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Date / /

Directors' Deed of Confidentiality

.au Domain Administration Ltd
ACN 079 009 340
and

The Director specified in the Schedule

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Directors' Deed of Confidentiality

Date / /

Parties

Name	.au Domain Administration Ltd ABN 38 079 009 340
Address	114 Cardigan Street, Carlton, Victoria
Contact	Company Secretary
Short name	auDA

Name	Director as specified in the Schedule
Short name	Director

Background

- A. auDA is a public company limited by guarantee under the *Corporations Act 2001*.
- B. auDA is endorsed by the Australian Government and recognised by the Internet Corporation for Assigned Names and Numbers (**ICANN**) as the manager of the .au Domain Name System (**.au DNS**). Pursuant to its Constitution and the *Corporations Act 2001* auDA oversees the operation of the .au DNS under an industry self-regulatory model.
- C. The Director is or will become a director of auDA. Under auDA's Constitution Directors are elected by either the Demand or Supply Class members of auDA or appointed by auDA's Board.
- D. Irrespective of the mechanism of their appointment, the Director acknowledges his or her duties under auDA's Constitution, the *Corporations Act 2001* and at common law to act with due care and diligence, in good faith in best interests of the company as a whole and for a proper purpose and not to improperly use their position or the confidential information of auDA to gain advantage for themselves or another person or to cause detriment to auDA.
- E. As part of auDA's commitment to excellence in corporate governance and pursuant to:
 - E.1 clause 21.3 of its Constitution, auDA maintains a complete set of Board Papers and provides the Director with access to those Board Papers during and after they cease to be a director of auDA; and
 - E.2 clause 32 of its Constitution, auDA indemnifies and insures the Director against certain liabilities during and after he or she ceases to be an Officer of auDA; and

- F. auDA and the Director have entered into this Deed to acknowledge the Director's obligations of confidentiality in relation to Board Information they receive access to in the course of their role as a director of auDA.

This Deed Witnesses

1. Definitions

In this document unless expressed or implied to the contrary:

Board means the board of directors of auDA.

Board Document means a document or record in any form (including electronic documents, sound recordings and cinematograph films) in which Board Information is embodied and from which may be retrieved with or without the assistance of any device, computer program, key, cipher or password.

Board Information includes all or any part of information concerning auDA or considered by or concerning the deliberations of auDA's Board and includes:

- (a) reports and information submitted to auDA's Board;
- (b) deliberations of auDA's board and formal and informal records of such deliberations;
- (c) communications between directors of auDA and other directors or Officers or staff of auDA in connection with auDA.

Business Day means a day on which the banks are open in the state of Victoria;

Corporations Act means *Corporations Act 2001* (Cth).

Deed means this deed entered into between auDA and the Director.

Officer means an officer of auDA as defined in section 9 of the *Corporations Act*.

2. Confidentiality of Board Information

2.1 General Obligation to Preserve Confidentiality of Board Information

- 2.1.1 Without limiting the Director's duties to auDA, subject to the terms of this Deed the Director acknowledges that they must keep confidential all Board Information which is of its nature inherently confidential or designated by the Chair to be confidential.
- 2.1.2 The Director's obligations under this Deed commence on the day the Director signs this Deed and end upon the day the Director ceases to be a director of auDA. The ending of Director's obligations under this Deed does not amount to any waiver by auDA of any other obligations owed by the Director to auDA at law or under the Corporations Act.

2.2 Exceptions

The obligation of confidentiality set out in clause 2.1.1 will cease to apply to:

- 2.2.1 Board Information which the Board authorises to be disclosed (such as a non-confidential summary of the Board's minutes or public announcements), but only to the extent that it has been authorised for disclosure;
- 2.2.2 Board Information which comes into the public domain other than as a result of a breach of the obligations set out in this Deed;
- 2.2.3 Board Information in respect of which disclosure is required by law; or
- 2.2.4 Board Information which must be disclosed for the purpose of bona fide court proceedings that arise out of the Director's involvement with auDA, provided that:
 - (a) auDA has waived any claim to client legal privilege in relation to the relevant Board Information in writing; or
 - (b) disclosure will not cause auDA's right to claim client legal privilege in regard to any other Board Information to be waived.

2.3 Limitations on Disclosure

The Director may only disclose Board Information under:

- 2.3.1 clause 2.2.3 - after providing auDA with notice of the requirement to disclose the Board Information (unless providing such notice is prohibited by law) and providing auDA with a reasonable opportunity to, at its cost, resist the disclosure of the Board Information; and
- 2.3.2 clause 2.2.4 - to persons who have a need to know for the purpose of the court proceedings and only to the extent that each has a need to know.

2.4 Return of Board Documents

Upon request by the Board the Director must:

- 2.4.1 deliver all Board Documents in their possession or under their control capable of delivery to auDA's company secretary for storage or destruction; or
- 2.4.2 destroy or permanently erase all Board Documents in their possession or under their control not capable of delivery and provide a statutory declaration in a form reasonably acceptable to auDA's company secretary confirming that the director has done so.

3. Assignment

None of the rights of the parties under this Deed may be assigned or transferred.

4. Entire Agreement and No Derogation

- 4.1 This Deed contains the entire understanding of the parties as to its subject matter and any and all previous understandings or agreements on that subject matter cease to have any effect from the date of this Deed.

- 4.2 The rights and obligations of the parties under this Deed are intended to be in addition to and not to derogate from or in any way limit the parties rights' and obligations under the law including the Corporations Act. The terms of this Deed must be construed accordingly.

5. No Waiver

- 5.1 The failure of a party to exercise or delay in exercising a right, power or remedy under this Deed does not prevent its exercise.
- 5.2 A provision of or right under this Deed may not be waived except by a waiver in writing signed by the party granting the waiver, and will be effective only to the extent specifically set out in that waiver.

6. Governing Law and Jurisdiction

- 6.1 This Deed is governed by the law of Victoria.
- 6.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

7. Further Action

Each party must do everything reasonably necessary or desirable to give full effect to this Deed.

8. Faxed Copy of Counterpart on Exchange

- 8.1 This Deed may be executed in any number of counterparts.
- 8.2 Each counterpart is an original but the counterparts together are one and the same agreement.
- 8.3 This Deed is binding on the parties on the exchange of counterparts. A copy of a counterpart sent by facsimile machine:
- 8.3.1 must be treated as an original counterpart;
 - 8.3.2 is sufficient evidence of the execution of the original; and
 - 8.3.3 may be produced in evidence for all purposes in place of the original.

9. Notices

- 9.1 A notice required or authorised to be given or served on a party under this Deed must be in writing and may be given or served by facsimile, post or hand to that party at its facsimile number or address specified in this Deed.
- 9.2 A notice is deemed to have been given or served on the party to whom it was sent:
- 9.2.1 in the case of hand delivery, on delivery during business hours;



- 9.2.2 in the case of prepaid post, 2 Business Days after the date of dispatch;
 - 9.2.3 in the case of facsimile transmission, at the time of dispatch if, following transmission, the sender receives a transmission confirmation report or, if the sender's facsimile machine is not equipped to issue a transmission confirmation report, the recipient confirms in writing that the notice has been received.
- 9.3 A notice given or served under this Deed is sufficient if:
- 9.3.1 in the case of a company, it is signed by a director, Officer or secretary of that company; or
 - 9.3.2 in the case of an individual, it is signed by that party.
- 9.4 The provisions of this clause are in addition to any other mode of service permitted by law.
- 9.5 In this clause **notice** includes a demand, request, consent, approval, offer and any other instrument or communication made, required or authorised to be given under this Deed.



Schedule 1

Director

Name	## director's name
Address	## director's address
Facsimile	## directors' fax



Signing Page

Executed as a Deed

Executed by .au Domain Administration Ltd)
ACN 079 009 340 in accordance with section)
127(1) of the Corporations Act 2001 by being)
signed by authorised persons for the)
company:

.....
Director

.....
Director (or Company Secretary)

.....
Full name

.....
Full name

.....
Usual address

.....
Usual address

Signed, sealed and delivered by The)
Director, in the presence of:)
)
)

.....

Signature of the Director

.....

Full Name of the Director

.....

Usual address of the Director

.....

Witness Signature

.....

Full name of Witness

.....

Usual address of Witness