

Customer Registration Agreement

1. DEFINITIONS

In this Customer Registration Agreement, unless the contrary intention appears:

Applicant means a natural person, company or organisation in whose name an Application is submitted.

Application means the complete and technically correct request for a Domain Name, which complies with the Published Policies.

Allocation means the method by which a Domain Name is created and then assigned to an Applicant, **Allocated** shall have a corresponding meaning.

Customer means, as the case may be:

- (a) a Registrant; or
- (b) an Applicant.

Domain Name means a domain name for the TLD, regardless of whether or not it is a Registered Name.

ICANN means the Internet Corporation for Assigned Names and Numbers.

ICANN Accreditation means accreditation issued by ICANN to be a registrar of specific TLDs to which this Customer Registration Agreement relates.

ICANN Published Policies means any ICANN Temporary Specifications or Policies and Consensus Policies (as defined in the Registry Agreement), including, without limitation, the latest versions, of policies identified at <http://www.icann.org/en/resources/registrars/consensus-policies> and any such policies that are from time to time developed and adopted by ICANN.

ICANN RPMs means any Rights Protection Mechanisms and associated rules, policies, requirements and procedures as outlined in Specification 7 of the Registry Agreement and the ICANN Published Policies, including but not limited to the TMCH Requirements, the Uniform Rapid Suspension (**URS**) requirements, the Trademark Post-Delegation Dispute Resolution Procedure (**PDDRP**) and the Registration Restriction Dispute Resolution Procedure (**RRDRP**).

Intellectual Property means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in Article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Personal Data means data about any identified or identifiable natural person.

Prohibited Activities include any of distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law and other prohibited activities listed or added to in Specification 11 clause 3(a) of the Registry Agreement from time to time.

Published Policies collectively means the ICANN Published Policies, ICANN RPMs, Registrar Published Policies and the Registry Operator Published Policies.

RDDS refers to Registration Data Directory Services and includes WHOIS and Registration Data Access Protocol (RDAP) services.

Registered Name refers to a Domain Name created and registered within the TLD, consisting of two or more levels of the TLD domain name hierarchy (e.g. name.TLD or another.name.TLD).

Registrant means the licence holder of a Registered Name.

Registrar means Bombora Technologies Pty Ltd ACN 84 091 136 088.

Registrar Published Policies means those specifications and policies established and published from time to time by us, copies of which are available on the Registrar's website at <https://www.bomboraregistrar.com/>.

Registry Agreement means the Registry Agreement between Registry Operator and ICANN whereby the Registry Operator is designated as the registry operator of a specific TLD.

Registry Operator means the designated organisation, in accordance with the Registry Agreement, responsible for the operation of a specific TLD.

Registry Operator Published Policies means those specifications and policies established and published from time to time by the Registry Operator or any subcontractor of the Registry Operator, copies of which are available on the Registry Operator's website.

Registry System means the system operated by or on behalf of the Registry Operator for a specific TLD used to record, store and maintain details of available and registered Domain Names in each specific TLD.

Regulatory Body means any government or any governmental, semi-governmental, or judicial entity or authority, including ICANN, any self regulatory organisation established or recognised under statute or any stock exchange.

Representatives of an entity include directors, officers, employees, agents, contractors and sub-contractors of that entity.

TMCH Requirements mean the most recent Trademark Clearinghouse Rights Protection Mechanism Requirements, published by ICANN pursuant to Specification 7 of the Registry Agreement and amended from time to time, or in the event that the Trademark Clearinghouse Rights Protection Mechanism Requirements have not yet been finalised, the most recent draft thereof.

TLD means a Top Level Domain.

We, us or our means Bombora Technologies Pty Ltd ACN 84 091 136 088 and our designated Representatives.

You and your means the Customer.

2. AGREEMENT

2.1 Customer Registration Agreement

- (a) This Customer Agreement sets out the applicable terms and conditions governing all Domain Name registration services provided by us, including non-exhaustively Domain Name Applications, Allocations, licences, renewals or otherwise ("Customer Agreement").
- (b) In submitting an Application, or on the Allocation of a Domain Name, the license, transfer or renewal of a Domain Name, you agree you have read, understand, acknowledge and agree to be bound by this Customer Agreement.
- (c) In the event of any inconsistency with this Customer Agreement and any Published Policies, the Published Policies will prevail to the extent of the inconsistency with this Customer Agreement.

2.2 Accreditation

We hold an ICANN Accreditation and we are an accredited registrar of the Registry Operator responsible for operating the TLD.

3. GENERAL CUSTOMER OBLIGATIONS

The Customer expressly acknowledges and agrees to:

- (a) comply with the applicable Published Policies, and that the Published Policies may be modified, and agrees to comply with any such changes in the time period specified for compliance;
- (b) adhere to all ICANN Published Policies for which the Registry Operator has monitoring responsibility under the Registry Agreement or any other arrangement with ICANN;
- (c) adhere to all Registry Operator and Registrar Published Policies as established from time to time;
- (d) adhere to any policies, rules or procedures applicable under the ICANN RPMs, submit to any proceedings brought in relation to the ICANN RPMs, and acknowledge any potential consequences of the ICANN RPMs including, but not limited to, the potential for a Domain Name to be locked pursuant to the Uniform Rapid Suspension rules;
- (e) refrain from engaging in any of the Prohibited Activities and acknowledge the consequences of such activities, which shall include, non-exhaustively, suspension or deletion of the Registered Name.

4. CONTACT INFORMATION

4.1 The Customer expressly agrees that it will provide us accurate and reliable contact details and correct and update them within seven (7) days of any change during the term of the Domain Name licence, including: the full name, postal address, e-mail address, voice telephone number, and fax number if available of the Registrant; name of authorised person for contact purposes in the case of a Registrant that is an organisation, association, or corporation; and the following data elements:

- (i) The names of the primary nameserver and secondary nameserver(s) for the Registered Name;
- (ii) The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for the Registered Name; and
- (iii) The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the Registered Name.

4.2 The Customer may access and update such contact details at any time via the interface provided by us, or by contacting us.

4.3 A Customer's wilful provision of inaccurate or unreliable information, its wilful failure to update information provided to us within seven (7) days of any change, or its failure to respond for over fifteen (15) days to inquiries by us concerning the

accuracy of contact details associated with the Registrant's licence shall constitute a material breach of this Customer Agreement and be a basis for suspension and/or cancellation of the Registered Name.

- 4.4 Any Registrant that intends to license use of a Domain Name to a third party is nonetheless the Registrant of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registrant licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it discloses the current contact information provided by the licensee and the identity of the licensee within seven (7) days to a party providing the Registrant reasonable evidence of actionable harm.

5. INTELLECTUAL PROPERTY

The Customer:

- (a) must ensure that the Customer's Application for, and the possible subsequent registration, licensing, and/or use of, the Domain Name will not infringe the Intellectual Property rights of any third party;
- (b) agrees and submits to proceedings commenced under all applicable ICANN dispute resolution policies or processes as established or amended by ICANN from time to time; and
- (c) must bear liability for any claims of infringement arising out of or relating to the Customer's registration, licensing, or use of the Domain Name, and indemnifies the Registry Operator for any liability it may incur arising from such infringement.

6. PERSONAL DATA

- (a) The Customer expressly acknowledges and consents to the Registry Operator's and our use of Personal Data, specifically: Personal Data may, in whole or in part, be shared with the Registry Operator, for their use, copying, distribution, publication, modification and other processing for (among other uses in accordance with our Published Policies) the purpose of administration of the Registered Name, and may require such information be transferred across international borders. As required by ICANN, this information may also be made publicly available by means of RDDS, and the Registry Operator may also be required to make this information publicly available by RDDS. Both we and the Registry Operator may be required to archive Personal Data with a third-party escrow service.
- (b) The Customer represents that notice has been provided equivalent to that described in clause 6(a) above to any third-party individuals whose Personal Data are supplied to us by the Customer, and that the Customer has obtained lawful consent equivalent to that referred to in clause 6(a) of any such third-party individuals.
- (c) We agree we will:
 - (i) not process the Personal Data collected from you in a way incompatible with this Customer Agreement; and
 - (ii) take reasonable precautions to protect Personal Data from loss, misuse, unauthorised access or disclosure, alteration, or destruction.

7. CUSTOMER'S WARRANTY

The Customer represents and warrants that:

- (a) it has legally binding authority to enter into this Customer Agreement;
- (b) it will not, directly or indirectly, through license or use of its Domain Name or otherwise:
 - (i) license a Domain Name for the purpose of selling it;
 - (ii) license a Domain Name for the purpose of diverting trade from another business or website;
 - (iii) deliberately license as a Domain Name misspellings of another entity's company or brand name in order to trade on the reputation of another entity's goodwill;
 - (iv) license a Domain Name and then passively hold a Domain Name licence for the purpose of preventing another licensee from licensing it;
 - (v) grant or purport to grant a security interest or other encumbrance in a Domain Name, unless such security interest or other encumbrance does not:
 - (A) exceed the rights of the Customer in the Domain Name as limited by this Customer Agreement;
 - (B) impede on the Customer's ability to fulfil the Customer's obligations under this Customer Agreement; and

- (C) impose or purport to impose obligations on the Registry Operator or us beyond the obligations owed by the Registry Operator or us to the Customer in the absence of such a security interest or encumbrance.
- (c) the information provided in relation to an Application, or a Domain Name, as the case may be, is current, complete, and accurate, and that the Customer agrees to correct and update the information to ensure that it remains current, complete, and accurate;
- (d) Customer meets, and will continue to meet for the period of the Domain Name licence, the eligibility criteria prescribed in the Registry Operator Published Policies;
- (e) Customer has not previously submitted an Application for the same Domain Name where:
 - (i) Customer is relying upon the same eligibility criteria; and
 - (ii) Customer's Application was previously rejected; and
- (f) that neither the licensing of the Domain Name nor the manner in which the Domain Name is directly or indirectly used infringes the legal rights of a third party.

7.1 Our remedies under these warranties will survive notwithstanding the cancellation of the Domain Name licence or expiry or termination of this Customer Agreement.

8. CUSTOMER ACKNOWLEDGEMENTS

The Customer expressly agrees and acknowledges:

- (a) an Application for a Domain Name may not result in the Domain Name being Allocated to the Customer, and that Domain Names are licensed on a first come, first served basis;
- (b) certain Domain Names may not be available as a result of being reserved by the Registry Operator or otherwise Allocated in accordance with the Published Policies;
- (c) from time to time the Registry Operator may identify certain Domain Names to be reserved, and may release such Domain Names subject to the Published Policies;
- (d) the Registry Operator and we may prevent a Customer from making an Application and registering or renewing a Domain Name where that Customer has been found to be in breach of the Published Policies;
- (e) that we reserve the right to deny any Application, or cancel, lock, place on hold, transfer or delete any Domain Name or transaction that we deem necessary, in our sole discretion:
 - (i) in the event Customer ceases to meet the eligibility criteria prescribed in the Registry Operator Published Policies;
 - (ii) If, as reasonably determined by us in our sole discretion, Customer or any other person uses the Domain Name in connection with:
 - (A) any activity that infringes the Intellectual Property rights or other rights of third parties;
 - (B) any activity that defames or disparages any person; or
 - (C) any otherwise illegal or fraudulent activity, or in accordance with our Acceptable Use Policy published on our website.
 - (iii) as directed by the Registry Operator or any Regulatory Body purporting to exercise its functions or powers; and
 - (iv) if Customer is in material breach of this Customer Agreement and has failed to rectify such breach within ten (10) calendar days of notice thereof by us to the Customer; and
- (f) that the Registry Operator reserves the right to deny any Application, or cancel, lock, place on hold, transfer or delete any Domain Name or transaction that it deems necessary, in its sole discretion:
 - (i) to protect the integrity and stability of the Registry System;
 - (ii) to comply with its obligations as a Registry Operator;
 - (iii) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or in compliance with any dispute resolution policies or process;
 - (iv) to avoid any liability, civil or criminal, on the part of Registry Operator, as well as its affiliates, subsidiaries, officers, directors, employees and subcontractors;
 - (v) to ensure compliance with the Published Policies;

- (vi) to stop or prevent any violations of any terms and conditions of this Customer Agreement;
- (vii) for the non-payment to the Registry Operator of any fee; or
- (viii) to correct mistakes made by the Registry Operator or any registrar or any of its service providers in connection with an Application or a Domain Name.

9. FEES

The Customer expressly agrees and acknowledges:

- (a) any price presented to the Customer for:
 - (i) the Application;
 - (ii) fulfilling any TMCH Requirements;
 - (iii) the Allocation of a Domain Name;
 - (iv) any premium associated with a Domain Name;
 - (v) creation of the Domain Name;
 - (vi) renewal of the Domain Name; or
 - (vii) any other fees that may be associated with the Domain Name;
- (b) that the price for the creation of a Domain Name may be greater than or less than the price for the renewal of that Domain Name;
- (c) that no refund will be provided for the Customer's failure to check or understand the fees; and
- (d) an Application for, or renewal of, a Domain Name may not be processed by us until we receive all applicable charges in respect of that Domain Name from the Customer.

10. TERM

- 10.1 Except as otherwise terminated in accordance with this Agreement, this Customer Agreement will remain in full force and effect during the length of the term of the Domain Name Application and licence.
- 10.2 The term of this Customer Agreement shall be extended upon the renewal or lengthening of the term of a Domain Name licence.
- 10.3 Termination or Expiry
 - (a) This Customer Agreement will terminate effective immediately upon deletion, cancellation or transfer to another accredited registrar of a Domain Name licence to which this Customer Agreement relates in accordance with the terms of this Customer Agreement.
 - (b) This Customer Agreement will expire where Customer's Domain Name licence expires and is not renewed by Customer prior to the deletion of the Domain Name licence.
 - (c) We will not refund any fees paid by Customer prior to termination of this Customer Agreement.
- 10.4 The parties' obligations (including any obligations to indemnify) under clauses 5, 9, 12 and 13 survive the termination or expiration for any reason. Termination or expiration of this Agreement will not affect any accrued rights or liabilities of either party.

11. MODIFICATION

- 11.1 Customer acknowledges and agrees that rights and obligations under this Customer Agreement are subject to modification at any time as the result of ICANN-mandated requirements, modifications to the Registry Agreement and any Published Policies (including non-exhaustively, the addition of new Published Policies).
- 11.2 Except for changes pursuant to clause 11.1, we may change the terms and conditions of this Customer Agreement either by obtaining your consent or giving you notice. The period of notice given by us depends on the nature of the change. If:
 - (a) the change will benefit you, we may make the change immediately and are not required to notify you prior to the change;
 - (b) the change is required by law, a Regulatory Body, the Registry Operator, or any other domain name regulatory body or for a technical reason (including for security), where possible we will give you a reasonable period of notice not exceeding three (3) days;
 - (c) we consider that the change has a significant and detrimental impact on our customers generally, we will give you at least 30 days' notice prior to the change; and

(d) for all other changes, we will also give you at least 30 days' notice prior to the change.

11.3 If Customer does not agree with any revision to this Customer Agreement, then Customer may terminate this Customer Agreement at any time by providing us with written notice in accordance with the notice provisions in clause 15.3. Customer agrees that by continuing the use our services, including non-exhaustively by being a Customer with us, following notice of any change to this Customer Agreement, Customer shall abide by any such changes.

12. LIABILITY

12.1 Except for any warranties expressly set out in this Agreement, to the extent permitted by the law, we expressly exclude all conditions, warranties and guarantees, whether express or implied, statutory or otherwise.

12.2 We will have no liability in any way to any party because of:

- (a) any act or omission of us, or our Representatives, where such act or omission is specifically required by a direction to us from a Regulatory Body purporting to exercise its functions or powers; or
- (b) any failure to provide uninterrupted access to the services provided by us, including our website and Domain Name Applications, licences, transfers, renewals or otherwise.

12.3 Notwithstanding any other provision in this Agreement, in no event will we be liable to any party, including the Customer, for any indirect, punitive, special, incidental or consequential damage in connection with or arising out of this Agreement (including for loss of profits, use, data, or other economic advantage), however it arises, whether for breach of this Customer Agreement or in tort, and even if we have been previously advised of the possibility of such damage. The Customer will indemnify us and keep us indemnified from and against any claims by any third party for or in respect of such damages.

12.4 Subject to clauses 12.5 and 12.6, at no time will our total aggregate liability in respect of all claims arising under or pursuant to this Customer Agreement exceed the amount paid to us under this Customer Agreement for the Domain Name to which the claims relate in the twelve (12) month period prior to the date the liability arose, regardless of whether those claims arise out of a single event or a number of different events.

12.5 Our liability arising out of or in connection with this Customer Agreement (whether in contract, equity, negligence, tort or for breach of statute or otherwise) will be reduced by the extent, if any, to which the Customer or its Representatives contributed to the loss.

12.6 Certain provisions of the *Competition and Consumer Act 2010* (Cth) and other statutes, rules and regulations in Australia may imply certain non-excludable warranties or conditions or mandate certain statutory guarantees. To the extent that they are not permitted to be excluded, our liability for breach of such conditions, warranties or guarantees and the Customer's sole and exclusive remedy in relation to such breaches, to the extent permitted by law, shall be limited to:

- (a) in the case of software or other goods under this Customer Agreement, at our option:
 - (i) replacing or repairing that software or those goods, or supplying of equivalent software or goods; or
 - (ii) paying the cost of replacing or repairing software or goods or of acquiring equivalent software or goods; and
- (b) in the case of services under this Customer Agreement, at our option:
 - (i) supplying the services again; or
 - (ii) paying the cost of having the services supplied again.

13. INDEMNITY

13.1 Customer will indemnify, defend and hold us harmless against all suits, actions, claims, demands, losses, damages, liabilities, costs, and expenses (including reasonable legal fees and expenses) arising out of or related to:

- (a) any loss or damage to any property or injury to or death of any person caused by any wrongful or negligent act or omission of the Customer or its Representatives;
- (b) any claim brought or filed by a third party against us due to any failure by the Customer or its Representatives to act in accordance with this Customer Agreement and the Published Policies; and
- (c) any costs, liability, losses, damages, or claims incurred or suffered by us where:
 - (i) we perform any act or omission specifically required by a direction to us from a Regulatory Body, purporting to exercise its functions or powers; and
 - (ii) that direction to us is caused by an act or omission of Customer or its Representatives.

13.2 Customer shall fully indemnify and hold harmless the Registry Operator and its Representatives from and against any and all suits, actions, claims, demands, losses, damages, liabilities, costs, and expenses (including reasonable legal fees and expenses):

- (a) arising out of or related to the Customer's Domain Name licence; or

- (b) that may be made or brought against or suffered or incurred by the Registry Operator arising out of or in connection in any way with a breach of the Customer Agreement by the Customer.

14. DISPUTE RESOLUTION

14.1 For the adjudication of disputes concerning or arising from use of your Domain Name, Customer agrees to submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts of:

- (a) Customer's domicile; and
- (b) the State of Victoria, Australia (where we are located).

15. MISCELLANEOUS

- 15.1 **Assignment** - We may assign this Customer Agreement to a third party on prior written notice to you. We may subcontract any of our obligations under this Customer Agreement, provided that we remain fully responsible for any subcontracted functions, responsibilities, obligations and services.
- 15.2 **Third-Party Beneficiaries** - ICANN and the Registry Operator are intended third-party beneficiaries of this Customer Agreement, and the third-party beneficiary rights of both ICANN and the Registry Operator described herein shall survive any termination or expiration of this Customer Agreement.
- 15.3 **Notice** - Any and all notices from Registrar to Customer may be provided by posting such notice on the Registrar's website. All other notices may be served by delivery in person or by post or email to the address of the recipient most recently notified by the recipient to the sender. Any notice is effective for the purposes of this Agreement upon the earlier of (a) Registrar posting such notice on the Registrar's website; or (b) delivery to the recipient.
- 15.4 **Relationship of the Parties** - Nothing in this Agreement shall be construed as creating an employer-employee or agency relationship, a partnership or a joint venture between the parties.
- 15.5 **Force Majeure** - Neither party shall be responsible or liable to the other for any loss, damage, detention or delay caused by limitations of availability, production, hold ups, shortages of raw materials or labour, fire, strike, civil or military authority, governmental restrictions or controls, insurrection or riot, acts of God, acts of terrorism, lockout, tempest, accident, breakdown of machinery, delay in delivery of materials by other persons, or any other cause which is unavoidable or beyond its reasonable control, nor in any event for consequential loss or damages arising out of such loss, damage, detention or delay.
- 15.6 **Waivers** - Any failure by any party to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.
- 15.7 **Entire Agreement** - This Agreement expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all terms of such; and supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement.
- 15.8 **Governing Jurisdiction** - This document is governed by and is to be construed in accordance with the laws of the State of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and waive any right to object to proceedings being brought in those courts.
- 15.9 **Severability of Provisions**- Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.
- 15.10 **Remedies** - The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by law.
- 15.11 **Statutory Rights** – The Customer may exercise relevant statutory rights related to our processing of Personal Data as applicable to them, including the right to request access to, and rectification or erasure of Personal Data, the right to data portability, and/or the right lodge a complaint with a relevant supervisory authority.

16. INTERPRETATION

In this Agreement unless the context otherwise requires:

- (g) words importing the singular include the plural and vice versa;
- (h) words importing a gender include every gender;
- (i) references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, novated or replaced from time to time;
- (j) references to this Agreement are references to this Agreement;
- (k) references to clauses are references to clauses of, and the schedules to, this Agreement;
- (l) headings are for convenience only and shall be ignored in construing this Agreement;

- (m) references to parties or to a party shall be a reference to the parties or a party to this Agreement and includes references to their or its respective successors, permitted assigns, executors and administrators;
- (n) references to law shall include references to any constitutional provision, treaty, decree, convention, statute, act, regulation, rule, ordinance, subordinate legislation, rule of common law and of equity and judgment and shall include the requirements of any applicable stock exchange;
- (o) references to any law are references to that law as amended, consolidated, supplemented or replaced from time to time;
- (p) references to any person include references to any individual, company, body corporate, association, partnership, firm, joint venture, trust and governmental agency;
- (q) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision;
- (r) references to time are references to Melbourne, Victoria, Australia time;
- (s) references to anything (including, but not limited to, any right) includes a part of that thing; and
- (t) each of the obligations of the parties contained in this Agreement shall be separate and independent and save as expressly provided shall not be limited by reference to any other provision of this Agreement.