



CONSTITUTION
OF
.AU DOMAIN ADMINISTRATION LTD ACN
079 009 340
A COMPANY LIMITED BY GUARANTEE

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PREAMBLE

Taking the view that the Internet Domain Name System is a public asset, and that the .au ccTLD is under the sovereign control of the Commonwealth of Australia, auDA will administer the .au ccTLD for the benefit of the Australian community.

1. INTERPRETATION

1.1 Replaceable Rules Inapplicable

The replaceable rules now and hereafter contained in the Corporations Act do not apply to auDA unless repeated in this Constitution or specifically made applicable to auDA by a provision of this Constitution.

1.2 Definitions

In this Constitution unless the context otherwise requires:

".au ccTLD" means the country code Top Level Domain (ccTLD) that is the area of the Internet domain name system administered by Australia. For example ".au" in the Internet address www.auda.org.au

"Australian Internet Community" means those users and suppliers of services via the Internet who are based in Australia;

"Board" means the whole or any number of the Directors plus CEO for the time being assembled at a meeting of Directors and not being less than a quorum; and reference to "the Directors" shall be construed as references to the Board (excepting the CEO) unless the context requires otherwise;

"Classes of Membership" means the classes of membership of auDA as defined in clause 9.3;

"Constitution" means this Constitution and all supplementary or amended Constitutions for the time being in force;

"Corporations Act" means the *Corporations Act 2001* (Cth);

"Director" includes any natural person occupying the position of a director of auDA (but not an associate director);

"Directors" means the Directors for the time being or such number of them as have authority to act for auDA;

"Independent Director" means a director appointed by the elected Directors, who is a person who:

- a. holds no posts in, or is otherwise associated 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;

(Inserted by Special Resolution, 14 August 2006)

"Initial Members" means the initial Members of auDA as specified in clause 9.2;

"Legal Person" means the legal definition of a person, including without limitation a natural person (individual) or an Organisation - see also clause 1.3(c);

"Members" means Legal Persons admitted as members of auDA pursuant to clause 9;

"Supply Class Members" means those Members who have been admitted to membership pursuant to clause 9.4

"Demand Class Members" means those Members who have been admitted to membership pursuant to clause 9.5.

"Representative Association Class Members" means those Members who have been admitted to membership pursuant to clause 9.6.

"Organisation" means a body corporate including without limitation an incorporated association or a Government agency;

"Register" means the register of Members to be kept pursuant to the Corporations Act;

"Registrar" means a Legal Person who acts as an interface between domain name holders and a registry, providing registration services.

"Registry" means the database administered by a Registry Operator, consisting of the zone file for a domain, containing the name and corresponding Domain Name System Resource Records, for each sub-domain of the domain. (Refer to IANA RFC 1034 for technical definitions.) *(Amended by Special Resolution, 23 September 2002.)*

"Registry Operator" means a Legal Person who has been accredited or licensed by auDA to maintain a Registry and or to provide registry services in relation to the Registry (usually, but not necessarily, with respect to a Second Level Domain in the .au name space). *(Amended by Special Resolution, 23 September 2002.)*

"Second Level Domain" means the second level of an Internet address. For example "org.au" in the Internet address "www.auda.org.au".

"Secretary" includes the assistant or acting secretary of auDA and any substitute for the time being for the secretary.

"Supply Related Person" means a person that:

- a. qualifies for Supply Class membership; or
- b. is an employee or officer or related entity (as those terms are defined in the Corporations Act) of:
 - i. a Registry Operator;
 - ii. an auDA accredited Registrar; or
 - iii. a reseller appointed by an auDA accredited Registrar in the .au name space,

provided that a person who holds less than 5% of the total number of votes attached to the shares in a listed Registry Operator, auDA accredited Registrar or reseller appointed by an auDA accredited Registrar in the .au name space, will not be taken to be a Supply Related Person by reason only of such holding.

(Inserted by Special Resolution, 13 August 2007.)

1.3 Construction

In this Constitution unless the context otherwise requires:

- a. words (including defined expressions) importing the singular include the plural and vice versa;
- b. words (including defined expressions) importing any gender include the other genders;
- c. words (including defined expressions) importing persons shall include corporations and bodies politic;
- d. a reference to a statute ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- e. references to "writing" or "written" includes typing, printing and any mode of representing or reproducing words in visible form including words or figures displayed on an electronic screen;
- f. references to "signatures" include "electronic signatures", being the result of a process applied to a document in electronic form by which a person authenticates the document and acknowledges that the document is being signed;
- g. references to the "sending" of a document includes the sending of that document via electronic means, including, but not limited to, electronic mail;
- h. reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the last day of the next succeeding calendar month; and
- i. references to this Constitution include its schedules and annexures.

1.4 Headings

Headings do not affect the interpretation of this Constitution.

2 NAME

The name of the company is **.au Domain Administration Ltd** and is referred to as "**auDA**".

3 OBJECTS

3.1 Principal Purposes

The principal purposes of auDA are:

- a. to be the administrator of, and the Australian self regulatory policy body for the .au ccTLD and its associated Second Level Domains;
- b. to maintain and promote the operational stability and utility of the .au ccTLD and more generally, the Internet's unique identifier system, and to enhance the benefits of the Internet to the wider community; (*Amended by Special Resolution, 14 August 2006*)
- c. to ensure a cost effective administration of the .au ccTLD and its sub-domains;
- d. to develop and establish a policy framework for the development and administration of the .au ccTLD including:
 - i. rules governing the operations of second level domain registries;
 - ii. the creation of second level domains;
 - iii. rules governing the accreditation of registrars and registry operators; (*Amended by Special Resolution, 23 September 2002.*)
 - iv. rules governing the registration of names within second level domains and access to second level domain registries;
 - v. ensuring that registrars have equal access to second level registry services.
- e. to manage the operation of critical technical functions including:
 - i. the primary and secondary .au name servers;
 - ii. zone files for second level domains; and
 - iii. a searchable data base containing information on registrations within the .au ccTLD.

- f. to liaise with national and international bodies on issues relating to the development and administration of domain name systems.
- g. to establish appropriate complaints handling and dispute resolution processes to provide for conciliation or redress of grievances on matters associated with the administration of the .au ccTLD.

3.2 Activities

Without reducing the effect of clause 4, auDA will seek to achieve its principal purposes as set out in clause 3.1, through:

- a. ensuring the continued operational stability of the domain name system in Australia;
- b. establishing mechanisms to ensure it is responsive and accountable to the supply and demand sides of the Australian Internet Community;
- c. the promotion of competition in the provision of domain name services;
- d. the promotion of fair trading;
- e. the promotion of consumer protection;
- f. adopting open and transparent procedures which are inclusive of all parties having an interest in use of the domain name system in Australia;
- g. ensuring its operations produce timely outputs which are relevant to the needs of the Australian Internet Community.

(Amended by Special Resolution, 14 August 2006)

4 CAPACITY

Subject to clauses 5, 6, 7 and 8, auDA has the legal capacity and all the powers provided by the Corporations Act.

5 NON-PROFIT

The income and property of auDA must be applied solely in promoting the objects of auDA as set out in this Constitution and no portion of it is to be paid or transferred directly or indirectly by way of profit to Members or Directors. This does not prevent the payment in good faith:

- a. for goods supplied in the ordinary and usual course of business;
- b. of interest at a reasonable and proper rate on money borrowed from any Member;
- c. of reasonable and proper rent for premises demised or let by any Member to auDA;
- d. of remuneration to any officers or servants of auDA in return for any services rendered to auDA, where the provision of the service has the prior approval of the directors of auDA and where the amount payable is approved by the directors of auDA and is not more than an amount which commercially would be a reasonable payment for the service; *(Amended by Special Resolution, 14 August 2006)*
- e. of out-of-pocket expenses incurred by a director in the performance of any duty as a director of auDA where the amount payable does not exceed any amount previously approved by the directors of auDA;
- f. of any salary or wage due to a director as an employee of auDA where the terms of employment have been approved by the directors of auDA; or
- g. a financial benefit to a director to which subsection 243K(7A) of the Corporations Act refers or payment of an insurance premium in respect of a contract insuring a director to which subsection 243K(7B) of the Corporations Act refers provided that the financial benefit and/or insurance premium has been previously approved by the directors of auDA.
- h. of remuneration to Directors, where the remuneration has the prior approval of the directors of auDA and where the amount payable is approved by ordinary resolution of the members of auDA in general meeting. *(Amended by Special Resolution, 14 August 2006)*

6 LIMITED LIABILITY

The liability of the Members is limited.

7 MEMBERS' GUARANTEE

Every Member undertakes to contribute an amount not exceeding one hundred dollars (\$100) to the property of auDA in the event of its being wound up while that person is a Member or within one year afterwards for:

- a. payment of the debts and liabilities of auDA contracted before the time when that Member ceased to be a Member;
- b. the costs, charges and expenses of winding up; and
- c. for an adjustment of the rights of contributories among themselves.

8 WINDING UP

On dissolution of the Company, the right to administer the .au ccTLD must either be transferred on to another entity nominated or approved by the Commonwealth of Australia or, in the absence of such approval, be transferred to the Commonwealth of Australia.

If upon the winding up or dissolution of auDA there remains, after the satisfaction of all its debts and liabilities, any property or money whatsoever, the remaining assets shall not be paid or distributed to the Members but shall be transferred to the subsequent entity approved by the Commonwealth of Australia to manage the .au ccTLD.

9 MEMBERS

9.1 Members

The Members of auDA are:

- a. The Initial Members; and

such other Legal Persons the Directors admit to membership in accordance with auDA's Constitution. Membership is held by a Legal Person, and each Legal Person may only hold one membership in auDA.

9.2 Initial Members

Those Legal Persons who have agreed to become or remain Members as at the date of the adoption of this Constitution shall be Initial Members. Any Legal Person who was a Member as at that date but who has not agreed to remain a Member shall immediately cease to be a Member.

9.3 Classes of Members

auDA consists of the following classes of Members

- a. Supply Class Members; and
- b. Demand Class Members;

(Amended by Special Resolution, 14 August 2006)

9.4 Qualification for Supply Class Membership

Any Legal Person that is a Registry Operator, an auDA accredited Registrar, or a reseller appointed by an auDA accredited Registrar, in the .au name space, or an association whose membership comprises a majority of such Legal Persons, qualifies to be a Supply Class Member.

If a group of related entities (as defined in the Corporations Act) consists of more than one Legal Person who qualifies for Supply Class membership, then only one such Legal Person within the group may apply to be a Supply Class Member.

(Amended by Special Resolutions, 23 September 2002, 14 August 2006 and 13 August 2007.)

9.5 Qualification for Demand Class Membership

Any Legal Person that does not qualify for Supply Class membership may apply to be a Demand Class Member.

9.6 Not Used

(Amended by Special Resolution, 22 April 2013.)

9.7 Application for Membership

An application for membership must be made in the form approved by the Board from time to time, provided that each such application must contain:

- a. an undertaking on the part of the applicant to be bound by auDA's Constitution;
- b. the postal address and electronic mail address of the applicant;
- c. adequate particulars of the applicant's qualifications for membership;
- d. if the applicant is an Organisation, the name of the Organisation's proposed Nominee(s); and
- e. the signature (or where applicable, the seal) of the applicant, or such other form of authentication (electronic or otherwise) approved by the Board from time to time.

9.8 Lodging of Applications

An application for membership, accompanied by the applicable membership fee and entrance fee, where applicable, must be lodged with auDA in the form and at the place (if any) approved by the Board from time to time.

9.9 Determination of Application by the Board

- a. The Board must determine whether or not to approve each application for Membership at the next Board meeting after receipt of the application.
- b. The Board may require an applicant to give such further information as it desires before approving or refusing the admission of an applicant for Membership.
- c. An applicant for membership is taken to be admitted as a Member upon the Board approving the application and the name, address and email address of the Legal Person being entered in the Register in the appropriate Class of Membership.
- d. The Board shall determine the class of membership appropriate for each membership application.
- e. If a membership application is rejected by the Board, the board shall provide written reasons for so doing.

9.10 Notification of Change in Qualifications

Each Member must promptly notify auDA of any change in the qualification of the Member to be a Member of auDA.

9.11 Change in Class of Membership

If the Board considers that a Member no longer qualifies to remain a Member in a particular Class of Membership, or if a particular Class of Membership is cancelled or abolished, the Board may by notice in writing to the Member, change the Class of Membership for that Member to a Class of Membership appropriate for that Member. The Secretary must make appropriate amendments to the Register to reflect the change. *(Amended by Special Resolutions, 23 September 2002 and 14 August 2006.)*

10 REGISTER OF MEMBERS

The Secretary shall keep the Register and shall enter in it the full names, addresses, and email addresses of Members, the date upon which Members became Members and the date upon which any Member ceased to be a Member. The Register must not be used for any other purpose and is to be open for inspection by Members.

11 RIGHTS AND DUTIES OF MEMBERS

11.1 Membership not Transferable

Membership of auDA is personal and is not transferable whether by operation of law or otherwise. All rights and privileges of membership of auDA cease on termination of membership.

11.2 Prohibition on Voting Agreements

A Member must not enter into or give effect to any contract, arrangement or understanding under which the Member (or any associate of the Member) has or will receive any material benefit in consideration for voting in a particular way (including not voting) on any matter being considered by a general meeting including any election. *(Inserted by Special Resolution, 27 November 2003.)*

12 MEMBERSHIP FEES

12.1 Annual Membership Fees

- a. Unless exempted by the Board, each Member is obliged to pay an annual membership fee, payable in full each year on a date determined by the Board from time to time. Payment may be made within one month of the due date (or such other date as the Board may determine from time to time) without prejudice to any rights of the Member. *(Amended by Special Resolution, 23 September 2002.)*
- b. The Board may from time to time determine the annual membership fees payable in respect of each Class of Membership.

12.2 Membership Fees payable on Application for Membership

An applicant for membership is obliged to pay the applicable annual membership fee at the time of application and any entrance fee determined by the Board from time to time.

12.3 Unpaid Membership Fees

A Member shall cease to be entitled to any of the rights or privileges of Membership if:

- a. the annual membership fee or entrance fee, where applicable, of that Member remains unpaid for one (1) month after it becomes payable; and
- b. a notice of default is given to the Member;

but, subject to clause 13.2, those rights and privileges shall be reinstated on payment of all arrears.

(Amended by Special Resolution, 17 October 2011.)

13 CESSATION OF MEMBERSHIP

13.1 Cessation of Membership

Membership of auDA ceases if the Member;

- a. resigns by submitting notice to the Directors;
- b. being a natural person, dies, becomes bankrupt, makes a composition with or assigns the Member's estate for the benefit of the Member's creditors;
- c. being an Organisation, becomes insolvent, has a receiver, receiver and manager, administrator or liquidator appointed, or is wound up (except for the purposes of reconstruction or amalgamation);
- d. ceases to satisfy the criteria for admission to membership of auDA.

13.2 Termination of Membership for Non-Payment of Membership Fees

The Board may at any time terminate the membership of a Member for non-payment of membership fees if:

- a. the membership fees payable by the Member have remained unpaid for a period of not less than one (1) month after the due date for payment; and

- b. after the end of that one (1) month period, a notice of default has been given to the Member by the Secretary; and
- c. the membership fees payable by the Member remain in arrears for a period of one (1) month after the date of service of the notice of default upon the Member in relation to those outstanding fees.

(Amended by Special Resolutions, 27 November 2003 and 17 October 2011.)

13.3 Expulsion of Members for Conduct Detrimental to Objects auDA in general meeting may by special resolution terminate the membership of a Member if:

- a. the Directors resolve that in the opinion of the Directors the Member may have been guilty of conduct detrimental to the interests of auDA or to the objects of auDA; and
- b. the notice of meeting specifies the purpose of the meeting and the general nature of conduct referred to in the Directors' resolution; and
- c. the Member is given the opportunity to be heard at that part of the general meeting at which the resolution is considered.

13.4 Removal from the Register

Upon the termination of membership of a Member for any reason the name of the Member must be immediately removed from the Register.

13.5 Continuing Obligations

The termination of a membership for any reason does not in any way prejudice, lessen or otherwise affect the liabilities and obligations of a Member (whether they arise under this Constitution or otherwise) existing at the date of termination or which arise or crystallises after that date out of, or by reason of, facts or circumstances occurring or in existence at or before that date.

Without limiting the previous clause, termination of membership does not relieve a Member from any obligation to pay any membership fees payable on or before the date of termination and does not entitle the Member to any refund of any entrance or membership fees in part or in whole.

14 GENERAL MEETINGS

14.1 Annual General Meeting

An annual general meeting of auDA must be held in accordance with the Corporations Act.

14.2 Holding of General Meetings

General meetings are to be held at the times and places prescribed by auDA in general meeting or if no time or place is prescribed then as determined by the Directors.

14.3 Convening of General Meetings

The Directors may whenever they think fit and must upon a requisition made in accordance with section 249D of the Corporations Act convene a general meeting of auDA.

14.4 Notice of Meetings

At least twenty-one (21) clear days notice of a general meeting must be given in accordance with clause 30 unless the Corporations Act otherwise provides. The notice must specify the place, day, and hour of meeting, and in the case of special business the general nature of that business, and in the case of an election of Directors, the names of the candidates for election.

14.5 Content of Notice of General Meeting A

notice of a general meeting must:

- a. set out the place, date and time for the meeting (and, if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this); and
- b. state the general nature of the meeting's business; and
- c. if a special resolution is to be proposed at the meeting:
 - i. set out an intention to propose the resolution as a special resolution, and
 - ii. state that resolution; and
- d. in the case of an election of Directors, state the names of the candidates for election; and
- e. contain a statement setting out the following information:
 - i. that the Member has the right to appoint a proxy;
 - ii. that the proxy does not need to be a Member.

14.6 Omission to Give Notice

The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice does not invalidate the proceedings at the meeting.

14.7 Special Business

All business will be special that is transacted at:

- a. a general meeting not being an annual general meeting; or
- b. an annual general meeting with the exception of:
 - i. the confirmation of the minutes of the preceding meeting;
 - ii. the receipt and consideration of the balance sheet, the profit and loss statement and the reports of the Directors and the auditors;
 - iii. the election of Directors;
 - iv. the transaction of any business which under the Corporations Act or this Constitution is required to be transacted.

14.8 Cancellation or Postponement of General Meeting

Except in the case of a general meeting convened on the requisition of Members, the Directors may at any time cancel or postpone a general meeting before the time for holding the meeting. The Directors shall endeavour to notify each Member orally or otherwise of the cancellation or postponement, but failure to notify a Member does not affect the validity of the cancellation or postponement.

14.9 Resolutions Evidenced by Each Member

- a. Any written resolution of auDA determined on without a general meeting (whether in one document or in several copies) and signed (including by electronic signature) by each Member entitled to vote is as valid and effectual as a resolution duly passed at a general meeting of auDA unless the Corporations Act requires a resolution to be passed at a general meeting of auDA.
- b. The written resolution of auDA may consist of:
 - i. several copies of a document each signed by one or more Members and takes effect at the date and time on which the last Member necessary for the resolution to be passed, signs a copy of the resolution; or
 - ii. a record of several electronic messages each indicating the identity of the sender, the text of the resolution and the sender's agreement or disagreement to the resolution, as the case may be, and such a resolution takes effect on the date on which the last Member's message necessary for the resolution to be passed is received.

15 PROCEEDINGS AT MEETINGS

15.1 Quorum

Seven (7) Members present in person or by proxy or representative and entitled to vote are a quorum for all general meetings. No business is to be transacted at any general meeting unless a quorum is present at the time the meeting proceeds to business.

15.2 Lack of Quorum

If within thirty (30) minutes after the time appointed for the meeting a quorum is not present, the meeting will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Directors determine. If at the adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the meeting five (5) Members present in person or by proxy or representative will be a quorum and if such reduced quorum is not then present the meeting will be dissolved.

15.3 Chairperson

The Chairperson of Directors, or in the Chairperson's absence the deputy Chairperson may preside as Chairperson at every general meeting. If there is no Chairperson or deputy Chairperson or if neither is present within fifteen (15) minutes after the time appointed for the meeting or if they are both unwilling to act as Chairperson of the meeting the Directors must choose another Director as Chairperson. If no Director is so chosen or if all the Directors present decline to take the chair the Members present must choose one of their own number to be Chairperson.

15.4 Adjournment

The Chairperson of a general meeting may with the consent of a meeting at which a quorum is present (and must if directed by the meeting) adjourn the meeting from time to time and place to place but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

15.5 Notice of Adjourned Meeting

It is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting, unless the meeting is adjourned for thirty (30) days or more in which case notice of the adjourned meeting is to be given as in the case of an original meeting.

15.6 Decision of Resolutions

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. Before or on the declaration of the result of the vote, the Chairperson or (other than on the election of the Chairperson of a meeting or the adjournment of a meeting) not less than three (3) Members having the right to vote at the meeting, may demand a poll. *(Amended by Special Resolution, 14 August 2006)*

15.7 Minutes as Evidence of Result

Unless a poll is duly demanded, a declaration by the Chairperson that a resolution has been carried or carried unanimously or carried by a particular majority or lost or not carried by a particular majority and an entry to that effect in the book containing the minutes of the proceedings of auDA signed by the Chairperson will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. *(Amended by Special Resolution, 14 August 2006)*

15.8 Taking of Poll

If a poll is duly demanded it must be taken in the manner and at the time and place as the Chairperson of the meeting directs. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded provided that a poll on the election of a Chairperson of a meeting or on any question of adjournment must be taken at the meeting and without adjournment. The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. The demand for a poll may be withdrawn. In the case of a dispute as to the admission or rejection of a vote, the Chairperson shall determine the dispute and the determination made in good faith will be final and conclusive. *(Amended by Special Resolution, 14 August 2006)*

15.9 Technology auDA may hold a general meeting at two (2) or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

16 VOTES OF MEMBERS

16.1 Entitlement to vote

Every Member who:

- a. was a Member on 14 October 2003 and has continuously been a Member since that date; or
- b. has been a Member for not less than three (3) months;

present at a general meeting in person or represented by proxy or representative has one vote. *(Amended by Special Resolutions, 27 November 2003 and 14 August 2006.)*

16.2 Resolutions

A resolution of Members will only be taken to be carried if the requisite majority comprises the following:

- a. in the case of an ordinary resolution of Members, there is an affirmative vote in each and every class of Members of more than 50% of Members present and entitled to vote (in person or by authorised representative or proxy);
- b. in the case of a special resolution of Members, there is 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);

(Amended by Special Resolution, 14 August 2006)

16.3 Special Resolutions

The following matters will require a special resolution of the Members in Meeting:

- a. any business which the Corporations Act states requires a special resolution;
- b. any alteration to auDA's legal status;
- c. voluntary winding up of auDA;
- d. changing the purposes, objects or scope of auDA;
- e. any variation or amendment to, or repeal of, this Constitution; and
- f. making, varying, or repealing auDA's by-laws.

17 PROXIES

17.1 Appointment of Proxy

A Member may appoint one proxy only, and that proxy is entitled to vote. *(Amended by Special Resolution, 14 August 2006)*

17.2 Instrument of Proxy

The instrument appointing a proxy must be in writing signed (including by electronic signature) by the appointor or the appointor's attorney duly authorised in writing. 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. *(Amended by Special Resolution, 14 August 2006)*

17.3 Receipt of Proxies

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a notarially certified copy of that power or authority (or a copy certified in another manner acceptable to the Directors) must be received in the manner specified for that purpose in the notice convening the meeting, not less than twenty-four (24) hours before the time for holding the meeting or adjourned meeting or taking of the poll at which the person named in the instrument proposes to vote and in default the instrument of proxy will not be treated as valid.

17.4 Form of Proxy

Every instrument of proxy whether for a specified meeting or otherwise must as nearly as circumstances will admit be addressed to auDA in the following form:

I/We

of

being a *Supply Class/Demand Class Member of auDA appoint

*Strike out whichever is not correct. of

as my/our proxy to vote for me/us and on my/our behalf at the general meeting of auDA to be held on the day of _____ and at any adjournment thereof.

This form is to be used **in favour of/against the resolution.

**Strike out whichever is not desired. Unless otherwise instructed the proxy may vote as the proxy thinks fit.

As witness my/our hand/s this day

of Signed by the said in the

presence of:

or in such other form as the Directors from time to time prescribe or in a particular case accept. An instrument of proxy in which the name of the appointee is not filled in will be deemed to be given in favour of the Chairperson of the meeting to which it relates.

(Amended by Special Resolution, 14 August 2006)

17.5 Power to Demand Poll

The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.

17.6 Votes of Proxies

A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or unsoundness of mind of the appointor or revocation of the instrument or of the authority under which the instrument was executed provided that no intimation in writing of the death unsoundness of mind or revocation has been received by auDA before the meeting or adjourned meeting at which the instrument is used. A proxy is not revoked by the appointor attending and taking part in any meeting but if the appointor votes on a resolution the person acting as proxy for that appointor has no vote as proxy on that resolution. *(Amended by Special Resolution, 14 August 2006)*

17.7 Identification of Proxy

The Chairperson of a meeting may require a person acting as a proxy to establish to the satisfaction of the Chairperson that the person is the person nominated as proxy in the form of proxy lodged under this Constitution and failing compliance that person may be excluded from voting. *(Amended by Special Resolution, 14 August 2006)*

17.8 Power of Attorney

If a Member executes or proposes to execute an instrument or to act by or through an attorney, the Member must:

- a. produce to auDA for noting the instrument appointing the attorney; and
- b. (if required) file with auDA a certified copy of the last-mentioned instrument which is to be retained by auDA.

The Directors may on the first production of that instrument of attorney and from time to time subsequently require any evidence as they think fit that the instrument of attorney is effective and current.

18 DIRECTORS

18.1 Minimum Number

If the number of Directors in office at any time (other than the term of the Initial Board) falls below seven (7), the Directors shall not act in the affairs of auDA (other than to appoint additional Directors) until the number of Directors is made up to at least seven (7).
(Amended by Special Resolution, 23 September 2002.)

18.2 Constitution of the Board

The Board shall comprise:

- a. four (4) persons elected by the Supply Class Members;
- b. four (4) persons elected by the Demand Class Members;
- c. the CEO of auDA as a non-voting member of the board; and
- d. not more than ~~four (4)~~ Independent Directors appointed by the elected Directors, for terms not exceeding two (2) years each.

(Amended by Special Resolutions, 14 August 2006 and 17 October 2011.)

18.3 Director's Membership Requirements

Directors need not be Members.

Directors are elected as individuals. They are not elected as representatives of an Organisation. Accordingly, a Director shall not be disqualified from office should the Director cease to be employed by the Organisation that employed the Director at the time of election. The Director elected by the Demand Class Members must not, at all relevant times, be a Supply Related Person. (Amended by Special Resolution, 13 August 2007.)

18.4 No Remuneration

Except as provided for in clause 5, no Director may receive any remuneration for services as a Director or as a Member.

19 APPOINTMENT AND REMOVAL OF DIRECTORS

19.1 Not Used (Amended by Special Resolution, 17 October 2011.)

19.2 Not Used (Amended by Special Resolution, 17 October 2011.)

19.3 Retirement and Election of Directors

At each AGM of auDA 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.

(Amended by Special Resolutions, 14 August 2006 and 17 October 2011.)

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19.4 Nomination for Election

- a. Each candidate for election as a Director by a Class in accordance with clause 19.2 or 19.3 must be proposed by a Member of auDA in that Class and seconded by another Member of auDA in that Class. aa. A Member may only propose or second a candidate for Election as a Director if they have:
 - i. paid their entrance fee (if any) and their membership fees as at the time that the proposal takes place; and
 - ii. in respect of a candidate for Election by a Class with four (4) or more Members, not proposed or seconded any other person for Election as a Director at that Election. (*Amended by Special Resolution, 27 November 2003.*)
- b. A candidate for election to the Board cannot stand for election by more than one Membership Class at the same election. (*Amended by Special Resolution, 23 September 2002.*)
- c. A nomination of a candidate for election:
 - i. must specify the full name and address of the candidate;
 - ii. must include such other information as is specified by the Board from time to time;
 - iii. may include a statement by the candidate of not more than 100 words; and
 - iv. must be in writing, signed by the candidate, the proposer and the seconder.
- d. A nomination of a candidate for election must be received in the manner specified by auDA not later than 5.00pm on the day which is twenty eight (28) days prior to the AGM at which the candidate seeks election, except that nominations for candidates for the Interim Board must be received on behalf of auDA not later than 12 noon on the working day prior to the election for the Interim Board.
- e. Other than for the election to the Interim Board, a list of the candidates' names together with the proposers' and seconders' names and any statement included with the nomination must be sent to Members with the notice of the AGM. In the case of the Interim Board, such a list may be provided to Members on the day of the election for the Interim Board.

19.5 Procedure for Election of Directors

- a. If on the close of nominations the number of candidates for election as Directors is equal to or less than the number of vacancies, the nominated candidates shall be declared elected at the AGM and the Board shall fill the remaining positions as set out in clause 19.7.
- b. If the number of candidates for election as Directors is greater than the number of vacancies on the Board, a ballot must be held for the election.
- c. If a ballot is required, balloting lists must be prepared listing the names of the candidates.
- d. Each Member entitled to vote may cast the number of votes equal to the number of vacancies in the relevant class of Membership, provided that no person so voting may cast more than 1 vote in favour of each candidate.
- e. The candidates receiving the greatest number of votes in their favour must be declared by the Chairperson of the meeting to be elected as Directors.
- f. In the event of a tie for a board position the result will be decided by lot.

19.6 Removal of Directors auDA in general meeting may by resolution remove any Director from office. However, no resolution for the removal of a Director from office is to be put to a general meeting unless notice signed by a Member duly qualified to vote at that meeting and signifying the intention of that Member to propose that resolution is received by auDA not less than twenty eight (28) clear days before the date appointed for holding the meeting.

19.7 Casual Vacancies

- a. Subject to clauses 15.3 and 19.1, any vacancy occurring in the Board whether by death, resignation or otherwise shall be filled within three (3) calendar months of the vacancy occurring (or such longer period as the Board may otherwise resolve) by the remaining Directors. The natural person filling the vacancy will be appointed for the remainder of the term of office of the Director who created the vacancy.
- b. All such appointments shall be made by instrument executed by all of the surviving or continuing Board.
- c. The continuing Directors may act notwithstanding any vacancy in their body but should the number of Directors fall below the minimum number fixed in accordance with this Constitution the Directors may act for the purpose of increasing the number of Directors to the minimum of summoning a general meeting of auDA or in emergencies but for no other purpose.

19.8 Observer appointed by the Commonwealth

A representative of the Commonwealth of Australia may attend any meeting of the Board of the Company as an observer. The Company Secretary shall give due notice of each Board meeting to the office of the Crown in right of the Commonwealth as notified to the Company from time to time.

20 DISQUALIFICATION OF DIRECTORS

The office of a Director must be vacated if:

- a. the Director ceases to be or is removed as a Director pursuant to the Corporations Act;
- b. the Director becomes an insolvent under administration or makes any composition or arrangement with the Directors' creditors or any class of them;
- c. the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- d. the Director resigns from office by notice in writing to auDA;
- e. the period for which the Director is appointed expires;
- f. the Director, without the permission of the other Directors, is absent from the meetings of the Directors for six (6) months continuously; or
- g. the Director is directly or indirectly interested in any contract or proposed contract with auDA and fails to declare the nature of that interest as required by the Corporations Act.

21 POWERS AND DUTIES OF DIRECTORS

21.1 Management of auDA

Subject to clause 24.6, the management of the business and affairs of auDA is to be vested in the Directors who in addition to the powers and authorities conferred by this Constitution or otherwise may exercise all powers and do all acts and things as can be exercised or done by auDA and are not required to be exercised or done by auDA in general meeting. The powers of the Directors are subject to the Corporations Act, this Constitution and to any regulations (not being inconsistent with this Constitution) from time to time made by auDA in general meeting. No regulation made by auDA in general meeting will invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

21.2 Power to Appoint Chief Executive Officer

The Board may appoint a natural person to be the Chief Executive Officer (CEO) with such title and on such terms, conditions and remuneration as the Board determines. The Chief Executive Officer is responsible for the control and management of the business and day to day operations of auDA.

The Board may from time to time and upon such terms and conditions and with such restrictions as they deem fit, confer upon the Chief Executive Officer all or any of its powers.

The Board may at any time or times, alter, revoke withdraw or vary all or any of the powers delegated to the Chief Executive Officer.

21.3 Duties Regarding Board Papers

- a. The Board must ensure that a complete set of all Board Papers in chronological order will be kept in an appropriate and secure manner.
- b. Subject to paragraph (c) of this clause, auDA, on receiving reasonable notice from a Director or former Director, must without charge:
 - i. permit the Director or former Director access during business hours to those Board papers which relate to the period during which he or she was a Director; and
 - ii. provide a copy to the Director or former Director of such Board papers, or any part of them, on request.
- c. After a Director ceases to be a Director:
 - i. auDA is only required to comply with paragraph (b) when the former Director is defending, or there is a reasonable prospect that the former Director will be defending, legal proceedings which relate to an act or omission of the former Director in performing the former Director's duties when he or she was a Director; and
 - ii. the former Director only has access to, and the right to take copies of, such Board papers for the sole purpose of defending legal proceedings which relate to that former Directors duties and acts as a Director.

For the purposes of this clause, "Board Papers" means all existing and future written communications given or made available to the Directors of auDA or any one or more of them or tabled at meetings of the Board (including periodic board papers, submissions, minutes, letters, board committee and sub-committee papers) and any other documents in the possession of auDA which are referred to in those documents.

21.4 Directors to act in Best Interest of auDA as a Whole

Each Director must act in the best interests of auDA as a whole and with due regard to the furtherance of auDA's objectives. Each Director must also act in accordance with an nonexcludable duty or obligation owed by the Director to auDA or the Members of auDA under general law, the Corporations Act, or other provisions of this Constitution. *(Amended by Special Resolution, 17 October 2011.)*

21.5 Sale of Undertaking

Any sale or disposal by the Directors of auDA's whole undertaking or of auDA's main undertaking is conditional upon ratification by auDA in general meeting and shall not involve a sale or transfer of such undertaking to any Legal Person other than one or more funds, authorities or institutions to which surplus assets of auDA could be given or distributed on a winding up under clause 8. At the meeting to ratify any sale or disposal, any person who may benefit from the sale or disposal must not vote on the resolution.

21.6 Cheques, Bills, etc.

All cheques promissory notes drafts bills of exchange and other negotiable instruments and receipts for money paid to auDA must be signed drawn accepted endorsed or otherwise executed by the persons and in the manner as the Directors determine.

21.7 Operating Manual

The Board shall cause to be prepared an operating manual which shall set out, inter alia, the process which auDA is to conduct its deliberations and operations. This shall specify the appointment of panels of experts to advise the board on matters of policy for the development and administration of the .au domain name space, and shall describe the process with which auDA shall achieve openness and transparency in the conduct of its business.

22 DIRECTOR'S CONTRACTS

22.1 Director's Interests

Subject to the Corporations Act:

- a. no Director or proposed Director is disqualified by that office from:
 - i. entering into a contract, agreement or arrangement with auDA;
 - ii. becoming or remaining a Director of any company in which auDA is in any way interested or which is in any way interested in auDA;
- b. no contract, agreement or arrangement in which a Director is in any way interested, entered into by or on behalf of auDA can be avoided; and
- c. no Director who:
 - i. enters into a contract, agreement or arrangement in which the Director has an interest; or
 - ii. is a director of another company with which auDA has entered into a contract, agreement or arrangement,

is liable to account to auDA for any profits or remuneration realised by that Director as a result of that Director being interested or being a director of the other company.

22.2 Declaration of Interest

- a. The nature of a Director's interest in any contract agreement or arrangement must be declared by that Director at a meeting of the Directors in accordance with the Corporations Act as soon as practicable after the relevant facts have come to that Director's knowledge.
- b. A general notice that a Director is a member of any specified firm or corporation and is to be regarded as interested in all transactions with that firm or corporation is a sufficient declaration under this clause as regards the Director and the transactions. After giving the general notice it is not necessary for the Director to give any special notice relating to any particular transaction with that firm or corporation.
- c. It is the duty of the Secretary to record in the Minutes any declaration made or any general notice given by a Director in pursuance of this clause.

22.3 Votes by Interested Directors

Subject to the Corporations Act, a Director who has a material personal interest in a matter that is being considered at a meeting of Directors:

- a. must not vote on the matter (or in relation to a proposed resolution under paragraph (ii) of this clause in relation to the matter, whether in relation to that or a different Director); and
- b. must not be present while the matter (or a proposed resolution of that kind) is being considered at the meeting, unless:
 - i. the matter applies to an interest that the Director has as a Member in common with the other Members; or
 - ii. the Directors have passed a resolution that specifies the Director, the interest and the matter, and states that the Directors voting for the resolution are satisfied that the interest should not disqualify the Director from considering or voting on the matter.

23 DIRECTOR'S CONFLICTS OF INTEREST

A Director who holds an office or possesses a property whereby duties or interests might be created whether directly or indirectly in conflict with that Director's duties or interest as Director must, declare at a meeting of the Directors the fact and the nature and extent of the conflict.

24 PROCEEDINGS OF DIRECTORS

24.1 Procedure Generally

The Directors may meet together for the dispatch of business adjourn and otherwise regulate their meetings and proceedings as they think fit. Until otherwise determined six (6) Directors constitute a quorum, provided at least one Director elected by each of the

Membership Classes is present. The quorum must be present at all times during the meeting.
Notwithstanding the previous paragraph, in the case of the Initial Board, three (3) Directors constitute a quorum.

24.2 Calling of Meetings

A Director may at any time, and the Secretary must on the request of a Director, convene a meeting of the Directors by notice served upon the other Directors.

24.3 Notice of Meetings

Reasonable notice of a meeting of Directors is to be given to all Directors except to a Director whom the Secretary when giving notice to other Directors reasonably believes to be outside Australia. The notice need not be in writing.

24.4 Chairperson of Meetings

The Directors may elect a Chairperson and a deputy Chairperson of their meetings and the Chairperson and deputy Chairperson positions are declared vacant at each AGM. If no Chairperson or deputy Chairperson is elected or if at any meeting neither the Chairperson nor the deputy Chairperson is present within fifteen (15) minutes of the time appointed for the holding of the meeting or is unable or unwilling or refuses to act, the Directors present shall elect a Chairperson of their meeting from among their number.

24.5 Decision on Questions

Subject to clause 24.11, questions arising at any meeting of Directors are to be decided by a majority of votes. Each Director (not including the CEO) has one vote and a determination by a majority of the voting Directors will for all purposes be deemed a determination of the Directors. In case of an equality of votes at a meeting at which a quorum is present the Chairperson has a second or casting vote in addition to a deliberative vote.

24.6 Delegation to Committees

The Directors may delegate any of their powers to Committees consisting of Directors or other natural persons as the Directors think fit. Any Committee formed must, in the exercise of the power delegated to it, comply with the regulations that may be imposed on it from time to time by the Directors.

24.7 Procedure of Committees

The meetings and proceedings of Committees consisting of more than one person are to be governed by the clauses of this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable and are not superseded by any regulations made by the Directors under this Constitution.

24.8 Advisory Panels

- a. Advisory Panels will be used by the Board as the principle mechanism for developing policy recommendations to the Board for the purpose of clause 3.1(d) of this constitution.
- b. The Directors may from time to time appoint individuals to chair an Advisory Panel, and provide that Advisory Panel with a brief to investigate, analyse and advise or report to the Directors regarding a particular issue or objective. Any interested Member or other person may be invited by the Chair of an Advisory Panel to participate in that Advisory Panel.

24.9 Procedure of Advisory Panels

The Chair of an Advisory Panel must report in writing to the Board on its activities from time to time. Subject to any conditions imposed by the Board, the meetings and procedures of the Advisory Board must be convened and conducted as the Chair thinks fit.

24.10 Validation of Irregular Acts

All acts done by any meeting of the Directors or by a Committee or Advisory Panel or by any person acting as a Director will, even if it is later discovered that there was some

defect in the appointment or continuance in office of a Director or person so acting or that they or any of them were disqualified or had vacated office or were not entitled to vote, be as valid as if every person had been duly appointed or had duly continued in office and was qualified and had continued to be a Director and had been entitled to vote.

24.11 Written Resolutions

- a. A resolution in writing signed by all the Directors who are entitled to vote (not being less than a quorum) is as valid and effectual as if it had been passed at a meeting of Directors duly called and constituted and is deemed to constitute a minute of that meeting.
- b. That resolution in writing may consist of:
 - i. several copies of a document each signed by one or more Directors and takes effect at the date and time on which the last Director necessary to form a quorum signs a copy of the resolution; or
 - ii. the record of several electronic mail messages each indicating the identity of the sender, the text of the resolution and the sender's agreement or disagreement to the resolution, as the case may be, and such a resolution takes effect on the date on which the last message is received from a Director necessary to form a quorum.

24.12 Voting Authority

Subject to clause 15.4, a Director who is unable to attend a meeting of the Directors may authorise another Director to vote at that meeting. The attending Director will have a vote for each absent Director by whom the attending Director is so authorised, in addition to the normal vote of the attending Director. Any such authority must be produced at the meeting at which it is to be used and be retained by the Secretary in auDA's records. Absent Directors (if any) are not to be counted as Directors present for the purposes of a quorum (Clause 24.1).

24.13 Meetings by Communications Technology

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting.

25 BORROWING POWERS

The Directors may exercise all the powers of auDA to borrow money and to mortgage or charge all or part of its undertaking and assets and to issue debentures, debenture stock and other securities outright or as security for any debt, contract, guarantee, engagement, obligation or liability of auDA or of any third party and on such terms and conditions as the Directors think fit.

26 MINUTES

The Directors shall cause minutes to be kept and entered up in accordance with the Corporations Act:

- a. of the names of the Directors present at each meeting of the Directors and of any Committee; and
- b. of all resolutions and proceedings of general meetings and of meetings of Directors and of Committees.

The minutes are to be signed by the Chairperson of the meeting at which the proceedings were held or by the Chairperson of the next succeeding meeting.

27 SECRETARY

One or more Secretaries must in accordance with the Corporations Act be appointed by the Directors for such terms, at such remuneration and upon such conditions as the Directors think fit. Any Secretary so appointed may be removed by the Directors.

28 ACCOUNTS

28.1 Accounting and Other Records

The Directors must cause proper accounting and other records to be kept and distribute copies of balance sheets as required by the Corporations Act.

28.2 Time for Accounts

The interval between the close of a financial year of auDA and the issue of the printed Annual Report and audited accounts relating to it must not exceed the period (if any) prescribed by the Corporations Act.

28.3 Access by Members

The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of auDA are to be open to the inspection of Members not being Directors.

29 BY-LAWS

The Board has the power to make, vary and repeal by-laws from time to time for the proper conduct and management of auDA and such by-laws are binding on all Members. A resolution of the Board to make, vary or repeal by-laws must subsequently be ratified by a special resolution of Members.

30 NOTICES

30.1 Modes of Giving Notice auDA may give notice to a Member or other Legal Person:

- a. personally; or
- b. in the case of a Member - by sending it by post to the address for the Member in the Register or the alternative address (if any) nominated by the Member; or
- c. in the case of a Director - by sending it by post to the address for the Director in the register of directors; or
- d. in the case of the Auditor - by sending it by post to the last-known address of the Auditor; or
- e. by sending it to the fax number (if any) or electronically to the electronic mail address (if any) nominated by the Member or other Legal Person.

30.2 When Notice Deemed Given

A notice may be given by auDA to any Member either personally or by sending it by post to the Member at the Member's registered address. A notice sent by post is deemed to be given three (3) days after it is posted. A notice given by electronic means is deemed to be given on the day after it is sent, and in the form in which it was received.

30.3 Persons Entitled to Notice of General Meeting

Notice of every general meeting must be given in the manner authorised to:

- a. every Member;
- b. every Director; and
- c. the Auditor for the time being (if any) of auDA.

No other person is entitled to receive notices of general meetings.

30.4 Signature to Notice

The signature to any notice to be given by auDA may be written, printed, stamped, electronic, or by any other means otherwise approved by the Board from time to time.

31 REPEAL, VARIATION AND AMENDMENT OF CONSTITUTION

Subject to any provision in the Corporations Act to the contrary, this Constitution may only be varied, amended or repealed by a special resolution of auDA in general meeting.

32 INDEMNITY TO OFFICERS

32.1 Mandatory Indemnity

auDA shall indemnify each Officer of auDA out of the assets of auDA to the relevant extent against any Liability incurred by the Officer in or arising out of the conduct of the business of auDA, or in or arising out of the discharge of the Duties of the Officer, unless the Liability was incurred by the Officer through the Officer's own dishonesty, negligence, lack of good faith or breach of duty.

32.2 Discretionary Indemnity

In addition to clause 32.1, if the Directors consider it appropriate to do so, auDA may indemnify an Officer of auDA and an Officer of a subsidiary of auDA to the Relevant Extent out of the assets of auDA against any Liability incurred by the Officer in or arising out of the conduct of the business of auDA or of the subsidiary, or in arising out of the discharge of the Duties of the Officer.

32.3 Insurance Against Liability

If the Directors consider it appropriate to do so, auDA may pay amounts by way of premium in respect of any contract effecting insurance on behalf or in respect of an Officer of auDA or a subsidiary against Liability incurred by the Officer in or arising out of the conduct of the activities of auDA or of the subsidiary or in or arising out of the discharge of the Duties of the Officer.

32.4 Interpretation

In this clause:

"Officer" means:

- a. a Director, Secretary, executive officer or employee; or
- b. a person appointed as a trustee by, or acting as a trustee at the request of, auDA or, where applicable, the subsidiary of auDA,

and includes a former officer.

"Duties of the Officer" includes, in any particular case where the Directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an Officer by auDA or, where applicable, the subsidiary of auDA to any other corporation.

"Relevant Extent" means:

- a. the extent that auDA is not precluded by law from doing so;
- b. the extent and for the amount that the Officer is not otherwise entitled to be indemnified and is not actually indemnified by another Legal Person (including, in particular, an insurer under any insurance policy); and
- c. where the Liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the Duties of the Officer in relation to another corporation, to the extent and for the amount that the Officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.

"Liability" means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or otherwise.