

Distribute.IT Reseller Agreement

Effective October 1, 2002

Modified April 26, 2005

Last Modified May 6, 2008

THIS AGREEMENT sets out the terms on which DISTRIBUTE.IT PTY LTD (ABN 88 101 292 237) of 928/401 Docklands Drive, Docklands, Victoria Australia 3008 (**'DIT'**) appoints a reseller (**'Reseller'**) as an agent to purchase the services from Distribute.IT.

RECITALS

- A. DIT has entered into Registrar Agreements with ICANN, .au Domain Administration Ltd (auDA) and the New Zealand Domain Name Commissioner (nzDNC), under which Distribute.IT 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 .com, .net, .org, .biz and .info and country code domains including .au, .nz and others as may be included from time to time.
- B. DIT is entitled, under its Registrar Agreements, to appoint resellers to sell domain name services and provide Reseller Services on behalf of DIT.
- C. DIT has entered into a non-exclusive Distribution Agreement with Geotrust, Inc, to supply Digital SSL Certificates.
- D. DIT has developed connections to various SMS gateways enabling the sending of text messages to mobile devices.
- E. DIT has offered to appoint Reseller as a reseller, and Reseller has accepted DIT's offer, on the terms and conditions set out in this agreement.

In This Agreement:

1.1 Definitions

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

Business Day means Monday to Friday excluding public holidays in Melbourne, Victoria, Australia.

ccTLD means Country Code Top Level Domain.

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

Commencement Date means the date Reseller's application is approved by DIT and account created in Distribute.IT's systems.

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

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

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

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

gTLD means General Top Level Domain

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

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

nzDNC means the New Zealand Domain Name Commissioner

Published Policies means those specifications and policies published by auDA, ICANN and nzDNC from time to time.

1.2 Interpretation

In this agreement unless the contrary intention appears:

- .1a reference to this agreement or document means this agreement and includes any variation or replacement of it;
 - .2a reference to a statute or other law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements of it;
 - .3 the singular includes the plural number and vice versa;
 - .4 a reference to a gender includes a reference to each gender;
 - .5 the word "person" includes a firm, corporation, body corporate, unincorporated association or a governmental authority;
 - .6 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;
 - .7 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;
 - .8 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;
 - .9 "includes" means includes but without limitation;
 - .10 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; and
 - .11 a reference to an act includes an omission and a reference to doing an act includes executing a document.
- 1.3 A heading is for reference only. It does not affect the meaning or interpretation of this agreement.
- 1.4 Any schedule attached to this agreement forms part of it.
- 1.5 All references to "dollars" and "\$" shall be and mean a reference to the lawful currency from time to time of Australia

2. APPOINTMENT OF RESELLER AND TERM

- 2.1 DIT 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.
- 2.2 DIT reserves the right to itself provide the Reseller Services and to appoint other resellers to provide the Reseller Services.
- 2.3 Reseller acknowledges and agrees that Registrants for Domain Names introduced by Reseller to DIT become and remain customers of DIT.
- 2.4 Reseller's appointment and the term of this agreement commences on the Commencement Date and continues thereafter until terminated in accordance with this agreement.
- 2.5 Either party may terminate this contract by giving the other party 30 days written notice.

3. WARRANTIES

- 3.1 Reseller represents and warrants to DIT that:
 - .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
 - .2 the person executing this agreement on its behalf has the authority to do so.

- .3 Reseller further represents and warrants to DIT that all written information and reports which it has furnished or will furnish to DIT in connection with Reseller's appointment as a reseller are true, accurate and not misleading in all material respects whether by omission or otherwise and, where appropriate, contain forecasts and opinions 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 to it and are fair and reasonable.
- 3.2 DIT represents and warrants to Reseller that:
- .1it is a corporation duly incorporated and validly existing under the laws of Australia; and
 - .2it 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. SOURCE OF OBLIGATIONS

- .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.
- .2 Reseller must identify its relationship with DIT:
 - .2.1 in any instrument of, or purporting to be signed or issued by or on behalf of, Reseller or issued in the course of, or for the purposes of, performing services in accordance with this agreement, and
 - .2.2 on the Reseller's website,
- .3 where providing registrations of domain names governed by the rules and regulations as set out by auDA.
- 4.4 Reseller must comply with DIT's reasonable directions as to the manner of identifying Reseller's relationship with DIT.
- 4.5 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 DIT 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.
- 4.6 Reseller must comply with the published Codes of Practice as if it were incorporated into and formed part of this agreement.
- 4.7 In the event of any inconsistencies between the provisions of this agreement and the provisions in the Published Policies or the Codes of Practice or both then to the extent of the inconsistencies the documents are to be interpreted in the following order of priority:
 - 4.7.1 the Published Policies; and
 - 4.7.2 the Code of Practice; and
 - 4.7.3 this agreement.
- 4.8 Reseller must comply with the specific Terms and Conditions for all other Reseller Services , as detailed on the DIT website from time to time, as if they were incorporated into and formed part of this agreement.

5. FEES

- 5.1 Reseller is entitled to set the fees which it charges for the Reseller Services it provides and Reseller must pay to DIT the fees charged by DIT in relation to the Services which DIT provides.
- 5.2 During the Term, Reseller must pay at the time of application for Reseller Services all applicable fees unless otherwise agreed by DIT.
- 5.3 Resellers' timely payment of Fees is a material condition of Resellers' obligations under this Agreement. In the event that Reseller fails to pay its Fees, DIT may, subject to its compliance with Published Policies, do any or all of the following: (i) stop accepting new orders from Reseller; (ii) cease providing services with invoices not paid in full (including deletion of domain names

- from the Registry database(s)) ; (iii) give to the Reseller written notice of termination of this Agreement and (iv) pursue any other remedy under this Agreement or at law.
- 5.4 Where Distribute.IT collects Reseller's payment from Reseller's Clients directly, Distribute.IT agrees to pay all claims for rebates within 14 days of receipt of a written request from Reseller.

6. RESELLER'S OBLIGATIONS

- 6.1 Reseller must:
- .1 act in good faith in all of its dealings with DIT and each Registrant;
 - .2 comply with all of DIT's written policies, conditions of use, and those of auDA, ICANN and nzDNC in relation to matters relating to this agreement;
 - .3 immediately give DIT notice of any security breaches affecting DIT as soon as Reseller becomes aware of such security breaches;
 - .4 keep DIT informed of all changes of Reseller's personal or company details;
 - .5 provide to DIT from time to time upon DIT's written request, information in relation to Reseller and the operation of Reseller's business relating to the provision of Reseller Services, as DIT may reasonably request; and DIT 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;
 - .6 within two Business Days give notice to DIT 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;
 - .7 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 breach, or cause DIT to breach, any laws pertaining to protection of Privacy;
 - .8 continue to hold all materials, statutory licences, consents and authorisations necessary to perform its obligations under this agreement; and
 - .9 comply with all applicable law.
- 6.2 Reseller must not:
- .1 use DIT's intellectual or industrial property other than as specified by DIT;
 - .2 use any information belonging to or regarding DIT other than in accordance with this agreement.

7. INDEMNITY

- 7.1 Reseller indemnifies DIT 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:
- .1 death of or injury to any person to the extent caused by the conduct of Reseller, its officers, directors, agents or personnel;
 - .2 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
 - .3 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.
- 7.2 DIT 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 DIT 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 other than as specified by 7.3.

- 7.3 To the extent permissible by Law DIT 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 DIT which of the condition or warranty shall, if the legislation so permits, be limited, in the sole discretion of DIT, to
- a) the resupply of the services; or
 - b) the cost of the resupply of the services,
- 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.

8. CONFIDENTIAL INFORMATION

- 8.1 Each party must:
- .1 keep confidential; and
 - .2 take reasonable steps to ensure that the party's employees do not disclose to a third party; and
 - .3 maintain proper and secure custody of; and
 - .4 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.
- .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:
- .2.1 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; or
 - .2.2 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
 - .2.3 provide a statutory declaration to the other party that all Confidential Information has been delivered or destroyed in accordance with this clause.

9. BREACH

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 DIT to do so, then DIT 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.

10. INSOLVENCY

If:

- 10.1 Reseller makes an assignment for the benefit of its creditors;
- 10.2 a receiver or receiver and manager or administrator or inspector or analogous person is appointed in respect of or over all or any part of Reseller's assets;
- 10.3 an application for the winding up of Reseller is presented and not withdrawn or dismissed within 21 days or an order is made or an effective resolution is passed for the winding up of Reseller or any analogous applications are made or proceedings started;
- 10.4 proceedings are initiated with a view to obtaining an order for winding up Reseller or any shareholder or director convenes a meeting for the purpose of considering or passing any resolution for the winding up of Reseller;
- 10.5 any execution or analogous process is levied or enforced against the property of Reseller; or

10.6 Reseller ceases to carry on business,

then, DIT 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.

11. CHANGE OF CONTROL

If

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

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

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

12. FOLLOWING TERMINATION

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

12.1.1 Cease identifying itself as a reseller or as having any other relationship with DIT;

12.1.2 Cease promoting, selling and supporting the Reseller Services;

12.1.3 Immediately pay any amounts the Reseller owes to DIT under this Agreement.

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

13. NOTICES

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

.1 in writing and clearly readable;

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

.3 left at the address or sent by pre-paid security post (air mail if outside Australia) to the address or to the facsimile number set out below:

(a) if to DIT:

Distribute.IT Pty Limited

928/401 Docklands Drive, Docklands VIC 3008 AUSTRALIA

Facsimile: as disclosed at www.distributeit.com.au

Attention: Managing Director

.2 A party may change its address or facsimile number for the purpose of service by giving notice of that change to the other party in accordance with the provisions of 13.1.

.3 Proof of posting or of dispatch of facsimile is proof of receipt:

.3.1 in the case of a letter on the third (seventh, if outside Australia) day after the date of posting; and

.3.2 in the case of a facsimile upon production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the facsimile number of the recipient notified for the purposes of this clause.

13.4 If the time of dispatch of a facsimile is not on a day, or is after 4.00 pm (local time) on a day, in which business generally is carried on in the place to which the facsimile communication is sent it will be deemed to have been received at the commencement of business on the next day in which business is generally carried on in that place.

14. TIME

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

15. ASSIGNMENT

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 DIT.

16. FURTHER ASSURANCE

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.

17. RELATIONSHIP BETWEEN PARTIES

- 17.1 Nothing in this agreement:
 - .1 constitutes a partnership between the parties; or
 - .2 except as expressly provided, makes a party an agent of the other party for any purpose.
- 17.2 Neither party can in any way or for any purpose:
 - .1 bind the other party; or
 - .2 contract in the name of the other party.
- .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.

18. WAIVER AND CONSENT

- 18.1 A party does not waive a right or remedy under this agreement or at law if it:
 - .1 fails to exercise a right or remedy;
 - .2 only partially exercises a right or remedy; or
 - .3 delays in exercising a right or remedy.
- .2 A party which exercises a single right or remedy or partially exercises a right or remedy maintains its right to:
 - .2.1 further exercise the same right or remedy; or
 - .2.2 to exercise another right or remedy.
- .3 A waiver or consent is effective only if in writing and properly signed by or on behalf of the party to be bound.
- 18.4 A waiver or consent is effective only:
 - .1 to the extent that the party giving it expressly states in writing;
 - .2 in the specific instance in which it is given; and
 - .3 for the purpose for which it is given.

19. REMEDIES

- .1 A party's rights and remedies are cumulative and do not exclude any other right or remedy.
- .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.
- .3 A party is not obliged to give a reason for its decision.
- .4 A party is not liable or accountable for a loss associated with its actions under this clause.
- .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.

20. WHOLE AGREEMENT

This agreement:

- .1 records the entire agreement between parties; and
- .2 supersedes all previous negotiations, understandings and agreements between the parties.

21. VARIATION

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

22. INVALIDITY

- 22.1 A word or provision must be read down if:
 - .1 this agreement document is void, voidable, or unenforceable if it is not read down;
 - .2 this agreement will not be void, voidable or unenforceable if it is read down, and
 - .3 the provision is capable of being read down.
- 22.2 A word or provision must be severed if:
 - .1 despite the operation of clause 22.1, a provision is void, voidable or unenforceable if it is not severed; and
 - 22.2.2 the Agreement will be void, voidable or unenforceable if it is not severed.
- 22.3 The remainder of this document has full effect even if clauses 22.1 or 22.2 applies.

23. SURVIVAL

- 23.1 Clauses 3 (WARRANTIES), 7 (INEMNITY), 8 (CONFIDENTIAL INFORMATION) and 12 (FOLLOWING TERMINATION) shall survive any termination or expiry of this agreement.

24. GOVERNING LAW AND JURISDICTION

- 24.1 This document is governed by the laws of Victoria in the Commonwealth of Australia.
- 24.2 The parties submit to the exclusive jurisdiction of the Victorian courts.