



Reseller Agreement

Domain Central Australia Pty Ltd

(ACN 152 360 088)

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1. What is this agreement about?

These terms are service terms for our Reseller Plan. This agreement allows the Reseller under a restricted agency to:

- 1.1 promote **domain name services**;
- 1.2 collect application forms for **domain name services** on behalf of **the Registrar**;
- 1.3 collect payments on behalf of **the Registrar**;

These terms apply to all domain registration and management services, and virtual web hosting services and plans we provide, and form part of our customer contract with you. They must be read in conjunction with our core terms at www.domaincentral.com.au/TandC

2. Who are the parties?

2.1. The parties to this agreement are:

- 2.1.1. 'We', 'us', 'DC', or 'Domain Central' means Domain Central Australia Pty Limited. ACN 152 360 088 of Level 27, 101 Collins Street, Melbourne VIC 3000, Australia ("**the Registrar**");
- 2.1.2. 'reseller', 'you', or 'customer' means anyone that we supply a service to. ("**the Reseller**");

3. When is this agreement made?

- 3.1. This agreement is made on the commencement date that the reseller subscription plan is purchased or first used; and
- 3.2. It continues until it is terminated in accordance with this agreement;

4. What are domain name services?

- 4.1. **Domain name services** are:
 - 4.1.1. domain name registration;
 - 4.1.2. email and URL forwarding features;
 - 4.1.3. web hosting services;
 - 4.1.4. web site advertising and placement; and
 - 4.1.5. other services offered by **the Registrar** from time to time;
- 4.2. **The Registrar** may discontinue, add or alter any of the **domain name services** at any time and without notice;

5. Can the reseller rebrand the service?

- 5.1. "Re-branding" a service means promoting **the Registrar's** service as a service provided by **the Reseller** subject to the restrictions imposed by this agreement;
- 5.2. **The Reseller** may **re-brand domain name services** with **the Reseller's** own product name, but only as allowed by this agreement.
- 5.3. If required by **the Registrar**, **the Reseller** must:
 - 5.3.1. give **the Registrar** copies of any advertising material in use or proposed for



use in the **re-branding** (“re-branding materials”);

- 5.3.2. give **the Registrar** any further information it requires about the **re-branding materials**; and
- 5.3.3. change the **re-branding materials** in any way that **the Registrar** reasonably directs.
- 5.4. **The Reseller** must never use **re-branding materials** that:
 - 5.4.1. infringe the **intellectual property rights** or other rights of any person; or
 - 5.4.2. expose **the Registrar** or **the Reseller** to the risk of legal liability (civil or criminal); or
 - 5.4.3. is misleading or deceptive; or
 - 5.4.4. contains any of **AUDA’s intellectual property rights** or the **intellectual property rights** of the **Registry Operator**, including its name, logo, distinctive colours, get up or trademarks, without the prior written consent of either **AUDA** or the **Registry Operator** and **the Registrar**; or
 - 5.4.5. the Reseller is prohibited from displaying the ICANN or ICANN-Accredited Registrar logo, or from otherwise representing itself as accredited by ICANN unless it has written permission from ICANN to do so; and
 - 5.4.6. except as specifically authorised by this agreement, uses any of **the Registrar’s intellectual property rights**, including its name, logo, distinctive colours, get up or trademarks, without the prior written consent of **the Registrar**.
- 5.5. **The Reseller** must immediately stop using any **re-branding materials** if so required by **the Registrar**, even if it had been approved by them, and use reasonable efforts to withdraw it from circulation. Neither **the Registrar** nor **AUDA/ICANN**, or the **Registry Operator** need have or give any reason for requiring it to do so, and no compensation is payable to **the Reseller** as a result.
- 5.6. Upon this agreement ending for any reason, **the Reseller** must stop using the **intellectual property rights** of **the Registrar**.

6. Sale of domain name services

- 6.1. If a person wishes to acquire **domain name services**, **the Reseller** shall:
 - 6.1.1. obtain from the person the information and any documentation that **the Registrar** requires in order to provide the **domain name service**; and
 - 6.1.2. pass the information and documentation on to **the Registrar**;
 - 6.1.3. conform with all registry policies in all regards including those published by AUDA and ICANN (Registrar Accreditation Agreement and Consensus Policies) as may change from time to time;
 - 6.1.4. identify the sponsoring registrar or provide a means for identifying the sponsoring registrar, such as a link to the InterNIC Whois look up service;
 - 6.1.5. identify the sponsoring registrar upon inquiry from the customer;

- 6.1.6. ensure that the identity and contact information provided by the customer of any privacy or proxy registration service offered or made available by reseller in connection with each registration will be deposited with Registrar or held in escrow or, alternatively, display a conspicuous notice to such customers at the time an election is made to utilize such privacy or proxy service that their data is not being escrowed.

Where escrow is used, the escrow agreement will provide, at a minimum, that data will be released to registrar in the event reseller breaches the reseller agreement, and such breach is harmful to consumers or the public interest. In the event that ICANN makes available a program granting recognition to resellers that escrow privacy or proxy registration data as detailed above, and reseller meets any other criteria established by ICANN in accordance with its Bylaws, reseller shall be permitted to apply to ICANN for such recognition;

- 6.1.7. to the extent that Registrar is obligated to provide a link to an ICANN webpage, the Reseller also shall be under an obligation to provide such linkage;

- 6.2. **The Registrar** may direct **the Reseller** to pass the information in clause 6.1 to it via the use of its website or via email;

- 6.3. Nothing in clause 6.1 obliges **the Registrar** to provide the **domain name services**;

- 6.4. **The Registrar** may direct the information to be obtained, the form in which it is to be provided, and any associated requirements (e.g. provision of original signature on application form).

- 6.5. **The Reseller** must not take any step under clauses 6.1 or 6.4 unless the person to whom the information relates:

- 6.5.1. is aware that **the Reseller** will be passing the information on to **the Registrar**;

- 6.5.2. intends the information to be taken as an application for **domain name services**;

- 6.5.3. is aware that **domain name services** are supplied subject to **the Registrar's** standard conditions as varied from time to time; and

- 6.5.4. consents to **the Reseller** and **the Registrar** disclosing to each other on an ongoing basis, information concerning the person for the purposes of providing and coordinating **domain name services**;

7. **The Reseller's conduct**

- 7.1. **The Reseller** must at all times act:

- 7.1.1. lawfully;

- 7.1.2. honestly and professionally; and

7.1.3. ethically and in a manner that does not bring either **the Registrar, AUDA** or **the Registry Operator** into disrepute;

7.2. The requirements in this clause 7 are in addition to those contained in the rest of this agreement;

8. Limited Agency

8.1. **The Reseller** is appointed as an agent of **the Registrar** only to the extent expressly provided for in this agreement;

8.2. **The Registrar** appoints and authorises **the Reseller** to act as his agent only to the extent necessary, and solely for the purposes of carrying out its obligations under this agreement in accordance with this clause 8;

8.3. The authority to act as agent is restricted to **the Reseller** undertaking the following things for and on behalf of **the Registrar**:

8.3.1. to collect applications for **domain name services** and pass them on to **the Registrar**; and

8.3.2. to collect fees payable for **domain name services**.

8.4. **The Reseller** must not do or purport to do anything in the capacity of **the Registrar's** agent that is beyond the strict terms of its actual authority, or represent to anyone that it has greater authority than it in fact has;

9. Overriding provisions – master agreements

9.1. **The Reseller** acknowledges that:

9.1.1. **the Registrar's** ability to allow it to provide **domain name services** is entirely dependent on its **master agreements**.

9.1.2. **the Registrar's** business substantially depends on the maintenance of its **master agreements**; and

9.1.3. the **master agreements** give third parties far-reaching and often arbitrary power over **the Registrar**.

9.2. **the Registrar** may do anything in relation to this agreement, up to the point of terminating it arbitrarily and immediately, that it deems necessary:

9.2.1. to comply with **master agreements**;

9.2.2. to protect or preserve **master agreements**;

9.2.3. to comply with a direction of **AUDA** or the **Registry Operator**;
without liability to **the Reseller**.

9.3. This agreement automatically ends if the **master agreements** under which **the Registrar** acquires **domain name services** ends.

10. What is the relationship of the parties?

10.1. The only legal relationship that the parties have is that set out in this agreement;

10.2. Except for the limited agency in clause 8, the parties are not partners, joint venturers nor



agents of each other and do not have the power to bind each other.

11. Charges

- 11.1. **The Reseller** must pay the prices specified in the price schedule ("price schedule") for the **domain name services**, unless otherwise agreed to in writing by **the Registrar**;
- 11.2. **The Reseller** may charge **Reseller customers** the market price (which is inclusive of **GST**) for **domain name services**;
- 11.3. **The Registrar** may publish a new or amended price schedule from time to time;

12. Collecting payments

- 12.1. **The Registrar** will provide **the Reseller** with the information necessary for it to bill the **Reseller customers** for **domain name services**, including any **GST** ("billing data").
- 12.2. **The Reseller** must:
 - 12.2.1. collect payment, including **GST**, in accordance with the **billing data** and **the Registrar's** standard terms of payment;
 - 12.2.2. remit to **the Registrar** all payments collected within 7 days of receiving them, provided that **the Reseller** may retain the amount of money exceeding the cost of the **domain name service** in clause 11.1 and subject to the conditions of this clause 12.2;
 - 12.2.3. keep **the Registrar** fully informed about the status of collections, overdue payments and billing disputes;
 - 12.2.4. comply with any directions that **the Registrar** may give about collection or remission of **Reseller customer** payments for **domain name services**;
 - 12.2.5. cease collection of payments (either generally, or in relation to specified **Reseller customers**) at the direction of **the Registrar** and do everything necessary to allow **the Registrar** to take them over smoothly.
- 12.3. **The Reseller** must not issue legal proceedings against any **Reseller customer** for payment of fees for **domain name services** unless authorised in writing by **the Registrar**, and then only in accordance with any conditions of that authority.

13. Privacy

- 13.1. This clause operates in addition to any other requirements imposed by this agreement;
- 13.2. **The Reseller** must have a privacy policy which complies with the *Privacy Act 1988 (as amended)* ("Privacy Act") and which:
 - 13.2.1. must be provided to **Reseller customers** upon demand;
 - 13.2.2. is prominently displayed at **the Reseller's** place of business;
 - 13.2.3. is available on **the Reseller's** website;
- 13.3. **The Registrar** may:
 - 13.3.1. direct **the Reseller** to 'opt in' to the operation of the **Privacy Act**;

13.3.2. direct **the Reseller** to adopt an approved privacy code;

13.4. **The Reseller** must comply with the National Privacy Principles and the provisions of the **Privacy Act** even if **the Registrar** has not requested **the Reseller** to 'opt in' in accordance with clause 13.3.1 of this agreement;

14. **No exclusivity**

14.1. **The Reseller** has no exclusivity in the rights it gets under this agreement. **The Registrar** may grant the same or similar rights to anyone else, in the same or a different territory as **the Reseller**.

14.2. If **the Registrar** offers any other commission or reward scheme to anyone else, it is not obliged to offer it to **the Reseller**.

15. **What are the reseller's obligations?**

15.1. **The Reseller** must:

15.1.1. provide **Reseller customers** with itemised pricing before the supply of **domain name services**;

15.1.2. cooperate and do all things reasonably necessarily required by **the Registrar**, where **the Registrar** is investigating any complaint or investigating a breach or a potential breach of this agreement or the **master agreements**;

15.1.3. comply with **published policies**;

15.1.4. comply with industry codes of practice;

15.1.5. comply with any other direction, code of conduct or reseller handbook as directed by **the Registrar**;

15.1.6. identify its relationship with **the Registrar**:

15.1.6.1. on **the Reseller's** website; and

15.1.6.2. in any instrument of, or purporting to be signed or issued by or on behalf of **the Reseller**, or issued in the course of, or for the purposes of, performing services in accordance with this agreement;

15.1.7. not in any way, whether directly or indirectly, be involved in the trade or business of the **Registry Operator**;

16. **Acknowledgements**

16.1. **The Reseller** acknowledges:

16.1.1. that it has no proprietary or other interest in **the Registrar's** website or any of the **intellectual property** in the website;

16.1.2. that it has no **intellectual property rights**, proprietary rights or any other interest in any data it passes to **the Registrar's** in accordance with this agreement or otherwise;

16.1.3. that it must pay an initial registration fee and any other fees and charges which **AUDA** or **the Registrar** may impose from time to time;



17. Indemnities

- 17.1. **The Reseller** indemnifies **the Registrar** against:
- 17.1.1. any consequences arising out of any breach of clause 5.4;
 - 17.1.2. any consequences arising out of any breach of clause 8.4;
 - 17.1.3. any consequences arising out of any breach of this agreement or any policy or direction of **the Registrar**, **AUDA** or the **Registry Operator**;
 - 17.1.4. any claim, costs or other liabilities including penalty interest, which **the Registrar** may suffer under the **master agreements** as a result of a breach of this agreement by **the Reseller**;
- 17.2. **The Reseller** indemnifies **the Registrar** against all costs, fees, expenses, taxes, duties, charges, and liabilities of any kind at all that may arise in connection with **the Reseller's** activities under this agreement and any money that **the Reseller** may receive under it.

18. Can this agreement be assigned?

- 18.1. **The Reseller** cannot transfer, assign or sublicense any or all of its rights, duties or obligations in this agreement to, or share them with, a third party.
- 18.2. **The Registrar** may transfer assign or sublicense any or all of its rights, duties or obligations in this agreement to, or share them with, a third party on notice to **the Reseller**.

19. How are documents served?

- 19.1. A notice under this agreement must be written, and faxed, posted or delivered to a party's **service address** or personally delivered to the party or a director of an incorporated party.
- 19.2. A notice from **the Registrar** need not be signed.
- 19.3. A notice from **the Reseller** must be signed.
- 19.4. Where a party:
- 19.4.1. is a corporation, its notices may be signed by any director;
 - 19.4.2. has a lawyer, its notices may be signed by the lawyer;
- 19.5. A party's **service address** is any of:
- 19.5.1. in the case of a corporation, its current registered office;
 - 19.5.2. the last:
 - 19.5.2.1. fax number;
 - 19.5.2.2. business address;the party notified as its address for service of notices.
- 19.6. A notice is deemed to have been given:
- 19.6.1. if personally delivered – at the time of delivery;



- 19.6.2. if hand delivered to a business address between 9 a.m. and 4:45 p.m. on a **business day** – on delivery;
 - 19.6.3. if hand delivered to a business address other than between 9 a.m. and 4:45 p.m. on a **business day** – at 9 a.m. on the next business day;
 - 19.6.4. if posted by ordinary mail -- at 10 a.m. on the third **business day** next following posting;
 - 19.6.5. if faxed between 9 a.m. and 4:45 p.m. on a **business day** – when the sender's fax machine issues a successful transmission notification, and
 - 19.6.6. if faxed other than between 9 a.m. and 4:45 p.m. on a **business day** – at 9 a.m. on the next business day, subject to the sender's fax machine having issued a successful transmission notification.
- 19.7. **The Registrar** is deemed to have delivered a document that is set out on the World Wide Web if it gives **the Reseller** notice of the address on the World Wide Web where the document can be found, as long as the document can be found at that address when the notice is given and for at least 3 days after that.
- 19.8. From the date of this agreement until further notice:
- 19.8.1. **The Registrar's service addresses** are those in **the schedule to be appended to this document**; and
 - 19.8.2. **The Reseller's service addresses** are those in **the schedule to be appended to this document**;
- 20. Confidential information**
- 20.1. Each party must treat the **confidential information** of the other party as confidential and commercially valuable.
 - 20.2. The parties' duties under this clause 20 are in addition to, and not instead of, any duties they may have under any other confidentiality or non-disclosure agreement.
- 21. Inconsistency**
- 21.1. Where there is an inconsistency between the master agreements and this agreement, then the master agreements take precedence;
 - 21.2. Where there is an inconsistency between this agreement and any other form or document then this agreement will take precedence;
- 22. When does this agreement end?**
- 22.1. This agreement ends:
 - 22.1.1. upon the expiration of the notice period in clause 23.1.1; or
 - 22.1.2. immediately upon termination in accordance with clause 23.2 and 23.3;
- 23. How can this agreement be terminated?**
- 23.1. This agreement can only be terminated:
 - 23.1.1. on at least 30 days' notice by either party; or
 - 23.1.2. in accordance with clause 23.2;

23.2. **The Registrar** may terminate this agreement immediately by issuing a **termination notice** if **the Reseller**:

23.2.1. becomes insolvent; or

23.2.2. fails to pay money within 7 days of it being due; or

23.2.3. breaches this agreement and fails to remedy the breach within 7 days after receiving a notice that details the breach and requires that it be remedied; or

23.2.4. breaches or threatens to breach the **master agreements**; or

23.2.5. breaches clause 15 of this agreement;

23.2.6. If the Registrar becomes aware that such a Reseller is in breach of the provisions of ICANN requirements noted in 5.4.5 or clauses 6.1.3 to 6.1.7 inclusive.

23.3. **The Registrar** may terminate this agreement in accordance with clause 9.2, and 9.3 of this agreement;

24. **How is GST charged?**

24.1. Except where express provision is made to the contrary, the *consideration* payable by **the Reseller** under this agreement represents the *value* of any *taxable supply* for which payment is to be made.

24.2. Subject to **the Reseller** being supplied with a valid *tax invoice*, if **the Registrar** makes a *taxable supply* in connection with this agreement for a *consideration*, which represents its *value*, then **the Reseller** will pay, at the same time and in the same manner as the *value* is otherwise payable, (or, if for any reason that does not happen, without delay after **the Registrar** requests it to) the amount of any **GST** payable in respect of the *taxable supply*.

24.3. Subject to **the Reseller** being supplied with a valid *tax invoice*, if this agreement requires **the Reseller** to pay, reimburse or contribute to an amount paid or payable by **the Registrar** in respect of an *acquisition* of a *taxable supply* from a third party, the amount required to be paid, reimbursed or contributed by **the Reseller** will be the *value* of the *acquisition* by the owner less any *input tax credit* to which the owner is entitled plus, if the owner's recovery from **the Reseller** is a *taxable supply*, any **GST** payable under clause 24.2.

25. **Who pays government charges?**

The Reseller must pay stamp duty and other government charges in relation to this agreement;

26. **Interpretation**

In this agreement, unless the context indicates otherwise:



26.1. Dictionary

the expression:	means:
AUDA	.au Domain Administration Limited ACN 079 009 340, the regulatory body responsible for administering the .au ccTLD and its associated sub-domains
business day	any day from Monday to Friday inclusive, excluding any public holidays observed in Victoria
claim	any demand, or allegation of liability, and all related costs, claims, demands, liability, damages, losses and expenses of any nature including all legal expenses suffered or incurred
confidential information	any information of a party which the other party knows or should know is confidential to the other party, for as long as it remains confidential, or would have remained confidential except for a wrongful disclosure by the first party
co-branding	has the meaning given by clause 5.1
co-branding materials	has the meaning given by clause 5.3.1
domain name services	has the meaning given by clause 4
Dictionary	this table of defined terms
GST	GST within the meaning of the GST Act
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (as amended)
intellectual property rights	all rights in relation to patents, copyright, registered designs, registered and unregistered trade marks, trade secrets, know-how and confidential information and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967, including without limitation any right to register those rights, whether created before or after the date of this agreement, whether existing in Australia or any other country and in all cases for the duration of those rights.
the Registrar	the person described in clause 2.1.1
master agreements	any agreements (as varied or replaced from time to time) between the Registrar and, AUDA and the Registry Operator relating to the provision or associated with the provision of domain name services

office hours	between 9 a.m. and 5 p.m. on a business day
published policies	those specifications and policies established and published by AUDA from time to time, as the self-regulatory body responsible for the administration of the .au ccTLD, in accordance with its constitution
the Reseller	The person described in the schedule to be appended to this document ;
Reseller customer	a person who acquires domain name services as a result of an application referred by the Reseller to the Registrar
Registry Operator	Ausregistry Pty Ltd ACN 092 242 209 or any subsidiary of it
schedule item	an item in the schedule to this agreement
served	served in accordance with clause 19.6
service address	an address in accordance with clause 19.5
standard form of agreement	The Registrar's standard form of agreement as varied from time to time
terminate	terminate in accordance with clause 23
termination notice	a notice in writing under clause 23.2 which terminates this agreement in accordance with clause 23;

- 26.2. If an expression is defined in the **dictionary** in clause 26.1 and is used in **bold typeface**, that is what it means.
- 26.3. If an expression is defined in the **dictionary**, grammatical derivatives of that expression have a corresponding meaning. (For instance, if “to colour” means “to paint red”, then “coloured” means “painted red”.)
- 26.4. Headings are only for convenience. They are to be ignored when interpreting the agreement.
- 26.5. A schedule to a document is part of that document.
- 26.6. A reference to the singular includes the plural and vice versa.
- 26.7. Where one thing is said to include one or more other things, it is not limited to those other things.
- 26.8. There is no significance in the use of gender-specific language.
- 26.9. A “person” includes any entity, which can sue and be sued.
- 26.10. A “person” includes any legal successor to or representative of that person.
- 26.11. A reference to a law includes any amendment or replacement of that law.



26.12. Anything a party can do, it may do through an appropriately authorised representative.

26.13. Any matter in **the Registrar's** discretion is in its absolute and unfettered discretion.

27. Severability

If any condition or part of a condition in this document is held to be invalid or void, then the invalid or void condition or any part of it is to be severed from this document, and will in no way affect the remaining conditions of this agreement;

28. Waiver

The performance or non-performance of an obligation by the owner is not to be deemed a waiver of any rights under this agreement or at law or in equity;

29. Variation

This agreement may only be varied in writing and signed by all parties;

30. Applicable Law

30.1. This agreement is governed by the law of Victoria.

30.2. Any legal proceedings relating to this agreement can only be taken in courts with jurisdiction in Victoria.