

IT City Terms and Conditions

Domain Name Registration AGREEMENT

This contract between ITCity Limited ('Datacom Communications') and the Domain Name Licence Holder ('the Licensee') for the licence of any .au domain name (the 'Domain Name') contains the following terms and conditions:

1. These terms and conditions, and any applicable Published Policies of .auDA Domain Administration Limited (ACN 079 009 340) ('auDA') (the 'Published Policies'), constitutes the entire agreement between ITCity and the Licensee for the registration of the Domain Name, and supersedes all prior agreements, understandings and representations whether oral or written.

LICENSEE'S OBLIGATIONS

2. The Licensee agrees to read and comply with the terms of the Published Policies referred to in clause 1 and located at <http://www.ada.org.au/policy>, in respect of its use and registration of Domain Names registered through ITCity.
3. The Licensee agrees that ITCity's charges for the licence of a Domain Name or any related Domain Name services are set out on ITCity's website <http://www.itcity.com.au/> (the 'ITCity Website'). The Licensee agrees to pay such charges:
 - a. at the rates set out on ITCity's Website at the time the Licensee's Domain Name Application is submitted to ITCity; and
 - b. in accordance with the payment terms set out at the ITCity Website at the time the Licensee's Domain Name application is submitted to ITCity.
4. The parties agree that the Licensee's application for the registration or renewal (as the case may be) of a Domain Name will not be processed by ITCity until ITCity receives all applicable charges in respect of that Domain Name from the Licensee.
5. The Licensee agrees that failure to pay any charge for its Domain Name when due (as evidenced for example by, without limitation, the Licensee's credit card company notifying ITCity of the Licensee disputing the payment of, or refusing to pay such charge, or where the Licensee's credit card payment has been declined or reversed) will entitle ITCity to suspend the delegation of the Licensee's Domain Name on ITCity giving the Licensee written notice of the Licensee's failure in payment. Where the Licensee fails to remedy its failure to pay the relevant charge within 14 days of receiving such notice from ITCity, ITCity may immediately cancel the relevant Domain Name registration by deleting the relevant Domain Name. Where the Licensee remedies the failure in payment within 14 days of receiving such notice from ITCity, ITCity will promptly cease its suspension of the delegation of the relevant Domain Name.
6. The Licensee agrees that it will:
 - a. ensure that its Domain Name Application is in the form specified in the Published Policies;
 - b. obtain the consent of individuals whose personal information is to be publicly listed in the Registry as part of the Domain Name Application;
 - c. at all times comply with the Published Policies;
 - d. promptly notify ITCity of any change to its Domain Name registration details;
 - e. promptly notify ITCity of any actual or threatened proceedings brought in respect of the word/s used as a Domain Name whether by or against the Licensee; and
 - f. Not, directly or indirectly, through registration or use of its Domain Name or otherwise:

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- i. register a Domain Name for the purpose of selling it;
 - ii. register a Domain Name for the purpose of diverting trade from another business or web site;
 - iii. deliberately register 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. register a Domain Name and then passively hold a Domain Name Licence for the purpose of preventing another licensee from registering it;
 - v. transfer or purport to transfer a right of ownership in any Domain Name registration; or
 - vi. grant or purport to grant a security interest or other encumbrance in a Domain Name.
7. The Licensee warrants:
 - a. that it meets, and will continue to meet for the period of its Domain Name registration, the eligibility criteria prescribed in the Published Policies for registering a Domain Name;
 - b. that the details in respect of its Domain Name submitted to ITCity by the Licensee are true and correct, and that any future additions or alterations to those details will be true and correct;
 - c. that it has not previously submitted a Domain Name Application (which is for the same Domain Name applied for with ITCity) for registration with another registrar where:
 - d. the Licensee is relying upon the same eligibility criteria for both Domain Names; and
 - e. the Domain Name has previously been rejected by the other registrar.
8. The Licensee warrants that neither the registration 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. ITCity's remedies under this warranty will continue to be available to it after the Licensee's completion of the Domain Name registration process and will survive notwithstanding the cancellation of the Domain Name or expiry or termination of this Agreement.
9. The Licensee indemnifies ITCity against any claim that the registration of the Domain Name or the manner in which the Domain Name is directly or indirectly used infringes the legal rights of any third party, and indemnifies ITCity against the costs and expenses, however they may arise, incurred in defending or dealing with such a claim.
10. The Licensee agrees that as required of ITCity by auDA it grants:
 - a. to auDA, the right to provide auDA with all information relating to the Licensee's Domain Names registered with ITCity for public disclosure to third parties;
 - b. to ITCity, the right to provide the Registry Operator with all information which is reasonably required by the Registry Operator in order to register the Domain Name in the Registry; and
 - c. to ITCity, the right to provide the Registry Operator with all information relating to the registered Domain Name to enable the Registry Operator to maintain a public WHOIS service for public disclosure to third parties, provided that such disclosure is consistent with:
 - i. the National Privacy Principles specified in the Privacy Act 1988 (Cth); and
 - ii. the Published Policies.
11. The Licensee acknowledges that all personal information about the Licensee which is supplied by ITCity to auDA is held by auDA for the benefit of the Australian public.
12. The Licensee agrees that ITCity enters into this Agreement as the agent of auDA for the sole purpose, but only to the extent necessary, to enable auDA to receive the benefit of the rights and covenants conferred on auDA under this Agreement.

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13. ITCity will:
 - a. Process the Licensee's Domain Name Application and consider whether to accept or reject it in accordance with the criteria laid down in the Published Policies in force at the time of the application;
 - b. (if the Domain Name Application is accepted) forward the Domain Name registration and delegation details to the Registry Operator and use its reasonable endeavours to ensure that details supplied by the Licensee in its Domain Name Application are entered into and maintained in the au zone file and sent to the Registry Operator;

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- c. (if the Domain Name Application is not accepted), notify the Licensee or its agent that the Application was not successful, and the reasons why;
- d. permit the Licensee to transfer registered Domain Names to another auDA accredited registrar in accordance with the Published Policies.

REGISTRATION OF DOMAIN NAME

14. The Licensee agrees that ITCity will register Domain Names on a first come, first served basis. The Licensee agrees that ITCity does not guarantee that any Domain Name applied for by the Licensee will be successfully registered. The Licensee acknowledges that it will not take any action in respect of the registration of its Domain Name until the successful registration of that Domain Name is confirmed to it by ITCity.
15. The parties agree that neither ITCity nor the Licensee has any right of ownership in a registered Domain Name.
16. The parties agree that the initial licence period for use of the Domain Name is two years from the date of successful registration. Thereafter, the licence may be renewed indefinitely for periods of two years, on the Licensee's payment of the applicable renewal charge prior to the expiry of the Domain Name and subject to the then current Published Policies and the terms of this Agreement.
17. The Licensee acknowledges that:
 - a. it is the Licensee's responsibility to ensure that the Domain Name is renewed; and
 - b. the Licensee releases and holds ITCity harmless against any claim for damage or loss arising from any failure of the Licensee's Domain Name to be renewed by the Licensee.
18. The Licensee acknowledges that ITCity has a complaints handling procedure (available upon Licensee request), which ITCity will follow in handling any complaint from the Licensee in respect of ITCity's supply of Domain Name registration or other related Domain Name services to the Licensee.

LICENSEE'S CANCELLATION OF DOMAIN NAME

19. The Licensee may cancel its licence of a Domain Name at any time by notice in writing to ITCity. The Licensee agrees that:
 - a. on receipt of such notice, ITCity will delete the relevant Domain Name; and
 - b. ITCity will have no liability to the Licensee whatsoever for such deletion.
20. The Licensee agrees that ITCity may cancel the registration or suspend the delegation of the Licensee's Domain Name in accordance with the terms of clause 6, or as directed by auDA.
21. The Licensee agrees that in the event that the Licensee ceases to meet the eligibility criteria prescribed in the Published Policies for registering a Domain Name during the licence period for its Domain Name, the Domain Name Licence may be cancelled or suspended by either ITCity, Melbourne IT or auDA.

TERMINATION OR EXPIRY OF AGREEMENT

22. Where the Licensee transfers its Domain Name from ITCity to another auDA accredited registrar in accordance with the Published Policies and the terms of this Agreement, the parties agree that this Agreement will terminate effective from the date of such transfer.
23. The parties agree that this Agreement will terminate on the effective date of cancellation of the Licensee's Domain Name in accordance with the terms set out in clauses 20-22.
24. The parties agree that this Agreement will expire where the Licensee's Domain Name licence expires and is not renewed by the Licensee prior to the deletion of the Domain Name.

DISPUTES

25. The Licensee agrees to be bound by the auDA dispute resolution policy, auDRP (the .au Dispute Resolution Policy) in the event of disputes between ITCity and the Licensee, or between the Licensee and a third party, in relation to a party's entitlements to register or maintain a Domain Name registration.

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26. The Licensee acknowledges that auDA may develop and implement other dispute resolution policies. The Licensee agrees to be bound by such dispute resolution policies where notified to the Licensee by auDA.

LIABILITY

27. The parties agree that notwithstanding any other provision of this Agreement and to the fullest extent permitted by law, neither auDA, the Registry Operator nor ITCity will be liable to the Licensee for direct, consequential or indirect loss or damages of any kind (including, without limitation, loss of profit, loss or corruption of data, business interruption or indirect costs) suffered by the Licensee as a result of any act or omission of auDA, the Registry Operator or ITCity, or any act or omission of the officers, employees, agents or sub-contractors of auDA, the Registry Operator or ITCity.
28. If any legislation implies in this Agreement a term or warranty, the Licensee agrees that ITCity's liability under this Agreement for a breach of that term or warranty is limited to, in the sole discretion of ITCity, the re-supply of the goods or services again, or the payment of the cost of having the goods repaired or replaced, or the services supplied again.
29. The parties agree that clauses 28 and 29 survive the expiry or termination of this Agreement.

GENERAL

30. If any clause of these terms and conditions is held to be invalid or unenforceable in whole or part, the invalid or unenforceable wording shall be deemed to be omitted.
31. Any notice to be given under the contract is be deemed to be served if delivered by hand or sent by pre-paid post, by fax or e-mail, to the party to whom it is given at its last known postal or e-mail address or fax number.
32. The contract is governed by Victorian law, and the Licensee and ITCity submit to the non-exclusive jurisdiction of the Victorian courts.
33. The parties agree that ITCity may assign this Agreement to a third party on prior written notice to the Licensee.
34. The failure of a party at any time to insist on strict performance of any provision of this Agreement is not a waiver of its right at any later time to insist on strict performance of that or any other provision of this Agreement.

END AGREEMENT