

## **.mobi Registration Agreement**

Revised: 2 February 2008

### **1. AGREEMENT**

In this Registration Agreement ("Agreement") "Registrant", "you" and "your" refer to each customer, "we", "us" and "our" refer to Distribute.IT Pty Ltd. and "Services" refers to the domain name registration provided by us. This Agreement explains our obligations to you, and explains your obligations to us for various Services.

### **2. SELECTION OF A DOMAIN NAME**

You represent that, to the best of your knowledge and belief, neither the registration of the SLD name nor the manner in which it is directly or indirectly used infringes the legal rights of a third party and that the Domain Name is not being registered for any unlawful purpose.

### **3. FEES**

As consideration for the services you have selected, you agree to pay to us, or your respective Reseller who remits payment to us on your behalf, the applicable service(s) fees. All fees payable hereunder are nonrefundable. As further consideration for the Services, you agree to:

1. Provide certain current, complete and accurate information about you as required by the registration process, and;
2. Maintain and update this information as needed to keep it current, complete and accurate. All such information shall be referred to as account information ("Account Information"). You, by completing and submitting this Agreement represent that the statements in your application are true.

### **4. TERM**

You agree that the Registration Agreement will remain in full force during the length of the term of your Domain Name Registration. Should you choose to renew or otherwise lengthen the term of your Domain Name Registration, then the term of this Registration Agreement will be extended accordingly. This Agreement will remain in full force during the length of the term of your Domain Name Registration as selected, recorded, and paid for upon registration of the Domain Name.

Should you choose to renew or otherwise lengthen the term of your Domain Name Registration, then the term of this Registration Agreement will be extended accordingly. Should you transfer your domain name or should the domain name otherwise be transferred due to another Registrar, the terms and conditions of this contract shall cease and shall be replaced by the contractual terms in force for the purpose of registering domain names then in force between SLD holders and the new Registrar.

### **5. MODIFICATIONS TO AGREEMENT**

You agree, during the period of this Agreement, that we may:

1. Revise the terms and conditions of this Agreement, and;
2. Change the services provided under this Agreement.

Any such revision or change will be binding and effective immediately on posting of the revised Agreement or change to the service(s) on our web site, or on notification to you by e-mail or regular mail as per the Notices section of this agreement. You agree to review our web site, including the Agreement, periodically to be aware of any such revisions. If you do not agree with any revision to the Agreement, you may terminate this Agreement at any time by providing us with notice by e-mail or regular mail as per the Notice section of this agreement.

Notice of your termination will be effective on receipt and processing by us. You agree that, by continuing to use the Services following notice of any revision to this Agreement or change in service(s), you shall abide by any such revisions or changes. You further agree to abide by the ICANN Uniform Dispute Resolution Policy ("Dispute Policy") as amended from time to time. You agree that, by maintaining the reservation or registration of your domain name after modifications to the Dispute Policy become effective, you have agreed to these modifications. You acknowledge that if you do not agree to any such modifications, you may request that your domain name be deleted from the domain name database.

### **6. MODIFICATIONS TO YOUR ACCOUNT**

In order to change any of your account information with us, you must use your Domain name, Username and Password ('Account Credentials') that you selected when you opened your account with us. Please safeguard your Account Credentials from any unauthorized use. In no event will we be liable for the unauthorized use or misuse of your Account Credentials.

### **7. DOMAIN NAME DISPUTE POLICY**

If you reserved or registered a domain name through us, or transferred a domain name to us from another registrar, you agree to be bound by the Dispute Policy which is incorporated herein and made a part of this Agreement by reference. The current version of the Dispute Policy may be found at <https://www.distributeit.com.au/terms.html>. Please take the time to familiarize yourself with this policy.

### **8. DOMAIN NAME DISPUTES**

You agree that, if the registration or reservation of your domain name is challenged by a third party, you will be subject to the provisions specified in the Dispute Policy in effect at the time of the dispute. You agree that in the event a domain name dispute arises with any third party, you will indemnify and hold us harmless pursuant to the terms and conditions contained in the Dispute Policy. For any dispute, you agree to submit to the jurisdiction of the courts of The State of Victoria, Australia.

### **9. ICANN POLICY**

You agree that your registration of the SLD name shall be subject to suspension, cancellation, or transfer pursuant to any ICANN-adopted policy, or pursuant to any registrar or registry procedure not inconsistent with an ICANN-adopted policy;

1. To correct mistakes by Registrar or the Registry in registering the name, or;
2. For the resolution of disputes concerning the SLD name.

### **10. AGENCY**

Should you intend to license use of a domain name to a third party you shall nonetheless be the SLD holder of record and are therefore responsible for providing your own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the SLD.

You shall accept liability for harm caused by wrongful use of the SLD, unless you promptly disclose the identity of the licensee to the party providing you reasonable evidence of actionable harm. You also represent that you have provided notice of the terms and conditions in this Agreement to the third party and that the third party agrees to the terms of Disclosure and Use of Registration Information (sections 18 and 19 of this Agreement).

### **11. ANNOUNCEMENTS**

We and our Reseller reserve the right to distribute information to you that is pertinent to the quality or operation of our services and those of our service partners. These announcements will be predominately informative in nature and may include notices describing changes, upgrades, new products or other information to add security or to enhance your identity on the Internet.

### **12. LIMITATION OF LIABILITY**

You agree that our entire liability, and your exclusive remedy, with respect to any Service(s) provided under this Agreement and any breach of this Agreement is solely limited to the amount you paid for such Service(s). We and our contractors shall not be liable for any direct, indirect, incidental, special or consequential damages resulting from the use or inability to use any of the Services or for the cost of procurement of substitute services. Because some states do not allow the exclusion or limitation of liability for consequential or incidental damages, in such states, our liability is limited to the extent permitted by law.

We disclaim any and all loss or liability resulting from, but not limited to:

1. loss or liability resulting from access delays or access interruptions;
2. loss or liability resulting from data non-delivery or data mis-delivery;
3. loss or liability resulting from acts of God;
4. loss or liability resulting from the unauthorized use or misuse of your Account Credentials;
5. loss or liability resulting from errors, omissions, or misstatements in any and all information or services(s) provided under this Agreement;
6. loss or liability resulting from the interruption of your Service.

You agree that we will not be liable for any loss of registration and use of your domain name, or for interruption of business, or any indirect, special, incidental, or consequential damages of any kind (including lost profits) regardless of the form of action whether in contract, tort (including negligence), or otherwise, even if we have been advised of the possibility of such damages. In no event shall our maximum liability exceed five hundred (\$500.00) dollars.

### **13. INDEMNITY**

You agree to release, indemnify, and hold us, our contractors, agents, employees, officers, directors and affiliates harmless from all liabilities, claims and expenses, including without limitation Network Solutions, Inc., and the directors, officers, employees and agents of each of them, including attorney's fees, of third parties relating to or arising under this Agreement, the Services provided hereunder or your use of the Services, including without limitation infringement by you, or someone else using the Service with your computer, of any intellectual property or other proprietary right of any person or entity, or from the violation of any of our operating rules or policy relating to the service(s) provided. You also agree to release, indemnify and hold us harmless pursuant to the terms and conditions contained in the Dispute Policy. When we are threatened with suit by a third party, we may seek written assurances from you concerning your promise to indemnify us; your failure to provide those assurances may be considered by us to be a breach of your Agreement and may result in deactivation of your domain name.

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#### 14. TRANSFER OF OWNERSHIP

The person named as registrant contact at the time the controlling user name and password are secured shall be the owner of the domain name. You agree that prior to transferring ownership of your domain name to another person (the Transferee") you shall require the Transferee to agree, in writing to be bound by all the terms and conditions of this Agreement.

Your domain name will not be transferred until we receive such written assurances or other reasonable assurance that the Transferee has been bound by the contractual terms of this Agreement (such reasonable assurance as determined by us in our sole discretion) along with the applicable transfer fee. If the Transferee fails to be bound in a reasonable fashion (as determined by us in our sole discretion) to the terms and conditions in this Agreement, any such transfer will be null and void.

#### 15. BREACH

You agree that failure to abide by any provision of this Agreement, any operating rule or policy or the Dispute Policy provided by us, may be considered by us to be a material breach and that we may provide a written notice, describing the breach, to you. If within thirty (30) calendar days of the date of such notice, you fail to provide evidence, which is reasonably satisfactory to us, that you have not breached your obligations under the Agreement, then we may delete the registration or reservation of your domain name. Any such breach by you shall not be deemed to be excused simply because we did not act earlier in response to that, or any other breach by you.

#### 16. NO GUARANTEE

You agree that, by registration or reservation of your chosen domain name, such registration or reservation does not confer immunity from objection to either the registration, reservation, or use of the domain name.

#### 17. DISCLAIMER OF WARRANTIES

You agree that your use of our Services is solely at your own risk. You agree that such Service(s) is provided on an "as is," "as available" basis. We expressly disclaim all warranties of any kind, whether express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement. We make no warranty that the Services will meet your requirements, or that the Service(s) will be uninterrupted, timely, secure, or error free; nor do we make any warranty as to the results that may be obtained from the use of the Service(s) or as to the accuracy or reliability of any information obtained through the Service or that defects in the Service will be corrected.

You understand and agree that any material and/or data downloaded or otherwise obtained through the use of Service is done at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of such material and/or data. We make no warranty regarding any goods or services purchased or obtained through the Service or any transactions entered into through the Service. No advice or information, whether oral or written, obtained by you from us or through the Service shall create any warranty not expressly made herein.

#### 18. INFORMATION

As part of the registration process, you are required to provide us certain information and to update us promptly as such information changes such that our records are current, complete and accurate. You are obliged to provide us the following information:

1. Your name and postal address (or, if different, that of the domain name holder)
2. The domain name being registered;
3. The name, postal address, e-mail address, and voice and fax (if available) telephone numbers of the administrative contact for the domain name.;
4. The name, postal address, e-mail address, and voice and fax (if available) telephone numbers of the billing contact for the domain name.

Any other information which we request from you at registration is voluntary. Any voluntary information we request is collected such that we can continue to improve the products and services offered to you through your Reseller.

#### 19. DISCLOSURE AND USE OF REGISTRATION INFORMATION

You agree and acknowledge that we will make domain name registration information you provide available to ICANN, to the registry administrators, and to other third parties as ICANN and applicable laws may require or permit.

You further agree and acknowledge that we may make publicly available, or directly available to third party vendors, some, or all, of the domain name registration information you provide, for purposes of inspection (such as through our WHOIS service) or other purposes as required or permitted by ICANN and the applicable laws.

You hereby consent to any and all such disclosures and use of, and guidelines, limits and restrictions on disclosure or use of, information provided by you in connection with the registration of a domain name (including any updates to such information), whether during or after the term of your registration of the domain name. You hereby irrevocably waive any and all claims and causes of action you may have arising from such disclosure or use of your domain name registration information by us. You may access your domain name registration information in our possession to review, modify or update such information, by accessing our domain management service, or similar service, made available by us and through your Reseller.

We will not process data about any identified or identifiable natural person that we obtain from you in a way incompatible with the purposes and other limitations which we describe in this Agreement. We will take reasonable precautions to protect the information we obtain from you from our loss, misuse, unauthorized access or disclosure, alteration or destruction of that information.

#### 20. REVOCATION

Your wilful provision of inaccurate or unreliable information, your wilful failure promptly to update information provided to us, or your failure to respond for over fifteen calendar days to inquiries by us concerning the accuracy of contact details associated with the your registration shall constitute a material breach of this Agreement and be a basis for cancellation of the SLD registration.

#### 21. RIGHT OF REFUSAL

We, in our sole discretion, reserve the right to refuse to register or reserve your chosen domain name or register you for other Services within thirty (30) calendar days from receipt of your payment for such services. In the event we do not register or reserve your domain name or register you for other Services, or we delete your domain name or other Services within such thirty (30) calendar day period, we agree to refund your applicable fee(s). You agree that we shall not be liable to you for loss or damages that may result from our refusal to register, reserve, or delete your domain name or register you for other Services.

#### 22. .MOBI REGISTRY INDEMNITY AND WARRANTIES

Registered Name Holder shall:

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;(3.7)

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;(3.7.1)

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 [Registrar's name] being a registrar for the .mobi top-level domain. Additionally, the third party beneficiary rights of dotmobi shall survive any termination or expiration of this Agreement.(3.8.3)

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;(3.8.1)

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;(3.8.2)

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;(3.8.4)

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Submit to proceedings commenced under ICANN's Uniform Domain Name Dispute Resolution Policy ("UDRP");(3.8.5)

Provide current, accurate and complete information in connection with its registration of the Domain Name and its creation, launch, and operation of the Website, including but not limited to information required for the purposes of the Whois records. Immediately correct and update the registration information for the registered Name during the registration term for the Registered Name;(3.8.6)

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. (3.8.7)

Acknowledge that if the domain name being registered is a dotMobi Premium Name, as such are listed at <http://mtld.mobi/domain/premium>, then use of the domain is also subject to the terms and conditions of the dotMobi Premium Name Agreement (formerly known as the dotMobi Auction Agreement) posted at <http://mtld.mobi/node/1135>, which is incorporated by reference herein. Acknowledge and agree that upon termination or expiration of the dotMobi Premium Name Agreement in accordance with the terms thereof,

- (i) any and all rights of Company to the Registration of the Domain Name, the Registration Code, and/or to create, launch, and/or operate the Website shall be terminated, and all such rights shall revert to mTLD and
- (ii) mTLD may grant Registration rights to the Domain Name and/or rights to the Registration Code to any entity or person in its sole discretion, and Company shall have no rights or recourse against mTLD and/or Registrar relating to the registration or use of the Domain Name and/or Registration Code by any other such entity or person. 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.(3.8.8.)

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](http://www.mtld.mobi)) and consent to the monitoring of the website as described in the dotmobi Style Guide monitoring guidelines ([www.mtld.mobi](http://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.(3.8.9)

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. (3.9.1)

## 23. SEVERABILITY

You agree that the terms of this Agreement are severable. If any term or provision is declared invalid or unenforceable, that term or provision will be construed consistent with applicable law as nearly as possible to reflect the original intentions of the parties, and the remaining terms and provisions will remain in full force and effect.

## 24. NON-AGENCY

Nothing contained in this Agreement or the Dispute Policy shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

## 25. NON-WAIVER

Our failure to require performance by you of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by us of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

## 26. NOTICES

Any notice, direction or other communication given under this Agreement shall be in writing and given by sending it via e-mail or via regular mail. In the case of e-mail, valid notice shall only have been deemed to have been given when an electronic confirmation of delivery has been obtained by the sender. In the case of e-mail notification to us or to the Reseller support@distributeit.com.au, or, in the case of notice to you, at the e-mail address provided by you in your WHOIS record.

Any e-mail communication shall be deemed to have been validly and effectively given on the date of such communication, if such date is a business day and such delivery was made prior to 4:00 p.m. AEST, otherwise it will be deemed to have been delivered on the next business day. In the case of regular mail notice, valid notice shall be deemed to have been validly and effectively given 5 business days after the date of mailing and, in the case of notification to us or to the Reseller shall be sent to:

Distribute.IT Pty Ltd, 928/401 Docklands Drive, Docklands 3008,

and in the case of notification to you shall be to the address specified in the "Registrant Contact" in your WHOIS record.

## 27. ENTIRETY

You agree that this Agreement, the rules and policies published by us and the Dispute Policy are the complete and exclusive agreement between you and us regarding our Services. This Agreement and the Dispute Policy supersede all prior agreements and understandings, whether established by custom, practice, policy or precedent.

## 28. GOVERNING LAW

THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF VICTORIA AND THE FEDERAL LAWS OF AUSTRALIA APPLICABLE THEREIN WITHOUT REFERENCE TO RULES GOVERNING CHOICE OF LAWS. ANY ACTION RELATING TO THIS AGREEMENT MUST BE BROUGHT IN VICTORIA AND YOU IRREVOCABLY CONSENT TO THE JURISDICTION OF SUCH COURTS.

## 29. INFANCY

You attest that you are of legal age to enter into this Agreement.

## 30. ACCEPTANCE OF AGREEMENT

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL ITS TERMS AND CONDITIONS. YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF THE SERVICE AND ARE NOT RELYING ON ANY REPRESENTATION AGREEMENT, GUARANTEE OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.