

K&L GATES

# auDA Registrar Agreement

.au Domain Administration Limited  
ACN 079 009 340

and

The Registrar described in Item 1 of Schedule A

**K&L Gates**  
Melbourne office  
Ref: 7392316.00001

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# auDA Registrar Agreement

## Date

## Parties

1. **.au Domain Administration Limited** ACN 079 009 340 of Level 17, 1 Collins Street Melbourne VIC 3000 (**auDA**)
2. The person described in Item 1 of Schedule A (**Registrar**)

## Background

- A. auDA is a non-profit organisation that is responsible for the administration of the .au ccTLD pursuant to the Australian Government Endorsement and the ICANN Sponsorship Agreement.
- B. auDA is committed to exercising its responsibilities to the Registrar and the Australian public in an open and transparent manner, and to apply standards and policies in a way which are not arbitrary, unjust or inequitable.
- C. If the parties are parties to a Prior Agreement, then they acknowledge that the Registrar currently:
  - (a) is auDA Accredited;
  - (b) provides Registrar Services in respect of Designated Namespaces; and
  - (c) has access to the Registry,in accordance with the terms of the Prior Agreement.
- D. The parties wish to:
  - (a) terminate the Prior Agreement (if any); and
  - (b) document the terms on which the Registrar will provide Registrar Services and access the Registry on and from the date of this Agreement in respect of the .au ccTLD and all other Designated Namespaces.

## Agreed terms

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Agreement:

**.au ccTLD** means the country code Top Level Domain for Australia;

**Accreditation Certificate** means a certificate in writing issued by auDA to the Registrar which certifies that the relevant Registrar is auDA Accredited;

**Accreditation Criteria** means the criteria set out in Schedule C, together with any other criteria notified by auDA to the Registrar from time to time which auDA deems is

reasonably necessary for the Registrar to be auDA Accredited under the terms of this Agreement;

**Affiliate**, in relation to a person, means:

- (a) any officer, manager, employee, agent or consultant of the person (**Relevant Person**); and
- (b) any Relative (including a spouse, domestic partner, immediate family member or household member), or spouse of such a Relative of a Relevant Person;

**Agreement** means this agreement including the background, any schedules and any annexures;

**Approved Application** has the meaning given in clause 7.3(a)(i);

**auDA Accreditation** means the process by which the relevant Registrar is issued with an Accreditation Certificate in accordance with clause 11;

**auDA Accredited** means a Registrar that has:

- (a) satisfied the Accreditation Criteria;
- (b) satisfactorily passed the Interface Tests, in respect of the Registry Data and/or Designated Namespaces (as required by auDA at the relevant time); and
- (c) been issued with an Accreditation Certificate;

**auDA Constitution** means the constitution of auDA as adopted from time to time in accordance with its terms and published on the auDA Website;

**auDA Website** means <https://www.ada.org.au/>, or any other website auDA adopts as its official website from time to time during the Term;

**Australian Consumer Law** means the provisions set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*;

**Australian Government Endorsement** means the Australian Government's endorsement of auDA as the appropriate organisation to hold the delegation of authority by ICANN for administrative authority of the .au ccTLD;

**Australian Presence** has the meaning given in the Licensing Rules;

**Authorisation** means:

- (a) an authorisation, consent, right, certificate, licence, permit, declaration, exemption, notarisation or waiver, however described (including any renewal or partial renewal); and
- (b) any authorisation or consent regarded as given by a Regulatory Authority where, in relation to something that can be prohibited or restricted by Law if the Regulatory Authority takes action within a specified period, that period expires without that action being taken;

**Background Material** means any Information or material in which a party holds Intellectual Property Rights that are provided (whether before or after the date of this Agreement) by or on behalf of that party to the other party in the course of or in relation to fulfilling its obligations or exercising its rights under this Agreement;



**Business Day** means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia;

**Claim** includes a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a Third Party or a party to this Agreement or otherwise;

**Commencement Date** means the date of this Agreement;

**Commissioner** means the Information Commissioner appointed under the *Australian Information Commissioner Act 2010 (Cth)*;

**Confidential Information** means:

- (a) Information submitted or disclosed by a party during negotiations, discussions and meetings relating to this Agreement (other than the final terms of this Agreement itself);
- (b) Information that at the time of disclosure by a Disclosing Party is identified to the Receiving Party as being confidential; and
- (c) all other Information belonging or relating to a Disclosing Party, or any Related Entity of that Disclosing Party, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or which the Receiving Party knows, or ought reasonably to be expected to know, is confidential to that Disclosing Party or any Related Entity of that Disclosing Party;

**Consent** has the meaning given to it in clause 12.3(g);

**Consequential Loss** means any indirect, incidental, special or consequential loss or damage, pure economic loss damages and exemplary or punitive damages, including loss or damage in relation to loss of use, loss of production, loss of revenue, loss of profits or anticipated profits, loss of business, loss of business opportunity, loss of contract, loss of reputation or opportunity, business interruptions of any nature, loss of data, data corruption rectification costs or loss or damage resulting from wasted management time;

**Contract Year** means the 12 month period from 1 July to 30 June;

**Corporate Transaction** means:

- (a) the Registrar's amalgamation, merger or consolidation with or into any other person; and/or
- (b) the effecting of any contract, arrangement or understanding under which:
  - (i) the Registrar's assets or liabilities are transferred to or assumed by another person; or
  - (ii) another person's assets or liabilities are transferred to or assumed by the Registrar,

whether by dealing in the shares of the Registrar or any other person, the sale and purchase (or otherwise the transfer) of assets, or any other similar transaction;

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

**Days** means calendar days;

**Default Notice** has the meaning given to it by clause 33.3;

**Designated Namespaces** means the second level domain name spaces set out, referred to, or otherwise described, in Item 2 of Schedule A;

**Developed Material** means any Information and material created by one party at the written request of another party, or developed by the parties together, for the purpose of this Agreement (and agreed in writing by the parties);

**Disclosing Party** means the party to whom Information belongs or relates;

**Dispute** has the meaning given in clause 32.1;

**DNS** means the domain name system;

**Domain Name** means a unique identifier consisting of alphanumeric characters registered in a Designated Namespace and recorded, or to be recorded, in WHOIS Data;

**Effective Control** means, subject to the Published Policies:

- (a) in respect of a company incorporated pursuant to the provisions of the Corporations Act:
  - (i) control of a majority of the board of directors; or
  - (ii) control of more than 50% of the voting rights that can be voted in a general meeting of the members; or
  - (iii) control of the disposal of more than 50% of the issued share capital,

and includes the exercise of such control by a person as a result of that person having a relevant interest (as defined in the Corporations Act) so that such person, either alone or with an associate (as defined in the Corporations Act) of that person can exercise the relevant control; and
- (b) in all other cases, has the meaning attributed to the term by auDA in the Published Policies;

**Eligible Data Breach** has the meaning given in the Privacy Laws;

**EPP** means the 'Extensible Provisioning Protocol', being an XML based protocol used by registrars and registries to manage Domain Names and other elements in a shared registry system environment;

**Event of Default** has the meaning given in clause 33.2;

**Fees** means the fees payable by the Registrar to auDA each Contract Year as set out in Item 3 of Schedule A;

**Financial Market** has the meaning given to that term in the Corporations Act;

**Force Majeure Event** means any act, event or cause, other than a lack of funds, including:

- (a) an act of God, peril of the sea, accident of navigation, war, sabotage, riot, act of terrorism, insurrection, civil commotion, national or State emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm

or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the party concerned), epidemic, pandemic, public health emergency, quarantine, disruptions to supply chain, radiation or radioactive contamination; or

- (b) an action or inaction of a Regulatory Authority, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order,

to the extent that the act, event or cause directly or indirectly results in a party being prevented from or delayed in performing one or more of its material obligations under this Agreement (other than a payment obligation) and that act, event or cause is beyond the reasonable control of that affected party;

**Further Term** has the meaning given in clause 5.2;

**Government Agency** means any government or any public, statutory, or judicial body, entity, department or authority established under a law of the Commonwealth of Australia, or State or Territory of the Commonwealth of Australia;

**GST** has the same meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

**ICANN** mean the Internet Corporation for Assigned Names and Numbers;

**ICANN Sponsorship Agreement** means the *.au ccTLD Sponsorship Agreement* executed on 25 October 2001 by ICANN and auDA, pursuant to which ICANN recognises auDA as the manager of the .au ccTLD as contemplated by the Australian Government Endorsement;

**Information** means any information, whether oral, graphic, electronic, written or in any other form, including:

- (a) forms, memoranda, letters, specifications, processes, procedures, statements, formulae, technology, inventions, trade secrets, research and development information, know how, designs, plans, photographs, microfiche, business records, notes, accounting procedures or financial information, sales and marketing information, names and details of customers, suppliers and agents, employee details, reports, drawings and data;
- (b) copies and extracts made of or from that information and data, whether translated from the original form, recompiled, partially copied, modified, updated or otherwise altered; and
- (c) samples or specimens (if any) disclosed either before or after execution of this Agreement;

**Infringement Claim** has the meaning given to it in clause 28.5(d);

**Initial Expiration Date** means 30 June 2022;

**Initial Period** has the meaning given to it in clause 32.2;

**Initial Term** means the period starting on the Commencement Date and ending on the Initial Expiration Date;

**Insolvency Event** means, in respect of a party, any one or more of the following events or circumstances:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;
- (b) having a controller (as that term is defined in the Corporations Act) or analogous person appointed to it or any of its property;
- (c) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the Corporations Act or any other Law;
- (d) seeking protection from its creditors under any Law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors;
- (e) any analogous event or circumstance to those described in paragraphs (a) to (d) under any Law; or
- (f) taking any step or being the subject of any action that is preparatory to, or reasonably likely to result in, any of the above,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party (which approval is not to be unreasonably withheld or delayed);

**Intellectual Property Rights** means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including in respect of:

- (a) patents, inventions, designs, copyright, trade marks, brand names, goodwill, product names, rights in circuit layouts, plant breeder's rights, know how, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals and extensions of these rights;

**Interface Tests** means the registrar/registry interface and other tests conducted by auDA that ensure the Registrar's system can properly interface with the Registry Operator's system for the purpose of processing Registry Data and providing the Registrar Services;

**ISO Compliance** has the meaning given to it in clause 15.1(b)(ii);

**ISS Compliance** has the meaning given to it in clause 15.1(b)(i);

**Key Validation and Integrity Requirements** means any provisions contained in a Published Policy that relate to:

- (a) the requirements of the Registrar to verify and/or validate the identity of any person or Registrant;
- (b) the requirements of the Registrar to have an Australian Presence (or which change what constitutes an Australian Presence);
- (c) the eligibility criteria for licensing the DNS in respect of a Designated Namespace; or

(d) the integrity, security and stability of the DNS or the Registry;

**Law** means:

- (a) principles of law or equity established by decisions of courts in Australia;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a Regulatory Authority; and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia that is relevant to the provision of Registrar Services, that have the force of law;

**Liability** means all liability, Loss, damage, cost, and expense, charge, outgoing or payment including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties, for which a party is liable, whether or not yet paid or met by that party;

**Licence** means a non-exclusive, non-transferable, revocable licence issued by auDA to a person or entity to use the DNS using a Domain Name for a specified period of time in accordance with the terms of the Licence Agreement;

**Licence Agreement** means an agreement to be entered into, or renewed, between the Registrar and each Registrant which sets out the terms on which the relevant Registrant is granted a Licence, including any terms prescribed by this Agreement;

**Licence Application** means any application by a Registrant for a Licence, or the renewal of an existing Licence;

**Licensing Rules** means the document titled ".au Domain Administration Rules – Licensing" released for public consultation on 21 April 2019 and ratified by auDA after that date (as amended from time to time);

**Loss** means all losses, liabilities, fines, penalties, damages, claims and interest, and all related costs and expenses (including any and all legal costs (on a full indemnity basis), and costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

**Payment Period** means each 12 month period starting 1 July and ending the following 30 June, during the Term;

**Personal Information** means information or an opinion (including Information or an opinion forming part of a database) that the Registrar collects, accesses, uses, discloses and otherwise handles in the course of or in connection with this Agreement or the performance of the Registrar Services, whether true or not and whether recorded in a material form or not, about an identified individual or an individual who is reasonably identifiable, and includes without limitation Sensitive Information and also anything defined as personal information in the Privacy Laws;

**Personnel** means, in relation to a party, the officers, employees, contractors, agents, sub-contractors and professional advisers of that party, and includes any officers, employees, contractors, agents and sub-contractors of any Sub-contractor;

**Prescribed Rate** means the rate that is 2% per annum above the rate fixed from time to time under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*;

**Prior Agreement** means any agreement, arrangement or understanding between auDA and the Registrar entered into, or agreed to, prior to the Commencement Date in respect of the provision of some or all of the Registrar Services as set out, or referred to, in Item 1 of Schedule A;

**Privacy Act** means the *Privacy Act 1988 (Cth)*;

**Privacy Breach** means an actual, probable or reasonably suspected corruption, interference or loss, or unauthorised access, use, modification, processing, disclosure or other misuse of Personal Information, including without limitation a serious data breach or an Eligible Data Breach within the meaning of the Privacy Law;

**Privacy Laws** means any applicable law, statute, regulation, ordinance, code, standard or requirement of any Government Agency which relates to privacy, including without limitation the Privacy Act and the Australian Privacy Principles under the Privacy Act, and the *Spam Act 2003 (Cth)*, the *Do Not Call Register Act 2006 (Cth)* and all other Laws which relate to the protection of Personal Information relevant to the parties as amended from time to time;

**Published Policies** means any rules, policies, procedures, plans or other specifications published by auDA from time to time in accordance with its constitution that are relevant to the provision of Registrar Services, including the:

- (a) Licensing Rules;
- (b) Registrar Rules;
- (c) .au Dispute Resolution Policy; and
- (d) Registrar Accreditation Policy;

**Receiving Party** means the party to whom Information is disclosed or who possesses or otherwise acquires Information belonging or relating to a Disclosing Party;

**Rectification Notice** has the meaning given in clause 33.1;

**Registrant** means the holder of a Licence (or any agent of such holder or applicant), as recorded in the Registry Data at the relevant time;

**Registrant Data** means the data in respect of a Registrant which the Registrar is required to submit to the Registry under clause 9 and which is maintained on the Registry;

**Registrar Equipment** means any hardware, equipment, machinery components, instruments or accessories owned or used by the Registrar;

**Registrar Facilities** means any applications, services, network connections or communications together with any relevant documentation used by the Registrar;

**Registrar Rules** means the document titled ".au Domain Administration Rules – Registrar" as ratified by auDA and amended from time to time;

**Registrar Services** means any and all services to be provided by the Registrar in respect of Registry Data, .au ccTLD and any other Designated Namespaces as prescribed, or otherwise authorised, by auDA under the terms of this Agreement, which includes the following:

- (a) applying to the Registry for Licences in respect of Designated Namespaces on behalf of a person;

- (b) providing all associated services to Registrants, including services related to the maintenance, delegation, creation, transfer, modification, renewal and cancellation of Licences and/or Licence Agreements and the administrative management of all related Information (including Registrant details);
- (c) checking and validating all Information provided for Registrants and Licence Applications to ensure such applicants and applications comply with, and satisfy, all relevant criteria prescribed in this Agreement, the Licensing Rules and other Published Policies; and
- (d) any other services, reasonably required, or contemplated, by the Published Policies in order to assist with, and provide for, the efficient management of the .au ccTLD in accordance with this Agreement;

**Registrar Systems** means the Registrar Equipment, the Registrar Facilities and any operating system or any permanent replacement equipment;

**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 Namespaces;

**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;

**Registry Connection** means a connection to the Registry as part of the Registrar's auDA Accreditation and accessed via EPP and/or any other web administrative tool;

**Registry Data** means all data maintained in electronic form in the Registry, including without limitation data related to:

- (a) Zone Files;
- (b) WHOIS;
- (c) Registrant Data;
- (d) technical and administrative contact Information; and
- (e) particular registrations or nameservers maintained in electronic form in the Registry;

**Registry Operator** means the person or entity that is accredited or licensed by auDA to maintain and operate the Registry or to provide Registrar Services in relation to the Registry from time to time, which as at the date of this Agreement is Afilias Australia Pty Ltd ACN 623 428 384;

**Registry Operator Accredited** means being recognised by the Registry Operator as having satisfied all relevant accreditation criteria to access the Registry as set out in the Registry-Registrar Agreement;

**Registry-Registrar Agreement** means the agreement between the Registrar and the Registry described in clause 12.2;

**Regulatory Authority** means:

- (a) any Government Agency; or

(b) any independent authority invested with responsibility under an applicable Law;

**Rejected Application** has the meaning given in clause 7.3(b)(i);

**Related Entity** has the meaning given in the Corporations Act;

**Relative** has the meaning given in the Corporations Act;

**Reliable and Independent Electronic Data** has the meaning given in the Registrar Rules;

**Security Breach** means an incident, including any unauthorised, unlawful or dishonest conduct or activities relating to the Registrar Services or the Registry Data, resulting in loss or unauthorised access to data, applications, networks, software and systems or otherwise affecting the Registrar or any part of its systems, including but not limited to misuse, interference, loss, deletion, corruption, unauthorised access, destruction, modification or disclosure relating to the Registrar Systems, Registrar Services or the Registry Data, and including any breach of the Registrar's security measures;

**Sensitive Information** has the meaning given in the relevant Privacy Law;

**Special Licensing Terms** means any terms set out in Item 1 of Schedule A;

**Step-in Event** means the occurrence of any one or more of the following:

- (a) the Registrar commits a breach of this Agreement which, in the reasonable opinion of auDA can, does or will have a materially adverse effect on the security, integrity or stability of the DNS or the Registry;
- (b) an Event of Default in relation to the Registrar;
- (c) auDA becomes entitled to direct the Registry Operator to suspend the Registrar's access to the Registry pursuant to clause 13;
- (d) the Registrar terminates this Agreement in accordance with clause 33.6;
- (e) auDA becomes entitled to terminate this Agreement in accordance with clause 33.7; or
- (f) a Force Majeure Event occurs affecting the ability of the Registrar to perform its obligations under this Agreement;

**Step-in Rights** means auDA's rights, in accordance with clause 23, to step-in and take control of the provision of all or any part of the Registrar Services on or after the occurrence of a Step-in Event;

**Sub-contractor** has the meaning given in clause 22.1(a), and includes any person appointed by the Registrar to provide and/or undertake some or all of the Registrar Services, on behalf of the Registrar, in accordance with the terms of this Agreement;

**Sub-contractor Agreement** has the meaning given in clause 22.2;

**Term** means the Initial Term together with any Further Term;

**Third Party** means a person who is not a party to this Agreement;

**Top Level Domain** means the highest level in the hierarchical DNS on the internet, which in Australia means the .au country code, and **TLD** has a corresponding meaning;



**Validation Plan** means the plan prepared, maintained and implemented by the Registrar to validate:

- (a) the identity of a Registrant; and
- (b) that the Registrant has an Australian Presence,

as contemplated by clause 7.2;

**WHOIS** means the service used to provide a public information service in relation to data in the Registry, including any supervening protocol such as the Registration Data Protocol (RDAP);

**WHOIS Data** means an extract of the Domain Name and Designated Namespace data which is made available to the public through a WHOIS service provided as part of the Registrar Services; and

**Zone File** means a data file that contains the mapping between each Domain Name in the .au ccTLD (including each Designated Namespace) and the internet addresses of computers that can resolve sub-domains of the Domain Name to physical internet addresses.

## 1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) headings are used for convenience only and do not affect the interpretation of this Agreement;
- (d) other grammatical forms of a defined word or expression have a corresponding meaning;
- (e) a reference to a document is to that document as amended, novated, supplemented, extended or restated from time to time;
- (f) a reference to a party is to a party to this Agreement and includes that party's executors, administrators, successors, permitted assigns and permitted substitutes;
- (g) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (h) "person" includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority, and any other body or entity whether incorporated or not;
- (i) "month" means calendar month and "year" means 12 consecutive months;
- (j) a reference to a thing (including a right) includes a part of it, but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (k) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) is to that statute as amended, consolidated, re-enacted or replaced from time to time;

- (l) "include", "for example" and any similar expressions are not used, and must not be interpreted, as words of limitation;
- (m) money amounts are stated in Australian currency unless otherwise specified;
- (n) a reference to a time of day is to that time in Melbourne, Victoria;
- (o) a reference to any agency or body that ceases to exist, is reconstituted, renamed or replaced, or has its powers or functions removed (**defunct body**) is to the agency or body that performs most closely the powers or functions of the defunct body;
- (p) any provision in this Agreement which is in favour of more than one person benefits all of them jointly and each of them severally; and
- (q) any provision in this Agreement which binds more than one person binds all of them jointly and each of them severally.

## **2. Prior Agreement**

### **2.1 Application of clause**

This clause 2 applies if the parties are parties to any Prior Agreement as set out or referred to in Item 1 of Schedule A. If there are no Prior Agreements, then clause 2 (other than this clause 2.1) will have no force or effect.

### **2.2 Termination of Prior Agreement**

Subject to clause 2.3, the parties agree that:

- (a) the Prior Agreement is terminated;
- (b) this Agreement supersedes and replaces all earlier registrar agreements between the Registrar and auDA, including the Prior Agreement, and all such agreements cease to have any further force or effect immediately on and from the Commencement Date; and
- (c) any clauses in the Prior Agreement relating to minimum notice periods for termination, and consequences in respect of termination, of the Prior Agreement have no effect and such termination does not constitute any breach of the Prior Agreement by either party.

### **2.3 Accrued obligations**

Notwithstanding clause 2.2, all obligations that have accrued and remain undischarged as at the Commencement Date remain unaffected and must still be performed by the relevant party.

### **2.4 Existing Licences and Licence Agreements**

All Licences granted, and Licence Agreements entered into, by the Registrar either on or before the Commencement Date pursuant to the terms of, and in accordance with, the Prior Agreement:

- (a) remain valid and in force on and from the Commencement Date; and
- (b) become subject to the terms and requirements of this Agreement as relevant to such Licences and Licence Agreements on and from the Commencement Date.

### **3. Registrar to be registered in Australia and otherwise meet Special Licensing Terms**

#### **3.1 Australian incorporated or registered entity**

- (a) Subject to clause 3.2, the Registrar must be at the Commencement Date, and continue to be during the Term, an Australian incorporated entity or otherwise registered to carry on business in Australia in accordance with the applicable Laws.
- (b) The Registrar acknowledges that:
  - (i) if it is an Australian company, it must hold an Australian Company Number (**ACN**) and an Australian Business Number (**ABN**); or
  - (ii) if it is a non-Australian domiciled company, it must hold an Australian Registered Body Number (**ARB**N) and an ABN, and must have an Australian address for service of notices for the purposes of this Agreement.
- (c) The Registrar must be registered with the Australian Taxation Office (**ATO**) for Goods and Services Tax (**GST**).

#### **3.2 Transition period of requirements**

If the Registrar was party to a Prior Agreement immediately prior to the Commencement Date, then auDA acknowledges and agrees that:

- (a) the requirements of this clause 3 do not apply to the Registrar until the first anniversary of the Commencement Date; and
- (b) the Registrar may operate and perform its obligations under this Agreement without being considered to be in breach of this clause 3 until expiry of the first Contract Year.

#### **3.3 Special Licensing Terms**

If there are any Special Licensing Terms that apply to the Registrar, the Registrar hereby acknowledges and agrees that as at the Commencement Date and on each day during the Term, it will be able to meet the requirements, and comply with the relevant provisions of such Special Licensing Terms.

### **4. Australian Government Endorsement and ICANN obligations**

#### **4.1 Endorsement and recognition**

The Registrar acknowledges that by virtue of the Australian Government Endorsement and the ICANN Sponsorship Agreement, auDA is endorsed and recognised as the holder of the delegation of authority by ICANN for administrative authority of the .au ccTLD (**Endorsement and Delegation**).

#### **4.2 Endorsement is not property**

The parties acknowledge and agree that the Endorsement and Delegation is the exercise of public rights and are not items of property and cannot be assigned, except by the Australian Government and ICANN.

### 4.3 Performance of obligations

Without limiting any other provision of this Agreement, the Registrar must perform its obligations under this Agreement in a manner that:

- (a) ensures the integrity, stability and resilience of the DNS and the .au ccTLD;
- (b) promotes consumer protection, fair trading and competition; and
- (c) promotes the timely resolution of disputes and complaints in respect of the domain name system.

### 4.4 Agreement subject to endorsement and delegation

- (a) Pursuant to clause 33.7, the parties acknowledge and agree that auDA may immediately terminate this Agreement by notice in writing if either:
  - (i) the Australian Government Endorsement is revoked or terminated for any reason; or
  - (ii) the ICANN Sponsorship Agreement is terminated and is not succeeded or replaced by a new .au delegation or sponsorship agreement between auDA and ICANN.
- (b) For the avoidance of doubt, if this Agreement is terminated pursuant to clause 4.4(a), the Registrar acknowledges that auDA will not be liable for any Claim, cost, Loss, expense or Liability, (whether direct, indirect or consequential) that the Registrar (or any Registrant) may suffer, sustain or incur as a result of such termination.

## 5. Term

### 5.1 Initial Term

This Agreement commences on the Commencement Date, and unless otherwise extended or terminated in accordance with its terms, expires on the Initial Expiration Date.

### 5.2 Further Term

auDA may extend this Agreement for a further term of 2 years (**Further Term**), by giving the Registrar no less than 90 Days' notice in writing prior to the Initial Expiration Date.

## 6. Registrar Services

### 6.1 Delivery of Registrar Services

- (a) The Registrar must provide the Registrar Services:
  - (i) in accordance with the terms of this Agreement, including any terms and conditions imposed on its auDA Accreditation;
  - (ii) with all due care, skill and diligence;
  - (iii) in a timely, efficient and professional manner;
  - (iv) in accordance with all applicable Laws; and

- (v) employing techniques generally employed in the industry (to the extent that such techniques do not otherwise derogate from its obligations under clauses 6.1(a)(i) to 6.1(a)(iv) (inclusive)).
- (b) The Registrar must not submit a Licence Application to the Registry pursuant to clause 7, if the Licence Application does not comply with the terms of this Agreement.

## 6.2 Compliance with Published Policies

- (a) Without limiting clause 6.1(a) but subject to clause 6.2(b), the Registrar must comply with all Published Policies, as if they were incorporated into, and form a part of, this Agreement.
- (b) If at any time during the Term auDA:
  - (i) introduces new Published Policies; or
  - (ii) makes changes to any existing Published Policy,
 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 existence of the new or changed Published Policies.
- (c) auDA may notify the Registrar of the new or changed Published Policies by:
  - (i) following the procedures described in clause 35 (Notices); or
  - (ii) posting the new or changed Published Policies on the auDA Website.
- (d) If the Registrar does not comply with any new or changed Published Policies within the 30 day period (referred to in clause 6.2(b)), this failure alone will not cause the Registrar to be in breach of this Agreement, unless the failure to comply relates to a breach of the Key Validation and Integrity Requirements, in which case, auDA may suspend the Registrar's access to the Registry (or any part of it) in accordance with clause 13 as a result of any such failure to comply and until the Registrar is compliant with the new or changed Published Policies (to auDA's satisfaction).

## 6.3 Inconsistencies

In the event of any inconsistency between the provisions of this Agreement and the terms of any Published Policies, then to the extent of the inconsistency, the documents will be interpreted in the following order of priority:

- (a) the Published Policies (highest level of priority) and in respect of inconsistent Published Policies, in the following order:
  - (i) Licensing Rules; and
  - (ii) Registrar Rules; and
- (b) this Agreement.

## 6.4 No limitation

Subject to clause 6.3, nothing in this clause limits or otherwise affects the Registrar's obligations as provided elsewhere in this Agreement.

## 7. Applications for Licences

### 7.1 Consideration by Registrar

- (a) On receipt of a Licence Application, the Registrar must:
  - (i) consider whether the Licence Application complies with this Agreement, together with the relevant Published Policy (including the Licensing Rules); and
  - (ii) validate the Information provided to the Registrar in the relevant Licence Application.
- (b) For the purposes of this clause 7.1, before submitting any Licence Application to the Registry Operator, the Registrar must (among other things) satisfy itself that:
  - (i) the identity of the Registrant has been validated using the sources set out in clause 7.1(c);
  - (ii) the Registrant has a legitimate Australian Presence; and
  - (iii) the Registrant satisfies all applicable eligibility and domain name allocation rules for the relevant Designated Namespace.
- (c) The Registrar must have in place the appropriate systems and processes to enable it to validate the identity of a Registrant and confirm its Australian Presence using:
  - (i) Reliable and Independent Electronic Data; or
  - (ii) valid identity documents that auDA has nominated and specified in the Registrar Rules as valid for the purposes of this clause.
- (d) If a Registrar has validated the identity of a Registrant and confirmed its Australian Presence on or after the Commencement Date in accordance with the validation process set out in clauses 7.1(b) and 7.1(c), then unless otherwise required under this Agreement, the Registrar is not required to undertake the validation process in clauses 7.1(b) and 7.1(c) again for that person or Registrant in respect of any subsequent Licence Applications during the Term.
- (e) Subject to clauses 7.1(f) and 7.1(g), the Registrar may determine, acting reasonably, which of the sources of Reliable and Independent Electronic Data it will use for the purposes of clause 7.1(b) and 7.1(c)(i), provided the Registrar has satisfied itself (acting reasonably) that, having regard to the following factors, such Reliable and Independent Electronic Data is appropriate for the purposes of this Agreement:
  - (i) the accuracy of the Information provided to or accessed by the Registrar;
  - (ii) the database's security policies and procedures in place with respect to the Information provided to or accessed by the Registrar;
  - (iii) the content of the Information provided to or accessed by the Registrar, including the comprehensiveness of such Information;
  - (iv) whether the Information has been verified from a reliable and independent source;

- (v) whether the Information is maintained by a government body or pursuant to legislation; or
- (vi) whether the Information can be additionally authenticated by any other source.
- (f) Notwithstanding clause 7.1(c), auDA may specify the Reliable and Independent Electronic Data, or particular identity documents, that the Registrar is required to use in undertaking the processes required by clauses 7.1(b) and 7.1(c) in respect of any particular Designated Namespace(s).
- (g) If auDA nominates specific data sources as Reliable and Independent Electronic Data or identity documents for a particular Designated Namespace pursuant to clause 7.1(f), then the Registrar must use only those data sources or identity documents in undertaking the validation process as set out in clauses 7.1(b) and 7.1(c) to the extent a relevant Licence Application relates to the Designated Namespace.

## 7.2 Validation Plan

- (a) Without limiting clause 7.1, the Registrar must prepare and send to auDA for approval, within 6 months following the Commencement Date, a Validation Plan that sets out the Registrar's processes and procedures to validate the identity and Australian Presence of a Registrant, including the specific Reliable and Independent Electronic Data or identity documents that will be used by the Registrar for those purposes, in respect of the validation process set out in clause 7.1, for the Term.
- (b) auDA will, within a reasonable period of time (not to exceed 30 Days), review the Validation Plan and either notify the Registrar in writing that the Validation Plan is approved, or of any changes to the Validation Plan that are required by auDA.
- (c) The Registrar must make any changes to the Validation Plan that are required by auDA pursuant to clause 7.2(b) within 7 Days of receipt of auDA's written notification requiring such changes, and submit the updated Validation Plan to auDA for approval.
- (d) If auDA does not approve the Validation Plan (or any updated Validation Plan pursuant to clause 7.2(f)(iii)) following the process in clauses 7.2(a) to 7.2(c) (inclusive) due to the Registrar failing to take the necessary steps to change the Validation Plan as required by auDA pursuant to clauses 7.2(b) and 7.2(c) (inclusive), auDA may suspend the Registrar from access to the Registry (or any part of it) in accordance with clause 13.1(e).
- (e) The Registrar must implement and maintain the Validation Plan once it is approved in writing by auDA.
- (f) Once the Validation Plan is approved by auDA, the Registrar must:
  - (i) comply with the Validation Plan at all times during the Term;
  - (ii) only alter the Validation Plan if required to in accordance with clause 7.2(f)(iii);
  - (iii) update the Validation Plan within 5 Days where there is a change to any data source being used by the Registrar to undertake the validation process set out in clause 7.1 (such as a database or service being used by the

Registrar no longer being available), and provide the updated Validation Plan to auDA within 5 Days of making such change for auDA to review in accordance with the process set out in clauses 7.2(b) and 7.2(c); and

- (iv) ensure that the Validation Plan is promptly implemented, continuously maintained, and made available to auDA for inspection on auDA's request.

### 7.3 Assessment of Licence Applications

If the Registrar:

- (a) is satisfied that a Licence Application complies with this Agreement then the Registrar must:
  - (i) approve the Licence Application (**Approved Application**); and
  - (ii) enter into a Licence Agreement as contemplated by clause 7.4; or
- (b) is not satisfied that a Licence Application complies with this Agreement, the Registrar must:
  - (i) reject the Licence Application (**Rejected Application**); and
  - (ii) not enter into a Licence Agreement with the relevant Registrant in respect of the Domain Name set out in the applicable Licence Application and notify the relevant Registrant of the Rejected Application as contemplated by clause 7.6.

### 7.4 Approved Licence Applications

The Registrar must, in relation to each Approved Application:

- (a) ensure that the Registrant enters into, and is bound, by a Licence Agreement in respect of the Approved Application; and
- (b) submit the Registrant Data relevant to the Approved Application to the Registry in accordance with clause 9.

### 7.5 Final check by Registry Operator

The Registrar acknowledges that even if it has approved an Approved Application, the Approved Application may still be rejected by the Registry Operator following its completion of final security and integrity checks.

### 7.6 Rejected Applications

The Registrar must, for each Rejected Application, notify the Registrant that the Rejected Application has been rejected.

### 7.7 Certificate of registration

Once Registrant Data from an Approved Application is accepted by the Registry and the Registry Operator, or placed in the Registry, the Registrar must issue a certificate (in a form prescribed or otherwise approved by auDA) that confirms that a Licence has been issued to the successful Registrant.



## **8. Licence Agreements**

### **8.1 Licence Agreement**

The Registrar must:

- (a) enter into a binding and enforceable Licence Agreement with each Registrant to whom it provides Registrar Services in respect of an Approved Application;
- (b) comply with the terms of each Licence Agreement; and
- (c) where appropriate, do all things reasonably necessary to procure that each Registrant complies with the terms of its Licence Agreement.

### **8.2 Mandatory Licence Agreements provisions**

Each Licence Agreement must:

- (a) be consistent with the terms of this Agreement and each Published Policy;
- (b) include the provisions set out in Schedule B;
- (c) comply with all applicable Laws (including the terms of any Published Policy that are relevant to a Registrant);
- (d) include, in a prominent location, a summary of the main provisions which are relevant to the Registrant with a view to ensuring compliance with, and no derogation from, the unfair contract terms regime in the Australian Consumer Law.

### **8.3 Make information available to Registrant**

The Registrar must, at auDA's direction, inform its Registrants by email about new or changed Published Policies relating to the Licensing Rules or Registrar Services

### **8.4 Enforcement for the benefit of auDA**

The parties acknowledge and agree that:

- (a) the Registrar, in performing the Registrar Services in accordance with a Licence Agreement, holds all rights, benefits, duties and obligations under such Licence Agreement (**Licence Agreement Rights**) on its own behalf, and for the benefit of, auDA; and
- (b) auDA may direct the Registrar to enforce any Licence Agreement Right on auDA's behalf, and for auDA's benefit, notwithstanding that auDA is not party to the Licence Agreement.

For the purposes of the enforcement rights contemplated by clause 8.4(b), the Registrar agrees that any obligation corresponding to the Licence Agreement Rights is taken to be owed directly by the relevant Registrant to auDA.

## 9. Registry Data and Registrant Data

### 9.1 Data to be submitted to Registry

For each Approved Application, the Registrar must promptly submit to the Registry Operator, or update the Registry Data operated by the Registry Operator, all mandatory information required under the Registry Access Protocol from time to time.

### 9.2 Updated Registrant Data

The Registrar must, within 2 Days of receiving updated Registrant Data from a Registrant, update the Registry with such updated Registrant Data.

### 9.3 Access to Registry Data and Registrant Data

- (a) The Registrar:
  - (i) must not sell or otherwise grant access to any Registry Data or Registrant Data to any person, other than in order to comply with its obligations under this Agreement (**Relevant Access**) and even then only on the basis that the Relevant Access meets each of the following criteria:
    - (A) it was approved in writing by auDA (prior to the Relevant Access being provided); and
    - (B) it was required to comply with any Published Policies; and
  - (ii) must take all reasonable and prudent actions to preserve the confidentiality and security of all Registry Data and Registrant Data at all times both during and after the Term.
- (b) The Registrar's obligations under clause 9.3(a) do not extend to Registry Data or Registrant Data, or the form of compilation of any such data, which is already in the public domain (other than due to unauthorised disclosure by or through the Registrar in breach of the Registrar's obligations under this Agreement).

### 9.4 Information to be publicly available

At all times during the Term the Registrar must ensure that the following information is publicly available, and easily accessible to the public (including on its website):

- (a) the terms and conditions of its standard form Licence Agreement;
- (b) the auDA logo; and
- (c) a link to the auDA Website homepage.

## 10. Transfer of Licence Agreements between Registrars

### 10.1 Transfers

The Registrar must ensure that a Registrant may, freely and without any restriction, transfer or novate any Licence Agreement (for which it has been granted a Licence) to another registrar in accordance with, and subject to, any requirements and conditions set out in the Licensing Rules and other Published Policies.

## 10.2 Acknowledgement

The Registrar must not charge any fee to a Registrant (or any other person) for the transfer or novation of a Licence Agreement or Licence, as contemplated by clause 10.1.

## 11. Registrar's accreditation

### 11.1 Requirement for auDA Accreditation

- (a) The Registrar must be auDA Accredited at all times during the Term.
- (b) For the avoidance of doubt:
  - (i) the Registrar is not auDA Accredited merely by virtue of entering into this Agreement; and
  - (ii) auDA will issue an Accreditation Certificate and the Registrar will be auDA Accredited, if the Registrar satisfies the Accreditation Criteria.

### 11.2 Requirement to be Registry Operator Accredited

The Registrar acknowledges and agrees that without limiting clause 11.1, at all times during the Term it must be Registry Operator Accredited in order to provide Registrar Services and access the Registry and Registry Data.

### 11.3 Registrar Service

In being auDA Accredited, the Registrar may (at auDA's discretion and subject to this Agreement):

- (a) be appointed to operate as a registrar of the .au ccTLD and Designated Namespaces; and
- (b) provide Registrar Services for the .au ccTLD and Designated Namespaces.

### 11.4 Non-exclusivity

The Registrar acknowledges and agrees that its appointment as a registrar under this Agreement is non-exclusive and there is no limit to the number of registrars which auDA may accredit or appoint at any time during the Term in respect of the .au ccTLD or any Designated Namespaces.

### 11.5 Warranties

The Registrar warrants and represents to auDA that:

- (a) on the Commencement Date, it satisfies the Accreditation Criteria; and
- (b) as a continuing warranty, at all times during the Term, it will continue to satisfy all of the Accreditation Criteria.

### 11.6 Continuous disclosure

The Registrar must promptly notify auDA if the Registrar becomes aware:

- (a) that it does not (or is likely not to) satisfy the Accreditation Criteria (or any part of it); or

- (b) of any circumstance, fact or matter that affects its ability to continue to satisfy the Accreditation Criteria.

## **11.7 Acknowledgments**

The Registrar acknowledges that:

- (a) the Registry Operator may begin accepting or processing Licence Applications by the Registrar on and from the Commencement Date; and
- (b) auDA may post on the auDA Website, the Registrar's name and contact information, and a link to the Registrar's web site and the Registrar must ensure that it keeps auDA immediately informed of any updates to, or changes in, such information.

## **11.8 Audit**

auDA may assess and audit the Registrar's compliance with the accreditation requirements set out in this clause 11 in accordance with the provisions of clause 16.

## **11.9 Loss of auDA Accreditation and access**

Notwithstanding any other provision of this Agreement, the Registrar's auDA Accreditation and entitlement to access the Registry and Registry Data is automatically revoked in full upon expiry or earlier termination of this Agreement.

## **11.10 auDA may revoke auDA Accreditation**

Without limiting clause 11.9 (or any other clause under this Agreement), auDA may revoke the Registrar's auDA Accreditation if it considers that the Registrar:

- (a) fails (or is likely to fail) to satisfy the Accreditation Criteria (in whole or in part) at any time during the Term;
- (b) fails (or is likely to fail) to be Registry Operator Accredited (in whole or in part) at any time during the Term; or
- (c) commits a breach of this Agreement in relation to its access, use or dealing with the Registry or the Registry Data (whether or not an Event of Default has occurred or a Default Notice has been issued).

## **11.11 Consequences of loss of auDA Accreditation**

- (a) If the Registrar's auDA Accreditation is revoked under the terms of this Agreement as a result of an Event of Default, the Registrar must not apply to auDA to become auDA Accredited from the date of such termination for a period of up to 12 months (as determined by auDA acting reasonably and as notified to the Registrar).
- (b) auDA may, at its sole discretion, waive the restriction in clause 11.11(a).
- (c) For the avoidance of doubt, in this Agreement and in the Published Policies, a reference to the termination of this Agreement, includes a reference to the revocation of a registrar's auDA Accreditation.

## 12. Access to the Registry

### 12.1 No automatic access

- (a) The Registrar acknowledges and agrees that entry into this Agreement does not give the Registrar an automatic entitlement to access the Registry.
- (b) On or after the Commencement Date, the Registrar must apply to the Registry Operator to be granted access to the Registry.
- (c) If for any reason the Registry Operator fails or refuses to grant the Registrar with access to the Registry for any reason, then this Agreement will be at an end, without further notice from auDA.

### 12.2 Registry-Registrar Agreement

The Registry Operator may require the Registrar to enter into an enforceable agreement containing terms acceptable to the Registry Operator and auDA as a condition of being granted access to the Registry (**Registry-Registrar Agreement**).

### 12.3 Registry Connections

- (a) The Registrar:
  - (i) is entitled to access and use up to 20 Registry Connections under this Agreement; and
  - (ii) may purchase additional Registry Connections for access and use in addition to the maximum number set out in clause 12.3(a).
- (b) Any purchase of additional Registry Connections under clause 12.3(a)(ii) will be made on commercial terms for the price set out in Item 3 of Schedule A (or as otherwise varied in accordance with clause 18.6).
- (c) Notwithstanding clauses 12.3(a)(ii) and 12.3(b), neither auDA or the Registry Operator are obligated to make any additional Registry Connections available for the Registrar's access and use.
- (d) The Registrar must not access or use more Registry Connections than it is entitled to in accordance with clause 12.3(a).
- (e) The Registry Connections under this Agreement are for the Registrar's use only, and the Registrar must not permit, enable or facilitate the access of, or use by, or the sharing of its Registry Connections with:
  - (i) any Third Party; or
  - (ii) for the avoidance of doubt:
    - (A) any Related Entity of the Registrar or any other member of the Registrar's corporate group; or
    - (B) any Affiliate of the Registrar,

unless otherwise permitted by auDA in writing, in its absolute discretion.
- (f) Without limiting auDA's discretion under clause 12.3(e), if the Registrar:

- (i) is a party to a Corporate Transaction; and
- (ii) has obtained auDA's approval pursuant to clauses 34.1 and 34.2 in respect of that Corporate Transaction,

then the Registrar must (and it must procure that any potential assignee), otherwise continues to comply with the terms of this Agreement.

- (g) auDA may, in its absolute discretion, permit the Registrar to share its Registry Connections with any potential transferee or party to a Corporate Transaction (as applicable) as expressly authorised by auDA, subject to any conditions reasonably imposed by auDA and for such period expressly permitted by auDA which for the avoidance of doubt, will not exceed 6 months from the date consent is given under this clause 12.3(g) (**Consent**) and the Registrar must strictly comply with the terms of the Consent.
- (h) The Registrar acknowledges that a breach of clause 12.3(e), 12.3(f) or 12.3(g) is an Event of Default under this Agreement.

## 13. Suspension of Registrar's access to the Registry

### 13.1 Suspension

The Registrar acknowledges and agrees that auDA is entitled to direct the Registry Operator to suspend the Registrar's access to the Registry (or any part of it) if:

- (a) a breach of this Agreement is committed by the Registrar in relation to the Registry or the Registry Data (whether or not a Rectification Notice has been issued, an Event of Default has occurred or a Default Notice has been issued);
- (b) the Registrar's access to the Registry can, does or will, in auDA's reasonable opinion, materially adversely affect the security, integrity or stability of the DNS or the Registry (whether or not a breach of this Agreement has occurred);
- (c) the Registrar fails to provide a Validation Plan to auDA for approval as required by clause 7.2(a);
- (d) the Registrar fails to rectify its Validation Plan as required by auDA in accordance with clause 7.2(c);
- (e) auDA does not approve the Validation Plan (or any updated Validation Plan pursuant to clause 7.2(f)(iii)) following the process as outlined in clauses 7.2(a) to 7.2(c);
- (f) the Registrar fails to update its Validation Plan as required by clause 7.2(f)(iii); or
- (g) such suspension is for the purposes of auDA limiting or preventing a Sub-contractor's access to the Registry and/or Registry Data pursuant to clause 22.5(b);

and such right is in addition to any other right auDA has under this Agreement (and despite any contrary provision in any agreement between the Registrar and the Registry Operator).

### 13.2 Period of suspension

A suspension effected under clause 13.1 may be for any period determined by auDA in its sole and absolute discretion (**Suspension Period**).

### 13.3 Reduction in scope

- (a) If auDA becomes entitled to direct the Registry Operator to suspend the Registrar's access to the Registry under clause 13.1, then:
  - (i) auDA may, in addition to any other right under this Agreement:
    - (A) reduce the number of Designated Namespace(s); and/or
    - (B) transfer to another registrar any given Licence(s),
 for which the Registrar provides Registrar Services under this Agreement; and
  - (ii) auDA may exercise its Step-in Rights in respect of any part of the .au ccTLD and/or any Designated Namespaces or Licences in clause 13.3(a).
- (b) The Registrar acknowledges and agrees that:
  - (i) it is entitled to continue to receive fees from a Registrant in respect of any Licence Application renewal during a Suspension Period;
  - (ii) other than as permitted under clause 13.3(b)(i), it is not entitled to receive any other fees or payments from a Registrant (or any other person), including in respect of any new Licence Application during a Suspension Period; and
  - (iii) auDA may recover from the Registrar any fees, costs, Claims or expenses suffered or incurred by auDA in exercising its rights under this Agreement.

## 14. Registry Data

### 14.1 Registry Data

The Registrar acknowledges and agrees that:

- (a) the Registry Data is not proprietary Information;
- (b) it is not entitled to claim obligations of confidence in the Registry Data;
- (c) it is not entitled to claim any proprietary rights, including Intellectual Property Rights, in the Registry Data;
- (d) the Registry Data is collected and stored by the Registrar for the benefit of auDA and the Australian public; and
- (e) without reducing the effect of any of the above, if any proprietary rights are held by the Registrar in the Registry Data:
  - (i) with effect from the date of creation, the Registrar assigns to auDA absolutely and beneficially, the whole of its rights, title and interest including any Intellectual Property Rights in and to the Registry Data;
  - (ii) the Registrar must, and must ensure that its Personnel, execute all such documents and do all things required by auDA to give effect to the assignment contained in clause 14.1(e)(i) and/or register all Intellectual Property Rights in the Registry Data in the name of auDA; and

- (iii) auDA grants the Registrar a non-exclusive and non-transferable licence to use the Registry Data for the sole purpose of performing its obligations under this Agreement. For the avoidance of doubt, the Registrar may sub-license the rights granted under this clause 14.1(e)(iii) to any Sub-contractor, to the extent necessary for, and for the sole purpose of, the Sub-contractor performing its obligations under this Agreement for and on behalf of a Registrar, pursuant to a Sub-contractor Agreement (as contemplated by clause 22).

## 14.2 Prohibition on use of Registry Data

The Registrar must not use any Registry Data in any system testing or development environments unless expressly authorised by auDA or expressly set out in this Agreement.

## 15. Information security

### 15.1 Security obligations

- (a) The Registrar must adopt and maintain an information security management system that is effective and appropriate for its business operations (and as otherwise approved by auDA) to safeguard the Registry Data, the EPP interface, the Registry Connections, the WHOIS directory server, the DNS server infrastructure and the Registrar Systems, against any Security Breach.
- (b) For the purposes of clause 15.1(a), the Registrar may either:
  - (i) for the Initial Term only and if the Registrar has a current "ISS Compliance Certificate as at the Commencement Date, retain a current "ISS Compliance Certificate", as defined in, and in accordance with, auDA's Information Security Standard (ISS) for Accredited Registrars (2013-03) including any applicable substitute, replacement or updated standard (**ISS Compliance**);
  - (ii) adopt and maintain an effective "Information Security Management System" in compliance with ISO 27001 including any applicable substitute, replacement or updated standard or framework (if approved in writing by auDA) (**ISO Compliance**); or
  - (iii) adopt and maintain any other effective recognised standard or framework expressly approved by auDA in writing for this purpose.
- (c) Subject to clause 15.3, the Registrar must at all times be certified under and compliant with at least one standard or framework set out in clause 15.1(b) during the Term (and must comply at all times with any conditions associated with any certification granted under clause 15.1(b)).
- (d) At auDA's request, the Registrar must promptly provide to auDA evidence of compliance (whether through a certificate of compliance or otherwise) in respect of this clause 15.1.
- (e) If a Registrar:
  - (i) fails to be certified by a standard or framework in clause 15.1(b); or
  - (ii) is assessed as non-compliant by an applicable assessor in regard to the relevant standard or framework to which it is certified in clause 15.1(b);

then auDA reserves the right to:



- (iii) suspend the Registrar's accreditation until the Registrar has been issued with an applicable compliance certificate; and/or
- (iv) post a notice on the auDA Website, and require the Registrar to post a notice on its own website, that the Registrar is non-compliant, until the Registrar has been issued with a relevant and current certificate of compliance.

## 15.2 Certification process

If the Registrar does not satisfy either ISS Compliance or ISO Compliance as at the Commencement Date, then the parties acknowledge and agree that:

- (a) in accordance with clause 15.1, the Registrar must obtain either ISS Compliance or ISO Compliance by no later than 6 months after the Commencement Date (**Trigger Date**); and
- (b) if the Registrar is unable or unwilling to:
  - (i) meet the requirements in clause 15.2(a); and
  - (ii) implement the Minimum Controls as contemplated by clause 15.3, (together the **Compliance Benchmarks**) on or before the Trigger Date, then auDA may by notice in writing to the Registrar (and in its sole and absolute discretion), either:
    - (iii) suspend the Registrar's access to the Registry (or any part of it) in accordance with clause 13, until such time as the Registrar can satisfy the Compliance Benchmarks contemplated by clause 15.1(b) and this clause 15.2; or
    - (iv) terminate this Agreement in accordance with clause 33.7.

## 15.3 Prescribed minimum security controls

- (a) The Registrar acknowledges and agrees that auDA may, acting reasonably, require the Registrar to implement and maintain new security programs or policies and/or prescribed minimum security controls, from time to time, which as the Commencement Date includes those controls set out in Schedule D (**Minimum Controls**).
- (b) Subject to clause 15.3, the Registrar must implement and maintain any prescribed Minimum Controls within 30 Days of being notified by auDA of the requirement to implement such Minimum Controls, or within such other timeframe as specified by auDA or as agreed between the parties.
- (c) auDA may direct the Registrar to implement prescribed Minimum Controls immediately, and the Registrar must comply with such request, if the immediate implementation of such Minimum Controls are (in auDA's reasonable opinion) required to prevent activities that can, will, or may have a materially adverse effect on the security, integrity or stability of the DNS or the Registry.

## 15.4 Protection of the Registry Data

The Registrar must have in place appropriate software, systems and processes that are designed to detect and prevent Loss, unauthorised access, use, copying or disclosure of Registry Data and the Registrar Systems. The Registrar must immediately notify auDA of

any suspected or actual unauthorised access, use, copying or disclosure of the Registry Data or the Registrar Systems (or of any matter or circumstance which arises that the Registrant reasonably believes poses a reasonable and significant risk of there being any unauthorised access, use, copying or disclosure of the Registry Data or the Registrar Systems).

## 15.5 Controlled access to Registry Data

The Registrar must:

- (a) only access or permit its Personnel to access Registry Data and only to the extent necessary to comply with the Registrar's obligations under this Agreement;
- (b) establish and maintain complete, accurate and up-to-date records of Registry Data accessed, collected, or changed by it (**Data Access Records**), which must include details of the Registrar's Personnel who accessed, collected or changed the Registry Data and the date it was accessed, collected or changed; and
- (c) at auDA's request, immediately provide auDA with copies of the Data Access Records.

## 15.6 Notifications of Security Breaches

- (a) In the event of any actual or suspected Security Breach, or where the Registrar is aware that there are reasonable grounds to suspect a Security Breach, the Registrar must:
  - (i) immediately (and in any event within 24 hours of the Security Breach, or of the Registrar becoming aware that there are reasonable grounds to suspect that there has been a Security Breach) notify auDA if:
    - (A) it is aware of, is given information that indicates, or suspects that it is, or any of its Personnel are, in breach of any obligations relating to any part of the Registry, the Registrar System or the Registry Data under this Agreement; or
    - (B) it is, or may be, required by Law to disclose any Registry Data.
  - (ii) within 3 Days of the Security Breach, or of the Registrar becoming aware that there are reasonable grounds to suspect that there has been a Security Breach, provide to auDA a summary report of the Security Breach containing details of the Security Breach, its impact on the Registrar Services and Registry Data and the initial steps taken by the Registrar to address the Security Breach; and
  - (iii) within 10 Business Days of the Security Breach, or of the Registrar becoming aware that there are reasonable grounds to suspect that there has been a Security Breach, provide to auDA a detailed incident report analysing the Security Breach and a rectification plan which sets out what steps will be taken to stop and further prevent the Security Breach occurring in the future. The Registrar must immediately implement that rectification plan (subject to any amendments to that rectification plan reasonably requested by auDA).
- (b) The Registrar must also immediately take all steps to prevent or stop, and comply with any direction issued by auDA from time to time, regarding a suspected or actual

Security Breach under this clause 15, and take all reasonable steps to mitigate the consequences of such suspected or actual Security Breach.

### 15.7 Event of Default

Failure by the Registrar to comply with any obligation under this clause 15 is an Event of Default under this Agreement.

## 16. Audit and provision of Information

### 16.1 Security Audits

- (a) The Registrar must engage an independent expert to audit the Registrar's compliance with its obligations relating to clause 14.2 (Prohibition on use of Registry Data) and clause 15 (Information security) (including the Registrar's compliance with certifications under clause 15.1(b)) (**Security Audit**).
- (b) auDA must approve of the independent expert before such expert conducts a Security Audit.
- (c) The Registrar must procure a Security Audit to be completed:
  - (i) before the Commencement Date, with an initial independent expert's report (**Audit Report**) to be delivered to auDA on or before the Commencement Date;
  - (ii) at least once in every 12 month period after the Commencement Date, with the relevant Audit Reports to be delivered to auDA on or before the anniversary of each Commencement Date; and
  - (iii) immediately following any Security Breaches, if requested by auDA, at any time auDA chooses and with the Audit Report to be delivered to auDA within 10 Business Days of the request.
- (d) For each 3 year period following the Commencement Date, the Registrar must undertake a comprehensive Security Audit.

### 16.2 Other audit rights

- (a) At any time during the Term, auDA may also require the Registrar to engage an independent expert to assess or audit the Registrar's compliance with its obligations relating to the Registrar's auDA Accreditation, the Registry or any Registry Data under this Agreement in which case the Registrar must provide the results of that audit to auDA in writing as soon as reasonably practicable.
- (b) For the purposes of an assessment or audit under this clause 16.2, the appointment of the independent expert will be made by auDA.

### 16.3 Co-operation by Registrar

The Registrar must ensure that its Personnel reasonably co-operates during, or for the purpose of this clause 16, including by:

- (a) providing appropriate access and secure office facilities in the relevant premises;
- (b) providing copies of any documents, records or data in accordance with clause 16.4 (which must be given to auDA within 5 Business Days of being requested to do so);

- (c) making appropriate Personnel promptly available to answer questions; and
- (d) if necessary, installing and running audit software on the Registrar's and its Personnel's information technology systems.

#### **16.4 Request for Information and documents**

- (a) auDA may request copies of any Information, documents, records or data from the Registrar:
  - (i) for the purposes of any audit activities under this clause 16;
  - (ii) for any other reason, and in respect of any subject matter, in connection with this Agreement; or
  - (iii) without limiting clauses 16.4(a)(i) or 16.4(a)(ii), where auDA reasonably believes or suspects that the activities or circumstances of the Registrar pose a risk to:
    - (A) the operation of the .au ccTLD;
    - (B) the operations of any Registrant; or
    - (C) the integrity, security and stability of the DNS or the Registry.
- (b) The Registrar must comply with any requests made under this clause 16.4 within 5 Business Days of such request and a failure to do so constitutes an Event of Default.

#### **16.5 Costs**

- (a) Subject to clause 16.5(b), each party is responsible for its own costs incurred in respect of this clause 16.
- (b) The Registrar is solely responsible for all costs and expenses associated with complying with clause 16.1.

### **17. Representations and warranties**

#### **17.1 Representations and warranties**

Each party warrants and represents that, as at the date of execution of this Agreement and on each day during the Term:

- (a) if it is a corporation, it is registered and validly existing under the Laws of Australia or the applicable Laws of the jurisdiction under which it is registered, incorporated and/or operating;
- (b) it has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates;
- (c) all corporate action has been taken that is necessary or desirable to authorise its entry into this Agreement and its carrying out of the transactions that this Agreement contemplates;
- (d) it holds each Authorisation that is necessary or desirable to:

- (i) execute this Agreement and to carry out the transactions that this Agreement contemplates; and
  - (ii) ensure that this Agreement is legal, valid, binding and admissible in evidence,
- (e) it is complying with any conditions to which any of these Authorisations is subject;
- (f) this Agreement constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms, subject to any necessary stamping or registration;
- (g) neither its execution of this Agreement, nor the carrying out by it of the transactions that this Agreement contemplates, does or will:
- (i) contravene any Law to which it or any of its property is subject or any order of any Regulatory Authority that is binding on it or any of its property;
  - (ii) contravene any Authorisation;
  - (iii) contravene any undertaking or instrument binding on it or any of its property; or
  - (iv) contravene its constitution;
- (h) there are no actions or Claims pending or threatened against it or by, against or before any person that may have a material effect on the subject matter of this Agreement;
- (i) it is not the subject of an Insolvency Event; and
- (j) it is not entering into this Agreement as trustee of any trust or settlement.

## 17.2 Additional Registrar warranties

In addition to clause 17.1, the Registrar warrants and represents to auDA that:

- (a) all written Information and reports which it has furnished, or will furnish, to auDA in connection with this Agreement (including pursuant to auDA Accreditation) are true, accurate and not misleading in all material respects, whether by omission or otherwise; and
- (b) the warranties it has given in clauses 11.5, 20.3, 25.1 and 28.5 are true and correct and not misleading in any material way.

## 17.3 Reliance on representations and warranties

Each party acknowledges that:

- (a) each other party has executed this Agreement and agreed to take part in the transactions contemplated by this Agreement in reliance on the representations and warranties that are made in this clause 17; and
- (b) subject to clause 17.3(a), it has exercised its independent skill and judgment and has carried out its own investigations in its decision to enter into this Agreement.

## **18. Payment of Fees**

### **18.1 Obligation to pay**

- (a) In consideration of auDA granting auDA Accreditation to the Registrar and providing access to the Registry to the Registrar, the Registrar must pay the Fees to auDA.
- (b) The Fees are payable for each Payment Period in advance.
- (c) For the purposes of this clause 18, auDA will issue a tax invoice to the Registrar on 1 July of each calendar year, in respect of Fees payable for the following Payment Period (**Tax Invoice**).
- (d) The Registrar must pay Fees within 30 Days of the date of issue of the relevant Tax Invoice (**Due Date**).

### **18.2 Timely payment**

Time is of the essence for all payments of Fees due and payable under this Agreement. The Registrar must make all payments to auDA under this Agreement regardless of any dispute which may exist between auDA and the Registrar.

### **18.3 Interest on late payment**

- (a) If the Registrar fails to pay any amounts due and payable under this Agreement by the relevant Due Date, then it must pay interest on the outstanding amount and such interest:
  - (i) must be paid on written demand of auDA;
  - (ii) is calculated from and including the Due Date but excluding the day on which it is paid in full; and
  - (iii) accrues each day at the Prescribed Rate.
- (b) The Registrar's right to require payment of interest under clause 18.3(a) does not affect any other rights or remedies it may have in respect of a failure to pay an amount due under this Agreement.

### **18.4 Default for non-payment of Fees**

If any amount due and payable by the Registrar remains unpaid 30 Days after the Due Date, the Registrar will be deemed to have committed an Event of Default.

### **18.5 No set-off**

The Registrar must not exercise any right of set-off on any account against auDA.

### **18.6 Variations to Fees**

- (a) auDA may change the Fees from time to time by giving the Registrar at least 30 Days prior written notice, and such changes will be effective on and from the next date Fees are payable, and provided that the relevant notice period has passed.
- (b) On receipt of notice under clause 18.6(a), the Registrar may terminate this Agreement in accordance with clause 33.6.

## **19. Prohibited activities**

### **19.1 No using Registry Data and/or WHOIS Data to solicit Registrants**

The Registrar must not use Information obtained from the Registry or auDA's WHOIS Data to solicit business from, or to otherwise make contact with, any Registrant, unless:

- (a) the Registrar is the registrar of the Registrant, as identified in the Registry;
- (b) the Registrant has previously contacted the Registrar in respect of the registration of a Domain Name;
- (c) the Registrant is otherwise a customer of the Registrar and has authorised the Registrar to use information obtained to accept business from or make contact with the Registrant; or
- (d) both the Registrant and their registrar (as identified in the Registry) have consented in writing to such use of the information.

### **19.2 Prohibited registration activities**

The Registrar must not do any of the following:

- (a) register any Domain Names for itself on its own behalf unless such registration(s) is/are for its own legitimate use in providing Registrar Services under this Agreement;
- (b) register Domain Names for the sole purpose of preventing any other registrations, unless it is done at the request of a person or Registrant (pursuant to legitimate provision of licensing services on an ordinary commercial basis);
- (c) register or renew Licences in advance of a request from a person or Registrant for the purpose of restricting a competitor from being able to register the Domain Name on behalf of the same person or Registrant. This includes anticipating a person's preference for a Domain Name or pre-registering Domain Names that may be in demand in the future;
- (d) be involved in, or:
  - (i) register any Domain Name for, or on behalf of; or
  - (ii) provide Registrar Services to,  
any Affiliate of the Registrar;
- (e) 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 Agreement, unless such activity is permitted under a Published Policy; and
- (f) do, enable or facilitate any activities that aim to artificially reduce the supply and availability of Domain Names.

## 20. Registrar's other obligations

### 20.1 Positive covenants

The Registrar must:

- (a) act in good faith in its dealings with auDA, the Registry Operator, other registrars and each Registrant;
- (b) immediately cancel the Licence, if the Registrar becomes aware or has cause to believe that a Registrant is no longer entitled to a Licence as a result of the Registrant;
  - (i) ceasing to be a validly incorporated entity with the capacity to enter into, or perform its obligations under the Licence Agreement;
  - (ii) failing to have or maintain an Australian Presence; or
  - (iii) failing to remedy any default, or carry out any rectification required under the Licence Agreement as within the time prescribed under the Licensing Rules;
- (c) provide to auDA (at auDA's request) and to the Registry Operator (at all times), all Information related to each approved Licence, including Information relating to the renewal, transfer, modification, or cancellation of a Licence;
- (d) accurately represent to the Registrants, the media, any Regulatory Authority 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;
- (e) 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;
- (f) 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;
- (g) within 2 Business Days, give notice to auDA of any impending Claims 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;
- (h) continue to hold all material Authorisations necessary to perform its obligations under this Agreement;
- (i) comply with all applicable Laws; and
- (j) comply with all reasonable and lawful directions of auDA in relation to the Registrar's provision of Registrar Services under this Agreement, including without limitation, in relation to the Registrar's access to the Registry.

### 20.2 Negative covenants

The Registrar must not:



- (a) approve any Licence 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;
- (b) use auDA's Intellectual Property Rights or industrial property other than as contemplated by this Agreement;
- (c) be involved in any activity which may directly or indirectly bring the Registry Operator or auDA into disrepute;
- (d) represent to any person that the Registrar enjoys access to the Registry that is superior to that of any other auDA Accredited registrar;
- (e) use any Personal Information held in relation to a Registrant or other person other than in accordance with the Published Policies, this Agreement, and all applicable Laws;
- (f) act as an agent for a Third Party in respect of registration of the Licence and for the purposes of the Licence Agreement;
- (g) use any Information belonging to or regarding auDA other than in accordance with this Agreement; or
- (h) improperly, negligently or willfully do anything, or omit to do anything, which can or does adversely affect the security, integrity or stability of the DNS or the Registry.

### **20.3 Insurance**

The Registrar represents and warrants to auDA that it has obtained, and will maintain at all times during the Term, the following insurance policies:

- (a) public and products liability;
- (b) business interruption;
- (c) business insurance (contents, fire, damage, perils);
- (d) burglary; and
- (e) accidental damage cover,

the types and levels of which a prudent provider of Registrar Services would have in place.

### **20.4 Handling of Registrant complaints**

- (a) The Registrar must act promptly to investigate all complaints from or regarding any Registrant in relation to a Domain Name, a Licence or a Licence Agreement, and which the Registrar is identified as the registrar in the Registry.
- (b) The Registrar must comply with Part 3 of the Licensing Rules with respect to handling any complaints under this clause 20.4.
- (c) A Registrar must not refer a complaint to auDA until the Registrar has investigated and/or made a decision in respect of such complaint.
- (d) The Registrar must, during the Term of, and for a period of 6 years after, this Agreement:

- (i) keep records of all complaints received, investigated and decided or referred to auDA under this clause 20.4; and
- (ii) ensure such records comply with any requirements set out in the Licensing Rules or the Published Policies and at a minimum, include:
  - (A) the date on which the complaint was received;
  - (B) the subject matter of the complaint;
  - (C) the decision; and
  - (D) the date that the decision was communicated to the complainant; and
- (e) at auDA's request, immediately provide auDA with copies of the records required to be kept by the Registrar under this clause 20.4(d).

## 21. GST

### 21.1 Interpretation

In this clause 21:

- (a) terms or expressions which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (**GST Act**) have the same meaning as in the GST Act; and
- (b) any reference to a party includes the representative member of a GST group of which that party is a member.

### 21.2 Consideration excludes GST

Unless otherwise expressly stated, all amounts to be paid or provided under this Agreement are expressed exclusive of GST.

### 21.3 Payment of GST

- (a) If GST is payable on any supply made under this Agreement, the recipient must pay to the supplier an additional amount (**GST Amount**) equal to the GST payable on that supply at the same time as the consideration for the supply is to be paid or provided.
- (b) Clause 21.3(a) does not apply to the extent that:
  - (i) the consideration for the supply is stated to include GST; or
  - (ii) GST on the supply is reverse charged and payable by the recipient.

### 21.4 Adjustment events

If an adjustment event arises in relation to a supply made under this Agreement, the GST Amount must be adjusted to reflect that adjustment event. A corresponding payment must be made by the supplier to the recipient or by the recipient to the supplier, as the case may be.

## 21.5 Calculation of amounts

If this Agreement requires an amount to be calculated by reference to another amount (**Reference Amount**) that will be:

- (a) received for a taxable supply; or
- (b) paid for a creditable acquisition,

then the Reference Amount must be reduced so as to exclude any part of the Reference Amount paid or received on account of GST, as the case may be.

## 21.6 Reimbursement and indemnity payments

If this Agreement requires a party to reimburse or indemnify another party for a cost or expense, the amount of the cost or expense must be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified is entitled for that cost or expense.

## 22. Sub-contracts

### 22.1 Registrar may sub-contract

- (a) The Registrar may engage or employ any person, sub-contractor or agent (**Sub-contractor**) to provide any part of the Registrar Services under this Agreement.
- (b) The Registrar must provide to auDA on demand, a list of all Sub-contractors at the relevant time, together with any details in respect of those Sub-contractors reasonably requested by auDA.

### 22.2 Agreements with Sub-contractors

- (a) Any agreement between the Registrar and a Sub-contractor relevant to such Sub-contractor performing activities in connection with this Agreement (**Sub-contractor Agreement**) must contain any provisions that auDA advises must be included in the Sub-contractor Agreement in order to:
  - (i) prevent activities that have, or may have (in auDA's view), a materially adverse effect on the security, integrity or stability of the DNS or the Registry;
  - (ii) ensure auDA's or the Registrar's compliance with this Agreement; or
  - (iii) ensure a Registrant's ability to use, or continue to use, a Domain Name is not adversely affected.
- (b) The Registrar acknowledges and agrees that it must do all things necessary to procure a Sub-contractor's agreement to any clauses specified by auDA under clause 22.2(a) (including amending existing agreements or entering into new agreements with Sub-contractors).

### 22.3 Identification of relationship with the Registrar

The Registrar must procure that the Sub-contractor identifies its relationship with the Registrar:

- (a) in any instrument of, or purporting to be signed or issued by or on behalf of the Sub-contractor, or issued in the course of, or for the purposes of, performing services under the Sub-contractor Agreement relevant to Registrar Services; and
- (b) on the Sub-contractor's website.

## **22.4 Registrar to remain liable**

If the Registrar engages a Sub-contractor:

- (a) the Registrar is not relieved of any of its Liabilities or obligations under this Agreement; and
- (b) the Registrar is liable to auDA for all acts, defaults and omissions of the Sub-contractor, or any of the Sub-contractor's Personnel (including its employees, officers, agents and contractors) as if they were the acts, defaults or omissions of the Registrar.

## **22.5 Removal of Sub-contractor**

- (a) auDA may direct the Registrar to:
  - (i) cease engaging or conducting activities with a Sub-contractor in respect of the Registry, Registry Data and the Registrar Services (and otherwise in connection with the Registrar's performance of this Agreement); or
  - (ii) terminate any agreement the Registrar has in place with any given Sub-contractor.
- (b) auDA may take any further action it deems necessary to effect any cessation or termination under clause 22.5(a) (to limit or prevent a Sub-contractor's access to the Registry and Registry Data) including suspending the Registrar's access to the Registry and Registry Data under clause 13.

## **22.6 No liability**

auDA is not liable for, and is released in respect of, any Liability suffered by the Registrar arising in connection with any Claims made against the Registrar by a Sub-contractor in connection with this clause 22, and the Registrar indemnifies auDA against any such Liability.

## **23. Step-in Rights**

### **23.1 Circumstances in which auDA may exercise Step-in Rights**

If a Step-in Event occurs, auDA may exercise the Step-in Rights.

### **23.2 Exercise of Step-in Rights**

- (a) If a Step-in Event occurs, auDA may, at its sole discretion, either itself or through one or more nominee(s), step-in and take control of the provision of the Registrar Services to the Registrants of the Registrar.
- (b) If auDA wishes to exercise its rights under this clause 23, it will use its best endeavours to provide the Registrar with as much notice as is reasonably practicable in the circumstances, or provide the Registrar with notice as soon as

practicable after exercising its Step-in Rights where the giving of advance notice is not reasonably practicable.

- (c) If clause 23.2(a) applies:
- (i) the Registrar will fully co-operate with auDA, its Personnel or its nominee(s) to the extent reasonably necessary for auDA to exercise its rights under this clause 23, including by:
    - (A) providing all information as reasonably requested by auDA;
    - (B) doing all things reasonably necessary to remedy the default or non-performance that gave rise to the Step-in Event; and
    - (C) to the extent required by auDA or its nominee(s), make available to auDA or such nominee(s), all rights and benefits of services under any existing Licence Agreements and/or Sub-contractor Agreement,
 

at no cost to the auDA, to enable auDA or its nominee(s) to fully exercise the Step-in Rights under this clause 23, including giving the auDA or its nominee(s) access to the Registrar's premises and all, systems and software. auDA and all of its Personnel, sub-contractors and resources or its nominee(s) will comply with the Registrar's reasonable security and access policies, including obligations of confidentiality, and
  - (ii) to the extent the Registrar Services are performed by auDA or its nominee(s) and Third Party service providers, the Registrar is relieved from its obligations to perform the Registrar Services (including corresponding obligations) during the period for which, and to the extent that, auDA or its nominee(s) exercises control over the Registrar Services.
- (d) The Registrar indemnifies auDA, its Related Entities and its Personnel against any and all Liability, damage, charge, reasonable expense, outgoing or cost (including but not limited to legal costs and defence settlement costs) directly or indirectly arising out of, or in connection with any infringement of any Third Party's rights (including Intellectual Property Rights) in and to any equipment and software that is accessed by auDA or any of its Related Entities and/or Personnel in connection with auDA exercising its rights under this clause 23.
- (e) If auDA's control over the Registrar Services under this clause is likely to exceed 30 Days (as reasonably determined by auDA), the Registrar will work with auDA to develop a plan to manage resolution of the problem. Once auDA approves that plan, the Registrar will immediately comply with the plan at its own expense.
- (f) auDA will use all reasonable efforts:
- (i) to minimise any period during which it takes control of the Registrar Services under this clause 23;
  - (ii) to re-transition the Registrar Services back to the Registrar once the Registrar demonstrates to auDA's reasonable satisfaction that the Registrar can recommence provision of the Registrar Services in accordance with this Agreement; and
  - (iii) if the re-transition has not occurred within 60 Days of auDA taking control of the Registrar Services, the Registrar may require good faith consultation with auDA with respect to the period within which the Registrar Services are

expected to be re-transitioned, and any other necessary issues the Registrar considers relevant.

- (g) The Registrar is not entitled to receive any fees or payments for the period during which auDA exercises its Step-in Rights in accordance with this clause.
- (h) Neither auDA nor any of its nominee(s) are liable to the Registrar for any Liabilities suffered by the Registrar arising out of or in connection with auDA's exercise of its Step-in Rights except where there is a fraudulent or negligent act or omission by auDA.
- (i) If auDA exercises its Step-in Rights, it may cease to exercise any such rights at any time by giving notice to the Registrar.
- (j) auDA's Step-in Rights are in addition to, and do not limit in any way, any other rights and remedies available to auDA under the Agreement or under any Law.
- (k) auDA is not obliged in any way to remedy or cure any default or Step-in Event or to overcome or mitigate any risk or risk consequences in respect of which auDA exercises Step-in Rights.
- (l) In the event auDA ceases exercising any Step-in Rights, the Registrar must promptly and without delay, recommence performance of those of the Registrar's obligations under the Agreement which were suspended pursuant to this clause 23.2(c)(ii).
- (m) The Registrar must continue performing any Registrar Services not affected by the exercise of Step-in Rights by auDA.
- (n) auDA will, at the cost and expense of the Registrar, give reasonable assistance to the Registrar to ensure that the process of auDA ceasing to exercise Step-in Rights, and the Registrar recommencing to perform its obligations, is effected as efficiently as possible.
- (o) Subject to the Registrar complying with its obligations under this clause 23, if auDA has exercised its Step-in Rights, to the extent auDA has taken actions or failed to take actions that impede the performance of the Registrar under the Agreement, the Registrar will not be held responsible for that failure to perform.
- (p) For the avoidance of doubt, in exercising the Step-in Rights under this clause 23, auDA and any of its nominee(s) are entitled to:
  - (i) be listed as the registrar of record in the Registry for all Domain Names administered by the Registrar pursuant to this Agreement and the Licence Agreements; and
  - (ii) take all actions which the Registrar would otherwise be entitled to take as registrar of record, in respect of such Domain Names.

## **24. Privacy**

### **24.1 'Opt-in' under Privacy Act**

If at the Commencement Date, the Registrar is not required by Law to comply with the Privacy Act (including the Australian Privacy Principles under the Privacy Act), then on or before the Commencement Date, the Registrar must advise the Commissioner in writing

that the Registrar chooses to be treated as an “organisation” under the Privacy Act, under section 6EA(2) of that Act.

## 24.2 No revocation

The Registrar must not revoke its choice to be treated as an “organisation” under the Privacy Act, except with the prior approval of auDA.

## 24.3 General privacy obligations

- (a) In performing this Agreement, the Registrar must comply, and must make sure that all of its Personnel also comply, with all Privacy Laws in respect of all Personal Information.
- (b) Without limiting clause 24.3(a), the Registrar must, and must ensure that its Personnel, co-operate with any reasonable requests or inquiries made by auDA in relation to the management of Personal Information by or on behalf of the Registrar under or in connection with this Agreement.
- (c) In respect of any Personal Information the Registrar provides or makes available or accessible to auDA, the Registrar will ensure that it has provided appropriate notifications and procured the necessary consents (as required by any Law):
  - (i) to allow auDA to receive, use and disclose (including to transfer) that Personal Information for the purposes of this Agreement and otherwise in respect of the management of the DNS; and
  - (ii) to inform persons or Registrants that the Registrar collects Personal Information from third parties such as Regulatory Authorities or reliable and independent databases.
- (d) The Registrar must take all necessary steps to ensure that (in relation to Personal Information it provides or makes available under this Agreement):
  - (i) no part of the Personal Information is corrupted or deleted;
  - (ii) the Personal Information is secured using current industry leading security methods (as updated from time to time through the term of the Agreement) and protected from misuse, interference, corruption and loss; and
  - (iii) the Personal Information is protected against unauthorised access, use, modification, processing or disclosure.

## 24.4 Privacy Breaches

- (a) Without limiting clause 24.3, if there are reasonable grounds to believe that there has been an Eligible Data Breach in respect of the Personal Information held by the Registrar or auDA in connection with this Agreement:
  - (i) the Registrar will be responsible for conducting any assessment required under the Privacy Laws in respect of an Eligible Data Breach affecting the Registrar Systems or Personal Information. As part of the assessment, the Registrar must liaise with auDA in respect of the suspected Eligible Data Breach;

- (ii) if the Eligible Data Breach relates to Personal Information held, accessed or processed by the Registrar relating to the Registrar's Registrants, the Registrar agrees that it must make any notification in respect of that Eligible Data Breach to the Office of the Australian Information Commissioner and to affected individuals;
- (iii) if the Registrar fails to notify the affected individuals within a timeframe mutually agreed by the parties (acting reasonably) or, if the parties cannot mutually agree a timeframe, within a reasonable timeframe as determined by auDA, in good faith, having regard to the circumstances of the Eligible Data Breach and potential harm to affected individuals (and having given the Registrar a reasonable opportunity to agree a timeframe), then auDA can use the Registry Data to notify the Commissioner, the Office of the Australian Information Commissioner or affected individuals, which such notice may include the Registrar's name and details of the incident as required;
- (iv) if there is an Eligible Data Breach in respect of information held by auDA relating to the Registrar's Registrants, the Registrar agrees that it must assist auDA, including making any notification to the Registrar's Registrants, in respect of that Eligible Data Breach on request by auDA;
- (v) each party agrees to cooperate and assist the other party, as reasonably required, in respect of any assessment or notifications required under clauses 24.4(a)(ii) and 24.4(a)(iv); and
- (vi) the parties agree that any information provided by either party in respect of the assessment of any suspected Eligible Data Breach is Confidential Information for the purposes of this Agreement unless otherwise notified by the disclosing party.

## **24.5 Record keeping, audits and access to facilities**

- (a) During the Term, the Registrar must provide auDA with reasonable access to, or copies of, such premises, records and documents which contain Personal Information, as is reasonably necessary to enable auDA to audit the Registrar's compliance with this Agreement. The costs of such audit will be borne by auDA.
- (b) The Registrar will grant auDA access to facilities or systems, which the Registrar uses to provide the Registrar Services where and to the extent necessary for security, privacy or other audits as required by this Agreement, provided that the provision of such access will only be granted to the extent that auDA has given the Registrar reasonable prior written notice of such required access (unless there is an imminent risk to the proper provision of the Registrar Services, in which case auDA will give as much notice as is practicable in the circumstances).
- (c) In undertaking the audits referred to in clause 24.5(a) and 24.5(b), auDA will at all times comply with the requirements in clause 27 except to the extent that auDA, in the course of the audit, discovers a breach of this Agreement by the Registrar.
- (d) Without limiting clause 24.3, the Registrar must ensure that all records in the Registrar's possession or control which contain Personal Information are, at the end of the Term or upon earlier expiry or termination of this Agreement, at auDA's option, either returned to auDA in a format reasonably requested by auDA, or permanently deleted or destroyed in the presence of a person duly authorised by auDA to oversee such deletion or destruction, except to the extent that the Registrar is required by applicable law to preserve such records.



## 24.6 Identity of Registrants

- (a) The Registrar must use its reasonable endeavours to obtain accurate information about the identity of Registrants and must take all reasonable steps to ensure it does not allow Registrants to conceal their true identity from the Registrar or the Registry.
- (b) Without limiting clause 24.6(a), the Registrar must not provide any service which allows Registrants to conceal their identity or the identity of the beneficial owner of a Licence.
- (c) The Registrar must provide conspicuous notice to each Registrant at the time of the Registrant's application for a Licence, to ensure that the Registrant is made aware that certain information they provide will become publicly available and searchable in the WHOIS Data.

## 24.7 Breaches of this clause

- (a) If the Registrar becomes aware of any infringement or alleged infringement of its obligations under this clause 24, the Registrar must:
  - (i) notify auDA immediately and provide full particulars of the infringement and the cause; and
  - (ii) comply with any reasonable direction from auDA with respect to remedying that infringement.

## 24.8 Privacy code

The Registrar must:

- (a) comply with the Australian Privacy Principles; or
- (b) in the event that auDA adopts an approved privacy code, at auDA's request, provide in writing to the Commissioner, notification that it consents to being bound to any such privacy code.

## 25. Conflict of interests

### 25.1 Warranty

Subject to clause 25.3, the Registrar warrants that, on the Commencement Date:

- (a) it will not itself; and
- (b) none of its Related Entities 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 an operator of a Registry.

### 25.2 Separation with Registry operations

Subject to clause 25.3, during the Term, the Registrar:

- (a) must not itself; and
- (b) must ensure that none of its Related Entities,

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 an operator of a Registry.

### **25.3 Exceptions**

This clause 25 does not prevent the Registrar or any of its Related Entities from holding marketable securities in the Registry Operator, provided that:

- (a) it is for investment purposes only; and
- (b) the marketable securities are quoted on a recognised securities exchange in Australia or elsewhere at the time of acquisition; and
- (c) 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.

### **25.4 Separation of operations**

The covenants in clauses 25.1 and 25.2 may be waived by auDA in writing if auDA considers (in its sole discretion) that:

- (a) the Registrar is able to have a clear and effective separation between the business operations of the Registrar as a registrar in the Designated Namespaces, and that of a registry operator in the Designated Namespaces; and
- (b) despite the Registrar's involvement as a registrar, competing registrars still have fair and equal access to the registry of the Designated Namespaces.

### **25.5 Acknowledgement**

The Registrar acknowledges that the covenants in clauses 25.1 and 25.2:

- (a) are material to auDA's decision to enter into the Agreement;
- (b) are fair and reasonable having regard to the intentions of the Australian Government Endorsement and the auDA Constitution to introduce competition into the .au ccTLD; and
- (c) are reasonably required by auDA to protect the interests of the Australian public and the requirements of the Australian Government Endorsement and the auDA Constitution.

## **26. Obligations of auDA**

### **26.1 General obligations**

With respect to all matters that impact the rights, obligations or role of the Registrar, auDA must during the Term:

- (a) exercise its responsibilities in good faith and in an open and transparent manner;
- (b) not unreasonably restrain competition and, to the extent possible, promote and encourage robust competition;
- (c) not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably;

- (d) not single out the Registrar for disparate treatment unless justified by substantial and reasonable cause; and
- (e) ensure, through its reconsideration and independent review policies, adequate opportunity for the Registrar to contribute to auDA's standards, policies, procedures or practices.

## **26.2 Assignment to new authority**

If another entity receives Australian Government Endorsement with respect to the .au ccTLD and the Designated Namespaces, auDA may, without the consent of the Registrar, transfer all its rights, obligations and liabilities under this Agreement to the other entity in accordance with clause 34.5.

## **27. Confidentiality**

### **27.1 No unauthorised storage or reproduction**

The Registrar and its Personnel must not save, download, copy or reproduce any Confidential Information of auDA on any local servers, hard drives, flash memory cards, storage media or devices, or other equipment, without auDA's prior written consent.

### **27.2 Obligations of confidentiality**

Subject to clauses 27.3 and 27.4, a Receiving Party must:

- (a) keep the Confidential Information confidential and not directly or indirectly disclose, divulge or communicate any Confidential Information to, or otherwise place any Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
- (b) take all reasonable steps to secure and keep secure all Confidential Information coming into its possession or control;
- (c) not memorise, use, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Agreement; and
- (d) take all reasonable steps to ensure that any person to whom the Receiving Party is permitted to disclose Confidential Information under clause 27.4 complies at all times with the terms of this clause 27 as if that person were a Receiving Party.

### **27.3 Exceptions**

The obligations of confidentiality under clause 27.2 do not apply to:

- (a) any Confidential Information that:
  - (i) is disclosed to the Receiving Party by a Third Party entitled to do so, whether before or after the date of this Agreement;
  - (ii) was already lawfully in the Receiving Party's possession when it was given to the Receiving Party and was not otherwise acquired from the Disclosing Party directly or indirectly; or

- (iii) is generally available to the public at the Commencement Date or subsequently becomes so available other than by reason of a breach of this Agreement; or
- (b) any disclosure of Confidential Information by the Receiving Party that is required by Law or the rules or regulations of any Financial Market to which a party, or a Related Entity of a party, is subject if, to the extent practicable and as soon as reasonably possible, the Receiving Party:
  - (i) notifies the Disclosing Party of the proposed disclosure;
  - (ii) consults with the Disclosing Party as to its content; and
  - (iii) uses reasonable endeavours to comply with any reasonable request by the Disclosing Party concerning the proposed disclosure.

#### **27.4 Authorised disclosure**

Without limiting this clause 27, a Receiving Party may disclose Confidential Information to any Related Entity, employee, agent, contractor, officer, professional adviser, banker, auditor or other consultant of the Receiving Party (each a **Recipient**) only if the disclosure is made to the Recipient strictly on a "need to know basis" and, before the disclosure:

- (a) the Receiving Party notifies the Recipient of the confidential nature of the Confidential Information to be disclosed;
- (b) the Recipient undertakes to the Receiving Party (for the benefit of the Disclosing Party) to be bound by the obligations in this clause 27 as if the Recipient were a Receiving Party in relation to the Confidential Information to be disclosed to the Recipient; and
- (c) if requested to do so by the Disclosing Party, the Recipient signs an undertaking or deed in a form acceptable to the Disclosing Party (and for the benefit of the Disclosing Party) agreeing to be bound by the obligations in this clause 27 as if the Recipient were a Receiving Party in relation to the Confidential Information to be disclosed to the Recipient.

#### **27.5 Return or destruction of Confidential Information**

Immediately on the written request of the Disclosing Party or on the expiry or termination of this Agreement for any reason, a Receiving Party must:

- (a) cease the use of all Confidential Information of or relating to the Disclosing Party (or any Related Entity of the Disclosing Party);
- (b) deliver to the Disclosing Party all documents and other materials in its possession or control containing, recording or constituting that Confidential Information or, at the option of the Disclosing Party, destroy, and certify to the Disclosing Party that it has destroyed, those documents and materials; and
- (c) for Confidential Information stored electronically, permanently delete that Confidential Information from all electronic media on which it is stored, so that it cannot be restored.

## **27.6 Liability for breach by Recipient**

The Receiving Party is liable for any breach of this clause 27 by a Recipient as if the Recipient were a Receiving Party in relation to the Confidential Information disclosed to the Recipient.

## **28. Intellectual property**

### **28.1 Use of Intellectual Property Rights by the Registrar**

- (a) The Registrar must not use any Intellectual Property Rights owned or provided by auDA (including auDA's name or trade marks) without auDA's prior written consent for any purpose, except as permitted by this clause 28.
- (b) Any rights granted under this clause 28 are personal to the Registrar and must not be transferred or assigned or sub-licensed to any other person (including any Related Entity of the Registrar).
- (c) Notwithstanding this clause 28.1 (and subject to clause 28.4), the Registrar may sub-license to a Sub-contractor any rights granted to the Registrar under this clause 28, but only to the extent necessary for, and for the sole purpose of, the Sub-contractor performing obligations under this Agreement for and on behalf of the Registrar, pursuant to a Sub-contractor Agreement contemplated by clause 22.

### **28.2 Background Material**

- (a) If a party supplies to the other party any Background Materials, the supplying party authorises the receiving party to, for the sole purpose of fulfilling its obligations or exercising its rights under this Agreement, use and/or reproduce those Background Materials in whole or part including to create or develop Developed Material.
- (b) The parties acknowledge that this Agreement does not transfer ownership of any Intellectual Property Rights comprised in any Background Material.

### **28.3 Developed Material**

- (a) Subject to clause 28.2, any Intellectual Property Rights in Developed Material are owned by auDA.
- (b) Subject to clause 28.2, and without reducing the effect of clause 28.3(a), if any Intellectual Property Rights are held by the Registrar in the Developed Materials:
  - (i) the Registrar must assign, transfer and set over to auDA all of its right, title and interest in and to the Developed Materials (or procure such assignment, transfer and set over from any other party, including a Sub-contractor, to give effect to this clause 28.3(b)(i)); and
  - (ii) auDA grants the Registrar a non-exclusive and non-transferable licence to use the Developed Material for the sole purpose of performing its obligations under this Agreement during the Term (noting that the provisions of clause 28.1(c) apply to this clause 28.3(b)(ii)).

### **28.4 Use of auDA Accredited status, names, logos and online content**

- (a) auDA grants to the Registrar (but not to any of its Personnel or any of its Sub-contractors) a non-exclusive, non-transferable, worldwide, royalty-free licence to:

- (i) represent that it is auDA Accredited as a registrar for .au ccTLD and the Designated Namespaces;
  - (ii) use any logo specified (and/or provided) by auDA to indicate that the Registrar is auDA Accredited as a registrar for the Designated Namespaces; and
  - (iii) link to pages and documents within the auDA Website, provided they are not framed by, or presented with, any other materials and used solely for the purposes of associated with providing Registrar Services.
- (b) For the avoidance of doubt, a Registrar is not permitted to sub-license any rights granted to it under clause 28.4(a) to any other person (including a Sub-contractor) and a Sub-contractor is not permitted to do any of the things referred to in clause 28.4(a).

## 28.5 Intellectual Property Rights warranty

The Registrar warrants to auDA that:

- (a) the Registrar has not granted to any other person rights inconsistent with the rights granted by this Agreement;
- (b) the performance of its obligations under this Agreement do not, and will not, infringe the Intellectual Property Rights of any person;
- (c) the Registrar is entitled to validly license and assign all Intellectual Property Rights as required or contemplated by this Agreement; and
- (d) the Registrar has not received notice of, and is not otherwise aware of, any Third Party Claim alleging infringement of any Intellectual Property Rights of any Third Party which may affect the Registrar's ability to perform its obligations, or auDA's interests or rights, under this Agreement (**Infringement Claim**).

## 28.6 Indemnity

The Registrar indemnifies auDA, its Related Entities and its Personnel against all and any Liability, damage, charge, reasonable expense, outgoing or cost (including, but not limited to legal costs and defence or settlement costs) directly or indirectly arising out of, or in connection with any breach of clause 24, clause 28.5 or any past, future or existing Infringement Claim.

## 28.7 Infringement Claims

If the Registrar is notified of, or otherwise becomes aware of, an Infringement Claim:

- (a) the Registrar must promptly notify auDA of the Infringement Claim or suspected Infringement Claim;
- (b) upon auDA's request, the Registrar must (at its own cost) use its best efforts to protect auDA's interests under this Agreement, including defending a claim or commencing legal proceedings; and
- (c) without prejudice to auDA's other rights or remedies under this Agreement or otherwise, where the effect of the Infringement Claim reduces auDA's or the Registrar's ability to fully benefit from the Registrar Services in any material way, such circumstance will be an Event of Default by the Registrar.

## **29. Force majeure**

### **29.1 Giving of notice**

If a party to this Agreement is affected by a Force Majeure Event that party must as soon as practicable give the other party written notice of that fact including:

- (a) reasonable particulars of the Force Majeure Event;
- (b) details of the obligations affected by it and the extent to which they are affected;
- (c) an estimate of its likely duration; and
- (d) the steps taken to rectify it.

### **29.2 Liability for force majeure**

Subject to clause 29.3, if a Force Majeure Event occurs, the obligations under this Agreement of the party giving the notice are suspended, to the extent to which they are affected by the Force Majeure Event, for the duration of the Force Majeure Event.

### **29.3 Effort to overcome**

- (a) A party who has given notice of a Force Majeure Event under clause 29.1 must:
  - (i) use its reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as reasonably possible; and
  - (ii) keep the other party regularly informed as to the steps or actions being taken to achieve this.
- (b) Nothing in this clause 29.3 requires a party to settle any industrial dispute against its will.

### **29.4 Alternative arrangements**

- (a) If a party fails to perform obligations because of a claimed Force Majeure Event, any other party may (but is not obliged to) make alternative arrangements for the performance of the obligation or obligations, whether by another person or otherwise for so long as the Force Majeure Event continues.
- (b) The party making the alternative arrangements:
  - (i) must notify the other party of the alternative arrangements; and
  - (ii) is not liable in any way to the other party in respect of the alternative arrangements.

### **29.5 Right of termination**

If a Force Majeure Event continues for more than 90 consecutive Days, any party to whom notice has been given under clause 29.1 may terminate this Agreement without cause in accordance with clause 33.6.

## 30. Indemnities

Without limiting auDA's rights (whether under this Agreement or otherwise), the Registrar indemnifies each of auDA and its Related Entities (including its officers, employees or agents) against any Liability, Loss, damage, charge, expense, outgoing or cost arising out of:

- (a) any injury to, or death of a natural person or any Loss of or damage to tangible property caused by breach of this Agreement or any unlawful or negligent act or omission of the Registrar or its Personnel;
- (b) any unlawful or negligent act or omission of the Registrar or its Personnel;
- (c) a Claim by a Registrant in relation to a Licence Agreement or provision of, or access to, Registrar Services;
- (d) a Claim by a Third Party, caused or contributed to by a breach of this Agreement by the Registrar;
- (e) any Claim by any Personnel of the Registrar against auDA and its Related Entities (including its officers, employees or agents); and
- (f) any fines, penalties or other similar charges imposed by a Regulatory Authority as a result of any breach of any Law applicable to the Registrar or any of its Personnel,

except the indemnity will be reduced proportionately to the extent that any Liability, damage, charge, expense, outgoing or cost, is caused by auDA or its officers, employees or agents.

## 31. Limitations of Liability

### 31.1 Exclusion of Liability

Subject to this clause 31 and to the maximum extent permitted by Law, auDA is not liable to the Registrar or to any other person for any:

- (a) Liability; or
- (b) Consequential Loss,

arising under or in connection with this Agreement, including any Liability that results from any wrongful or negligent act or omission of auDA or any of its Personnel.

### 31.2 Exceptions

Nothing in this clause 31 limits auDA's Liability with respect to damages for:

- (a) personal injury, including sickness and death;
- (b) breach of confidentiality under clause 27;
- (c) any fraudulent acts or omissions; or
- (d) any reckless or malicious acts.



### 31.3 Exclusion of implied warranties

Any representation, warranty, condition, guarantee, indemnity or undertaking that would be implied in, or affect, this Agreement by legislation, common law, tort, equity, or by course of performance, dealing, trade, custom or usage is excluded to the maximum extent permitted by Law.

### 31.4 Non-excludable rights implied by statute

Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on auDA by the Australian Consumer Law or any other applicable Law that cannot be excluded, restricted or modified by agreement.

### 31.5 Survival of clause

Despite any other provision of this Agreement, this clause 31 survives the expiry or termination of this Agreement.

## 32. Dispute resolution

### 32.1 Delivering a Dispute Notice

If any dispute, controversy or claim arises between the parties arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity or termination (**Dispute**), a party may deliver to the other party a written notice (**Dispute Notice**) which sets out the nature of the Dispute and the relief or remedy that the party seeks.

### 32.2 Parties must negotiate

During the period of 10 Business Days after delivery of the Dispute Notice, or any longer period agreed in writing by the parties (**Initial Period**), each of the parties must use their reasonable endeavours and act in good faith to resolve the Dispute by discussion and negotiation.

### 32.3 Referral to mediation - Australian Registrars

If the Registrar is domiciled in Australia and the parties are unable to resolve the Dispute in the Initial Period, then the Dispute must be referred to mediation in accordance with the following:

- (a) The parties must agree on a mediator within 10 Business Days after the end of the Initial Period. If they fail to do so, any party may request the Australian Centre For International Commercial Arbitration (**ACICA**) to appoint a mediator.
- (b) Any mediator agreed by the parties or appointed by ACICA must be independent and impartial.
- (c) The mediation must be commenced within 20 Business Days after the mediator has been appointed and must be concluded within 30 Business Days after the mediator has been appointed, unless otherwise agreed between the parties.
- (d) The mediation must take place in Melbourne, Australia.
- (e) The parties must in good faith co-operate with the mediator and must comply with requests by the mediator including requests to submit written materials, provide evidence, attend meetings and pay the mediator's fees.

- (f) The parties agree that the mediation will be private and confidential and they undertake not to rely on or introduce as evidence in any arbitral or judicial proceedings, whether or not such proceedings relate to the Dispute that is the subject of the mediation, any matter relating to the mediation (including the existence of the mediation), any settlement agreement, materials created for the purpose of the mediation and documents produced by another party in the mediation except:
- (i) for the purpose of making an application to a court of competent jurisdiction to enforce the settlement agreement;
  - (ii) pursuant to the order of a court of competent jurisdiction; or
  - (iii) if required by the Law of any State which is binding on the party making the disclosure.

### 32.4 Referral to arbitration - non-Australian Registrars

- (a) If the Registrar is not domiciled in Australia and the relevant Dispute is not resolved by negotiation within the Initial Period or such other period as the parties agree, then the Dispute must be resolved by arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules which are operating at the time the Dispute is referred to arbitration.
- (b) The seat of arbitration must be Melbourne, Australia.
- (c) The language of the arbitration must be English.
- (d) The number of arbitrators must be one or three.

### 32.5 Other proceedings

No party may commence any judicial proceedings in relation to the Dispute unless:

- (a) it has complied with any obligation on it under this clause 32;
- (b) those proceedings are commenced for the purpose of enforcing this clause 32 or to seek interlocutory relief; or
- (c) following the procedures in clauses 32.1 to 32.4 would result in a limitation period for a cause of action arising from or relating to the Dispute expiring.

## 33. Rectification, default and termination

### 33.1 Rectification of breaches

- (a) Without limiting the effect of any Default Notice issued, if a party (**Breaching Party**) breaches any obligation under this Agreement, then the other party (**Non-breaching Party**) may issue a notice to the Breaching Party specifying the nature of the breach (together with all associated details) and requesting rectification of the breach by the Breaching Party (**Rectification Notice**).
- (b) On receipt of a Rectification Notice, the Breaching Party must:
  - (i) rectify the breach set out in the Rectification Notice within 30 Days of receipt of the Rectification Notice; and

- (ii) demonstrate (to the Non-breaching Party's satisfaction acting reasonably), how such rectification has been undertaken.

### 33.2 Events of Default

In this Agreement, **Event of Default** means:

- (a) in relation to a party, any of the following events:
  - (i) the party commits a breach of this Agreement and fails to remedy the breach in accordance with clause 33.1;
  - (ii) the party commits a breach of this Agreement that is not capable of being remedied;
  - (iii) an Insolvency Event occurs in relation to the party;
  - (iv) a notice of deregistration of the party is given under sections 601AA(5) or 601AB(5) of the Corporations Act;
  - (v) any amount due and payable by the party under this Agreement is in arrears for 30 Days after it is due and/or formal request or demand has been made;
  - (vi) any representation, warranty or statement made or repeated by the party in or in connection with this Agreement is untrue or misleading in any material respect (including by omission) when so made or repeated;
  - (vii) the party becomes unable to perform all of its obligations and take all actions contemplated under this Agreement;
  - (viii) a material provision of this Agreement that purports to impose an obligation on the party is or becomes void, voidable, illegal or unenforceable or of limited effect (other than because of equitable principles or Laws affecting creditor's rights generally); or
  - (ix) the party ceases or threatens to cease to carry on business or a substantial part of it; and
- (b) in relation to the Registrar, any of the following events (in addition to those set out in clause 33.2(a)):
  - (i) the Registrar fails to satisfy the Accreditation Criteria (in whole or in part) at any time during the Term;
  - (ii) the Registrar becomes subject to a change of Effective Control;
  - (iii) the Registrar breaches clause 12.3(e) and permits, enables or facilitates the unauthorised access, use and/ or sharing of one or more Registry Connections with a Third Party;
  - (iv) the Registrar breaches clause 12.3(f) by failing to comply and/or failing to procure its potential assignee comply, with the terms of this Agreement;
  - (v) the Registrar breaches clause 12.3(g) and breaches a term of auDA's Consent to the Registrar's sharing of one or more Registry Connections in relation to a Corporate Transaction;

- (vi) the Registrar fails to comply with any obligation set out in clause 15 (regarding information security);
- (vii) by failing to provide Information, documents, records or data requested by auDA under clause 20.4 within 5 Business Days of the auDA's request;
- (viii) an Infringement Claim reduces auDA's ability to fully benefit from the Registrar Services (in accordance with clause 28.7(c)); or
- (ix) if the Registrar or any of its officers (as defined in the Corporations Act) or director is convicted of an offence involving fraud or dishonesty.

### 33.3 Default notice

If an Event of Default, other than an Insolvency Event, occurs in relation to a party (**Defaulting Party**), the other party (**Non-defaulting Party**) may give a notice to the Defaulting Party specifying the Event of Default (**Default Notice**) and requiring the Defaulting Party to remedy the default within 10 Business Days of the Default Notice being given to the Defaulting Party.

### 33.4 Consequences of default

Following an Event of Default, the Non-defaulting Party may, by notice in writing to the Defaulting Party do all or any of the following:

- (a) demand that all moneys actually or contingently owing under this document are immediately due and payable by the Defaulting Party (and the Defaulting Party must immediately repay those moneys);
- (b) demand that the Defaulting Party must pay to the Non-defaulting Party interest at the Prescribed Rate in accordance with clause 18.3, calculated based on the amount overdue during the period of default (and the Defaulting Party must immediately pay such interest);
- (c) 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;
- (d) if the Defaulting Party is the Registrar, auDA may demand that the Registrar pays all reasonable expenses incurred by auDA as a result of any breach of this Agreement by the Registrar and the service of notices as required by this clause, and the Registrar must immediately pay those expenses; or
- (e) terminate this Agreement in accordance with clause 33.5.

### 33.5 Termination for default

If a Defaulting Party:

- (a) receives a Default Notice and does not remedy the default or otherwise comply with the notice within the relevant period referred to in clause 33.3;
- (b) receives a Default Notice for a breach of that is incapable of remedy;
- (c) receives a Default Notice on 3 occasions in any period of 12 months (whether or not such defaults are remedied); or

(d) is the subject of an Insolvency Event,

then subject to any stay or restriction which applies because of section 415D, 434J, 440B or 451E of the Corporations Act, the Non-defaulting Party, without limiting its other rights and remedies, may terminate this Agreement by written notice to the Defaulting Party with immediate effect.

### **33.6 Termination without cause**

A party may terminate this Agreement at any time, without reason or Liability, by giving the other party at least 60 Days written notice.

### **33.7 Termination by auDA**

In addition to any other termination right it has under this Agreement, auDA may terminate this Agreement, in whole or in part and with immediate effect, by written notice to the Registrar if one or more of the following occur:

- (a) the breach committed by the Registrar, and relied upon by auDA to terminate this Agreement, relates to an act or omission of the Registrar which is likely (in auDA's reasonable opinion) to materially adversely affect the security, integrity or stability of the DNS or the Registry;
- (b) the ICANN Sponsorship Agreement is terminated;
- (c) the Australian Government Endorsement is revoked or terminated;
- (d) the Registry-Registrar Agreement expires or terminates;
- (e) auDA becomes entitled to exercise its right under clause 15.2(b)(iv); or
- (f) a repudiation of all or any part of the Agreement by the Registrar.

### **33.8 Fees and compensation**

- (a) The parties acknowledge and agree that the Fees paid by the Registrar to auDA under this Agreement are not refundable, regardless of how and when any such termination may occur.
- (b) Notwithstanding clause 33.8(a), if this Agreement is terminated without cause by auDA in accordance with clause 33.6, then the Registrar may be entitled to a one-off compensation payment to be determined in accordance with Item 4 of Schedule A (less any amounts owing by the Registrar to auDA at the relevant time).

### **33.9 Rights and obligations on termination**

If this Agreement is terminated for any reason, in addition to and without prejudice to any other rights, powers or remedies provided by Law, each party:

- (a) is released from its further obligations under this Agreement, except those provisions of this Agreement which are expressly intended to survive termination;
- (b) must return or destroy all Confidential Information of the other party in accordance with clause 27.5; and
- (c) retains the rights it had against the other party in respect of any past breach.

### 33.10 Registrar's obligations on termination

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

- (a) provide all necessary information to auDA; and
- (b) cooperate in good faith with auDA and to comply with all reasonable and lawful directions of auDA,

to ensure that all its Registrants migrate their Licence Agreements with respect to Domain Name registration services to another registrar of their choice (or as directed by auDA), with minimum disruption or inconvenience to the Registrants, and by no later than the date this Agreement terminates.

### 33.11 Survival of clauses

Despite any other provision of this Agreement, this clause 33 (Default and termination) and clauses 1 (Definitions and interpretation), 17 (Representations and warranties), 21 (GST), 24 (Privacy), 27 (Confidentiality), 28 (Intellectual Property), 30 (Indemnities), 31 (Limitations of liability), 32 (Dispute Resolution), 35 (Notices) and 36 (General) survive the expiry or termination of this Agreement.

## 34. No assignment

### 34.1 No assignment by the Registrar without consent

The Registrar must not:

- (a) sell, transfer, delegate, assign, licence; or
- (b) mortgage, charge or otherwise encumber,

any right under this Agreement to any person (**Proposed Assignee**), or permit a Proposed Assignee to assume any obligation under this Agreement, without auDA's prior written approval and consent.

### 34.2 No change of control

The Registrar:

- (a) must ensure that there is no change of Effective Control of the Registrar without auDA's approval; and
- (b) acknowledges and agrees that a change of Effective Control of the Registrar in breach of clauses 12.3(f) or 34.2(a) will be regarded as an Event of Default, whether such change is within or beyond the control of the Registrar.

### 34.3 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 any proposed assignment and the investigation of the Proposed Assignee under this clause 34, whether or not any relevant consent and/or approval is granted.

### 34.4 Details

If auDA approves of, and consents to, the assignment of this Agreement under clause 34.1, then at auDA's request the Registrar must promptly deliver to auDA all requested Information about the Proposed Assignee and the assignment including:

- (a) the name, address and occupation (if applicable) of the Proposed Assignee;
- (b) two written references as to financial circumstances of the Proposed Assignee;
- (c) 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 Agreement; and
- (d) 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.

### 34.5 Permitted assignment by auDA

- (a) auDA is permitted to assign, transfer or novate its rights or obligations under this Agreement, in whole or in part, to:
  - (i) any other entity that becomes the Australian Government endorsed authority for, and is recognised by ICANN as the manager of, the applicable .au ccTLD; or
  - (ii) any related body corporate (as defined in the Corporations Act) as part of any corporate restructure or re-organisation of auDA's business,

without the Registrar's consent, and for the purposes of this clause 34.5 and if required by any Law, the Registrar agrees it consents to any such assignment, transfer or novation.
- (b) The Registrar must enter into any documentation required to give effect to any assignment, transfer or novation under this clause 34.5 if required by auDA.

### 35. Notices

Any notice or other communication to or by a party under this Agreement:

- (a) must be given in accordance with this clause 35;
- (b) may be given by personal service, post or email;
- (c) must be in writing, legible and in English addressed (depending on the manner in which it is given) as shown below:
  - (i) if to auDA:
    - Address:** Level 17/1 Collins Street, MELBOURNE VIC 3000
    - Attention:** Chief Executive Officer
    - Email:** ceo@auda.org.au

- (ii) if to the Registrar, in accordance with the details set out in Item 1 of Schedule A,

or addressed in accordance with any updated details last notified by the party to the sender by notice given in accordance with this clause;

- (d) must be signed:

- (i) in the case of a corporation registered in Australia, by any authorised representative or by the appropriate office holders of that corporation under section 127 of the Corporations Act; or
- (ii) in the case of a corporation registered outside of Australia, by a person duly authorised by the sender in accordance with the Laws governing the place of registration of that corporation; and

- (e) is deemed to be given by the sender and received by the addressee:

- (i) if delivered in person, when delivered to the addressee;
- (ii) if posted, at 9.00am on the third Business Day after the date of posting to the addressee whether delivered or not; or
- (iii) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purposes of this clause),

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (addressee's time), it is deemed to have been received at 9.00am on the next Business Day.

## **36. General**

### **36.1 Time of the essence**

In this Agreement, time is of the essence unless otherwise stated.

### **36.2 Entire understanding**

- (a) This Agreement contains the entire understanding between the parties concerning the subject matter of this Agreement and supersedes, terminates and replaces all prior agreements and communications between the parties concerning that subject matter.
- (b) Each party acknowledges that, except as expressly stated in this Agreement, it has not relied on any representation, warranty, undertaking or statement made by or on behalf of another party in relation to this Agreement or its subject matter.

### **36.3 No adverse construction**

No provision of this Agreement is to be construed to the disadvantage of a party solely because that party was responsible for preparing or proposing this Agreement or the provision.



### **36.4 Further assurances**

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

### **36.5 No waiver**

- (a) A failure to exercise, a delay in exercising or partially exercising any power, right or remedy conferred on a party by or in respect of this Agreement does not operate as a waiver by that party of the power, right or remedy.
- (b) A single or partial exercise of any power, right or remedy does not preclude a further exercise of it or the exercise of any other power, right or remedy.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

### **36.6 Remedies cumulative**

Except as set out in this Agreement, the powers, rights and remedies under this Agreement are cumulative with and not exclusive of any powers, rights and remedies provided by Law independently of this Agreement.

### **36.7 Severability**

Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction, be:

- (a) read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) severed from this Agreement in any other case,

without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

### **36.8 Consents and approvals**

Unless this Agreement provides otherwise, where anything depends on the consent or approval of a party, then that consent or approval may be given conditionally, unconditionally or withheld, in the absolute discretion of that party.

### **36.9 No variation**

This Agreement cannot be amended or varied except in writing signed by the parties.

### **36.10 Costs**

Each party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.

### **36.11 Duty**

- (a) Any duty (including related interest or penalties) payable in respect of this Agreement or any instrument created in connection with it must be paid by the Registrar.

- (b) The Registrar undertakes to keep auDA indemnified against all Liability relating to the duty, fines and penalties.

### **36.12 Conflicting provisions**

If there is any conflict between the main body of this Agreement and any schedules or annexures comprising it, then the provisions of the main body of this Agreement prevail.

### **36.13 No merger**

Unless otherwise provided in this Agreement, the representations, undertakings, warranties and indemnities of the parties in, or the rights and remedies of the parties under, survive and remain enforceable to the fullest extent (following expiry and/or termination of this Agreement).

### **36.14 Operation of indemnities**

Unless this Agreement expressly provides otherwise:

- (a) each indemnity in this Agreement is a continuing obligation and survives the completion, expiry or termination of this Agreement;
- (b) each indemnity given by a party in this Agreement is an additional, separate and independent obligation of the party and no one indemnity limits the operation of any other indemnity; and
- (c) a party may enforce and recover a payment under an indemnity in this Agreement before it incurs any expense or makes the payment in respect of which the indemnity is given.

### **36.15 No right of set-off**

Unless this Agreement expressly provides otherwise, a party has no right of set-off against a payment due to another party under this Agreement.

### **36.16 Relationship of parties**

Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

### **36.17 Counterparts**

If this Agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document. A party may sign a counterpart by executing a signature page and electronically transmitting a copy of the signed page to each other party or their authorised representative.

### **36.18 Governing law and jurisdiction**

- (a) This Agreement is governed by and must be construed in accordance with the Laws of the State of Victoria.
- (b) The parties submit to the exclusive jurisdiction of the courts of the State of Victoria and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

- (c) Each party waives any rights to:
- (i) object to the venue of any proceedings; or
  - (ii) claim that the proceedings have been brought in an inconvenient forum or that the courts of another place are a more convenient forum,
- if the proceedings have been brought in a court referred to in clause 36.18(b).

## Schedule A – Particulars

### 1. Registrar details (including particulars for service)

<b>Name:</b>	
<b>ACN/ABN:</b>	
<b>Category of Registrar</b>	
<b>Street address:</b>	
<b>Postal Address:</b>	
<b>Facsimile:</b>	
<b>Email address:</b>	
<b>Nominated Contact:</b>	
<b>Prior Agreement:</b>	Registrar Agreement dated [ <i>insert date</i> ] OR "Not applicable"
<b>Special Licensing Terms</b>	<i>[insert details around special conditions for the Registrar. By way of example - if the Registrar is Education Services Australia, this should include any particular requirements around any authority required to meet the .edu.au namespace requirements]</i>

### 2. Designated Namespaces

The .au CCTLD together with the following second level domain name spaces, which together constitute the **Designated Namespaces**:

.au, .com.au, .net.au, .org.au, asn.au, id.au, wa.au, nt.au, sa.au, qld.au, nsw.au, act.au, vic.au, tas.au.

### 3. Fees

<b>Fees:</b>	The Registrar must pay the Fees applicable to the relevant category that applies to it, as set out in Part 1 above.	
	<b>Category</b>	<b>Domains under licence / management</b>
	Category 1	Fewer than 100,000
	Category 2	100,001 to 500,000
	Category 3	More than 500,000
Fees applicable for additional Registry Connections:		
<b>Quantity</b>	<b>Applicable fees plus GST</b>	
For each group of up to 10 additional Registry Connections	\$3000	

### 4. Maximum compensation for termination without cause

The below is the maximum one-off compensation payable to a Registrar in the event this Agreement is terminated without cause by auDA. The amount applicable to the Registrar is the amount that applies to the category that applies to the Registrar as set out in Part 1 above.

<b>Category</b>	<b>Domains under licence / management</b>	<b>Maximum compensation (including GST)</b>
Category 1	Fewer than 100,000	\$3000
Category 2	100,001 to 500,000	\$3000
Category 3	More than 500,000	\$3000

## Schedule B – Mandatory provisions for the Licence Agreements

All Licence Agreements must contain the following provisions:

### 1. auDA AND REGISTRAR'S AGENCY

1.1 In this Agreement:

- (a) **auDA** means .au Domain Administration Limited ACN 079 009 340, the .au domain names administrator;
- (b) **Registrar Rules** means the document titled ".au Domain Administration Rules – Registrar" as ratified by auDA and amended from time to time; and
- (c) **Licensing Rules** means the document titled ".au Domain Administration Rules – Licensing" released for public consultation on 21 April 2019 and ratified by auDA after that date (as amended from time to time).

1.2 Solely to the extent this Agreement purports to grant a right or benefit to auDA (who is not a contracting party to this Agreement), if that right or benefit is also granted to the Registrar, then the Registrar may (whether on behalf of auDA and/or in its own capacity) enforce the obligation corresponding to the auDA's right, for auDA's benefit. For the purposes of such enforcement, the obligation corresponding to auDA's right or benefit is taken to be owed to auDA.

### 2. auDA PUBLISHED POLICIES

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>, and includes the Registrar Rules and the Licensing Rules.

2.2 The 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 The Registrant acknowledges that under the auDA Published Policies:

- (a) there are mandatory terms and conditions that apply to all licences, and such terms and conditions are incorporated into, and form part of, this Agreement; and
- (b) the Registrant is bound by, and must submit to, the .au Dispute Resolution Policy; and
- (c) auDA may delete or cancel the registration of a .au licence.

### 3. auDA'S LIABILITIES AND INDEMNITY

3.1 To the fullest extent permitted by law, auDA is not liable to Registrant for any Consequential Loss or damage suffered by Registrant arising from, as a result of, or otherwise in connection with, any wrongful or negligent act or omission of auDA, its officers, employees, agents or contractors, sub-contractors and professional advisers.

3.2 For the purposes of this Item 3, "Consequential Loss" means any indirect, incidental, special or consequential loss or damage, pure economic loss damages and exemplary or punitive damages, including loss or damage in relation to loss of use, loss of production, loss of revenue, loss of profits or anticipated profits, loss of business, loss of business

opportunity, loss of contract, loss of reputation or opportunity, business interruptions of any nature, loss of data, data corruption rectification costs or loss or damage resulting from wasted management time.

- 3.3 The Registrar indemnifies each of auDA and its officers, employees or agents against any liability, loss, damage, charge, expense, outgoing or cost arising out of, and in connection with, the Registrant's registration or use of its .au licence.

## **Schedule C – Accreditation Criteria**

### **1. General**

- 1.1 All Registrars must satisfy the Accreditation Criteria set out in this Schedule at all times during the Term of the Agreement. The Accreditation Criteria is intended to ensure that Registrars operate in a way that is consistent with auDA's responsibility to promote and protect:
- (a) the security, integrity or stability of the Australian DNS;
  - (b) the efficient and effective operation of the licence registration system; and
  - (c) the rights and interests of Registrants.

### **2. Corporate requirements**

- 2.1 If it is an Australian company, the Registrar must be registered to carry on business in Australia in accordance with the Corporations Act.
- 2.2 If it is a non-Australian domiciled company, the Registrar must be registered and validly existing under the applicable Laws of the jurisdiction under which it is registered, incorporated and/or operating.
- 2.3 Australian companies must hold an Australian Company Number (ACN) and Australian Business Number (ABN).
- 2.4 Non-Australian domiciled companies must hold an Australian Registered Body Number (ARBN) and ABN, and must have an Australian address for service of notices for the purposes of this Agreement and general Law.
- 2.5 The Registrar must be registered with the Australian Taxation Office (ATO) for Goods and Services Tax (GST).
- 2.6 The Registrar must be required by Law to comply with the Privacy Act or have elected to be treated as an "organisation" in accordance with section 6EA(2) of the Privacy Act and must not have withdrawn or revoked such election.
- 2.7 The Registrar must obtain and maintain the insurance policies specified in clause 20.3 of this Agreement.
- 2.8 The Registrar must have a valid and subsisting Registry-Registrar Agreement in place with the Registry Operator.
- 2.9 The Registrar's satisfaction of each requirement of this paragraph 2 is a question of fact and will be verified by auDA objectively.

### **3. Operational requirements**

- 3.1 The Registrar must demonstrate knowledge of the Australian DNS and the Published Policies.
- 3.2 The Registrar must have the capability to interact with the Registry using EPP and/or a web interface, in accordance with all technical specifications prescribed by the Registry Operator.



- 3.3 The Registrar must have the capability to provide services to Registrants in accordance with this Agreement and the Published Policies.
- 3.4 The Registrar must have a sufficient number of staff, and adequate systems and procedures, to handle:
- (a) policy compliance checks for Domain Name registrations;
  - (b) customer billing;
  - (c) all customer inquiries and support services, including requests for changes in registration data; and
  - (d) customer complaints.
- 3.5 The Registrar must be able to maintain electronic copies of all transactions, correspondence and communications with auDA, the Registry Operator and Registrants for the Term.
- 3.6 The Registrar must be able to provide information systems security procedures to prevent systems hacks, break-ins, data tampering (or similar compromises of systems security) and any other disruptions to its business.
- 3.7 The Registrar must have at least one nominated contact person to liaise on all matters with auDA, and such person must be recognised as holding a senior management role in the Registrar's business.
- 3.8 In determining whether the Registrar satisfies the requirements of this paragraph 3, auDA will evaluate the Registrar's ability to meet the operational requirements based on accepted industry practice and benchmarks, and may take into account any factors it sees fit to do so, including the type and size of the Registrar's business and operations.

#### **4. Security requirements**

- 4.1 The Registrar must hold a current:
- (a) "ISS Compliance Certificate", as defined in, and in accordance with, auDA's Information Security Standard (ISS) for Accredited Registrars (2013-03); or
  - (b) effective "Information Security Management System" in compliance with ISO 27001; or
  - (c) other equivalent recognised security standard or framework expressly approved in writing by auDA for this purpose.
- 4.2 The Registrar must implement and maintain any prescribed Minimum Controls as advised by the auDA.
- 4.3 The Registrar's compliance with the security requirements of this paragraph 4 is a question of fact and will be verified by auDA objectively.

## Schedule D - Minimum Controls

### 1. Multi-factor authentication

1.1 Multi-factor authentication must be enforced for at least the following:

- (a) Registrar customers
  - (i) At login to customer interfaces with access to Registrar Services
  - (ii) As part of the customer submitting any change to Registrant Data
- (b) Registrar staff
  - (i) All interfaces that provide any level of access to Registrant Data

1.2 Email, Telephone and SMS are not to be used as forms of multi-factor authentication

### 2. Encryption at rest and in transit of Registrant Data

2.1 All Registrant Data must be encrypted at rest and during transit following the Australian Cyber Security Centre (ACSC) guidance on cryptographic controls as outlined in the ACSC's ISM (<https://www.cyber.gov.au/ism>). This includes (but is not limited to):

- (a) All internal and external situations in which Registrant Data flows over a network connection (including between databases and app servers)
- (b) Server/Virtual Machine/Cloud instance storage
- (c) Removable media
- (d) Registrant Data transferred via email
- (e) Backup media

2.2 Authentication information (internal and external) must be stored using non-reversible cryptographic hashes or equivalent. Where this is not possible, for example because the authentication data needs to be retrieved (e.g. the EPP authInfo password) then the information must be stored in database tables in an encrypted form.

### 3. Protection from Malware, Viruses and Phishing Attacks

3.1 Protection against malware, viruses and phishing must be in place including:

- (a) Host based anti-virus and anti-malware protections
- (b) Network based anti-virus and anti-malware protections
- (c) Monitoring and centralised alerting of malware detection, system changes and suspicious activity
- (d) Filtering of known malicious domains and websites
- (e) Scanning of file uploads
- (f) Scanning of web traffic
- (g) Blocking access to know botnet command and control endpoints

- (h) Scanning email for malware
- (i) Anti-phishing controls

#### **4. Segregation of critical systems that process Registrant Data**

4.1 Segregation controls must be in place including:

- (a) Any host that has the capability to communicate with the Registry must be segregated into its own subnet
- (b) Database and other repositories that hold Registrant Data must be segregated into their own subnet
- (c) Default-deny firewalls or equivalent must be used to control traffic entering or leaving a secure subnet
- (d) Hosts holding, processing or responsible for administering systems that hold or process Registrant Data must be set for default-denied access to the Internet and utilise an explicit whitelist only
- (e) Workstations used to administer systems must not be used for web browsing, email or general activities

#### **5. Patch Applications**

5.1 Technical vulnerability management controls (detection and identification of vulnerabilities and patch management procedures) must be in place on hosts that process Registrant Data, including alerting of vulnerabilities that go unpatched with escalation to management.

#### **6. Application Whitelisting**

6.1 Application whitelisting must be in place on hosts holding, processing or responsible for administering systems that hold or process Registrant Data.

#### **7. Access Control and authentication of users accessing systems with Registrant Data**

7.1 Access control systems must be in place that detect, and where feasible prevent, unauthorised changes to Registrant Data (prevent changes not requested by the Registrant). The access control policy and corresponding technical controls must implement the following:

- (a) Restrict administrative privileges
- (b) Need to know basis only
- (c) Identification and authentication of those requesting access
- (d) Validation of authorisation to access
- (e) Everything is forbidden unless explicitly permitted
- (f) Approval procedures for allocation & changes to access
- (g) Yearly auditing of access and records.

#### **8. Security Incident Management**

- 8.1 Any event that affects or has the potential to affect the confidentiality, integrity or availability of Registrant Data is to be classified as an information security incident.
- 8.2 A formal procedure and controls must be in place to prepare for, detect and then respond to information security incidents. This procedure must include requirements that the organisation must immediately give auDA notice of any security breaches.
- 8.3 The formal information security incident process must include a root cause analysis mechanism with mitigations assigned priorities and action items tracked to completion. Full records must be maintained.

## **9. Event Logs for hosts processing Registrant Data**

- 9.1 All relevant assets must keep logs of all activities which must include (where relevant)
  - (a) Identifying information of the event (such as IP Address, username, device details)
  - (b) Details of the event
  - (c) Timestamp of the event
- 9.2 Logs must be shipped to a centralised location and further analysed for patterns / issues.
- 9.3 Logs must be subject to disaster recovery processes.
- 9.4 Logs related to data security incidents must be made available to auDA upon request.

## Signing Page

**Executed** as an agreement.

**Signed** for and on behalf of **.au Domain Administration Ltd** ACN 079 009 340 by its duly authorised representative in the presence of:

.....  
Signature of witness

.....  
Signature of authorised representative  
By executing this agreement the representative/agent states that he/she has received no notice that his/her authority to do so has been revoked.

.....  
Name of witness  
(please print)

.....  
Name of authorised representative  
(please print)

**[If Registrar is an Australian company]:**

**Executed** by the **Registrar** in accordance with section 127(1) of the *Corporations Act 2001 (Cth)*:

.....  
Signature of director

.....  
Signature of director or company secretary\*  
\*delete whichever does not apply

.....  
Name (please print)

.....  
Name (please print)

**[If Registrar is a foreign company]:**

**Executed** for and on behalf of the **Registrar** in accordance with its Constitution, by its duly authorised representative in the presence of:

.....  
Signature of witness

.....  
Signature of authorised representative  
By executing this agreement the representative/agent states that he/she has received no notice that his/her authority to do so has been revoked.

.....  
Name of witness  
(please print)

.....  
Name of authorised representative  
(please print)