**James Demetrie trading as**

# DISKMANdotNet

**Reseller Agreement**

**RECITALS**

a.  This agreement sets out the terms on which James Demetrie t/a DISKMANdotNet(ABN 18 209 695 017). ('DISKMANdotNet' or DISKMAN) appoints a Reseller ('Reseller') as an agent to purchase the DISKMANdotNet.

b.  DISKMANdotNet is a web hosting and domain name provider in Australia.

c.  DISKMANdotNet is a trading name for James Demetrie in Australia

d.  DISKMANdotNet, via its upline TPP Wholesale and Synergy Wholesale, has entered into Registrar Agreements with ICANN, au Domain Administration Ltd (auDA), AusRegistry, AusRegistry International, Afilias, the New Zealand Domain Name Commissioner (nzDNC), Nominet, doMEn, dotSO, CentralNic, Nic.IM, BRS Media, Neustar and Verisign under which DISKMANdotNet is entitled, subject to compliance with the Registrar Agreements, to operate as a registrar, and provide registrar Services, in the designated top level domains including and not limited to .com, .net, .org, .biz and .info and country code domains including .au, .nz, .uk, .so, .im, .me, .la, .us and newTLDs as released by ICANN and associated bodies, and others as may be included from time to time.

e.  DISKMANdotNet is entitled, under its existing Agreements, to appoint Resellers to sell domain name Services and provide Reseller Services, on behalf of DISKMANdotNet.

f.  DISKMANdotNet has entered into a non-exclusive distribution agreement with GoGetSSL, to supply SSL certificates; along with further non-exclusive distribution agreements with cPanel, Inc to provide cPanel software licences; Installatron to provide Installatron licences, CloudLinux to provide CloudLinux software licences, Softaculous to provide Softaculous software licences and others that may be included from time to time.

g.  DISKMANdotNet has, via Synergy Wholesale, developed connections to various SMS providers, including and not limited to Telstra Wholesale, to enable the sending of short messages (SMS) to Australian and International mobile and telecommunication devices.

h.  DISKMANdotNet has developed various modules, and software connections that Reseller can use to integrate with the system, which remain subject to their independent agreements, and may not be inclusive of this agreement.

i.  DISKMANdotNet has offered to appoint the Reseller as a Reseller, and Reseller has accepted DISKMANdotNet's offer on the terms and conditions set upon in this agreement, and any further agreements that may be raised from time to time.

**OPERATIVE:**

1.  **DEFINITIONS AND INTERPRETATION**

    a.  Definitions

In this Agreement, unless the context or subject matter otherwise require:

*This document was last updated on 5 September 2018.*

"**Agreement**" means this agreement, (including the recitals, schedules, appendices and exhibits to it), as it may later be amended or supplemented by the parties in writing;

"**auDA**" means .au Domain Administration Limited ACN 079 009 340;

"**Australian Dollars**", "**$**" or "**AUDs**" means the lawful currency of Australia;

"**Business Day**" means Monday to Friday, excluding public holiday's in Melbourne, Victoria, Australia;

"**BRS Media**" refers to BRS Media, Inc, registry operator for FM domain names;

"**ccTLD**" means Country Code Top Level Domain, and is not limited to a specific ccTLD;

"**CentralNic**" refers to CentralNic Ltd an England and Wales registered entity with company number 4985780, with a portfolio of more than 20 domain ccTLDs available;

"**Client**" refers to any person, partnership, corporation, or other legal entity acquiring Services from Reseller, which form part of the Reseller's Services; Last Updated: 29 May 2018

"**CloudLinux**" refers to Cloud Linux, Inc, manufacturers of web density, stability and performance optimisation tools;

"**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 of this Agreement, and the date the Reseller is approved in DISKMANdotNet's system and Reseller access is approved and granted;

"**Confidential Information**" shall mean all the information relating to the DISKMANdotNet Services, not generally known by the industry in which the Company is involved, which the Company considers to be proprietary or confidential, including but not limited to:

    a. products, Services, processes, costs, sources of supply, marketing plans, strategic plans, business relationships, research and development, sales, profits, pricing methods, discoveries, improvements, know-how, whether or not reduced to writing or other tangible expression;

    b. all other trade secrets and proprietary information relating to the DISKMANdotNet Services, business affairs and finances of DISKMANdotNet or other information made available during any discussions.

"**cPanel**" refers to cPanel, Inc manufacturers of web hosting control panels and related systems;

"**Designated Agent**" means a Partner who has obtained express permission, through a contractual agreement with the Registrant, to authorise Material Changes on their behalf.

"**Domain Name**" refers to a domain name in any of the gTLD, ccTLD, newTLD or other types of TLD's offered by DISKMANdotNet;

"**doMEn**" refers to the ccTLD registry operator for .ME domains (Republic of Montenegro);

"**dotSO**" refers to dotSO (soregistry.so) the operator of the .SO registry;

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

"**gTLD**" means General Top Level Domain;

"**ICANN**" refers the Internet Corporation for Assigned Names and Numbers, being the not-for-profit regulatory body of the domain name industry worldwide;

*This document was last updated on 5 September 2018.*

"**Installatron**" refers to Installatron LLC, manufacturers of a multi-platform application installer for web host providers;

"**Intellectual Property Rights**" means:

    a. jointly and severally any Rights as they relate to the Confidential Information, the trademarks or corporate indicia of DISKMANdotNet, the copyright, the design rights, the patent rights, the eligible layout rights, the Improvements, and the Future Rights; and

    b. any application or Right to apply for registration of any of the Rights referred to in the subclause (a) so far as they relate to, protect or form part of the DISKMANdotNet Services.

"**Material Change**" is more than a 5% deviance between the old data currently held on file, or in the case of a transfer held at the losing registrar and the newly supplied data for the fields:

    a. Registrant Full Name, or

    b. Registrant Organisation.

Unless either of the above fields be updated for any change, and this is accompanied by an address or phone number change this will be treated as a material change regardless of typographical correction (i.e. no 5% variance). Any change to the Registrant Email Address or Administration Email Address (should Registrant Email Address be unavailable) is classified as a Material Change irrespective of the circumstance.

"**Neustar**" refers to Neustar, Inc, located in Sterling, VA 20166;

"**Nic.IM**" refers to the IM Registry, located in the Isle of Man in British Isles;

"**Nominet**" means the body in charge of UK domain names;

"**nzDNC**" means the New Zealand Domain Name Commissioner;

"**Owner**" means either party to this agreement in the context of information supply;

"**Personnel**" of a party means employees, agents and contractors of a party or a Related Body Corporate, except to the extent those contractors are under the direction of the other party.

"**Published Policies**" refer to those specifications and policies published by and not limited to auDA, ICANN, nzDNC, and any other domain regulatory body or registry operator, and amended from time to time;

"**Recipient**" means either party to this agreement in the context of information receipt.

"**Registrant**" means the person, company or entity who owns or holds a domain name licence.

"**Related Body Corporate**" has the meaning given to that term in section 50 of the Corporations Act 2001.

"**Reseller**", "**Resellers**", or "**Partner**" refers to the customer and/or entity who is responsible for the account and Services with DISKMANdotNet;

"**Reseller Services**" or "**Partner Services**" refers to the Services to be provided by DISKMANdotNet to the Reseller, and provided by the Reseller to their end client, as specified in the Reseller's application and as amended from time to time by the Reseller by providing written notice;

"**Softaculous**" refers to to Softaculous Ltd, manufacturers of a multi-platform application installer for web host providers;

"**DISKMANdotNet**", "**Synergy**", "**Company**", or "**Business**" means DISKMANdotNet and its Related Body Corporate;

*This document was last updated on 5 September 2018.*

"**Telstra Wholesale**" refers to Telstra Corporation Limited ABN 33 051 775 556, provider of SMS, Data, Mobile and Voice products;

"Comodo" refers to Comodo Group an American-based provider of SSL certificates;

"**Verisign**" refers to Verisign, Inc an American-based company acting as the authoritative registry for the .com, .net, and .name generic top-level domains;

2. **INTERPRETATION**

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

a.  singular includes plural and vice versa;
b.  any gender includes every gender;
c.  a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
d.  references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
e.  references to signature and signing include due execution of a document by a corporation or other relevant entity;
f.  references to months mean calendar months;
g.  references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
h.  references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
i.  headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
j.  where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
k.  a reference to this agreement or document means this agreement and includes any variation or replacement of it;
l.  a reference to a statute or other law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements of it;
m.  the singular includes the plural number and vice versa;
n.  a reference to a gender includes a reference to each gender;
o.  the word "person" includes a firm, corporation, body corporate, unincorporated association or a governmental authority;
p.  a reference to a person includes a reference to the person's legal personal representatives, successors, liquidators, trustees in bankruptcy and the like, and permitted assigns;
q.  an agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them or any one or more of them together and separately;
r.  a reference to a party means a person who is named as a party to, and is bound to observe the provisions of, this agreement;
s.  "includes" means includes but without limitation;

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t.  where a word or phrase is given a defined meaning in this agreement, any other part of speech or grammatical form in respect of such word or phrase has a corresponding meaning;

u.  any schedule attached to this agreement forms part of it;

v.  all references to "dollars" and "$" shall be and mean a reference to the lawful currency from time to time of Australia;

w.  each paragraph or sub-paragraph in a list is to be read independently from the others in the list;

x.  a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time; and

y.  a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

**3.  APPOINTMENT OF RESELLER AND TERM**

**3.1.**  DISKMANdotNet appoints Reseller and Reseller accepts appointment, as a non-exclusive Reseller of the Reseller Services with rights to market, promote and sell the Reseller Services in the Territory upon and subject to the terms of this agreement.

**3.2.**  DISKMANdotNet reserves the right to itself provide the Reseller Services and to appoint other Resellers to provide the Reseller Services.

**3.3.**  Reseller acknowledges and agrees that Registrants for Domain Names introduced by Reseller to DISKMANdotNet become and remain customers of DISKMANdotNet.

**3.4.**  Reseller's appointment and the term of this agreement commences on the commencement date, which is when the Reseller is created inside of DISKMANdotNet's system, and trading begins, and continues thereafter until terminated in accordance with this agreement.

**3.5.**  Reseller may terminate this contract by giving DISKMANdotNet 30 days written notice. DISKMANdotNet may terminate the contract at any time, under any decision, or if the contract (or any registrant agreements) are breached.

**3.6.**  Reseller acknowledges that their account with DISKMANdotNet will have Designated Agent status enabled by default and Reseller will commit to inclusion of mandatory contractual clauses.

**4.  WARRANTIES**

**4.1.**  Reseller represents and warrants to DISKMANdotNet that**;**

**4.1.1.**  it has the power to enter into and perform its obligations under this agreement to carry out the transactions contemplated by this agreement and to carry on its business as now conducted or contemplated; and

**4.1.2.**  the person executing this agreement on its behalf has the authority to do so;

**4.1.3.**  Reseller further represents and warrants to DISKMANdotNet that all written information and reports which it has furnished or will furnish to DISKMANdotNet in connection with the appointment of the Reseller Services are true, accurate and not misleading in all material respects whether by omission or otherwise, and, where appropriate, contain forecasts and opinions

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all of which were made or formed after due and careful consideration on the part of its relevant offices based on the best information available and are all fair and reasonable

4.2.    DISKMANdotNet represents and warrants to Reseller that;

    4.2.1.    it is a corporation duly incorporated and validly existing under the laws of Australia; and

    4.2.2.    it has the power to enter into performance obligations under this agreement and to carry out the transactions contemplated by this agreement and to carry on its business as now conducted or contemplated.

4.3.    DISKMANdotNet does not warrant that:

    4.3.1.    Services provided will be uninterrupted or error free;

    4.3.2.    The Services will meet your requirements, other than as expressly set out in this agreement;

    4.3.3.    The Services will not be subjected to external hacking attempts, viruses, worms, denial of service attacks, or other persons attempting to gain unauthorised access to the Service or DISKMANdotNet systems

4.4.    DISKMANdotNet does not make or give any express or implied warranties including, without limitation, the warranties of merchantability or fitness for a particular purpose, or arising from a course of dealing, usage or trade practice, with respect to any goods or services provided under or incidental to this agreement**.**

4.5.    No oral or written information or advice given by DISKMANdotNet or its resellers, agents, representatives or employees, to the Customer, shall create warranty or in any way increase the scope of the express warranties hereby given, and the Customer should not rely on any such information or advice.

4.6.    Third party services engaged by the Customer through cPanel shared web hosting services including but not limited to SEO and web design tools are done so at the Customer's own undertaking. DISKMANdotNet does not provide any express or implied warranty on the quality of their product(s) nor the outcomes expected, and is under no obligation to extend support for externally managed or purchased products.

## 5.    SOURCE OF OBLIGATIONS

5.1.    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.

5.2.    Any other agreements set forward by DISKMANdotNet, whether directly or indirectly referenced in this agreement are assumed to form part of this agreement.

5.3.    Reseller must identify its relationship with DISKMANdotNet**:**

    a.    it 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

    b.    on the Reseller's website;

    c.    where providing registrations of domain names governed by the rules and regulations as set out by auDA, ICANN and any relevant industry body.

*This document was last updated on 5 September 2018.*

James Demetrie trading as
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**5.4.** Reseller must comply with DISKMANdotNet's reasonable directions as to the manner of identifying the relationship.

**5.5.** 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, ICANN or nzDNC at any time after the Commencement Date. Notice of the variation will be given to Reseller either by notice in writing by DISKMANdotNet or by being posted on auDA's, ICANN's or nzDNC's website. Reseller acknowledges and agrees that it is its responsibility to visit auDA's, ICANN's and nzDNC's websites to ensure that it is aware of the most recent Published Policies.

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

**5.7.** 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 propriety;

   **a.** the Published Policies; and
   **b.** the Code of Practice; and
   **c.** this agreement.

**5.8.** Reseller must comply with the specific Terms and Conditions for all other Reseller Services, as detailed on DISKMANdotNet's website and varied from time to time, as if they were incorporated and formed part of this agreement.

## 6. FEES

**6.1.** At DISKMANdotNet's discretion Reseller may pay a once-off activation fee to access Reseller Services. This fee is currently $99.00 AUD and is subject to change at any time. Upon payment of this fee, Reseller will have full access to the DISKMAN Console (customer portal);

**6.2.** Reseller is entitled to set the fees which it charges for Services provided;

**6.3.** Reseller must pay all applicable fees at the time of application or renewal of new or existing Services unless otherwise agreed in writing by DISKMANdotNet.

**6.4.** The timely payment of fees by the Reseller is a material condition of the obligations set forth under this agreement. In the event the Reseller fails to pay its fees, DISKMANdotNet may, subject to Published Policies and statutory rights;

   **a.** stop accepting new orders from Reseller
   **b.** cease providing Services until invoices are paid in full (including deletion of domains from the registry databases)
   **c.** terminate the agreement and all Reseller Services; and
   **d.** peruse any other remedy under this Agreement or at law

**6.5.** Recurring services which are overdue on payment by seven (7) days will automatically incur a late payment fee of $15.00 inc GST of the original renewal total in addition to any outstanding fees which may apply to have the service restored;

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a. In the event recurring services remain unpaid for a period of fourteen (14) days, the service will be automatically suspended until full payment is made.

b. In the event recurring services remain unpaid for a period of thirty (30) days, the service will be automatically terminated and all data removed from DISKMANdotNet web hosting servers.

**6.6.** Where DISKMANdotNet collects the payments owing by the Reseller, DISKMANdotNet agrees to pay claims, no larger than the original amount, for rebates within 14 days of receipt of a written request.

**6.7.** The liabilities of any payment amounts by DISKMANdotNet to Reseller will not exceed the wholesale purchase price of the Services offered by DISKMANdotNet.

**7. RESELLER'S OBLIGATIONS**

**7.1.** The Reseller as appointed by DISKMANdotNet, must;

a. act in good faith in all its dealing with DISKMANdotNet and each registrant;

b. communicate with all DISKMANdotNet staff, consultants or connected parties in a manner which is fair, reasonable and socially accepted;

c. comply with all of DISKMANdotNet's written policies (whether directly or indirectly referred in this agreement), conditions of use, and those of auDA, ICANN and nzDNC in relation to matters relating to this agreement;

d. immediately give DISKMANdotNet notice of any security breaches affecting DISKMANdotNet or Reseller as soon as Reseller becomes aware of such security breaches;

e. keep DISKMANdotNet informed of all changes of Reseller's personal or company details;

f. provide to DISKMANdotNet from time to time upon DISKMANdotNet's written request, information in relation to Reseller and the operation of Reseller's business relating to the provision of Reseller Services, as DISKMANdotNet may reasonably request; and DISKMANdotNet 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;

g. within two Business Days give notice to DISKMANdotNet 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;

h. use personal information about Resellers 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

*This document was last updated on 5 September 2018.*

breach, or cause DISKMANdotNet to breach, any laws pertaining to protection of Privacy;

i.    follow all policies, agreements and procedures as set out by DISKMANdotNet, whether specifically set out or inferred in this agreement or any of DISKMANdotNet's agreements;

j.    agree that registration agreement used by Reseller shall include all registration agreement provisions and notices required by the ICANN Registrar Accreditation Agreement and any ICANN Consensus Policies, and shall identify the sponsoring registrar or provide a means for identifying the sponsoring registrar, such as a link to the InterNIC Whois lookup service;

k.    Reseller shall 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 utilise 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 that the 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.

l.    to the extent that registrar is obligated to provide a link to an ICANN webpage, Reseller also shall be under an obligation to provide such linkage.

m.    publish on their website(s) a link to the ICANN webpage detailing both the Registrant education information (https://www.icann.org/resources/pages/educational-2012-02-25-en) and the Registrants' Benefits and Responsibilities (https://www.icann.org/resources/pages/benefits-2013-09-16-en);

n.    publish on their website(s) or included in their agreement with Registrants, the recovery fee charged to the Registrant for the restoration (RGP renewal) of a domain name;

o.    include a clause in their contractual agreements with Registrants that states that their customer (and/or the Registrant) "warrants that Reseller is authorised to act as a Designated Agent to approve any changes made to the Registrant contact details on behalf of the old and new Registrant for any generic top-level domain names governed by ICANN";

p.    shall identify the sponsoring registrar upon inquiry from the customer;

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

r.    comply with all applicable law.

7.2.    The Reseller as appointed by DISKMANdotNet, must not;


*This document was last updated on 5 September 2018.*

a. use excessive punctuation, capitalisation or offensive verbal, written or inferred language, whether directly or indirectly conveyed when dealing with DISKMANdotNet staff, consultants or connected parties;

b. use DISKMANdotNet intellectual or industrial property other than specified in writing by DISKMANdotNet;

c. use any information or partnership agreements belonging to or relating to DISKMANdotNet other than in accordance with this agreement, or in writing by DISKMANdotNet;

d. display 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.

## 8.  ICANN IMPOSED OBLIGATIONS TO THIRD-PARTY RESELLERS

**8.1.**  In addition to any obligations listed in clause 7, the following obligations are imposed on third-party Resellers by ICANN;

a. 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;

b. Any registration agreement used by Reseller shall include all registration agreement provisions and notices required by the ICANN Registrar Accreditation Agreement and any ICANN Consensus Policies, and shall identify the sponsoring registrar or provide a means for identifying the sponsoring registrar, such as a link to the InterNIC Whois lookup service;

c. Reseller shall identify the sponsoring registrar upon inquiry from the customer;

d. Reseller shall 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 utilise 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;

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

f. If Registrar becomes aware that such a Reseller is in breach of any of the provisions of this Agreement, Registrar shall take reasonable steps to notify the Reseller that it is in breach of the Reseller agreement and that Registrar has the

*This document was last updated on 5 September 2018.*

right to terminate such agreement.

9.    **AUDA IMPOSED OBLIGATIONS TO THIRD-PARTY RESELLERS**

   9.1.    In addition to any obligations listed in clause 7, the following obligations are imposed on third-party Resellers by auDA:
   a.    The Reseller must understand, comply, operate within and agree to all of auDA Published Policies (which can be found online at http://www.auda.org.au/policy/current-policies/);
   b.    The Reseller must understand, comply, operate within and agree to the auDA Code of Practice (which can be found online at http://www.auda.org.au/registrars/code/);
   c.    auDA may, from time to time, amend the requirements and obligations imposed to third-party Resellers. DISKMANdotNet will make all reasonable attempts to notify the Reseller of any change, and how it will affect their business.
   d.    The Reseller understands and agrees that DISKMANdotNet may notify auDA on the creation of the Reseller account with DISKMANdotNet.

10.    **MOBI IMPOSED OBLIGATIONS TO THIRD-PARTY RESELLERS**

   10.1.    In addition to any obligations listed in clause 7, the following obligations are imposed on third-party Resellers by MOBI;
   a.    Indemnify to the maximum extent permitted by law, defend and hold harmless Registry Operator, and its directors, officers, employees and agents from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to the Registered Name Holder's domain name registration and or use, and this indemnification obligation survive the termination or expiration of the registration agreement;
   b.    Indemnify, defend and hold harmless Registry Services Provider, its subsidiaries and affiliates, and the directors, officers, employees and agents or each of them, from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to the Registered Name Holder's domain name registration and or use, and indemnification obligation survive the termination or expiration of the registration agreement;
   c.    Acknowledge and agree that notwithstanding anything in this Agreement to the contrary, mTLD Top Level Domain Ltd. ("dotMobi"), the Registry Operator of the .mobi TLD, is and shall be an intended third party beneficiary of this Agreement. As such, the parties to this Agreement acknowledge and agree that the third party beneficiary rights of dotMobi have vested and that dotMobi has relied on its third party beneficiary rights under this Agreement in agreeing to DISKMANdotNet being a registrar for the .mobi top-level domain. Additionally,

*This document was last updated on 5 September 2018.*

the third party beneficiary rights of dotMobi shall survive any termination or expiration of this Agreement.

**d.** Comply with ICANN requirements, standards, policies, procedures, and practices for which Registry Operator has monitoring responsibility in accordance with the Registry Agreement or other arrangement with ICANN;

**e.** Comply with operational standards, policies, procedures, and practices for the Registry TLD established from time to time by Registry Operator in a non-arbitrary manner as Registry Policies, applicable to all registrars and/or Registered Name Holders, and consistent with the Registry Agreement shall be effective upon thirty days notice by Registry Operator to Registrar;

**f.** Consent to the use, copying, distribution, publication, modification and other processing of Registered Name Holder's Personal Data by Registry Operator and its designees and agents in a manner consistent with the purposes specified pursuant to Subsection 2.6 and with relevant mandatory local data protection, laws and privacy;

**g.** Submit to proceedings commenced under ICANN's Uniform Domain Name Dispute Resolution Policy ("UDRP");

**h.** Immediately correct and update the registration information for the registered Name during the registration term for the Registered Name;

**i.** Acknowledge and agree to be bound by the terms and conditions of the initial launch and general operations of the Registry TLD, including without limitation the Limited Industry Launch, the Sunrise Period, the Land Rush Period, the Sunrise Dispute Resolution Policy, the Premium Name Allocation Process, and the General Registration Period, and further to acknowledge that Registry Operator and the Registry Service Provider has no liability of any kind for any loss or liability resulting from the proceedings and processes relating to the Limited Industry Launch, the Sunrise Period, the Land Rush Period, the Sunrise Dispute Resolution Policy, the Premium Name Allocation Process, and the General Registration Period including, without limitation: (a) the ability or inability of a Registrant to obtain a Registered Name during these periods, and (b) the results of any dispute made during the limited industry launch or over a Sunrise Registration.

**j.** Acknowledge and agree that the Registry and Registry Services Provider, acting in consent with the Registry, reserves the right to deny, cancel or transfer any registration that it deems necessary, in its discretion (i) to protect the integrity and stability of the registry; (ii) to comply with all applicable laws, government rules or requirements, requests of law enforcement, in compliance with any dispute resolution process; (iii) to avoid any liability, civil or criminal, on the part of the Registry as well as its affiliates, subsidiaries, officers, directors, representatives, employees, and stockholders; (iv) for violations of the terms and conditions herein; or (v) to correct mistakes made by the Registry or any registrar in connection with a domain name registration, and the Registry also reserves the right to freeze a Registered Name during resolution of a dispute.

*This document was last updated on 5 September 2018.*

    **k.** Acknowledge and agree that they must comply with the requirements, standards, policies, procedures and practices set forth in the dotMobi Style Guide (www.mtld.mobi) and consent to the monitoring of the website as described in the dot Mobi Style Guide monitoring guidelines (www.mtld.mobi) for compliance with the Style Guide. Furthermore, Registrant acknowledges and agrees that this Style Guide is subject to modification by the Registry with any such changes appearing at the previously designated URL, and that Registrant must promptly comply with any such changes in the time allotted.

    **l.** Acknowledge and agree that Proxy or Proxy Registrations will not be allowed during the Sunrise Period, the Limited Industry Launch and the Premium Name Allocation and Auction Period, and in such an instance will constitute a material breach to this contract.

## 11. NOMINET IMPOSED OBLIGATIONS TO THIRD-PARTY RESELLERS

**11.1.** In addition to any obligations listed in clause 7, the following obligations are imposed on third-party Resellers by Nominet:

    **a.** The Reseller must understand, comply, operate within and agree to the Nominet Terms and Conditions of Domain Name Registration as available on their website at http://www.nominet.org.uk/uk-domain-names/registering-uk-domain/legal-details/terms-and-conditions-domain-name-registration;

    **b.** Nominet may, from time to time, amend the requirements and obligations imposed to third-party Resellers. DISKMANdotNet will make all reasonable attempts to notify the Reseller of any change, and how it will affect their business.

## 12. STIPULATED RIGHTSIDE REGISTRY POLICY

**12.1.** These Registration Terms and Conditions ("the Registration Terms") supplement, and are incorporated into, the agreement between you ("you"),a registrant, and the ICANN Accredited Registrar ("Registrar") that you use to register or reserve a name in the United TLD Top Level Domain (the "Registry TLD"). As between you and United TLD Holdco Ltd., ("UTLDH" or the "Registry," "us," "our," "we," and also trading as "Rightside Registry" or "Rightside"), in the event of any conflict between this Agreement Schedule and the terms of your agreement with Registrar (the "Registrar Registrant Agreement"), these Registration Terms shall prevail.

**12.2.** By applying to register or reserve a domain name in a Registry TLD, you represent and warrant that neither your registration nor your use of the name will infringe the intellectual property or other rights of any third party or violate the Registry's Acceptable Use (Anti-Abuse) Policy.

**12.3.** You acknowledge and agree to abide by all Registry Policies set forth on the Registry's website at http://rightside.co/registry/for-registrars/#c290 (the "Registry Website").

*This document was last updated on 5 September 2018.*

You specifically acknowledge and agree that the Registry Policies may be modified by the Registry, and agree to comply with any such changes in the time period specified for compliance.

**12.4.** You agree to comply with all applicable ICANN requirements and policies found at www.icann.org/en/general/consensus-policies.htm.

**12.5.** You agree to comply with all applicable laws, including those that relate to privacy, data collection, consumer protection, fair lending, debt collection, organic farming, disclosure of date and financial disclosures.

**12.6.** You agree that should you use a Registry TLD to collect and or maintain sensitive health and financial data, you implement reasonable appropriate security measures commensurate with the offering of those services as defined by applicable law.

**12.7.** You represent and warrant that you have provided to your Registrar current, complete, and accurate information in connection with your application for a registration, and that you will correct and update this information to ensure that it remains current, complete, and accurate throughout the term of any resulting registration or reservation. Your obligation to provide current, accurate, and complete information is a material element of these terms, and the Registry reserves the right to deny, cancel, terminate, suspend, lock, or transfer any registration or reservation if it determines, in its sole discretion, that the information is materially inaccurate.

**12.8.** You consent to the collection, use, processing, and/or disclosure of personal information in the United States and in accordance with the Registry's Privacy Policy, and incorporated by reference here. If you are submitting information from a country other than the country in which the Registry servers are located, your communications with the Registry may result in the transfer of information (including your membership account information) across international boundaries; you consent to such transfer.

**12.9.** Should you choose to register one or more of these new generic top-level domain names, you must comply with the registration requirements as described below: Regulated TLDs: .ENGINEER, .MARKET, MORTGAGE, .DEGREE, .SOFTWARE, .VET, .GIVES, and .REHAB Highly-regulated TLDs: .DENTIST, .ATTORNEY, and .LAWYER Military TLDs: .ARMY, .NAVY, and .AIRFORCE.

    **a.** Safeguards for Regulated TLDs. Registrants must comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures. Additionally, if a Registrant collects and maintains sensitive health and financial data, Registrants must implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law.

    **b.** Safeguards for Highly-Regulated TLDs. Registrants must provide to their Registrar administrative contact information, which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business. Additionally, Registrants must possess any

*This document was last updated on 5 September 2018.*

necessary authorizations, charters, licenses and/or other related credentials for participation in the sector associated with such Highly-regulated TLD and report any material changes to the Registrant's authorizations, charters, licenses and/or other related credentials for participation in the sector associated with the Highly-regulated TLD.

    **c.** Safeguards for Military TLDs. Registrant must take steps to ensure against misrepresenting or falsely implying that the Registrant or its business is affiliated with, sponsored or endorsed by one or more countries or government's military forces if such affiliation, sponsorship or endorsement does not exist.

**12.10.** You should be aware that Australian Defence Regulation 1957, No. 16, individuals and businesses, who are subject to Australian law, are prohibited from using the words "Navy" and "Air Force" in connection with a trade or business. Consequently, Australian based Registrars are advised that it may be illegal to sell or distribute domain names under this law and selling or distributing domain names to consumers based in Australia may also be prohibited. Australian Registrars are advised to consult with their legal counsel prior to selling or distributing any .NAVY or .AIRFORCE domain name.

**12.11.** You agree to submit to proceedings commenced under ICANN's Uniform Domain Name Dispute Resolution Policy ("UDRP"), and the Uniform Rapid Suspension System ("URS"), each as described on the ICANN Website. You further agree to abide by the final outcome of any of those processes, subject to any appeal rights provided in those processes or the law, and you hereby release the Registry, its affiliates and service providers from any and all directly or indirect liability associated with such dispute resolution processes.

**12.12.** You acknowledge and agree that the Registry reserves the right, in its sole discretion, to disqualify you or your agents from making or maintaining any registrations or reservations in the Registry TLD if you are found to have repeatedly engaged in abusive registrations.

**12.13.** You acknowledge and agree that the Registry reserves the right to deny, cancel, terminate, suspend, lock, or transfer any registration that it deems necessary, in its discretion, in furtherance of the following:

    **a.** to enforce all Registry Policies, these Registration Terms, and ICANN requirements, as amended from time to time;

    **b.** to protect the integrity and stability of the Registry, its operations, and the Registry TLDs;

    **c.** to comply with any applicable law, regulation, holding, order, or decision issued by a court, administrative authority, or dispute resolution service provider with jurisdiction over the Registry or you;

    **d.** to establish, assert, or defend the legal rights of the Registry or a third party, or to avoid any liability, civil or criminal, on the part of the Registry as well as its affiliates, subsidiaries, officers, directors, representatives, employees, contractors, and stockholders;

*This document was last updated on 5 September 2018.*

      **e.**   to correct mistakes made by the Registry or any Registrar in connection with a registration or reservation;

      **f.**   as otherwise provided herein.

**12.14.** The Registration Terms, its interpretation, and all disputes between the parties arising in any manner hereunder, shall be governed by and construed in accordance with the internal laws of the State of Washington, without giving effect to any choice or conflict of law provision or rule (whether of the State of Washington or any other jurisdiction). You agree and submit to the exercise of personal jurisdiction of courts in the State of Washington for the purpose of litigating any such claim or action.

**12.15.** BY AGREEING TO THESE REGISTRATION TERMS AND CONDITIONS, YOU ARE: (1) WAIVING CLAIMS THAT YOU MIGHT OTHERWISE HAVE AGAINST THE REGISTRY, ITS EMPLOYEES, AFFILIATES AND SUBSIDIARIES, AND SERVICE PROVIDERS, BASED ON THE LAWS OF OTHER JURISDICTIONS, INCLUDING YOUR OWN; (2) IRREVOCABLY CONSENTING TO THE EXCLUSIVE JURISDICTION OF, AND VENUE IN, STATE OR FEDERAL COURTS IN THE STATE OF WASHINGTON OVER ANY DISPUTES OR CLAIMS YOU HAVE WITH THE REGISTRY, ITS AFFILIATES AND SERVICE PROVIDERS; AND (3) SUBMITTING YOURSELF TO THE PERSONAL JURISDICTION OF COURTS LOCATED IN THE STATE OF STATE OF WASHINGTON FOR THE PURPOSE OF RESOLVING ANY SUCH DISPUTES OR CLAIMS.

**12.16.** You acknowledge and agree that the Registry is and shall be an intended third party beneficiary of the obligations you undertake under your registration agreement with the Registrar and these Registration Terms. You acknowledge and agree that the Registry's third party beneficiary rights have vested, and shall survive any termination or expiration of your registration or reservation.

**12.17.** You acknowledge and agree that domain names in the Registry TLD are provided "as is", "with all faults" and "as available." The Registry, its affiliates and service providers, make no express warranties or guarantees about such domain names.

**12.18.** TO THE GREATEST EXTENT PERMITTED BY LAW, THE REGISTRY, ITS AFFILIATES AND SERVICE PROVIDERS, DISCLAIM IMPLIED WARRANTIES THAT THE REGISTRY AND ALL SOFTWARE, CONTENT AND SERVICES DISTRIBUTED THROUGH THE REGISTRY, ITS AFFILIATES AND SERVICE PROVIDERS ARE MERCHANTABLE, OF SATISFACTORY QUALITY, ACCURATE, TIMELY, FIT FOR A PARTICULAR PURPOSE OR NEED, OR NON-INFRINGING. THE REGISTRY, ITS AFFILIATES AND SERVICE PROVIDERS DO NOT GUARANTEE THAT ANY REGISTRY TLDS, OR REGISTRY OPERATIONS WILL MEET YOUR REQUIREMENTS, WILL BE ERROR-FREE, RELIABLE, WITHOUT INTERRUPTION OR AVAILABLE AT ALL TIMES. WE DO NOT GUARANTEE THAT THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE UNITED TLD, INCLUDING ANY SUPPORT SERVICES, WILL BE EFFECTIVE, RELIABLE, ACCURATE OR MEET YOUR REQUIREMENTS. WE DO NOT GUARANTEE THAT YOU OR THIRD PARTIES WILL BE ABLE TO ACCESS OR USE A DOMAIN NAME IN UNITED TLDS (EITHER DIRECTLY OR THROUGH THIRD-PARTY NETWORKS) AT TIMES OR LOCATIONS OF YOUR CHOOSING. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY A REPRESENTATIVE OF THE REGISTRY, ITS AFFILIATES AND SERVICE PROVIDERS SHALL

*This document was last updated on 5 September 2018.*

CREATE A WARRANTY REGARDING OPERATIONS OF THE REGISTRY OR A DOMAIN NAME IN A REGISTRY TLD.

**12.19.** THE REGISTRY, ITS' AFFILIATES AND SERVICE PROVIDERS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING FROM YOUR USE OF, INABILITY TO USE, OR RELIANCE UPON A DOMAIN NAME IN A UNITED TLD. THESE EXCLUSIONS APPLY TO ANY CLAIMS FOR LOST PROFITS, LOST DATA, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF THE REGISTRY, ITS AFFILIATES AND SERVICES PROVIDERS KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, THE REGISTRY'S LIABILITY, AND THE LIABILITY OF THE REGISTRY'S AFFILIATES AND SERVICE PROVIDERS, SHALL BE LIMITED TO THE AMOUNT YOU PAID TO REGISTER A UNITED TLD. YOU FURTHER AGREE THAT IN NO EVENT SHALL THE REGISTRY'S, ITS AFFILIATES AND SERVICE PROVIDERS, TOTAL AGGREGATE LIABILITY EXCEED THE TOTAL AMOUNT PAID BY YOU FOR THE PARTICULAR SERVICES THAT ARE THE SUBJECT OF THE CAUSE OF ACTION. YOU AGREE THAT THE RIGHTS STATED HEREIN SURVIVE TERMINATION OF THE REGISTRAR'S AGREEMENT WITH YOU.

**12.20.** The Registry reserves the right to modify, change, or discontinue any aspect of its Registry Services, these Registration Terms, including without limitation its prices and fees. You acknowledge and agree that the Registry, its affiliates and service providers may provide any and all required notices, agreements, modifications and changes to these Registration Terms, and other information concerning Registry TLDs electronically, by posting such items on the Registry Website. Your continued use of a Registry TLD shall constitute your acceptance of the most current versions of those notices, agreements, modifications, and changes to these Registration Terms. In the event of any conflict between these Registration Terms and the notices, agreements, modifications and changes to the Registration Terms as posted from time to time on the Registry Website, the terms posted on the Registry Website shall prevail.

**12.21.** You represent and warrant that your use of the Registry and/or the Registry TLDs will not be for any illegal purpose and that you will not undertake any activities with your Registry TLD that will be in violation of the Acceptable Use (Anti-Abuse) Policy.

**12.22.** The Registry TLDs are intended for and available to applicants and registrants who are at least eighteen (18) years of age. By applying for, registering, or reserving United TLD, you represent and warrant that you are at least eighteen (18) years of age.

**13.    COMODO IMPOSED OBLIGATIONS TO THIRD-PARTY RESELLERS**

**13.1.** In addition to any obligations listed in clause 7, the following obligations are imposed on third-party Resellers by Comodo;

a.   Reseller understands and agrees that use of Comodo's digital certificate products is subject to and governed by the Comodo Certificate Practice

*This document was last updated on 5 September 2018.*

Statement(s), Certificate Policy(ies), Subscriber Agreement and other related documentation;

    **b.** DISKMANdotNet grants the Reseller the ability to re-sell Comodo Products.

## 14. SHARED CPANEL WEB HOSTING SERVICES

**14.1.** All shared cPanel web hosting Services are governed by the Acceptable Use Policy.

**14.2.** DISKMANdotNet reserves the right to suspend or terminate services if:

    **a.** The Customer is found to be in breach of any policy including but not limited to the Reseller Agreement, Acceptable Use Policy, Customer Service Policy or any other applicable policy.

    **b.** The Customer has unpaid Services for a period as defined within the Reseller Agreement.

**14.3.** If a shared cPanel web hosting service is suspended or terminated for any reason, DISKMANdotNet is under no obligation to provide the Customer with a copy of any data associated with the Service. DISKMANdotNet may provide the customer with a backup of the data, if it is available, for a fee of **$199.95** per Service.

**14.4.** It is the Customer's sole responsibility to maintain regular off-site backups of their data contained with shared cPanel web hosting services. The Customer will not hold DISKMANdotNet liable for incomplete, out of date, corrupt or otherwise incomplete data recovered from backups and archives.

    **a.** DISKMANdotNet makes every reasonable effort to backup and archive the Customers data on a regular basis for the purposes of disaster recovery, however the Customer should be prepared to upload all of their data to their Service from their own copy or an off-site backup in the event of catastrophic server failure or data loss.

**14.5.** In the event a Customer requires DISKMANdotNet to supply a backup of their data for an active shared cPanel web hosting Service, for any reason or purpose that is not the direct fault of DISKMANdotNet, a fee of $199.95 per Service may be payable by the client before the data will be made available.

    **a.** Services in a suspended or terminated state within DISKMANdotNet's Console are not considered an active Service.

## 15. INDEMNITY

**15.1.** Reseller indemnifies DISKMANdotNet and its officers, directors, agents and personnel from and against all losses, claims, demands, suits, actions, proceedings, penalties, liabilities, costs and expenses (including without limitation legal fees and expenses), of whatever kind arising from:

    **a.** death of or injury to any person to the extent caused by the conduct of Reseller, its officers, directors, agents or personnel;

*This document was last updated on 5 September 2018.*

      **b.**   damage to or loss or destruction of any real or tangible property to the extent caused by the conduct of Reseller, its officers, directors, agents or personnel; and

      **c.**   any third party claims or allegations in respect of any privacy obligations owed to such third parties by Reseller, arising out of a breach by Reseller of its obligations under this agreement.

**15.2.**   DISKMANdotNet will not be liable to the Reseller for any loss or damage whatsoever suffered, or that may be suffered (including but not limited to direct, economic and consequential loss) as a result of any act or omission by DISKMANdotNet whether negligent or otherwise, in the performance of any duty, obligation or function under this Agreement or in any way arising out of its being party to or in connection with this Agreement.

**15.3.**   To the extent permissible by law DISKMANdotNet expressly disclaims all conditions and warranties, express or implied, in respect of the subject matter of this Agreement. If any condition or warranty is implied into this Agreement pursuant to any legislation (including without limitation the Trade Practices Act 1974) and the legislation avoids or prohibits provisions in a contract excluding or modifying the application of, exercise of, or liability under such condition or warranty, the condition or warranty will be deemed to be included in this Agreement, provided that the liability of DISKMANdotNet which of the condition or warranty shall, if the legislation so permits, be limited, in the sole discretion of DISKMANdotNet to

      **a.**   the resupply of the Services; or

      **b.**   the cost of the resupply of the Services,

      **c.**   to a maximum liability of $200, in respect of which the breach occurred, and otherwise will be limited to the maximum extent permitted by law.

## 16.    CONFIDENTIAL INFORMATION

**16.1.**   Each party must:

      **a.**   keep confidential;

      **b.**   take reasonable steps to ensure that the party's employees do not disclose to a third party;

      **c.**   maintain proper and secure custody of; and

      **d.**   not use or reproduce in any form, any confidential information belonging to the other party without the written consent of the other party or as required by law.

**16.2.**   A party must immediately on receipt of a request from the other party in accordance with the other party's rights under this agreement:

      **a.**   deliver all Confidential Information belonging to the other party and all changes to, reproductions of, extracts from and notes regarding that Confidential Information, in any form;

*This document was last updated on 5 September 2018.*

b. destroy the Confidential Information and, if it is stored in other media, by erasing from the medium on which it is stored so that the Confidential Information is incapable of being revived; and

c. provide a statutory declaration to the other party that all Confidential Information has been delivered or destroyed in accordance with this clause.

## 17. BREACH

**17.1.** 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 DISKMANdotNet to do so, then DISKMANdotNet 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.

**17.2.** Any breach of this, or any DISKMANdotNet, Registry or Industry body agreement, whether explicitly referred in this agreement, may, at the determination of DISKMANdotNet, result in immediate termination of this agreement, and any Services the Reseller or client may have with DISKMANdotNet.

**17.3.** If DISKMANdotNet becomes aware that such a Reseller is in breach of any of the provisions of this Agreement, DISKMANdotNet shall take reasonable steps to notify the Reseller that it is in breach of the Reseller agreement and that DISKMANdotNet has the right to terminate such agreement.

## 18. INSOLVENCY

**18.1.** In the event that the;
a. Reseller makes an assignment for the benefit of its creditors;
b. 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;
c. 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;
d. 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;
e. any execution or analogous process is levied or enforced against the property of Reseller; or
f. Reseller ceases to carry on business,

then, DISKMANdotNet 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.

*This document was last updated on 5 September 2018.*

**19.    CHANGE OF CONTROL**

**19.1.**    In the event that the;

    **a.**    control, ownership or management of Reseller changes significantly; or

    **b.**    Reseller sells or otherwise disposes of substantially all of its business assets to a third party, DISKMANdotNet may terminate this Agreement by giving written notice to Reseller of the termination which will be effective immediately unless otherwise stated in the notice.

**20.    FOLLOWING ON FROM TERMINATION**

**20.1.**    Following Termination of this Agreement the Reseller must immediately and at the Reseller's own expense:

    **a.**    Cease identifying itself as a Reseller or as having any other working, partner or other relationship with DISKMANdotNet;

    **b.**    Cease promoting, selling and supporting the Reseller Services that are provided directly or indirectly by DISKMANdotNet;

    **c.**    Immediately pay any amounts the Reseller owes to DISKMANdotNet under this Agreement.

**20.2.**    Upon termination of the Reseller Agreement, DISKMANdotNet will, based upon its obligations and duties with the domain registries, utilise its discretionary rights based upon circumstance to determine transfer of rights within the best interests of the registered Client.

**20.3.**    Any costs incurred directly or indirectly from a termination of this contract by DISKMANdotNet will be the sole responsibility of the Reseller.

**21.    NOTICES**

**21.1.**    Any notice, demand, consent or other communication given or made under this document must be:

    **a.**    in writing and clearly readable;

    **b.**    signed by the party giving or making it (or signed on behalf of that party by its authorised representative);

    **c.**    left at the address or sent by pre-paid security post (air mail if outside Australia) to the address or to the email address as set out below:

If to DISKMANdotNet via mail:

DISKMANdotNet PO Box 85 Doncaster VIC 3108 Australia

If to DISKMANdotNet via email: clientservices@diskman.net

*This document was last updated on 5 September 2018.*

**21.2.** Or as set out on the DISKMANdotNet corporate website, or any of the related DISKMANdotNet websites as being the official communication addresses for all official correspondence;

**22. TIME**

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

**23. ASSIGNMENT**

**23.1.** Reseller must not sell, transfer, delegate, assign, licence or mortgage charge or otherwise encumber any right it holds pursuant to this agreement to any person or permit any person to assume any obligation under this agreement without the prior written consent of DISKMANdotNet.

**24. FURTHER ASSURANCE**

**24.1.** Each party must do everything necessary, or reasonably required, by the other party, to give effect to the intentions of the parties as expressed in this agreement.

**25. RELATIONSHIP BETWEEN PARTIES**

**25.1.** Nothing in this agreement:
   **a.** constitutes a partnership between the parties;
   **b.** except as expressly provided, makes a party an agent of the other party for any purpose.
**25.2.** Neither party can in any way or for any purpose:
   **a.** bind the other party;
   **b.** contract in the name of the other party.
**25.3.** If a party must fulfil an obligation and that party is dependent upon the other party, then the other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

**26. WAIVER AND CONSENT**

**26.1.** A party does not waive a right or remedy under this agreement or at law if it:
   **a.** fails to exercise a right or remedy;
   **b.** only partially exercises a right or remedy;
   **c.** delays in exercising a right or remedy.

*This document was last updated on 5 September 2018.*

**26.2.** A party which exercises a single right or remedy or partially exercises a right or remedy maintains its right to:

    **a.** further exercise the same right or remedy;

    **b.** to exercise another right or remedy.

**26.3.** A waiver or consent is effective only if in writing and properly signed by or on behalf of the party to be bound.

**26.4.** A waiver or consent is effective only:

    **a.** to the extent that the party giving it expressly states in writing;

    **b.** in the specific instance in which it is given; and

    **c.** for the purpose for which it is given.

## 27. REMEDIES

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

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

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

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

**27.5.** 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.

## 28. WHOLE AGREEMENT

**28.1.** This agreement:

    **a.** records the entire agreement between parties; and

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

## 29. VARIATION

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

## 30. INVALIDITY

**30.1.** A word or provision must be read down if:

    **a.** this agreement document is void, voidable, or unenforceable if it is not read down;

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

*This document was last updated on 5 September 2018.*

c. the provision is capable of being read down.

**30.2.** A word or provision must be severed if:

    **a.** despite the operation of clause 23.1, is a provision is void, voidable or unenforceable if it is not severed;

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

**30.3.** The remainder of this document has full effect even if clauses 24.1 applies.

## 31.  SURVIVAL

**31.1.** Clauses 4 (WARRANTIES), 15 (INDEMNITY), 16 (CONFIDENTIAL INFORMATION) and 20 (FOLLOWING ON FROM TERMINATION) shall survive any termination or expiry of this agreement.

**31.2.** Termination of this agreement does not affect any accrued rights or remedies any party may have.

## 32.  GOVERNING LAW AND JURISDICTION

**32.1.** This document is governed by the laws of Victoria in the Commonwealth of Australia.

**32.2.** The parties submit to the exclusive jurisdiction of the Victorian courts.

## 33.  GENERAL

**33.1.** The obligations of confidentiality under this agreement continue to apply to the parties of this Agreement (in addition to any permitted assignee) after the assignment or termination of this Agreement.

**33.2.** The failure of a party at any time to insist on performance of any provision of this agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of this agreement.

**33.3.** Neither party may assign or otherwise transfer any or all of its rights arising out of this agreement without the prior written consent of the other party.

**33.4.** This agreement is governed by the laws of the state of Victoria and each party submits to the jurisdiction of the courts of that state.

**33.5.** Each party must do or cause to be done all things necessary or desirable to give effect to, and must refrain from doing all things that could hinder performance of this agreement.

If you have any questions about this agreement, please contact our Client Services team at clientservices@diskman.net

*This document was last updated on 5 September 2018.*