a Domain Name Licence;

- 14.1.6 within two Business days, give notice to auDA if the Registrar becomes aware or has cause to believe that a particular Registrant is in breach of, or a particular Domain Name breaches, the Published Policies;
- 14.1.7 accurately represent to the Registrants, the media, any governmental entity and the general public, the Published Policies and the Registrar's relationship with and status in the domain name infrastructure relative to the Registry Operator and auDA;
- 14.1.8 keep the Registry Operator informed of any changes in the information supplied to the Registry Operator, including information supplied on behalf of Registrants and all changes of the Registrar's personal or company details;
- 14.1.9 provide to auDA from time to time, upon auDA's request, all information in relation to the Registrar and the operation of the registrar's business as auDA may reasonably request;
- 14.1.10 within two Business Days, give notice to auDA of any impending claims, litigation, proceedings or material disputes against the Registrar by any person or authority relating directly or indirectly to its provision of Registrar Services including arbitration and administrative or governmental investigation;
- 14.1.11 continue to hold all material statutory licences, consents and authorisations necessary to perform its obligations under this document; and
- 14.1.12 comply with all applicable law.

## **14.2 Negative Covenants**

The Registrar must not:

- 14.2.1 approve any Domain Name Application, nor submit to or place in the Registry, any Registrant Data which relates to a Domain Name which does not comply with the Published Policies;
- 14.2.2 use auDA's intellectual or industrial property other than as contemplated in this document;
- 14.2.3 be involved in any activity which involves the acquisition or accumulation of Domain Names which are not connected to the provision of Registrar Services under this document, for the purposes of removing them from the availability of others, transferring them for a direct or indirect, immediate or deferred gain or profit or for any other reason which can be considered to be done in bad faith;
- 14.2.4 be involved in any activity which may directly or indirectly bring the Registry Operator or auDA into disrepute;
- 14.2.5 not represent to any person that the Registrar enjoys access to the Registry that is superior to that of any other auDA Accredited registrar;

- 14.2.6 use any personal information held in relation to a Registrant or other person other than in accordance with the Published Policies, this document, and all applicable law; or
- 14.2.7 use any information belonging to or regarding auDA other than in accordance with this document.

### **14.3 Insurance**

The Registrar represents and warrants to auDA that it has in place, and will maintain during the Term the following insurance coverage:

- 14.3.1 public and products liability;
- 14.3.2 business interruption;
- 14.3.3 business insurance (contents, fire, damage, perils);
- 14.3.4 burglary;
- 14.3.5 accidental damage cover; and
- 14.3.6 contents temporarily removed,

the types and levels of which a prudent provider of Registrar Services would have in place.

### **14.4 Bundled Services**

If the Registrar provides bundled services to its customers (which include the provision of services relating to Domain Names), then the Registrar must specify the price of each Domain Name Licence.

### **14.5 Enquiries and Complaints**

The Registrar must act promptly to investigate all enquiries and complaints from or regarding any Registrant in relation to a Domain Name or a Registrant Agreement, in respect of which the Registrar is identified as the registrar in the Registry.

## **15. CONTROL OF RESELLERS**

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### **15.1 Appointment of Resellers**

The Registrar may appoint Resellers.

### **15.2 Notification of Appointment or Termination of Reseller**

The Registrar must notify auDA in writing of the appointment or termination of a Reseller within seven days of the appointment or termination, each time a Reseller is appointed or terminated.

### **15.3 Responsibility of Registrar**

auDA is entitled to regard all the acts and omissions of a Reseller in respect of services provided by the Reseller under a Reseller Licence, as if they were the acts and omissions of the Registrar under this document.

#### **15.4 Reseller Agreement**

Any contract, arrangement or understanding between the Registrar and the Reseller for a Reseller Licence must contain a provision which requires the Reseller to comply with the Published Policies.

#### **15.5 Direction Not to Deal with Reseller**

auDA is entitled to direct the Registrar in writing, and by providing reasons:

15.5.1 not to accept any services from a particular Reseller; and

15.5.2 terminate any Reseller Licence in existence between the Registrar and that particular Reseller,

if auDA considers that the particular Reseller has breached:

15.5.3 any provision of this document (read as if the Reseller were a party to this document); or

15.5.4 any Published Policy; or

15.5.5 the Code of Practice,

and the Registrar must comply with such direction.

#### **15.6 Reseller to Identify Relationship**

The Registrar must procure that the Reseller identifies its relationship with the Registrar for which it is a reseller:

15.6.1 in any instrument of, or purporting to be signed or issued by or on behalf of the Reseller, or issued in the course of, or for the purposes of, performing services in accordance with the Reseller Licence; and

15.6.2 on the Reseller's website.

### **16. PRIVACY**

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#### **16.1 'Opt-in' under *Privacy Act 1988***

On or before the Commencement Date, the Registrar must advise the Commonwealth Privacy Commissioner in writing that the Registrar chooses to be treated as an "organisation" under the *Privacy Act 1998*, under section 6EA(2) of that Act.

#### **16.2 No Revocation**

The Registrar must not revoke its choice to be treated as an "organisation" under the *Privacy Act 1988*, except with the prior approval of auDA.

#### **16.3 Privacy code**

The Registrar must:

16.3.1 comply with the National Privacy Principles; or

- 16.3.2 in the event that auDA adopts an approved privacy code, at auDA's request, provide in writing to the Commonwealth Privacy Commissioner, notification that it consents to being bound to any such privacy code.

## **17. INTELLECTUAL PROPERTY RIGHTS**

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### **17.1 Acknowledgement on Registrant Data**

The Registrar and auDA both acknowledge and agree that Registrant Data:

- 17.1.1 are not proprietary information; and
- 17.1.2 for clarity, are not owned by the Registrar or auDA; and
- 17.1.3 are held by auDA for the benefit of the Australian public.

### **17.2 Registrant Data**

The Registrar is not entitled to claim any Intellectual Property Rights in the Registrant Data.

## **18. CONFLICT OF INTERESTS**

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### **18.1 Warranty**

Subject to clause 18.3, the Registrar warrants that, on the Commencement Date:

- 18.1.1 it will not itself; and
- 18.1.2 none of its Related Entity will,  
directly or indirectly, and whether solely or jointly with any other person, be carrying on or engaged or involved in any trade, business or undertaking as a Registry Operator.

### **18.2 Separation with Registry Operations**

Subject to clause 18.3, during the Term, the Registrar:

- 18.2.1 must not itself; and
- 18.2.2 must ensure that none of its Related Entity,  
whether directly or indirectly, and whether solely or jointly with any other person, carry on or be engaged or involved in any trade, business or undertaking as the Registry Operator.

### **18.3 Exceptions**

This clause 18 does not prevent the Registrar or any of its Related Entities from holding marketable securities in the Registry Operator, provided that:

- 18.3.1 it is for investment purposes only; and
- 18.3.2 the marketable securities are quoted on a recognised stock exchange in Australia or elsewhere at the time of acquisition; and

- 18.3.3 the collective holding by the Registrar and all its Related Entities in the Registry Operator does not exceed 20% of all its issued share capital.

#### **18.4 Separation of Operations**

The covenants in clauses 18.1 and 18.2 may be waived by auDA in writing if auDA considers that:

- 18.4.1 the Registrar is able to have a clear and effective separation between the business operations of the Registrar as a registrar in the Designated 2LD, and that of a registry operator in the Designated 2LD; and
- 18.4.2 despite the Registrar's involvement as a registrar, competing registrars still have fair and equal access to the registry of the Designated 2LD.

#### **18.5 Acknowledgement**

The Registrar acknowledges that the covenants in clauses 18.1 and 18.2:

- 18.5.1 are material to auDA's decision to enter into the Agreement; and
- 18.5.2 are fair and reasonable having regard to the intention of the Australian Internet community to introduce competition into the .au ccTLD; and
- 18.5.3 are reasonably required by auDA to protect the interests of the Australian Internet community.

### **19. OBLIGATIONS OF auDA**

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#### **19.1 General obligations**

With respect to all matters that impact the rights, obligations or role of the Registrar, auDA must during the Term:

- 19.1.1 exercise its responsibilities in good faith and in an open and transparent manner; and
- 19.1.2 not unreasonably restrain competition and, to the extent possible, promote and encourage robust competition; and
- 19.1.3 not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably; and
- 19.1.4 not single out the Registrar for disparate treatment unless justified by substantial and reasonable cause; and
- 19.1.5 ensure, through its reconsideration and independent review policies, adequate opportunity for the Registrar to contribute to auDA's standards, policies, procedures or practices.

#### **19.2 Assignment to New Authority**

In the event that another entity becomes the Australian Government endorsed authority for the .au namespace, auDA must transfer all its rights, obligations and liabilities under this document to the other entity.

## **20. CONFIDENTIALITY**

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### **20.1 Confidentiality Security and Reproduction**

Each party must:

- 20.1.1 keep confidential; and
- 20.1.2 take reasonable steps to ensure that the party's employees do not disclose to a third party; and
- 20.1.3 maintain proper and secure custody of; and
- 20.1.4 not use or reproduce in any form,

any Confidential Information belonging to the other party without the written consent of the other party or as required by law.

### **20.2 Delivery or Destruction of Confidential Information**

A party must immediately on receipt of a request from the other party in accordance with the other party's rights under this document:

- 20.2.1 deliver all Confidential Information belonging to the other party and all changes to, reproductions of, extracts from and notes regarding that Confidential Information, in any form; or
- 20.2.2 destroy the Confidential Information and, if it is stored in other media, by erasing it from the media on which it is stored so that the Confidential Information is incapable of being revived; and
- 20.2.3 provide a statutory declaration to the other party that all Confidential Information has been delivered or destroyed in accordance with this clause.

## **21. LIMITATIONS OF LIABILITY**

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### **21.1 Effect of Legislation**

Nothing in this clause 21 is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.

### **21.2 Exclusion of Implied Warranties**

Any representation, warranty, condition or undertaking which (but for this clause 21.2) would be implied in this document by law, is excluded to the fullest extent permitted by law.

### **21.3 General Exclusion of Liability**

auDA is not liable to the Registrar for any claim arising under this document in contract, tort, statute or otherwise, except where auDA has acted in bad faith.

#### **21.4 Specific Performance**

Either party may seek specific performance of any provision in this document, provided that the party seeking such specific performance is not in material breach of its obligations under this document.

#### **21.5 Limitation of Liability**

The liability of auDA for breach of a condition or warranty implied by the *Trade Practices Act 1974* (other than under Section 69) in relation to the supply of goods or services not of a kind ordinarily acquired for personal domestic or household use or consumption, is limited, at auDA's option, to:

- 21.5.1 in the case of goods – the replacement of the goods, the supply of equivalent goods, the payment of the cost of replacing the goods or the payment of the cost of acquiring equivalent goods; or
- 21.5.2 in the case of services – the supplying of the services again or the payment of the cost of having the services supplied again.

#### **21.6 Aggregate Liability**

Without reducing the effect of any other provisions in this clause 21, auDA's aggregate liability to the Registrar will not, in any event, exceed the Fees payable by the Registrar to auDA in respect of the first 12 months of the Term.

#### **21.7 Consequential Losses**

Despite any other provision of this document and to the fullest extent permitted by law, auDA will not be liable to the Registrar for consequential, indirect or special losses or damages of any kind (including, without limitation, loss of profit, loss or corruption of data, business interruption or indirect costs) suffered by the Registrar as a result of any act or omission whatsoever of auDA, its employees, agents or sub-contractors.

## **22. DISPUTE RESOLUTION**

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### **22.1 Mediation before Arbitration**

If a dispute arises:

- 22.1.1 out of or relating to this document, or the breach, termination, validity or subject matter of this document; or
- 22.1.2 as to any claim in tort, in equity or pursuant to any domestic or international statute or law,

the parties agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Disputes Centre before having recourse to arbitration.

### **22.2 Notice**

A party claiming that a dispute has arisen, must give written notice to the other party to the dispute specifying the nature of the dispute.

**22.3 Attempt to Resolve**

The parties to the dispute must seek to resolve the dispute within seven days of receipt of the notice specified in clause 22.2.

**22.4 Referral to ACDC**

If the dispute is not resolved within seven days or within such further period as the parties agree then the dispute must be referred to ACDC for mediation under clause 22.5.

**22.5 Mediation**

The mediation must be conducted in accordance with ACDC *Mediation Guidelines* which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and which terms are regarded to form part of this document.

**22.6 Arbitration**

22.6.1 In the event that the dispute has not settled within 28 days or such other period as agreed to in writing between the parties after the appointment of the mediator, the dispute must be submitted to arbitration (administered by ACDC) and conducted in accordance with ACDC's *Arbitration Guidelines* which terms are regarded to form part of this document.

22.6.2 The arbitrator must not be the same person as the mediator.

**22.7 No Merger**

This clause does not merge upon completion.

**23. DEFAULT AND TERMINATION**

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**23.1 Events of Default**

In this document, **Event of Default** means, in relation to a party, any of the following events:

23.1.1 an Insolvency Event; or

23.1.2 the Registrar does not continue to meet the Accreditation Criteria; or

23.1.3 any amount due and payable by the party under this document is in arrears for 30 days after formal demand has been made; or

23.1.4 the party commits a breach of this document which is not capable of being remedied; or

23.1.5 the party commits a breach of this document and fails to rectify that breach within 30 days after receipt of written notice specifying the breach and requiring rectification; or

23.1.6 if clause 25.2 applies.

## **23.2 Consequences of Default**

At any time following an Event of Default, the non defaulting party may, by notice in writing to the party do all or any of the following:

- 23.2.1 demand that all money actually or contingently owing under this document are immediately due and payable by the party and the party must immediately repay those moneys; or
- 23.2.2 demand that the party must pay to the non defaulting party interest at the rate set out in clause 8.4, computed on the amount overdue during the period of default and the party must immediately pay such interest; or
- 23.2.3 declare that the obligations of the non defaulting party under this document cease and the non defaulting party is no longer obliged to perform any obligations under this document; or
- 23.2.4 if the defaulting party is the Registrar, auDA may demand that the Registrar pay the reasonable expenses incurred by auDA as a result of any breach of this document by the Registrar and the service of notices as required by this clause, and the Registrar must immediately pay those expenses; or
- 23.2.5 terminate this Agreement.

## **24. CONSEQUENCES OF TERMINATION**

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### **24.1 Rights and Obligations on Termination**

If this document is terminated for any reason, in addition to and without prejudice to any other rights, powers or remedies provided by law:

- 24.1.1 each party is released from its further obligations under this document, except those provisions of this document which are expressly intended to survive termination; and
- 24.1.2 each party retains the rights it had against the other party in respect of any past breach.

### **24.2 Confidential Information**

If this document is terminated, then a party must immediately on receipt of a request from the other party:

- 24.2.1 deliver all Confidential Information belonging to the other party and all changes to, reproductions of, extracts from and notes regarding that Confidential Information, in any form; or
- 24.2.2 destroy the Confidential Information and, if it is in the form of computer software, by erasing it from the magnetic media on which it is stored so that the Confidential Information is incapable of being revived; and
- 24.2.3 provide a statutory declaration to the other party that all Confidential Information has been delivered or destroyed in accordance with this clause.

### 24.3 Survival

For clarity, each of the party's rights and obligations in this clause 24 survives termination of this document.

## 25. PROHIBITION OF ASSIGNMENT

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### 25.1 No Assignment

The Registrar must not:

25.1.1 sell, transfer, delegate, assign, licence; or

25.1.2 mortgage, charge or otherwise encumber

any right under this document to any person (**Proposed Assignee**), or permit a Proposed Assignee to assume any obligation under this document without the prior written consent of auDA.

### 25.2 No Change of Control

25.2.1 Subject to clause 25.2.2, the Registrar:

25.2.1.1 must ensure that there is no change of Effective Control of the Registrar without the approval of auDA; and

25.2.1.2 acknowledges and agrees that a change of Effective Control of the Registrar will be regarded as an Event of Default, whether such change is within or beyond the control of the Registrar.

25.2.2 Clause 25.2.1 does not apply to the Registrar if it is or becomes a company in respect of which marketable securities are quoted on an official stock exchange in Australia, or on any other stock exchange approved by auDA.

### 25.3 Fees and Expenses

The Registrar must pay all fees and expenses (including legal fees on a solicitor/own client basis) incurred by auDA in connection with the proposed assignment and the investigation of the Proposed Assignee, whether or not consent is granted.

### 25.4 Details

The Registrar must deliver to auDA:

25.4.1 the name, address and occupation (if applicable) of the Proposed Assignee;

25.4.2 two written references as to financial circumstances of the Proposed Assignee;

25.4.3 an agreement in a form approved by auDA, executed by the Proposed Assignee, in which the Proposed Assignee agrees to perform the obligations of the Registrar under this document; and

- 25.4.4 if required by auDA, a guarantee in a form approved by auDA executed by persons approved by auDA, guaranteeing the performance of the Proposed Assignee's obligations.

## **26. GENERAL**

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### **26.1 Amendment**

This document may only be varied or replaced by a document duly executed by the parties.

### **26.2 Entire Understanding**

This document contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this document and have no effect.

### **26.3 Further Assurance**

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this document.

### **26.4 Legal Costs and Expenses**

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this document and other documents referred to in it, unless expressly stated otherwise.

### **26.5 Waiver and Exercise of Rights**

26.5.1 A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

26.5.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### **26.6 Time of the Essence**

Time is of the essence as regards all dates, periods of time and times specified in this document.

### **26.7 Rule of Construction**

In the interpretation of this document, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it put forward this document or any part of it.

## 27. NOTICES

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### 27.1 Service of Notice

A notice or other communication required or permitted, under this document, to be served on a person must be in writing and must be served using at least **two** of the following methods:

- 27.1.1 personally on the person;
- 27.1.2 by leaving it at the person's current address for service;
- 27.1.3 by posting it by prepaid post addressed to that person at the person's current postal address for service; or
- 27.1.4 by facsimile to the person's current number for service; or
- 27.1.5 by email to the person's current email address for service.

### 27.2 Particulars for Service

27.2.1 The particulars for service of auDA are:

Address:	107 Faraday Street Carlton VIC 3053
Postal address:	As above
Facsimile number:	+61 3 9349 5711
Email address:	ceo@auda.org.au <b>and to</b> chair@auda.org.au
Attention:	Chief Executive Officer

27.2.2 The particulars for service of Registrar are set out in item (ii) of Schedule C.

27.2.3 Any party may change its particulars for service by giving notice to the other party.

27.2.4 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

### 27.3 Time of Service

A notice or other communication is deemed served:

- 27.3.1 if served personally or left at the person's address, upon service;
- 27.3.2 if posted within Australia to an Australian address, two Business Days after posting and in any other case, seven Business Days after posting;
- 27.3.3 if served by facsimile, subject to clause 27.3.5, at the time indicated on the transmission report produced by the sender's facsimile machine

indicating that the facsimile was sent in its entirety to the addressee's facsimile;

27.3.4 if served by email, subject to the next sub-clause, at the time the notice or other communication comes to the attention of the addressee;

27.3.5 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

## **28. INTERPRETATION**

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### **28.1 Governing Law and Jurisdiction**

This document is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

### **28.2 Persons**

In this document, a reference to:

28.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;

28.2.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and

28.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

### **28.3 Joint and Several**

If a party consists of more than one person, this document binds them jointly and each of them severally.

### **28.4 Legislation**

In this document, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

### **28.5 This Document, Clauses and Headings**

In this document:

28.5.1 a reference to this or other document includes the document, Published Policies and Code of Practice at the Commencement Date and as varied or replaced from time to time;

28.5.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this document all of which are deemed part of this document;

- 28.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 28.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this document; and
- 28.5.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

## **28.6 Severance**

- 28.6.1 If a provision in this document is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 28.6.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this document.

## **28.7 Counterparts**

This document may be executed in any number of counterparts all of which taken together constitute one instrument.

## **28.8 Currency**

In this document, a reference to **\$** or **dollars** is a reference to Australian dollars.

## **28.9 Business Day**

If a payment or other act is required by this document 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 following Business Day.

## **28.10 Number and Gender**

In this document, a reference to:

- 28.10.1 the singular includes the plural and vice versa; and
- 28.10.2 a gender includes the other genders.

## **28.11 Property**

In this document, a reference to any property or assets of a person includes the legal and beneficial interest of that person in those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise.

**EXECUTED** by the parties as an agreement.

**SIGNED** for and on behalf of **.AU DOMAIN  
ADMINISTRATION LTD ACN 079 009  
340** by Chris Disspain, its Chief Executive  
Officer, who is duly authorised by its Board,  
in the presence of: ) .....  
)  
)  
)  
)  
)

.....  
Witness

*If the Registrar is a corporation:*

**EXECUTED** by **THE REGISTRAR** by )  
being signed by those persons who are )  
authorised to sign for the company: )  
)

..... Director  
..... Full name  
..... Usual address  
..... Director (or Company Secretary)  
..... Full name  
..... Usual address

*If the Registrar is a natural person:*

**SIGNED** by **THE REGISTRAR** in the )  
presence of: ) .....  
)

.....  
Witness

## Schedule A - Fees

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The Fees comprise:

(a) **\*Licence Fee**

The Licence Fee is **\$3,000.00** per annum, payable on the Commencement Date, and then on each anniversary date of the Commencement Date.

(b) **\*Reseller Fee**

[There is no Reseller Fee payable at this time].

(c) **\*Reseller Notification Fee**

[There is no Reseller Notification Fee payable at this time].

**\* NOTE:**

auDA is entitled to change the Fees from time to time by giving the Registrar at least three months notice of its intention to do so.

Any change to the Fees will apply the next time any Fee becomes payable to auDA (provided that three months have elapsed since auDA's notice to the Registrar).

## Schedule B - Registrant Agreement - Mandatory Provisions

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### Notes:

- This document contains the **minimum** terms and conditions for a Registrant Agreement. It does not purport to be, and is not, a comprehensive Registrant Agreement.
- This document assumes that capitalised words have the meanings given in the Registrar Agreement

The Registrant Agreement must contain the following **minimum** terms and conditions:

### 1. REGISTRAR'S AGENCY

The Registrar agrees and covenants to act as agent for auDA for the sole purpose, but only to the extent necessary, to enable auDA to receive the benefit of rights and covenants conferred to them under this Registrant Agreement.

### 2. REGISTRATION OF DOMAIN NAMES

- 2.1 A Domain Name Application must be in the form prescribed under the Published Policies. The Domain Name must comply with the Published Policies.
- 2.2 The Registrar and the Registrant do not have any proprietary right arising from:
- 2.2.1 the registered Domain Name; or
  - 2.2.2 the entry of a Domain Name in the Registry Database.
- 2.3 All personal information pertaining to the Registrant is held by auDA for the benefit of the Australian public.

### 3. CONSENT TO USE REGISTRANT INFORMATION

The Registrant grants to:

- 3.1 auDA, the right to publicly disclose to third parties, all information relating to the registered Domain Names in accordance with the Published Policies which are available on auDA's website <<http://www.auda.org.au>>;
- 3.2 the Registrar, the right to disclose to the Registry Operator, all information which are reasonably required by the Registry Operator in order to register the Domain Name in the Registry; and
- 3.3 the Registry Operator, the right to publicly disclose to third parties, all information relating to the registered Domain Name to enable the Registry Operator to maintain a public WHOIS service,

provided that such disclosure is consistent with:

- 3.4 the National Privacy Principles; and
- 3.5 auDA's Published Policies.

#### **4. CHANGE OF REGISTRARS**

4.1 The Registrar must ensure that the Registrant can easily transfer registered Domain Names to another registrar in accordance with the Published Policies. The Published Policies include, but are not limited to, such matters as:

- 4.1.1 the maximum fees chargeable by the Registrar;
- 4.1.2 when fees are not chargeable by the Registrar;
- 4.1.3 the conditions pursuant to which the Registrar must transfer; and
- 4.1.4 the conditions pursuant to which the Registrar does not have to transfer.

4.2 In the event that:

- 4.2.1 the Registrar is no longer a registrar; or
- 4.2.2 the Registrar's auDA Accreditation is suspended or terminated; or
- 4.2.3 the Registrar Agreement is terminated by auDA,

the Registrant is responsible for transferring the registered Domain Name to a new registrar in accordance with the Published Policies within 30 days of written notice being provided to the Registrant by auDA.

4.3 In the event that the Registrar Agreement between auDA and the Registrar is terminated, the Registrar must not charge the Registrant any fee for the transfer of the registered Domain Name to another registrar.

#### **5. REGISTRAR'S OTHER OBLIGATIONS**

5.1 The Registrar must immediately give written notice to the Registrant if:

- 5.1.1 the Registrar is no longer a registrar; or
- 5.1.2 the Registrar's auDA Accreditation is suspended or terminated; or
- 5.1.3 the Registrar Agreement is terminated by auDA.

5.2 auDA may post notice of:

- 5.2.1 the fact that the Registrar is no longer a registrar;
- 5.2.2 the suspension or termination of a Registrar's auDA Accreditation; or
- 5.2.3 the termination of the Registrar Agreement between auDA and the Registrar

on its web site and may, if it considers appropriate, give such notice to the Registrant.

## **6. REGISTRANT'S OTHER OBLIGATIONS**

- 6.1 Throughout the Term of the Registrant Agreement, the Registrant must:
  - 6.1.1 comply with the Published Policies;
  - 6.1.2 give notice to the Registry Operator, through the Registrar, of any change to any information in the Registrant Data.
- 6.2 The Registrant must not, directly or indirectly, through registration or use of its Domain Name or otherwise:
  - 6.2.1 register a Domain Name for the purpose of selling it;
  - 6.2.2 register a Domain Name for the purpose of diverting trade from another business or web site;
  - 6.2.3 deliberately register misspellings of another entity's company or brand name in order to trade on the reputation of another entity's goodwill; and
  - 6.2.4 register a Domain Name and then passively hold a Domain Name Licence for the purpose of preventing another registrant from registering it.
- 6.3 The Registrant must not in any way:
  - 6.3.1 transfer or purport to transfer a proprietary right in any domain name registration;
  - 6.3.2 grant or purport to grant a registered domain name as security; or
  - 6.3.3 encumber or purport to encumber a domain name registration.

## **7. DISPUTE RESOLUTION**

- 7.1 auDA currently has in place a dispute resolution policy called auDRP (the .au Dispute Resolution Policy) which applies in the event of disputes between a registrar and a registrant, or between a registrant and a third party, in relation to entitlements to domain names in .au. The auDRP binds the Registrar and the Registrant as if it were incorporated in the Registrant Agreement.
- 7.2 The Registrant acknowledges that auDA may develop and implement other dispute resolution policies which are accessible by the Registrant as an alternative and further to any complaints handling procedure prescribed by the Registrar. Such policies bind the Registrar and the Registrant as if they were incorporated in the Registrant Agreement.

## **8. REGISTRANT WARRANTIES**

- 8.1 The Registrant warrants that it meets, and continues to meet, the eligibility criteria prescribed in auDA's Published Policies for registering a Domain Name. In the event that the Registrant ceases to meet such eligibility criteria, the Domain Name Licence may be terminated by either the Registrar or auDA.

- 8.2 The Registrant warrants that it has not previously submitted a domain name which is the same as the Domain Name for registration with another registrar where:
- 8.2.1 the Registrant is relying upon the same eligibility criteria for both domain names; and
  - 8.2.2 the Domain Name has previously been rejected by the other registrar.

## 9. LIABILITIES

- 9.1 The Registrant must not pursue any claim against auDA, and auDA is not liable for any direct, indirect, special, punitive, exemplary or consequential damages, including but not limited to damages resulting from loss of use, lost profits, lost business revenue or third party damages arising from any breach by the Registrar of its obligations under the Registrant Agreement or the Registrar Agreement between auDA and the Registrar.
- 9.2 The Registrant acknowledges and agrees that if the Registrar has any outstanding fees owing to auDA, entitling auDA to terminate the Registrar Agreement between auDA and the Registrar, auDA may in its sole discretion terminate the Registrar Agreement.
- 9.3 The Registrant agrees that auDA is not responsible for the use of any Domain Name in the Registry database and that auDA is not responsible in any way for any conflict or dispute with or any actual or threatened claim against a Registrar or Registrant, including one relating to a registered or unregistered trademark, a corporate, business or other trade-name, rights relating to a name or other identifying indicium or of an individual or other intellectual property rights of a third party or relating to the defamation or unlawful discrimination with respect to any other person.
- 9.4 Notwithstanding any other provision of this document and to the fullest extent permitted by law, auDA will not be liable to the Registrant for consequential, indirect or special losses or damages of any kind (including, without limitation, loss of profit, loss or corruption of data, business interruption or indirect costs) suffered by the Registrant as a result of any act or omission whatsoever of auDA, its employees, agents or sub-contractors.
- 9.5 Nothing in this document is intended to exclude the operation of *Trade Practices Act 1974*.

## Schedule C - Table Of Particulars

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**(i) REGISTRAR**

Name:	
ACN/ABN:	
Address:	

**(ii) PARTICULARS FOR SERVICE**

Street Address:	
Postal Address:	
Facsimile number:	
Email address:	
Attention:	

**(iii) DESIGNATED 2LD**

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