

## **Policy 10: edu.au Mandatory Terms and Conditions Policy**

### **APPLICATION**

This Policy sets out the mandatory terms and conditions that apply to all domain name licences in the closed edu.au domain.

This document is incorporated by reference (as an eDAC Published Policy) in the Registration Agreement between the Registrant and the Registrar, and has effect as if it formed part of the Registration Agreement.

In the event that these mandatory terms and conditions are inconsistent with provisions in the Registration Agreement, then to the extent of such inconsistency, these mandatory terms and conditions prevail.

From time to time eDAC may update this Policy for the purposes of clarification or correction.

## **Terms and Conditions**

---

### **1 ACKNOWLEDGMENT AND ACCEPTANCE OF EDU.AU DOMAIN NAME REGISTRATION AGREEMENT**

- 1.1 This edu.au domain name registration agreement ("Agreement") between you (the entity applying for registration of an edu.au domain name "the Registrant") and the Registrar (Education Services Australia Limited) explains the terms and conditions of your use of our edu.au domain name registration service and the use of your edu.au domain name once registered (collectively, the "Service").
- 1.2 By completing the registration process and by clicking on the "Add Domain" button you are agreeing to become a party to this Agreement with the Registrar and acknowledge and agree that:
  - a. you have read, understood and agree to be bound by all terms and conditions of this Agreement, the Privacy Statement and the Application Form Disclaimer (the "Agreement Documents") (available on the Registrar website [www.domainname.edu.au](http://www.domainname.edu.au));
  - b. you have read, understood and agree to be bound by all the policies for the edu.au domain (collectively, the "Published Policies") that are or may be:
    - i. approved by auDA as edu.au policies and published by the Registrar from time to time (available on the Registrar website: [www.domainname.edu.au](http://www.domainname.edu.au)); or
    - ii. approved and published by auDA from time to time as applying to the edu.au domain (available on the auDA website: [www.auda.org.au](http://www.auda.org.au))

- c. subject to the Published Policies the Registrar may grant you a licence to exclusively use your edu.au domain name for a maximum period of two years (subject to renewal in accordance with this Agreement and the Published Policies).
- d. if an agent (such as an Internet Service Provider or an employee) ordered the Service on your behalf, you are bound as a principal by all terms and conditions of this Agreement.
- e. you do not own your edu.au domain name. Instead you hold a licence to use your edu.au domain name for a specified period of time provided such use is in accordance with this Agreement and the Published Policies;
- f. the Registrar may terminate the registration of your domain name should you cease to meet the eligibility criteria prescribed in the Published Policies for your edu.au domain name;
- g. should your edu.au domain name registration be terminated by the Registrar, your licence to use your edu.au domain name will be revoked immediately upon such termination;
- h. the Registrar or auDA may change the Published Policies from time to time. Where they are changed, they will be posted on the Registrar's website (.edu.au policies) or the auDA website (auDA policies);
- i. all personal information pertaining to your edu.au domain name is held by the Registry Operator for the benefit of the users of edu.au domain
- j. subject to the Agreement Documents and the Published Policies:
  - i. the Registrar has the right to publicly disclose to third parties all information relating to your edu.au domain name;
  - ii. the Registrar has the right to disclose to the Registry Operator, all information which is reasonably required by the Registry Operator in order to register a domain name in the Registry; and
  - iii. the Registry Operator may publicly disclose to third parties, all information relating to your edu.au domain name to enable the Registry Operator to maintain a public WHOIS service;
- k. the Registrar may apply additional terms and conditions to bulk registration services;
- l. the Registrar may take any action in relation to your edu.au domain name in order to comply with court orders directed against you and/or your edu.au domain name registration.

## **2 YOUR OBLIGATIONS**

2.1 In addition to the obligations contained in the Agreement Documents or the Published Policies, you:

- a. must not use your edu.au domain name in a manner that violates any state, national or international law or regulation;

- b. must not use your edu.au domain name in a manner that contravenes the Published Policies;
- c. will immediately notify the Registrar of any unauthorised use of your edu.au domain name;
- d. must not resell, rent, lease or grant a security interest in your edu.au domain name;
- e. must:
  - i. provide certain, true, current, complete and accurate information as required by the domain name registration process or the Registrar;
  - ii. maintain and update this information as needed to keep it current, complete and accurate for the duration of the registration; and
  - iii. respond within fourteen (14) calendar days to inquiries from the Registrar concerning the accuracy of this information.
- f. must immediately notify the Registrar if you cease to meet the eligibility criteria prescribed in the Published Policies for your domain name;
- g. must not, directly or indirectly, through registration or use of your edu.au domain name or otherwise:
  - i. register the domain name for the purpose of selling it;
  - ii. register your edu.au domain name for the purpose of diverting trade from another business or website;
  - iii. cause a person or body accessing your edu.au domain name to be automatically redirected to another domain name (either in the edu.au domain or another domain) which is operated by or on behalf of a person or body which is not eligible to register a edu.au domain name within the Published Policies;
  - iv. deliberately register misspellings or another entity's company or brand name in order to trade on the reputation of another entity's goodwill;
  - v. register your edu.au domain name and then passively hold it for the purpose of preventing another registrant from registering it;
  - vi. purport to transfer an ownership right in the edu.au domain name or its registration;
  - vii. grant or purport to grant your edu.au domain name as security; or
  - viii. encumber or purport to encumber your edu.au domain name registration.

### **3 FEES**

- 3.1 The fees payable for registering your edu.au domain name, and the methods by which such fees may be paid, will be notified to you prior to or at the time you register for your edu.au domain name. The Registrar may change the fees charged for registering your edu.au domain name from time to time.

- 3.2 The fees payable for registering a edu.au domain name are, unless otherwise stated, exclusive of GST. Any GST that applies to such fees is payable by you at the same time and in the same manner as the fees themselves.
- 3.3 The Registrar may cancel the edu.au domain name registration if payment of such fees (or any applicable GST) is not received or cannot be processed for any reason.
- 3.4 The Registrar provides a bulk registration service for registrants registering more than 100 edu.au domain names, or for organisations representing a state or territory. Registrants of the bulk registration services will be notified of any additional terms and conditions, and any additional terms and conditions will be deemed incorporated into and will form a part of this Agreement.

#### **4 REGISTRATION PERIOD AND RENEWAL**

- 4.1 Your edu.au domain name registration is for a two (2) year initial term and renewable for successive terms subject to compliance with this Agreement and the Published Policies.
- 4.2 If the application for domain name registration is made by an authorised domain name manager<sup>1</sup>, the Registrar may agree to a one-off registration period of less than two (2) years, with the fee payable calculated by the Registrar.
- 4.3 You may renew the registration of your edu.au domain name two (2) years from the date this Agreement takes effect.
- 4.4 Any registration renewal is subject to these terms and conditions, payment of applicable registration fees at the time of renewal and the domain name Registry Operator's acceptance of your edu.au domain name registration. The Registrar will provide you with notice in advance of the renewal as specified in [Policy 1: edu.au Policy and Governance Framework](#).
- 4.5 You are solely responsible for ensuring your registration is renewed. The Registrar will have no liability to you or any third party in connection with such renewal, including any failure or errors in renewing the registration, and any consequences of such failure or errors.

#### **5 TRANSFER OF REGISTERED DOMAIN NAME**

- 5.1 A licence to use a edu.au domain name can be transferred to another party but only in the circumstances set out in [Policy 8: edu.au Transfers \(Change of Registrant\) Policy](#).

---

<sup>1</sup> This section should refer to client account managers. On 6 April 2011 changes to Policy 1 were approved which removed the concept of domain name managers and, inter alia, formalised the ability of the Registrar to appoint client account managers.

## **6 RIGHT OF REFUSAL**

- 6.1 The Registrar reserves the right to determine in its sole discretion whether you meet the eligibility criteria prescribed in the Published Policies relevant to your.edu.au domain name.
- 6.2 The Registrar may delete your edu.au domain name at any time if it determines that you do not meet the eligibility criteria prescribed in the Published Policies at that time.
- 6.3 If the Registrar does not register your edu.au domain name, or deletes your edu.au domain name, the Registrar will not be liable to you for any loss or damage that may result.

## **7 THIRD PARTY DISPUTES**

- 7.1 You agree that if a dispute arises with any third party regarding your edu.au domain name, you will indemnify and hold the Registrar harmless from any loss or liability arising from such dispute.
- 7.2 If the Registrar is notified that a dispute has resulted in a complaint being filed with a judicial or administrative body regarding your use of the Service, you agree not to make any changes to your edu.au domain name record without the prior approval of the Registrar. The Registrar may not allow you to make changes to your edu.au domain name record until the Registrar:
  - a. is directed to do so by the judicial or administrative body; or
  - b. receives notification by you and the other party to the dispute that the dispute has been settled.

## **8 INDEMNIFICATION**

- 8.1 You agree to indemnify and hold harmless the Registrar and its affiliated bodies, officers and employees ("Affiliated Parties"), from any claim or demand, including reasonable legal fees and expenses, made by any third party due to or arising out of:
  - a. your use of the Service;
  - b. your violation of the Agreement Documents or the Published Policies;
  - c. your infringement of any intellectual property or other right of any person or entity; or
  - d. any threatening, libellous, obscene, harassing or offensive material contained in any communication by you.
- 8.2 If the Registrar is threatened with suit or sued by a third party in relation to your edu.au domain name, the Registrar may seek written assurances from you concerning how you will indemnify the Registrar.

- 8.3 Your failure to provide those assurances may be considered by the Registrar to be a material breach of this Agreement and the Registrar may, at its discretion, immediately suspend, cancel or otherwise terminate your edu.au domain name registration.

## **9 LIMITATION OF LIABILITY**

- 9.1 To the maximum extent permitted by law, neither the Registrar nor its related bodies will be liable to you or any other person for any indirect, special, incidental, or consequential damages of any character, whether under tort (including negligence), contract or otherwise, nor for damages resulting from any matter or thing relating to your application for registration of your edu.au domain name, the registration of your edu.au domain name or the rejection of the registration of your edu.au domain name including without limitation:
- a. the use of or the inability to use the Service;
  - b. the loss or liability resulting from access delays or access interruptions;
  - c. loss or liability resulting from data non-delivery or data mis-delivery;
  - d. loss or liability resulting from acts of God;
  - e. loss or liability resulting from the unauthorised use or misuse of your password;
  - f. loss or liability resulting from errors, omissions or misstatements in any and all information or Service provided under this Agreement;
  - g. loss or liability relating to you or the Registrar deleting or failing to store communications relating to the Services;
  - h. loss or liability resulting from the development or interruption of your website;
  - i. loss or liability that you may incur in connection with the processing of your application for the Service or the processing of any authorised modification to your edu.au domain name record; or
  - j. loss or liability as a result of the application of Section 7 (Third Party Disputes).
- 9.2 To the maximum extent permitted by law, the maximum aggregate liability of the Registrar and its related bodies (whether under tort (including negligence), contract or otherwise) in any licence period is limited to the fees paid by you under this Agreement during that licence period.
- 9.3 Nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or remedy implied or imposed by any statute or regulation which cannot lawfully be excluded, restricted or modified, which may include Part V of the *Trade Practices Act 1974* (Commonwealth) and corresponding provisions of State or Territory legislation which contain provisions including implied terms and warranties which operate to protect the purchasers of goods and services in various circumstances. If any condition or warranty is implied into this Agreement under the *Trade Practices Act 1974* (Commonwealth) or any equivalent State or Territory

legislation and cannot be excluded, and the Registrar is able to limit your remedy for a breach of such a condition or warranty, then the liability of the Registrar for breach of the condition or warranty is limited to one or more of the following at the Registrar's option:

- a. in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
- b. in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

## **10 WARRANTIES**

10.1 By applying for the registration of your edu.au domain name, or by requesting renewal of your edu.au domain name registration, you represent and warrant that:

- a. the statements made in your registration or renewal application form are complete and accurate, including those relating to your eligibility for a edu.au domain name;
- b. whilst your edu.au domain name is registered, you meet, and continue to meet, the eligibility criteria prescribed in the Published Policies for registering a domain name;
- c. your registration of your edu.au domain name does not infringe upon or otherwise violate the rights of any third party (it is your responsibility to determine whether your edu.au domain name registration infringes or violates someone else's rights);
- d. you are not registering your edu.au domain name for an unlawful purpose;
- e. you have the requisite power and authority to execute and to perform the obligations in this Agreement; and
- f. you agree that use of the Service is solely at your own risk.

## **11 BREACH AND TERMINATION**

11.1 If you breach or otherwise fail to comply with any of the terms of the Agreement Documents, the Registrar or auDA may provide you with written notice outlining the nature of the breach. If within ten (10) calendar days of the date of such notice you fail to provide evidence which is reasonably satisfactory to the Registrar that you have not breached the terms of this Agreement:

- a. the Registrar or auDA retain the right, at their sole discretion, to suspend, cancel or otherwise terminate your edu.au domain name registration;
- b. you will not be entitled to any reimbursement or credit for any fees paid; and
- c. any breach by you will not be deemed to be excused because the Registrar or auDA did not act earlier in response to that, or any other breach by you.

- 11.2 The Registrar may suspend, cancel or transfer your edu.au domain name registration in order to:
- a. correct mistakes made by the Registrar or the registry in registering your chosen edu.au domain name; or
  - b. resolve a dispute under Section 7 (Third Party Disputes).

## **12 AGENTS**

- 12.1 By acting on your behalf, your Agent represents, warrants and undertakes to the Registrar that they are authorised to act on your behalf as your agent, that they are authorised to bind you to the terms and conditions of the Agreement Documents and that they have informed you of the terms and conditions of the Agreement Documents and the Published Policies.
- 12.2 The Registrar may rely on any instructions received from your Agent as if they were your instructions, and you are responsible for any errors made by your Agent.

## **13 ENTIRE AGREEMENT**

- 13.1 The Agreement Documents and the Published Policies and all modifications to them, constitute the complete and exclusive agreement between you and the Registrar concerning your use of the Service, and supersede and govern all prior proposals, agreements, or other communications.

## **14 GOVERNING LAW**

- 14.1 This Agreement is governed by the laws of the State of Victoria applicable to agreements executed and performed wholly within the State of Victoria. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the State of Victoria.

## **15 INTERPRETATION**

- 15.1 For the purposes of this Agreement, use of the word "including" is not to be interpreted as a word of limitation.