

MD WEB HOSTING Reseller Agreement

Terms last updated: November 22, 2007

THIS AGREEMENT is made on the ___ day of _____ 2008

BETWEEN: **MD Web Hosting Pty Limited (ACN 109 613 194) of 12/25 Claremont Steet, South Yarra VIC 3141**

(“MD”)

AND: **The party named in schedule A**

(“Reseller”)

BACKGROUND

- A** MD Web Hosting is an official registrar and has entered a registrar agreement with .au Domain Administration Ltd ACN 079 009 340 (“auDA”), and, subject to the registrar agreement, the auDA published policies and the code of conduct, is able to provide Registrar services for .au country code domains.
- B** MD is entitled to appoint resellers to sell domain name services on behalf of MD.
- C** The Reseller agrees to resell domains and other services to their own customers on the terms set out in this Agreement.

1. INTERPRETATION

1.1 Unless expressed to the contrary:

- (a) words importing the singular include the plural and vice versa, and words importing any gender includes the other genders;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:
 - (i) a person includes a partnership, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and assigns;
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty, indemnity or representation and a reference to a failure to observe or perform an obligation includes a breach of a warranty, indemnity or representation;
 - (vi) where any word or phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form in respect of such word or

phrase shall have a corresponding meaning;

- (vii) this Agreement or any other instrument, policy or document includes this Agreement, instrument, policy or document as varied, amended, modified or replaced, notwithstanding any change in the identity of the parties;
- (viii) any authorities, associations, bodies and entities whether statutory or otherwise shall, in the event of such authority, association, body or entity ceasing to exist or being reconstituted, replaced or the powers or functions thereof being transferred to or taken over by any other authority, association, body or entity, be deemed to refer respectively to the authority, association, body or entity established, constituted or substituted in lieu thereof or which exercises substantially the same powers or functions in lieu thereof;
- (d) any covenant, agreement, warranty or indemnity on the part or for the benefit of two or more persons shall bind them and be for the benefit of them jointly and severally respectively;
- (e) “\$” or “dollars” is a reference to the lawful currency of Australia;
- (f) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (g) “including” and similar expressions are not words of limitation;
- (h) a month means a calendar month;
- (i) this Agreement includes the Recitals and all schedules, exhibits, annexures and appendices referred to in this Agreement;
- (j) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (k) any term defined in the Recitals, statement of names and descriptions of the parties has the meaning there defined; and
- (l) nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or any part of it.

2. HEADINGS

2.1 Clause headings and the table of contents (if any) do not affect the interpretation of this Agreement.

3. BUSINESS DAY

3.1 If any amount payable under or pursuant to this Agreement is to be paid on a day which is not a business day in the place where the payment originates, the amount may be paid on the next business day in that place.

4. DEFINITIONS

4.1 'auDA' means .au Domain Administration Limited ACN 079 009 340.

'Code of Practice' means the Industry Code of Practice which with the Published Policies is intended to regulate the practices of participants in the domain names industry towards other participants in the industry or towards consumers in the industry.

'Commencement Date' means the date Reseller's application is approved by MD and account created in MD Web Hosting's systems.

“Confidential Information” means without limitation, trade secrets, information (including financial information, market information, commercial information and other information), customer lists, supplier lists, employee, contractor or agent details, ideas, concepts, know-how, technology, process formulae, software, drawings, forms, interfaces, templates, knowledge and similar information, samples, devices, demonstrations and other materials of whatever description whether subject to or protected by copyright, patent, trademark registered or unregistered or otherwise, Intellectual Property Rights or MD Material which is designated as confidential or which by its nature is confidential or which is disclosed in circumstances importing an obligation of confidence, disclosed or communicated directly or indirectly (whether in writing or orally) before and after the date of this Agreement by one party to the other.

'Reseller Services' means the services to be provided by MD to Reseller, and provided by Reseller to Client, as specified in Resellers Application and as amended from time to time by Reseller by providing written notice.

'Client' means any person, corporation or other legal entity acquiring services from Reseller which form part of Reseller Services.

'Domain Name' means a domain name in any of the gTLD or ccTLD's offered by MD.

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

'gTLD' means General Top Level Domain

'ICANN' Means Internet Corporation for Assigned Names and Number, being the not-for-profit regulatory body of the domain name industry worldwide.

'Intellectual Property Rights' means any rights conferred under statute, common law and equity in relation to inventions, patents, designs, trade marks, trade names, logos and get-up, circuit layouts and copyright (including moral rights).

'Published Policies' means those specifications and policies published by auDA, ICANN and any other regulatory body from time to time.

5. WARRANTIES

5.1 Each party represents and warrants to the other party that at the time of entering into this Agreement:

- (a) it has full and corporate power to execute, deliver and perform its obligations under this Agreement;
- (b) this Agreement and any schedules and attachments constitute a legal, binding and enforceable obligation on it in accordance with its terms;
- (c) there are no actions, claims, proceedings or investigations pending or threatened against it or by it of which it is aware and that may have a material effect on the subject matter of this Agreement; and
- (d) it has all licences, authorisations, consents, approvals and permits required by all applicable laws and regulations in order to perform its obligations under this Agreement.

5.2 Each party warrants that it will carry out its obligations under this Agreement:

- (e) with due care and skill and to the best of its knowledge and expertise; and
- (f) in compliance with all applicable laws, regulations and industry codes.

Each party warrants that it shall not knowingly infringe the intellectual property rights of the other or any third party.

6. APPOINTMENT OF RESELLER

6.1 MD hereby grants and the Reseller accepts a non-exclusive appointment as a reseller of Domain name services upon and subject to the terms of this agreement.

6.2 MD reserves the right to itself provide the Reseller Services and to appoint other resellers to provide the Reseller Services.

6.3 Reseller acknowledges and agrees that Registrants for Domain Names introduced by Reseller to MD become and remain customers of MD.

6.4 Reseller's appointment and the term of this agreement commences on the Commencement Date and continues thereafter until terminated in accordance with this agreement.

6.5 Either party may terminate this contract by giving the other party 30 days written notice.

7. SOURCE OF OBLIGATIONS

7.1 When providing the Reseller Services pursuant to its appointment as a Reseller, Reseller must do so in accordance with the obligations imposed on it under this agreement.

7.2 Reseller must identify its relationship with MD:

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

7.2.2 on the Reseller's website,

7.3 where providing registrations of domain names governed by the rules and regulations as set out by auDA.

7.4 Reseller must comply with MD's reasonable directions as to the manner of identifying Reseller's relationship with MD.

7.5 Reseller must comply with all Published Policies as if they were incorporated into and formed part of this agreement. Reseller acknowledges and agrees that the Published Policies may be varied by auDA at any time after the Commencement Date. Notice of the variation will be given to Reseller either by notice in writing by MD or by being posted on auDA's website. Reseller acknowledges and agrees that it is its responsibility to visit auDA's websites to ensure that it is aware of the most recent Published Policies.

7.6 Reseller must comply with the published Codes of Practice as if it were incorporated into and formed part of this agreement.

7.7 In the event of any inconsistencies between the provisions of this agreement and the provisions in the Published Policies or the Codes of Practice or both then to the extent of the inconsistencies the documents are to be interpreted in the following order of priority:

7.7.1 the Published Policies; and

7.7.2 the Code of Practice; and

7.7.3 this agreement.

7.8 Reseller must comply with the specific Terms and Conditions for all other Reseller Services, as detailed on the MD website from time to time, as if they were incorporated into and formed part of this agreement.

8. PAYMENTS AND FEES

8.1 All payments and fees shall be in accordance with the relevant scale of charges and rates published and provided to the reseller from time to time by MD.

8.2 Reseller must pay MD for services in accordance with the scale of current charges and rates provided in schedule B.

8.3 Unless waived by MD, Reseller must pay all applicable fees at the time of application set out in schedule B.

8.3 Resellers' timely payment of Fees is a material condition of Resellers' obligations under this Agreement. In the event that Reseller fails to pay its Fees, MD may, subject to its compliance with Published Policies, do any or all of the following: (i) stop accepting new orders from Reseller; (ii) cease providing services with invoices not paid in full (including deletion of domain names from the Registry database(s)); (iii) give to the Reseller written notice of termination of this Agreement and (iv) pursue any other remedy under this Agreement or at law.

8.4 Where MD Web Hosting collects Reseller's payment from Reseller's Clients directly, MD Web Hosting agrees to pay all claims for rebates within 14 days of receipt of Tax Invoice from Reseller.

9. RESELLER'S OBLIGATIONS

9.1 Reseller must:

9.1.1 act in good faith in all of its dealings with MD and each Registrant;

9.1.2 comply with all of MD's written policies, conditions of use, and those of auDA in relation to matters relating to this agreement;

9.1.3 immediately give MD notice of any security breaches affecting MD as soon as Reseller becomes aware of such security breaches;

9.1.4 keep MD informed of all changes of Reseller's personal or company details;

9.1.5 provide to MD from time to time upon MD's written request, information in relation to Reseller and the operation of Reseller's business relating to the provision of Reseller Services, as MD may reasonably request; and MD undertakes to keep confidential all information so disclosed to it by Reseller and not to use any such information, or permit it to be used, for any purposes other than as permitted by law and expressly provided for in this Agreement;

9.1.6 within two Business Days give notice to MD of any impending claims, litigation, proceedings or material disputes against Reseller by any person or authority relating directly or indirectly to the provision of Reseller Services including arbitration and administrative or Governmental investigations;

9.1.7 use personal information about Reseller's Clients solely for the purposes of fulfilling Reseller's obligations under this Agreement and take all reasonable steps to ensure such information is protected against loss and unauthorised use, access, modification and disclosure and not do anything that would constitute a breach, or cause MD to breach, any laws pertaining to protection of Privacy;

9.1.8 continue to hold all materials, statutory licences, consents and authorisations necessary to perform its obligations under this agreement; and

9.1.9 comply with all applicable law.

9.2 Reseller must not:

9.2.1 use MD's intellectual or industrial property other than as specified by MD;

9.2.2 use any information belonging to or regarding MD other than in accordance with this agreement.

10. INDEMNITY

10.1 Notwithstanding any other provision of this Agreement neither party shall be liable to the other by way of indemnity or by reason of any breach of contract or statutory duty or by reason of tort (including but not limited to negligence) for consequential, indirect or special damages whatsoever that may be suffered by the other, including, but not limited to, loss of business profits, anticipatory profits, business interruption or loss of business information.

10.2 Each party, to the extent permitted by law:

- (a) excludes all conditions and warranties implied into this Agreement; and
- (b) limits its liability for breach of any such condition or warranty that it cannot exclude to the greater of:
 - (i) resupplying the services; or
 - (ii) paying the cost of having the services resupplied.

10.3 Each party is responsible for:

- (a) deducting PAYE tax and the superannuation guarantee levy from the wages or salaries of its employees; and
- (b) all payments (of whatever nature, including, but not limited to, wages or salaries and workers compensation) to its employees.

10.4 Each party indemnifies the other and its respective directors, officers and employees from and against any and all liability, loss, harm, damage, cost or expense (including legal fees) howsoever arising that they, or any of them may suffer, incur or sustain as a result of a breach of his obligation in this Clause 10.

11. INSURANCE

11.1 The Reseller shall take out adequate insurance against all normal risks arising in the course of its business including without limitation insurance against public liability, business interruption, fire, flood, burglary and accidental damage. The Reseller shall provide a certificate of currency of its insurance policies to MD Web Hosting upon request.

12. CHANGE OF CONTROL

If

12.1 control, ownership or management of Reseller changes significantly; or

12.2 Reseller sells or otherwise disposes of substantially all of its business assets to a third party,

MD may terminate this Agreement by giving written notice to Reseller of the termination which will be effective immediately unless otherwise stated in the notice.

13. FOLLOWING TERMINATION

13.1 Following Termination of this Agreement the reseller must immediately and at the Reseller's own expense:

13.1.1 Cease identifying itself as a reseller or as having any other relationship with MD;

13.1.2 Cease promoting, selling and supporting the Reseller Services;

13.1.3 Immediately pay any amounts the Reseller owes to MD under this Agreement.

13.2 Upon termination of this Agreement Reseller will cease to have administrative or any other rights to the domain names registered to Clients. MD will, at its discretion, take over all such rights, obligations and duties as required of a Registrar and contact the Clients accordingly to advise them of this change and of their rights and responsibilities with MD.

14. CONFIDENTIALITY

14.1 Each party to this Agreement, its directors, officers, employees, agents and representatives shall respect and hold in confidence and not disclose to third parties in any way Confidential Information, which is disclosed to it by the other party, and not use such Confidential Information other than for the purposes for which it is disclosed to it.

14.2 A party will not use, and will ensure that its directors, officers, employees, agents and representatives do not use Confidential Information other than for the purposes for which it is disclosed to it.

14.3 Each party shall, on the written request from the other party, deliver to the party making that request all Confidential Information of that party which is at the time of the request in a recorded form, and which is in that party's possession or control.

14.4 Each party shall assume responsibility for the actions of its directors, employees, agents and representatives who have access to the Confidential Information from time to time and shall ensure that they are aware of and strictly bound by the confidentiality obligations created under this Agreement.

14.5 Confidential Information shall not include information that:

- (c) at the time of disclosure is or thereafter becomes a part of the public domain through no act or error of the receiving party;
- (d) is received by a party from a third party lawfully in possession thereof and who has the lawful power to disclose such Confidential Information to the receiving party;
- (e) is officially approved in writing for release by the disclosing party;
- (f) was otherwise in the lawful possession of the receiving party prior to disclosure as shown by competent evidence; or
- (g) is required to be disclosed pursuant to an applicable law, rule, regulation, government requirement or court order, or the rules of any stock exchange

provided, however, that the receiving party shall advise the disclosing party of such required disclosure promptly upon learning thereof in order to afford the disclosing party a reasonable opportunity to contest, limit and/or assist the receiving party in preparing such disclosure.

14.6 The party intending to rely on any of the exceptions stated in Clause 10.5 shall bear the onus of proof that the exception applies.

14.7 The confidentiality obligations under this Agreement shall remain in force both during and after the termination or expiry of this Agreement.

14.8 Confidential Information directly communicated by the disclosing party's directors, officers, employees, agents or representatives to the receiving party shall be deemed to be Confidential Information belonging to the disclosing party for the purpose of this Agreement.

14.9 Neither party will disclose all or part of the contents of this Agreement without the prior written approval of the other party.

14.10 Neither party shall use the other party's name in any advertising or other promotional material without the prior written permission of the other party.

14.11 Confidential Information includes Confidential Information belonging to a Related Body Corporate of a party.

15. BREACH

15.1 In the event that Reseller fails to fulfil or is in breach of any of its obligations under this Agreement and does not rectify the omission or breach after receiving 30 days notice in writing from MD to do so, then MD is entitled to terminate this agreement by giving written notice to Reseller of the termination, which will be effective immediately unless otherwise stated in the notice.

16. INSOLVENCY

If:

16.1 Reseller makes an assignment for the benefit of its creditors;

16.2 a receiver or receiver and manager or administrator or inspector or analogous person is appointed in respect of or over all or any part of Reseller's assets;

16.3 an application for the winding up of Reseller is presented and not withdrawn or dismissed within 21 days or an order is made or an effective resolution is passed for the winding up of Reseller or any analogous applications are made or proceedings started;

16.4 proceedings are initiated with a view to obtaining an order for winding up Reseller or any shareholder or director convenes a meeting for the purpose of considering or passing any resolution for the winding up of Reseller;

16.5 any execution or analogous process is levied or enforced against the property of Reseller; or

16.6 Reseller ceases to carry on business,

then, MD is entitled to terminate this agreement by giving written notice to Reseller of the termination, which will be effective immediately unless otherwise stated in the notice.

17. FURTHER ASSURANCES

17.1 Each party agrees, at its own expense, on the request of the other party, to do everything necessary to give effect to this Agreement and the transactions contemplated by it (including the execution of documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

18. RELATIONSHIPS BETWEEN THE PARTIES

18.1 Both MD Web Hosting and the reseller are independent contractors with respect to each other and nothing contained in this Agreement is intended to or will create an association, partnership, joint venture, employment or agency relationship between them.

19. WAIVER AND VARIATION

19.1 No delay or failure by a party enforcing the provisions of this Agreement will prejudice or restrict the rights of that party, nor any waiver of those rights operate as a waiver of a new subsequent breach.

19.2 Any provision or right under this Agreement may only be waived in writing signed by the party granting the waiver.

20. REMEDIES

20.1 A party's rights and remedies are cumulative and do not exclude any other right or remedy.

20.2 A party may exercise or not exercise a right or remedy, including the making or not making of any determination, in its absolute discretion.

20.3 A party is not obliged to give a reason for its decision.

20.4 A party is not liable or accountable for a loss associated with its actions under this clause.

20.5 To the extent permitted by law, a party may enforce or act on a breach of another party's obligations under this document even if the parties terminate this agreement.

21. WHOLE AGREEMENT

This agreement:

20.1 records the entire agreement between parties; and

20.2 supersedes all previous negotiations, understandings and agreements between the parties.

21. VARIATION

21.1 No provision of this agreement or a right conferred by it can be varied except in writing signed by the parties.

22. INVALIDITY

22.1 A word or provision must be read down if:

22.1.1 this agreement document is void, voidable, or unenforceable if it is not read down;

22.1.2 this agreement will not be void, voidable or unenforceable if it is read down, and

22.1.3 the provision is capable of being read down.

22.2 A word or provision must be severed if:

22.2.1 despite the operation of clause 22.1, is a provision is void, voidable or unenforceable if it is not severed; and

22.2.2 the Agreement will be void, voidable or unenforceable if it is not severed.

22.3 The remainder of this document has full effect even if clauses 22.1 or 22.2 applies.

23. SURVIVAL

23.1 Clauses 5 (WARRANTIES), 10 (INDEMNITY), 13 (FOLLOWING TERMINATION) and 14 (CONFIDENTIAL INFORMATION) shall survive any termination or expiry of this agreement.

24. THIRD PARTY BENEFICIARIES

24.1 Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

25. NOTICES

25.1 General

A notice, demand, certification or other communication under this Agreement:

- (a) shall be given in writing and in the English language; and
- (b) may be given by an agent of the sender.

25.2 Method of Service

In addition to any means authorised by law a communication may be given by:

- (a) being delivered personally;
- (b) being left at the party's current address for service;
- (c) being sent to the party's current address for service by pre-paid ordinary mail or if the address is outside Australia, by pre-paid air mail; or
- (d) facsimile to the party's current facsimile number.

25.3 Address for Service

(a) The address, telephone and facsimile numbers are initially:

(i) in the case of MD Web Hosting

Address:	12/25 Claremont Street
Telephone:	1800 600 934
Facsimile:	(03) 9826 8677
Attention:	Director

(i) in the case of reseller

See Schedule A

(b) A party may from time to time change its address or numbers for service by notice to the other party.

25.4 Service by Post

A communication given by post shall be deemed received:

- (a) if posted within Australia to an Australian address, on the third Business Day after posting; and
- (b) in any other case, on the seventh Business Day after posting.

25.5 Service by Facsimile

A communication given by facsimile shall be deemed received when the sender's facsimile machine produces a transmission report stating that the facsimile was sent to the addressee's facsimile number.

25.6 Form Received

A communication given by facsimile shall be deemed given in the form transmitted unless the message is not fully received in legible form and the addressee immediately notifies the sender of that fact.

25.7 Process Service

Any process or other document relating to litigation, administrative or arbitral proceedings in relation to this Agreement may be served by any method contemplated by this Clause 25 in addition to any means authorised by law.

25.8 Service After Hours

If a communication to a party is received by it:

- (a) after 5.00pm in the place of receipt; or
- (b) on any day which is not a Business Day;

it will be deemed to have been received at the commencement of the next Business Day.

26. TIME

26.1 Time is of the essence as regards to all dates, periods of time and times specified in this agreement.

27. GOVERNING LAW

27.1 This Agreement, your rights and obligations and all actions contemplated by this Agreement shall be governed by the laws of the Australia and the State of Victoria, as if the Agreement was a contract wholly entered into and wholly performed within the State of Victoria. You agree that any action to enforce this Agreement or any matter relating to your use of the Services shall be brought exclusively in the Australian Court for the South Eastern district of Victoria, or if there is no jurisdiction in such court, then in a state court in Melbourne, Victoria. You consent to the personal and subject matter jurisdiction of any state or Federal court in Melbourne, Victoria in relation to any dispute arising under this Agreement.