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Registrar Agreement

[Approved Version 4 – 12 July 2010]

.au Domain Administration Limited
ACN 079 009 340
and

The Registrar described in item (i) of Schedule C

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Registrar Agreement

Dated / /

Parties

Name	.au Domain Administration Limited ACN 079 009 340
Address	114 Cardigan Street, Carlton, Victoria
Short name	auDA

Name	The Registrar Described In Item (i) of Schedule C
Short name	Registrar

Background

- 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

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 Accreditation means the state of being auDA Accredited.

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 the industry code of practice in place from time to time, forming a part of the Published Policies, which regulates 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.

Dispute has the meaning given in clause 22.1.1.

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.

Expiration Date means the fourth anniversary date of the Commencement Date.

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 which the Registrar is required to submit 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 Review Panel means the panel established by the board of auDA for the purpose of reviewing a Reviewable Decision of auDA under clause 23A.

Registrar Review Panel Rules means the rules, forming part of the Published Policies, which govern the processes and procedures of reviewing a Reviewable Decision of auDA under clause 23A.

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, delegation, 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.

Review Committee means a committee to be established by auDA from time to time to consider any proposed material changes to the standard form of registrar agreement, which committee must have at least two representatives from the community of auDA's accredited registrars.

Reviewable Decision has the meaning given in clause 23A.1.

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.

1A. Previous registrar agreements

1A.1 Application of provision

This clause 1A applies only if, prior to the date of this document, the Registrar has already entered into another registrar agreement with auDA, and such registrar agreement continues to have effect on the date of this document.

1A.2 This document supersedes and replaces earlier agreement

This document supersedes and replaces all earlier registrar agreements between the Registrar and auDA, and all such earlier registrar agreements cease to have any further effect immediately upon the parties entering into this document.

2. Duration of Agreement

2.1 Duration

This document has effect on and from the Commencement Date, and continues until the Expiration Date, unless it is terminated before that time:

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.

2.3 Extension of Term

2.3.1 The Registrar may seek to remain auDA Accredited after the Expiration Date, by complying with clause 2.3.2.

2.3.2 If:

(a) on the Expiration Date, the Registrar:

(i) is not in breach of any its obligations under this document; and

(ii) is not the defaulting party of an Event of Default; and

(b) before the Expiration Date, the Registrar agrees to be bound by auDA's then applicable standard form of registrar agreement (on the day after the Expiration Date), by signing and returning to auDA, two original signed copies of the document,

then auDA must regard the Registrar as remaining to be auDA Accredited according to the terms of the new and the then applicable form of registrar agreement, for the period stipulated in that agreement.

- 2.3.3 For clarity, clause 2.3.2 does not require the Registrar to submit itself to the process of applying to be auDA Accredited again, provided that the conditions set out in clause 2.3.2 are satisfied.
- 2.3.4 For the purpose of clause 2.3.2(b), the reference to auDA's then applicable standard form of registrar agreement is a reference to the form of registrar agreement that:
- (a) auDA prescribes as the standard form of agreement which a prospective registrar must enter into with auDA, at that time, in order to become accredited by auDA as a registrar; and
 - (b) has been considered and approved by a Review Committee, if the form of that agreement is materially different from this document.

3. Registrar's accreditation

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.

3A. Access to Registry

3A.1 No automatic access

The entry into this document does not give the Registrar an automatic entitlement to access the Registry. Upon being auDA Accredited, the Registrar may apply to the Registry Operator to permit the Registrar to have access to the Registry.

3A.2 Registry Registrar Agreement

The Registry Operator may require the Registrar to have in place between the Registry Operator and the Registrar, an enforceable agreement containing terms acceptable to it and to auDA before permitting the Registrar to have access to the Registry.

3A.3 auDA can direct Registry Operator to suspend Registrar's access

Subject to clause 3A.5, the Registrar agrees that auDA is entitled to direct the Registry Operator to suspend the Registrar's access to the Registry or any part of the Registry if auDA considers that:

- 3A.3.1 the Registrar's continual access to the Registry can or does adversely affect the integrity or stability of the domain name system or the Registry; or
- 3A.3.2 an Event of Default has occurred in respect of the Registrar,

despite any contrary provision in any agreement between the Registrar and the Registry Operator.

3A.4 Period of suspension

auDA is entitled to direct the Registry Operator to suspend the Registrar's access to the Registry or any part of the Registry under clause 3A.3.2 for:

- 3A.4.1 a period not exceeding 30 days, where the Event of Default leading to such suspension, ceases to be an Event of Default either before, or during, the 30 day period; or
- 3A.4.2 a period longer than 30 days, where:
 - (a) the Event of Default leading to such suspension continues to occur at the end of the 30 day period; and
 - (b) for as long as auDA considers that the Event of Default continues to occur.

3A.5 Minimum notice before suspension

auDA must give the Registrar at least 10 days prior notice in writing before exercising its right to suspend the Registrar's access to the Registry or any part of the Registry under clause 3A.3.2, unless:

3A.5.1 the Event of Default relied upon by auDA to suspend such access relates to an act or omission of the Registrar which is likely to materially adversely affect the integrity or stability of the domain name system or the Registry; or

3A.5.2 in auDA's reasonable opinion, the giving of the 10 days prior notice required under this clause is likely to materially adversely affect the integrity or stability of the domain name system or the Registry,

in which case, auDA may give the Registrar immediate notice of such suspension.

3A.6 Third party access to the Registry

The Registrar must not permit any other person to have any access to any part of the Registry, whether through the utilisation of the Registrar's electronic connection to the Registry, or otherwise, except:

3A.6.1 where specifically permitted under a Published Policy, in accordance with the requirements set out in the Published Policy; or

3A.6.2 with the prior written permission of auDA, and in compliance with any conditions imposed by auDA relating to such access.

4. Loss of Registrar's accreditation and access to Registry

4.1 Loss of accreditation

The Registrar's auDA Accreditation and its entitlement to access the Registry is automatically terminated when this document terminates.

4.2 auDA may terminate accreditation

Subject to clause 23.3, if auDA considers that an Event of Default has occurred in respect of the Registrar, auDA may, in addition to any other right which it has under this document, terminate the Registrar's auDA Accreditation.

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

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

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

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:

- (a) introduces new Published Policies; or
- (b) 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:

- (a) following the procedures described in clause 27; or
- (b) 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

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.

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

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

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

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

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

11.3.1 The Registrar:

- (a) 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:
 - (i) authorised by auDA; and
 - (ii) in compliance with any conditions of use specified by auDA; and
 - (iii) in compliance with any Published Policies; and
- (b) must take all reasonable or prudent actions to preserve the confidentiality and security of all Registrant Data.

11.3.2 The Registrar's obligations under clause 11.3.1 does not extend to Registrant Data, or the form of compilation of Registrant Data, which is already in the public domain, other than through an unauthorised disclosure by or through the Registrar, in breach of the Registrar's obligations under this document.

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

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

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**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;
- 14.1.12 comply with all applicable law; and
- 14.1.13 comply with all reasonable and lawful directions of auDA in relation to the Registrar's provision of Registrar Services under this document, including without limitation, in relation to the Registrar's access to the Registry.

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, or permit a Related Entity of the Registrar to 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, unless such activity is permitted under a Published Policy;
- 14.2.4 be involved in any activity which may directly or indirectly bring the Registry Operator or auDA into disrepute;
- 14.2.5 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;
- 14.2.7 use any information belonging to or regarding auDA other than in accordance with this document; or
- 14.2.8 improperly, negligently or wilfully do anything, or omit to do anything, which can or does adversely affect the integrity or stability of the domain name system or the Registry.

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; and
- 14.3.5 accidental damage cover,

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

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

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

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

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

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

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

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

22.1 Dispute and Mediation

22.1.1 For the purpose of this clause 22, **Dispute** means a dispute that arises:

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

where such dispute is outside the scope of a review by the Registrar Review Panel under clause 23A.

22.1.2 If a Dispute arises, 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.

22.8 Urgent relief

Nothing in this clause prevents any party from seeking urgent injunctive or declaratory relief in relation to any Dispute.

23. Default and termination

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; or
- 23.1.7 if the Registrar or any of its officer (as defined in the *Corporations Act 2001*) or director is convicted of an offence involving fraud or dishonesty.

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.

23.3 Minimum Notice of Termination

auDA must give the Registrar at least 10 days prior notice in writing before exercising its right to:

- 23.3.1 terminate this Agreement under clause 23.2.5; or
- 23.3.2 terminate the Registrar's auDA Accreditation under clause 4.2,

unless:

- 23.3.3 the Event of Default relied upon by auDA to terminate this Agreement or to terminate the Registrar's auDA Accreditation relates to an act or omission of the Registrar which is likely to materially adversely affect the integrity or stability of the domain name system or the Registry; or
- 23.3.4 in auDA's reasonable opinion, the giving of the 10 days prior notice required under this clause is likely to materially adversely affect the integrity or stability of the domain name system or the Registry,

in which case, auDA may give the Registrar immediate notice of such termination.

23A. Registrar's right to seek review of auDA decision

23A.1 Reviewable Decision

In this document, a **Reviewable Decision** means a decision of auDA to:

23A.1.1 direct the Registry Operator to suspend the Registrar's access to the Registry or any part of the Registry under clause 3A.3.2; or

23A.1.2 terminate:

- (a) this Agreement under clause 23.2.5; or
- (b) the Registrar's auDA Accreditation under clause 4.2,

in circumstances where auDA is required, under clause 23.3, to give the Registrar at least 10 days notice in writing of such termination.

23A.2 Review of a Reviewable Decision

23A.2.1 The Registrar Review Panel can review a Reviewable Decision.

23A.2.2 The Registrar can apply to the Registrar Review Panel to review a Reviewable Decision, by:

- (a) giving the prescribed notice under the Registrar Review Panel Rules to both auDA and the Registrar Review Panel, within seven days after the Registrar receives a written notice from auDA stating that auDA has made a Reviewable Decision; and
- (b) paying the applicable fees (if any) set out in the Registrar Review Panel Rules.

23A.2.3 If the Registrar makes an application under clause 23A.2.2, then upon the receipt and acceptance by the chair of the Registrar Review Panel, of a compliant application (within the meaning of the Registrar Review Panel Rules):

- (a) both the Registrar and auDA:
 - (i) are taken to be bound by; and
 - (ii) must comply with,
- the Registrar Review Panel Rules; and

- (b) auDA agrees to be bound by the decision of the Registrar Review Panel; and
- (c) auDA must not take any further action to give effect to the Reviewable Decision, pending the decision of the Registrar Review Panel, unless otherwise directed by the Registrar Review Panel.

23A.3 Registrar Review Panel's powers

23A.3.1 The Registrar Review Panel:

- (a) can exercise all the powers and discretions conferred upon it and as set out in the Registrar Review Panel Rules; and
- (b) cannot make a decision under clause 23A.4.1 unless both auDA and the Registrar have been given a reasonable opportunity to make a submission to the Registrar Review Panel in relation to the Reviewable Decision, according to the Registrar Review Panel Rules.

23A.3.2 auDA and the Registrar can only make submissions to the Registrar Review Panel that are permitted by, and comply with, the requirements of the Registrar Review Panel Rules.

23A.4 Registrar Review Panel's decision

23A.4.1 The Registrar Review Panel can make a decision to:

- (a) affirm a Reviewable Decision; or
- (b) set aside a Reviewable Decision, and:
 - (i) make a decision in substitution of the Reviewable Decision; or
 - (ii) remit the matter for reconsideration by auDA according to any directions or recommendations of the Registrar Review Panel.

23A.4.2 If the Registrar Review Panel makes a decision in substitution of a Reviewable Decision, the substituted decision made by the Registrar Review Panel, will be taken:

- (a) to be the decision of auDA (except that such decision cannot be the subject of a further application for review by the Registrar Review Panel); and
- (b) to have effect on and from the date on which auDA originally made the Reviewable Decision, unless otherwise directed by the Registrar Review Panel.

24. Consequences of termination

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 Registrar's obligations on termination

If this document is terminated, then the Registrar must on receipt of a request from auDA, do all things necessary, including without limitation:

- 24.3.1 provide all necessary information to auDA; and
- 24.3.2 cooperate in good faith with auDA and to comply with all reasonable and lawful directions of auDA,

to ensure that all its Registrants can migrate their Domain Names registration services to another registrar of their choice, with minimum disruption or inconvenience to the Registrants.

24.4 Survival

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

25. Prohibition of assignment

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:

- (a) must ensure that there is no change of Effective Control of the Registrar without the approval of auDA; and
- (b) 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

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

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: 114 Cardigan Street
Carlton VIC 3053

Postal address: As above

Facsimile number: +61 3 8341 4112

Email address: ceo@auda.org.au **and to**
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**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.



Signing Page

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

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

Schedule A

Fees

The Fees comprise:

(a) ***Licence Fee**

The Licence Fee is **\$3,000.00** per annum, payable:

- (i) unless paragraph (ii) below applies, on the Commencement Date, and then on each anniversary date of the Commencement Date; or
- (ii) if, prior to the Commencement Date, the Registrar has already:
 - (A) entered into another registrar agreement with auDA; and
 - (B) been auDA Accredited under the terms of that registrar agreement,then, on each anniversary date of the date on which auDA issued the Accreditation Certificate to the Registrar.

(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

All Registrant Agreements must contain the following provisions:

1. auDA AND REGISTRAR'S AGENCY

- 1.1 In this agreement, **auDA** means .au Domain Administration Limited ACN 079 009 340, the .au domain names administrator.
- 1.2 The Registrar acts 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 it under this agreement. auDA is an intended third party beneficiary of this agreement.

2. auDA PUBLISHED POLICY

- 2.1 In this clause, **auDA Published Policies** means those specifications and policies established and published by auDA from time to time at <http://www.auda.org.au>.
- 2.2 Registrant must comply with all auDA Published Policies, as if they were incorporated into, and form part of, this agreement. In the event of any inconsistency between any auDA Published Policy and this agreement, then the auDA Published Policy will prevail to the extent of such inconsistency.
- 2.3 Registrant acknowledges that under the auDA Published Policies:
- 2.3.1 there are mandatory terms and conditions that apply to all domain names licences, and such terms and conditions are incorporated into, and form part of, this agreement; and
- 2.3.2 Registrant is bound by, and must submit to, the .au Dispute Resolution Policy; and
- 2.3.3 auDA may delete or cancel the registration of a .au domain name.

3. auDA'S LIABILITIES AND INDEMNITY

- 3.1 To the fullest extent permitted by law, auDA will not be liable to Registrant for any direct, indirect, consequential, special, punitive or exemplary losses or damages of any kind (including, without limitation, loss of use, loss or profit, loss or corruption of data, business interruption or indirect costs) suffered by Registrant arising from, as a result of, or otherwise in connection with, any act or omission whatsoever of auDA, its employees, agents or contractors.
- 3.2 Registrant agrees to indemnify, keep indemnified and hold auDA, its employees, agents and contractors harmless from all and any claims or liabilities, arising from, as a result of, or otherwise in connection with, Registrant's registration or use of its .au domain name.
- 3.3 Nothing in this document is intended to exclude the operation of *Trade Practices Act 1974*.



Schedule C

Table of particulars

(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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