

**ANNEXURE – EXPLANATORY MEMORANDUM**

**TO AND FORMING PART OF THE NOTICE OF EXTRAORDINARY GENERAL MEETING  
OF .AU DOMAIN ADMINISTRATION LIMITED ACN 079 009 340**

to be held:  
on 14 August 2006 at 11.00am  
at Maddocks Lawyers, 140 William Street, Melbourne

**SUMMARY**

The directors of .au Domain Administration Limited (auDA) propose the following amendments to auDA's constitution:

1. to extend the stated principal purposes of auDA, to better reflect auDA's role and responsibilities to the Australian internet community
- 2A to make changes to the membership classes, by:
  - o abolishing the representative association class of membership
  - o absorbing representative association class members into existing demand and supply classes, as appropriate
  - o changing the composition of the elected directors to four directors elected by each of the demand and supply classes (from three previously)
  - o introducing a defined meaning of 'independent directors' in the constitution
- 2B if the changes described in paragraph 2A above are accepted, then as a separate resolution, to increase the number of independent directors that can be elected by the board to three (from two previously)
3. to permit the payment of remuneration to elected directors (with the prior approval of the board and the members)
4. to permit the casting of electronic votes at meetings

Each resolution (other than resolution 2B to increase the number of independent directors) stands alone, and they need not be passed together.

Resolution 2B will only be put to members and considered if the preceding resolution 2A relating to the changes of membership classes is passed.

As each proposed resolution is to amend the constitution, each must be passed by a special resolution of the company, which means that there must be an affirmative vote in each and every class of members of more than 75% of members present and entitled to vote (in person or by authorised representative or proxy).

The directors of auDA recommend that members pass each of the proposed resolutions.

## PROPOSED SPECIAL RESOLUTIONS

### PREAMBLE

The Australian domain name industry, and auDA's role within it, have changed significantly since auDA assumed responsibility for administration of the .au ccTLD in 2001. The board of auDA considers this an opportune time to amend auDA's constitution to reflect these changes, and to ensure that auDA continues to operate effectively and efficiently into the future.

A sub-committee of the board reviewed the constitution and recommended a number of amendments, which the board approved at its meeting on 13 June 2006.

### RESOLUTION 1 – Changes to principal purposes

#### *Explanatory Memorandum*

The directors of auDA consider that the principal purposes of auDA, as set out in clause 3.1 of the constitution, do not adequately reflect auDA's current roles and responsibilities to the Australian internet community.

Recognising that the .au ccTLD is part of the global domain name system, the directors consider that auDA's principal purpose should encompass aspects of the maintenance of the operational stability and utility of the internet's unique identifier system (such as IP addressing, IPv6, ENUM), and also the enhancement of the benefits of the internet to the wider community.

The proposed changes to the constitution seek to align this view with the principal purposes stated in auDA's constitution.

#### *Proposed Resolution*

That the constitution of the company be amended as follows:

1. In clause 3.1(b) of the constitution, at the end of the clause after the words ".au ccTLD", insert:  
  
", and more generally, the Internet's unique identifier system, and to enhance the benefits of Internet to the wider community".
2. In clause 3.2 of the constitution:
  - 2.1 at the beginning of the paragraph, delete the words "Solely for the purposes of achieving", and replacing them with:  
  
"Without reducing the effect of clause 4, auDA will seek to achieve"; and
  - 2.2 at the end of the first paragraph, delete the words "auDA will enhance the benefits to Internet users".

## **RESOLUTION 2a – changes to membership classes**

### ***Explanatory Memorandum***

When auDA was first established, the representative association class of membership was created to provide a balance between the supply and demand class members, and to reduce the possibility of membership and board stacking practices.

auDA has, in recent years, introduced a number of safeguards in its constitution provisions, to make it more difficult for membership and board stacking to occur. The directors of auDA also recognise and acknowledge the maturation of the domain name industry through this period, and with the maturation, the redundancy of a separate class of representative association membership. The representative association class members can readily be accommodated (and distributed) within auDA's existing supply and demand classes of membership.

There are a number of consequential changes that will be needed. Of the three current directors elected by the representative class members, two will retire at the 2006 AGM of auDA. The directors propose that:

- the one remaining director elected by the representative class members at the 2005 AGM of auDA, remain as a director for the period after the 2006 AGM of auDA, until the 2007 AGM of auDA; and
- at and after the 2006 AGM of auDA, the supply and demand classes of members be entitled to each elect four directors to the board (from three previously).

The directors also propose that the two additional directors appointed by the board, be redefined as 'independent directors', and that the term 'independent directors' be defined in the constitution.

### ***Proposed Resolution***

That the constitution of the company be amended as follows:

1. In clause 1.2 of the constitution, insert a new definition of "Independent Director", in alphabetical order, as follows:  
  
**"Independent Director"** means a director appointed by the elected Directors, who is a person who:
  - a. does not hold any position in, and does not have any association with, auDA, the Registry Operator or any Registrar; and
  - b. does not have any relationship with auDA or any other person that could, in the opinion of the elected Directors, materially interfere with:
    - i. the exercise of objective, unfettered and independent judgement by the person; or
    - ii. the person's ability to act in the best interests of auDA.
2. in clause 9.3 of the constitution:
  - 2.1 at the end of paragraph (a), insert "and";
  - 2.2 at the end of paragraph (b), delete "; and", and replace it with a full stop; and

2.3 delete paragraph (c); and

3. in clause 9.4 of the constitution, after the words "in the .au name space, ", insert:

"or an association whose membership comprises a majority of such Legal Persons,"; and

4. in clause 9.11 of the constitution, at the end of the first sentence after the words "particular Class of Membership, ", insert:

"or if a particular Class of Membership is cancelled or abolished, "; and

5. in clause 17.4 of the constitution, in the proxy form, delete the reference to "Representative Association Class"; and

6. in clause 18.2 of the constitution, delete paragraphs (a) to (f), and replace them with:

"a. For the period up to the AGM of auDA in 2006:

- i. three persons elected by the Supply Class Members;
- ii. three persons elected by the Demand Class Members;
- iii. three persons elected by the Representative Association Class Members;
- iv. the CEO of auDA as a non-voting member of the board;
- v. not more than two additional board members appointed by the elected Directors, for terms not exceeding two years each;

b. For the period after the AGM of auDA in 2006, up to the AGM of auDA in 2007:

- i. four persons elected by the Supply Class Members
- ii. four persons elected by the Demand Class Members
- iii. one person elected by the Representative Association Class Members (as elected by the Representative Association Class Members at the AGM of auDA in 2005)
- iv. the CEO of auDA as a non-voting member of the board;
- v. not more than two Independent Directors appointed by the elected Directors, for terms not exceeding two years each;

c. After the AGM of auDA in 2007:

- i. four persons elected by the Supply Class Members
- ii. four persons elected by the Demand Class Members
- iii. the CEO of auDA as a non-voting member of the board;
- iv. not more than two Independent Directors appointed by the elected Directors, for terms not exceeding two years each;" and

7. delete clause 19.3 of the constitution, and replace it with:

**"19.3 Retirement and Election of Directors**

At the AGM of auDA in 2006, the following Directors shall retire from office:

- a. two (2) of the Directors elected only by the Supply Class Members;
- b. one (1) of the Directors elected only by the Demand Class Members; and
- c. two (2) of the Directors elected only by the Representative Association Class Members;

At the AGM of auDA in 2007, the following Directors shall retire from office:

- a. two (2) of the Directors elected only by the Supply Class Members;
- b. two (2) of the Directors elected only by the Demand Class Members; and
- c. one (1) of the Directors elected only by the Representative Association Class Members;

At the AGM of auDA in 2008, and subsequent AGMs, the following Directors shall retire from office:

- a. two (2) of the Directors elected only by the Supply Class Members;
- b. two (2) of the Directors elected only by the Demand Class Members.

In each of the separate groups of Directors, the Directors to retire are the Directors who have been the longest in office since their last election. As between two (2) or more who have been in office an equal length of time, the Director or Directors to retire shall, in default of agreement between them, be determined by lot.

auDA may fill any Director's office so vacated by re-electing the Director or by electing some other natural person to fill the vacancy. A retiring Director is eligible for re-election, provided that no Director may retain office for more than two (2) years, without being subject to re-election. An election of Directors shall take place each year."

## **RESOLUTION 2b - Increasing the number of Independent Directors**

### ***Note***

Resolution 2B will only be put to members for consideration if resolution 2A has been passed by the members.

### ***Explanatory Memorandum***

The directors of auDA recognise the contribution that independent directors can bring to the board, by way of particular skills and experience, as well as an objective and independent perspective to board matters.

With the abolition of the representative association class members, and hence the removal of directors nominated by the representative association class members, the directors propose that the number of independent directors appointed by the board be increased from two to three.

### ***Proposed Resolution***

That the constitution of the company be amended as follows:

In clause 18.2(c)(iv) of the constitution, as amended by resolution 2A above, delete the words "two Independent Directors", and replace them with:

"three Independent Directors".

## **RESOLUTION 3 – REMUNERATION OF ELECTED DIRECTORS**

### ***Explanatory Memorandum***

The directors propose that the prohibition against the payment of remuneration to elected directors be removed.

This is to enable payments of remuneration to elected directors if the board considers it appropriate to do so, and with the amount payable subject to the approval of members. The board envisages that such remuneration would be in the form of sitting fees, as opposed to a salary.

The board proposes this change in order to recognise the significant contribution in time and effort that is made by the elected directors, and also to assist in the attraction of suitable candidates to the auDA board.

### ***Proposed Resolution***

That the constitution of the company be amended as follows:

1. in clause 5(d) of the constitution, delete the following words in the first sentence:  
  
"other than in the capacity as director or officer"; and
2. in clause 5(h) of the constitution, delete the following words in the first sentence:  
  
"appointed pursuant to Clause 18.2(f) of this Constitution in the capacity as director or officer".

## RESOLUTION 4 – ELECTRONIC VOTING

### *Explanatory Memorandum*

The directors of auDA consider that it is appropriate to make provisions in the company's constitution to permit the use of technology for voting at general meetings, if permitted by the chairperson of the meeting.

The board proposes these changes in order to make it easier for members to participate in general meetings. Any technology used for voting would need to meet appropriate security and probity standards.

The proposed changes permit the use of technology for voting, and make consequential changes to the constitution.

### *Proposed Resolution*

That the constitution of the company be amended as follows:

1. in clause 15.6 of the constitution, change the clause as follows (by deleting the words in ~~strikeout~~, and inserting the underlined words):

"At a general meeting a resolution put to the vote of the meeting is to be decided by voice, on a show of hands, or by ballot, as the Chairperson of the meeting directs. Voting may take place by electronic means if permitted by the Chairperson. ~~unless a poll is (before~~ Before or on the declaration of the result of the vote, show of hands) demanded ~~by the Chairperson or (other than on the election of the Chairperson of a meeting or the adjournment of a meeting) by~~ not less than three (3) Members having the right to vote at the meeting, may demand a poll."; and

2. in clause 15.7 of the constitution, delete the following words in the second sentence:

"on the show of hands"; and

3. in clause 15.8 of the constitution, delete the following words in the last sentence after the words "or rejection of a vote":

"on a show of hands or on a poll", and replace them with a comma; and

4. in clause 16.1 of the constitution, delete the following words at the end of the clause:

", whether on a show of hands or on a poll"; and

5. in clause 16.2 of the constitution, change the first paragraph of the clause as follows (by deleting the words in ~~strikeout~~, and inserted the underlined words):

~~"Any A~~ resolution of Members will ~~not only~~ be taken to be carried ~~whether on a show of hands or a poll unless~~ if the requisite majority comprises the following:"; and

6. in clause 17.1 of the constitution, delete the following words at the end of the clause:

"on a show of hands or on a poll"; and

7. in clause 17.2 of the constitution:



7.1 in the first sentence after the words "must be in writing signed", insert:

"(including by electronic signature)"; and

7.2 at the end of the clause, insert:

"Proxies may be submitted to and accepted by auDA in electronic form, if specified and in the manner specified for that purpose in the notice convening the meeting."

8. in clause 17.6 of the constitution, delete the following words in the last sentence after the words "appointor votes on a resolution":

"either on a show of hands or on a poll"; and

9. in clause 17.7 of the constitution, delete the following words in the last sentence after the words "excluded from voting":

"either upon a show of hands or upon a poll"; and