

2015-09 EDU.AU MANDATORY TERMS AND CONDITIONS POLICY

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Background	<p>This Policy sets out the mandatory terms and conditions that apply to all domain name licences in the closed edu.au domain.</p> <p>This document is incorporated by reference (as an edu.au domain Published Policy) in the Registration Agreement between the Registrant and the edu.au Registrar, and has effect as if it formed part of the Registration Agreement.</p> <p>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.</p> <p>From time to time this Policy may be updated for the purposes of clarification or correction.</p>
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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 edu.au Registrar (Education Services Australia Limited – "the Registrar") 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 Form or domain name renewal process you agree 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);
 - b) you have read, understood and agree to be bound by all the policies for the edu.au domain as amended from time to time (collectively, the "Published Policies") that are or may be:
 - i. ratified by auDA as edu.au policies and published by the Registrar from time to time (available on the Registrar website: 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);

- c) Subject to determination of your eligibility according to the *edu.au Registration Policy*, the Registrar may grant you an exclusive licence to use your edu.au domain name;
- 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 edu.au Domain Administration Committee (eDAC) 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 RIGHT OF DETERMINATION

- 3.1 The Registrar reserves the right to determine whether you meet the eligibility criteria prescribed in the Published Policies relevant to your edu.au domain name.

4 REGISTRATION PERIOD AND RENEWAL

- 4.1 Your edu.au domain name registration is for a two (2) year initial term and is renewable for successive terms subject to compliance with this Agreement and the Published Policies.
- 4.2 If you hold multiple domain name registrations, the Registrar may agree to a one-off registration period of less than two (2) years in order to synchronise the expiry dates of the registrations, with the fee payable calculated in accordance with the *edu.au Pricing Notice*, issued under the *edu.au Pricing Policy*.
- 4.3 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 the *edu.au Registration Policy*.

- 4.4 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 You can only transfer a licence to use an edu.au domain name to another party in the circumstances set out in the *edu.au Transfers (Change of Registrant) Policy*.

6 FEES

- 6.1 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 fees will be those specified in the *edu.au Pricing Notice*, issued under the *edu.au Pricing Policy*.
- 6.2 The fees payable for registering an 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.
- 6.3 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.

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.

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) 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 resulting from the deletion or termination of your edu.au domain name;
- j) 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
- k) 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 the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (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 Australian Consumer Law 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 and allocation rules 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 Subject to this Section, the Registrar may suspend or terminate your licence to use the edu.au domain name for any of the reasons outlined in the table below:

Table 1: Licence termination

#	Reason	Description
1	Breach of Registration Agreement	You have breached a term or condition of your edu.au domain name Registration Agreement. This includes: <ol style="list-style-type: none"> a) any warranty supplied by you or your agent under Section 10 of this policy; b) you do not pay the prescribed fee within the required time; c) you cease to meet the eligibility and domain name allocation criteria prescribed in the Published Policies for the domain name; and d) you breach any other term or condition of the Registration Agreement.
2	Court decision	Where a court of competent authority determines that the domain name should not be licensed to you, be removed from the Registry, or be licensed to another party.
3	Name Change	Where the business name or project or program name you used to obtain the domain name has changed.
4	Third party dispute	Where it is necessary to suspend or terminate your licence in order to resolve a third party dispute under Section 7 of this policy.

5	Instruction	Where you instruct the Registrar to terminate the licence to use the domain name.
6	Error	Where a domain name which could not otherwise be registered under this policy is registered through mistake, oversight or otherwise (within thirty days of registering the domain name).

- 11.2 Prior to terminating your licence for reasons 1 to 4 in Table 1, the Registrar must provide you with written notice outlining the reasons for the proposed termination.
- a) If within fourteen (14) calendar days of the date of such notice you fail to provide evidence which is reasonably satisfactory to the Registrar that your licence should not be terminated:
- i. The domain name will enter “pending delete” status for 14 calendar days. If while the domain name is in this status you provide the Registrar with evidence, which is reasonably satisfactory to the Registrar, that your licence should not be suspended or terminated, the Registrar must request the Registry Operator to remove the domain name from “pending delete”;
 - ii. A breach of the Registration agreement by you will not be deemed to be excused because the Registrar did not act earlier in response to that, or any other breach by you;
- b) If you do not provide information which is reasonably satisfactory to the Registrar that your licence should not be terminated, then:
- i. the domain name will be randomly dropped from the Registry within the next 7 calendar days; and
 - ii. you will not be entitled to any reimbursement or credit for any fees paid.
- 11.3 In the case of termination for error (reason 6 in Table 1), the Registrar must:
- a) Notify you 10 days prior to terminating the licence. The notice must state that the Registrar intends to terminate your licence and provide reasons for the termination; and
 - b) Invite you to reapply for a different domain name. You are entitled to obtain a refund for all fees paid for the terminated domain name.
- 11.4 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.

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 BULK REGISTRATION

- 13.1 The Registrar provides a bulk registration service. Registrants using 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.

14 ENTIRE AGREEMENT

- 14.1 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.

15 GOVERNING LAW

- 15.1 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.

16 INTERPRETATION

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