

## ANNEXURE B

### KEY PRINCIPLES - REGISTRY LICENCE AGREEMENT

The following document summarises the principles that will form part of the formal Registry Licence Agreement. This document is intended to assist respondents in the preparation of their responses to the RFT and by submitting a response, each respondent acknowledges and accepts (subject to the following sentence) that these principles will form part of the Registry Licence Agreement. These principles are non-exhaustive and remain subject to .au Domain Administration Limited's (auDA) specific requirements, assessed and confirmed at the time of contract formation.

Ref	Key Principle
<p><b>1 Structure of Agreement</b></p>	<p>The formal Registry Licence Agreement (<b>Agreement</b>) will consist of a core set of head terms (that apply generally and across all services) and specific service schedules (that contain service specific details). The proposed structure of the Agreement is illustrated at the end of this section.</p> <p>Services will be supplied based on a standard set of pre-agreed service terms and will be supplemented by general Registry Technical Specifications.</p>
<p><b>2 Term</b></p>	<p>The Agreement will have a fixed term. At this point in time, auDA contemplates a fixed term of four (4) years and a right for auDA to renew for a further two (2) years.<sup>1</sup></p> <p>Notwithstanding the term of the Agreement, specific service schedules (or discrete services / service components within those service schedules) may have a term that is less than four (4) years.</p> <p>auDA will have no minimum purchase, payment or volume related obligations (whether through traditional payment, revenue related arrangement or otherwise).</p> <p>A mechanism to give effect to the renewal option referred to above will be included in the Agreement.</p>
<p><b>3 Services</b></p>	<p>The services will be set out in specific service schedules. Each service schedule will contain service details, service / performance obligations and other related obligations (including service specific transition and business continuity support).</p> <p>auDA will have the ability to increase / reduce the scope of services over time, utilising pre-agreed processes to give effect to a flexible engagement model. At this point in time, the proposed suite of services will consist of:</p> <ul style="list-style-type: none"> <li>• the registry services;</li> <li>• the authoritative nameserver services;</li> <li>• the WHOIS registration data directory services;</li> <li>• registrar support services,</li> <li>• reporting and logging services; and</li> </ul>

<sup>1</sup> The term of the Agreement may be subject to change after auDA's consideration of any alternative financial models proposed by respondents in response to the RFT.

Ref	Key Principle
	<ul style="list-style-type: none"> <li>abuse mitigation services.</li> </ul> <p>The services above may be supplemented by further services / obligations / deliverables on the part of the supplier set out in the Registry Technical Specifications.</p> <p>The Agreement will include ongoing obligations on the supplier to improve, innovate and deliver services which are 'best in class' and a process for the supplier to propose and offer new services to auDA and / or the Registrars.</p> <p>Registrars are organisations accredited and authorised by auDA to process Registry Data (defined below) on behalf of holders of / applicants for domain names in respect of a .au domain name space (<b>Registrar</b>).</p>
<p><b>4 Licence, Fees and Payment</b></p>	<p>auDA will grant the supplier the right and / or licence to operate as registry operator for certain .au domain name spaces and the right to charge Registrars for the registration / ongoing use of domain names in those domain name spaces.</p> <p>In consideration of the grant of the right / licence above, the supplier will provide auDA with the agreed services and will pay auDA an "auDA domain name fee", for each domain name, on registration of a domain name or a renewal of that registration. This fee is payable to auDA on a monthly basis.</p> <p>auDA will be permitted to change the amount of the "auDA domain name fee" by giving reasonable notice to the supplier. If the "auDA domain name fee" is reduced, the supplier must "pass through" the reduction to the Registrar.</p> <p>The supplier must not charge a Registrar a "wholesale price" that exceeds the sum of the "auDA domain name fee" and the "supplier fee" set out in the Agreement (such fees to be subject to a review mechanism).</p> <p>The "supplier fee" is the fee to be retained by the supplier per domain name, calculated on each registration / renewal of a domain name. The "supplier fee" will be reduced based on an agreed cumulative volume of domain name registrations / renewals.</p> <p>If the scope of the services are increased / reduced, this may lead to a change in the "supplier fee" and / or the "auDA domain name fee".</p> <p>The supplier must pay the "per domain name fee" to auDA, irrespective of the supplier's ability to collect any downstream fees from a Registrar.</p> <p>Invoicing, payment and interest provisions will be included in the Agreement.</p>
<p><b>5 Australian Presence</b></p>	<p>The supplier must, at all times, be an Australian incorporated entity. Further obligations to ensure there is an Australian presence may be included in the Agreement. For example, certain key personnel will be required to be located in Australia.</p>
<p><b>6 ICANN Agreement</b></p>	<p>The supplier must perform its obligations under the Agreement in a manner consistent / in accordance with the requirements under the ccTLD Sponsorship Agreement (.au) between ICANN and auDA dated 25 October 2001 (<b>ICANN</b></p>

Ref	Key Principle
	<p><b>Agreement</b>) and in a manner that ensures auDA can comply with its obligations under the ICANN Agreement.</p> <p>The supplier will have an ongoing obligation to enable auDA to fulfil its obligations under the ICANN Agreement to establish and maintain a data escrow arrangement in relation to the Registry Data.</p> <p>The supplier will be required to acknowledge that its rights under the Agreement will come to an end if the ICANN Agreement is terminated.</p> <p>The Agreement will confirm that the delegation to auDA under the ICANN Agreement is the exercise of a public right and that it:</p> <ul style="list-style-type: none"> <li>(a) is not an item of property (or property right); and</li> <li>(b) cannot be reassigned, except by ICANN.</li> </ul>
<p><b>7 New Registrations</b></p>	<p>auDA may introduce direct registration within .au (e.g. example.au), other domain spaces within .au, or any other additional domain name options. The Agreement will not restrict auDA's rights in relation to these domain name options in any way. For example, auDA may make these options available to another supplier and / or manage these options itself.</p>
<p><b>8 Supplier / Registrar Arrangements</b></p>	<p>The Agreement will set out the process for the supplier to enter into separate agreements with Registrars, including minimum terms that must be included in those agreements. This will include a requirement for the supplier to provide the Registrars with a domain name registration payment credit arrangement which enables a Registrar to continue to process domain name transactions when its account with the supplier is not in credit (on an interim basis).</p>
<p><b>9 Cooperation</b></p>	<p>The supplier must cooperate with auDA and any of its suppliers to enable services / deliverables to be delivered to auDA in a coordinated, effective and timely manner.</p>
<p><b>10 Registry Data</b></p>	<p>Registry data includes the contact information of the holders / applicants of domain names, technical and administrative contact information, data submitted by Registrars in electronic form and other data concerning particular registrations or nameservers maintained in electronic form in the registry database (<b>Registry Data</b>).</p> <p>No intellectual or other property rights exist in the Registry Data and the supplier must ensure that all Registry Data, registry servers (excluding agreed DNS servers) and all backups and escrow versions of the Registry Data are located in Australia at all times.</p> <p>The supplier must grant auDA access to the up-to-date Registry Data and all log information including extensible provisioning protocol (<b>EPP</b>) transactions, WHOIS queries and domain name system queries.</p> <p>Unless directed by auDA, the supplier must not transfer, sell or grant access to any Registry Data to any third party and may only use the Registry Data to perform its obligations under the Agreement.</p> <p>The Agreement will include robust security terms and a process for regular data security reviews / audits to assess if security risks are managed and mitigated</p>

Ref	Key Principle
	appropriately, and to identify / detect any unauthorised access, modification or disclosure of Registry Data or the registry systems.
<b>11 Security Requirements</b>	<p>The supplier must have an arrangement in place (acceptable to auDA) with the Australian Government, Attorney-General's Department's Computer Emergency Response Team (<b>CERT Australia</b>) and the Agreement will include ongoing obligations on the part of the supplier to engage with CERT Australia in relation to cyber security and data protection issues.</p> <p>The supplier must take all steps to protect the Registry Data, the EPP interface, the Registrar's registry portal, the WHOIS directory server and the domain name system server infrastructure against misuse, interference and loss, and from unauthorised access, modification or disclosure.</p> <p>The supplier will be obliged to act in accordance with the "Strategies to Mitigate Cyber Security Incidents" (known as 'Essential Eight') published by the Australian Signals Directorate.</p> <p>The Agreement will permit and set out the process by which auDA may conduct an independent audit of the supplier's compliance with the security requirements set out in the Agreement, including cooperation and assistance obligations on the part of the supplier.</p> <p>In addition to any ad hoc compliance reviews, auDA and the supplier must meet at least once every 3 months to review performance of the security requirements.</p>
<b>12 Personnel</b>	<p>The supplier must ensure that each of its personnel with access to the Registry Data and / or the registry completes all the background checks and screening processes as required by auDA.</p> <p>The supplier must review the access granted to its personnel to the Registry Data and / or the registry at least once every 3 months to determine if the access continues to be necessary to perform the supplier's obligations under the Agreement.</p>
<b>13 Software</b>	<p>The supplier must provide auDA with access to, copies of and rights to use all software and systems used to deliver services under the Agreement, including all enhancements to that software during the term of the Agreement, to enable auDA to:</p> <ul style="list-style-type: none"> <li>• review or conduct an independent audit of the supplier's compliance with its obligations under the Agreement (including security obligations); and</li> <li>• step-in to perform any services in accordance with the Agreement.</li> </ul> <p>The supplier must grant auDA an appropriate licence to use the software and systems (including any enhancements to that software) to the extent necessary to fulfil its obligations under the Agreement and enable auDA to operate / administer the registry and perform any services provided to the Registrars (including any new services developed by the supplier).</p>
<b>14 Governance Model</b>	<p>The Agreement will include a "Governance Model" setting out ongoing relationship and agreement management principles (including appointing representatives to any governance committee / board for this purpose). The Governance Model will include</p>

Ref	Key Principle
	regular governance meetings and reporting requirements, including quarterly security review meetings.
<b>15 Step-in Rights</b>	<p>If the supplier fails to perform its obligations under the Agreement, auDA may “step-in” to do anything it considers necessary to remedy such failure and / or undertake the services itself. The Agreement will set out these “step-in” rights, including obligations on the supplier to give effect to these rights.</p> <p>The supplier must do all things necessary to ensure auDA can successfully “step-in”.</p>
<b>16 Business Continuity &amp; Disaster Recovery Plan</b>	<p>The Agreement will include detailed business continuity and disaster recovery obligations, including the requirement to implement a business continuity and disaster recovery plan.</p> <p>The supplier must regularly review (at least once every 6 months) and maintain the currency of any plan. auDA will be able to test, review and request updates to any plan.</p>
<b>17 Emergency Transition Plan</b>	<p>The Agreement will include emergency transition obligations that detail the process for an urgent transition of services from the supplier to auDA or another third party (including an Emergency Back-End Registry Operator (<b>EBERO</b>)), if auDA believes the stability and security of the domain name system and the registry is at risk or a suspension / termination trigger event applies.</p> <p>The supplier will have an ongoing obligation to do all things necessary to enable auDA and / or an EBERO to transition in and perform critical registry functions at any time, including to cooperate and assist auDA and or the EBERO to conduct all appropriate transition readiness testing.</p> <p>The supplier must regularly review (at least once every 12 months) and maintain the currency of any plan. auDA will be able to test, review and request updates to any plan.</p>
<b>18 Suspension and Termination</b>	<p>The Agreement will contain a robust set of suspension and termination rights (on the part of auDA), including rights to terminate individual service schedules or components of a service schedule.</p> <p>Specific suspension / termination trigger events will include (amongst others) security related breach, un-remedied breach, change of control and insolvency / financial distress.</p> <p>The consequences of termination will also be set out in the Agreement and termination rights will be supported by transition related obligations on the part of the supplier.</p>
<b>19 Transition-in Plan</b>	<p>The Agreement will include “transition-in” obligations for the transition of services to the supplier and / or to the Agreement (if, and to the extent required, by auDA).</p> <p>The Agreement will also include provisions relating to a transition-in plan, a timetable for the completion of transition-in services, obligations on the supplier to achieve deliverable milestones and acceptance testing by auDA.</p>

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<b>20 Transition-out Plan</b>	<p>The Agreement will include “transition-out” obligations for the transition of services (or service components) from the supplier to auDA or to another third party nominated by auDA. This will include a requirement for a “transition-out” plan.</p> <p>The supplier must regularly review and maintain the currency of any plan. auDA will be able to test, review and request updates to any plan.</p> <p>The supplier will be required to ensure continuity in the provision of services to auDA to the service levels specified in the Agreement during any transition-out process including ensuring an orderly and staged transition of the relevant services.</p>
<b>21 Third party providers</b>	<p>auDA acknowledges that the supplier may need to use third party providers to provide the service. If this is required, the supplier must obtain auDA’s prior approval at the time of contract and as any further third party services are procured during the term of the Agreement. The supplier will always remain liable for the performance of any of its third party providers.</p>
<b>22 Compliance</b>	<p>The supplier and its personnel must comply with all applicable laws and auDA published policies. The supplier must comply with any new auDA published policies within 90 days unless otherwise agreed.</p>
<b>23 Warranties</b>	<p>The Agreement will include a standard set of warranties in favour of auDA.</p>
<b>24 Limitation of Liability</b>	<p>The Agreement will include appropriate exclusions / limitations of liability on the part of auDA and indemnity protection in favour of auDA.</p>
<b>25 General Provisions</b>	<p>The Agreement will include general provisions relating to confidential information, privacy, insurance and dispute resolution. The supplier’s rights under the Agreement will not be assignable and the Agreement will be governed by the laws of Victoria, Australia.</p>

## Proposed Structure of Registry Licence Agreement

