

## dotMobi Auction Agreement

YOU MUST READ AND AGREE TO THE FOLLOWING TERMS AND CONDITIONS SET FORTH IN THIS DOTMOBI AUCTION AGREEMENT BEFORE PARTICIPATING IN THE DOMAIN AUCTION. YOUR REGISTRATION FOR AND PARTICIPATION IN THE DOMAIN AUCTION CONSTITUTES YOUR ACCEPTANCE OF THIS AUCTION AGREEMENT.

This dotMobi Auction Agreement (“Auction Agreement”) is by and between mTLD Top Level Domain Ltd (“mTLD”) and you, your heirs, agents, successors, and assigns (collectively “You”). This Auction Agreement sets forth the terms and conditions applicable to your participation in the auction of Authorization Codes required as a precondition to registration of certain .mobi domain names (the “Auction”). This Auction Agreement is **in addition to, and not in place of**, any other agreements or understandings of any kind relating to the Auction and use of an Authorization Code between You and the Event Organizer, the Auction Manager, the Escrow Agent, any Registrar, or any other third party. In the event of a conflict between the terms of this Auction Agreement and any such agreement relating to your participation in the Auction or use of an Authorization Code, the terms of this Auction Agreement shall prevail.

By registering for and participating in the Auction, You acknowledge that you have read, agree with, and accept all of the terms and conditions contained in this Auction Agreement. This Auction Agreement is effective upon your registration for the Auction (the “Effective Date”) and may be changed from time to time in the manner set forth below.

For purposes of this Auction Agreement:

“Auction Manager” means the third party managing the Domain Auction.

“Authorization Code” means the unique code issued by mTLD to a winning Participant, possession of which is necessary but not sufficient to Register a specified Domain Name.

“Domain Name” means a .mobi domain name for which an Authorization Code is required.

“dotMobi Site” means the web site operated by mTLD with the URL address: [http://dotmobi.mobi].

“Escrow Agent” means the service selected by the Auction Manager to receive funds from You in the event you are the winning bidder for an Authorization Code in the Auction, to notify mTLD that such funds have been received, and to release such funds to mTLD upon confirmation that mTLD has released the Authorization Code to You.

“Event Organizer” means the entity organizing the Auction;

“ICANN” means the Internet Corporation for Assigned Names and Numbers;

“Participant” means a participant eligible to participate in the Auction subject to paragraph 1 below;

“Registrant” means the applicant for, and on registration the holder of, a Domain Name.

“Registrar” means any entity authorized by ICANN and mTLD to provide registration services for the .mobi top level domain.

“Registration” means the subsequent registration of a Domain Name through a dotMobi-accredited Registrar by a Participant holding an Authorization Code.

“Standard Registrant Obligations” means the terms and conditions applicable to any Registrant including, without limitation, those set forth in (a) the end-user agreement with the Registrar of Your choice (the “End-User Registration Agreement”); (b) the .mobi required “Registrant Agreement” provisions as posted from time to time on the dotMobi Site at <http://mtld.mobi/domain/registrars/become>; (c) all standards, policies, procedures and practices specified by mTLD including without limitation those set forth in the latest dotMobi Mobile Web Developer Guide [http://dev.mobi/node/197] (the “Style Guide”); and (d) all applicable policies promulgated by ICANN, including ICANN’s Uniform Domain Dispute Resolution Policy (“UDRP”) and the obligation to provide accurate and complete Whois information.

“Registry Operator” or “Registry” means mTLD.

### **1. Eligible Auction Participants**

Participation in the Auction is restricted to persons who can form legally binding contracts under applicable law. Without limiting the foregoing, an eligible Participant must be at least 18 years old and meet any terms, conditions, and/or eligibility criteria established by mTLD, the Event Organizer and/or the Auction Manager.

By participating in the Auction You represent and warrant that: (a) You are an eligible Participant as described above and (b) You have provided current, accurate and complete information in connection with your registration for and participation in the Auction.

### **2. Modification of Auction Agreement**

mTLD, in its sole discretion, may amend this Auction Agreement at any time by posting the amended terms on the dotMobi Site. You expressly agree to be bound by the Auction Agreement in effect at the time of your participation in the Auction. It is your responsibility to review the dotMobi Site, including the Auction Agreement posted on that Site, for any modifications or amendments.

### **3. Termination of Agreement & Revocation of Authorization Code**

mTLD, in its sole discretion, may terminate this Auction Agreement at any time with or without notice to You.

Without limiting the foregoing, mTLD may terminate this Auction Agreement and/or revoke any Authorization Code for which you are the winning bidder if it determines in its sole discretion that You have acted inconsistently with the obligations or the spirit of this Auction Agreement, if You are ineligible to participate in the Auction, or if any information that You have provided to mTLD, the Event Organizer, the Auction Manager, and/or a Registrar is found in mTLD’s sole discretion to be false or unverifiable.

mTLD may terminate this Auction Agreement and revoke or withhold delivery of an

Authorization for which you are a winning bidder if You violate the terms described herein. If, following delivery of the Authorization Code, You breach the Participant Commitments set forth in Section 8 below and fail to cure said breach within thirty days of receiving written notice from mTLD, mTLD may, in its sole discretion revoke any Authorization Code for which You are the winning bidder and retain the full dollar amount of Your winning bid.

#### **4. Fees**

mTLD does not charge a fee for participation in the Auction. However, participation may be subject to fees charged by other entities, including an attendance fee charged by the Event Organizer and/or the Auction Manager. Under no circumstances shall mTLD be responsible for return or refund of such fees, if any.

#### **5. Bids and Conduct of Auction**

A bid made by a Participant is a binding offer to purchase the Authorization Code at the stated bid price. The Auction shall be conducted by the Auction Manager in accordance with terms and conditions determined by the Auction Manager. In the event of any dispute between bidders with respect to the conduct of the Auction, the Auction Manager shall have sole and final discretion to determine the winning bidder. Subject to the terms and conditions set forth in this Auction Agreement, including all documents incorporated herein, the winning bidder shall be obligated to complete the transaction and to pay the amount of the winning bid as provided herein.

mTLD reserves the right in its sole discretion to reject a bid from any Participant for any reason.

#### **6. Payment and Escrow Service**

Payment of amounts due for winning bids following completion of the Auction shall be made to the Escrow Agent in accordance with the terms and conditions specified by the Auction Manager and the Escrow Service. Once the Escrow Service confirms receipt of the full payment amount, mTLD will release the Authorization Code to the winning bidder.

Failure to remit payment in full in accordance with the above terms shall be deemed a material breach of this Auction Agreement.

## **7. Use of Authorization Code**

Purchase of an Authorization Code does not constitute Registration of a Domain Name, nor does it assure that you are qualified to Register said Domain Name. It is your responsibility to ensure that You meet any and all requirements for Registration of a Domain Name.

Subject to the terms and conditions set forth in this Auction Agreement, upon receipt of an Authorization Code, You may use that Authorization Code to Register the Domain Name, using a Registrar of Your choice. The Authorization Code will remain valid for a period of 1 year, and will automatically renew at the end of the year, and on an annual basis thereafter, subject to Your (a) continued eligibility to Register the Domain Name and operate a website; (b) Your continued fulfillment of and compliance with this Agreement, all Standard Registration Obligations, and the Participant Commitments listed in Section 8, below; and (c) Your compliance with any policies, procedures, or rules issued by Your Registrar.

## **8. Participant Commitments**

If You are the winning bidder for an Authorization Code, You agree to use that code to Register the Domain Name and launch a dotMobi-compliant website (the “Website”) using the Domain Name with the URL address [www.<Domain Name>.mobi] within ten (10) days of the transfer of the Authorization Code by mTLD. The Website may initially consist of a dotMobi-compliant parking page; provided, however, that You agree to:

- Use Your best efforts to create, launch, and operate a live website related to and primarily containing content relevant to the commonly held and widely shared understanding of the meaning of the Domain Name to replace the parking page within six (6) months of the transfer of the Authorization Code by mTLD.
- Achieve and maintain a mobile readiness score of at least 4, as measured by the ready.mobi test then available at <http://ready.mobi/>.
- Operate the Website in compliance with the dotMobi Domain Compliance Policy, when

and as available at <http://mtld.mobi/domain/policies/compliance>.

- Comply with the dotMobi Mobile Web Developer Guide, as such Style Guide may be modified by mTLD in accordance with published policies. You further consent to the monitoring of any such website as described in that policy and the dotMobi Style Guide monitoring guidelines.
- Design and operate the Website to achieve mTLD's stated goals of: (a) optimizing the mobile experience by providing a predictable, consistent user experience; (b) providing the mobile community with new features and services; and (c) strengthening user loyalty and goodwill toward the .mobi top level domain.
- In the event of sale or transfer of the Domain Name to another party. You agree to notify mTLD and contractually require such party to be bound by the terms of this Agreement.

FAILURE TO COMPLY WITH THE PROVISIONS OF THESE COMMITMENTS SHALL CONSTITUTE A MATERIAL BREACH OF THIS AUCTION AGREEMENT, WHICH MAY RESULT IN FORFEITURE OF YOUR WINNING BID, TERMINATION OF THIS AGREEMENT, AND REVOCATION OF ANY AUTHORIZATION CODE FOR WHICH YOU ARE THE WINNING BIDDER, AS SET FORTH IN PARAGRAPH 3 ABOVE.

## **9. Rights to the Domain**

Purchase of an Authorization Code does not constitute Registration of a Domain Name. Registration of Domain Names are the result of, and are subject to, all of the conditions, limitations, restrictions, obligations contained in the Standard Registrant Obligations. Nothing in this Auction Agreement shall be construed to imply that the Participant possesses any rights to a subsequently Registered Domain Name beyond those specified in the .mobi Registrant Agreement provisions, the End-User Registration Agreement, and all applicable ICANN policies.

## **10. Disclaimer of Warranties**

WITH RESPECT TO THE SUBJECT MATTER HEREOF, mTLD EXPRESSLY DISCLAIMS 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. mTLD MAKES NO WARRANTY THAT THE GOODS AND SERVICE(S) REFERENCED HEREIN, INCLUDING, WITHOUT LIMITATION, THE AUCTION ITSELF, ANY AUTHORIZATION CODE FOR WHICH YOU ARE THE WINNING BIDDER, AND/OR ANY ASSOCIATED DOMAIN, WHETHER OR NOT YOU REGISTER SAID DOMAIN NAME, WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICE(S) AND/OR ACCESS TO AND USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES mTLD MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE GOODS OR SERVICE(S) OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH ITS WEB SITE. YOU UNDERSTAND AND AGREE THAT ANY MATERIAL AND/OR DATA OBTAINED THROUGH THE USE OF OUR WEB SITE IS DONE AT YOUR SOLE 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.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM mTLD OR THROUGH ITS WEB SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. TO THE EXTENT JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

#### **11. Notice of Potential Violation of Third Party Rights**

You agree that mTLD makes no representations or warranties of any kind in connection with this Auction Agreement and specifically makes no guarantee to You (1) regarding the conduct of the Domain Auction by the Event Organizer and/or Auction Manager and/or (2) against the possibility of objection to, or challenge of, the Registration or use of any Domain Name using the Authorization Code for which You may be the winning bidder in the Domain Auction. mTLD cannot and does not check to see whether the Domain Name associated with the auctioned Authorization Code (or any use You make of such Domain Name) infringes the legal rights of others. It is your responsibility to investigate whether a Domain Name

associated with the Authorization Code You win may infringe the legal rights of others. You acknowledge and agree that You are exclusively liable for any such infringement.

## **12. Dispute Resolution**

Any difference, controversy or claim (whether based on contract, tort, statute, or any other legal basis) arising out of or relating to this Auction Agreement (including, without limitation, the formation, existence, validity, enforceability, performance, expiration, or termination of this Auction Agreement or the arbitration provision herein) or the products and services supplied by either party to this Auction Agreement and includes an application for provisional or protective relief shall be finally, confidentially, and individually resolved by arbitration by three (3) arbitrators in accordance with the Rules of Arbitration then in effect of the International Court of Arbitration of the International Chamber of Commerce, or its successor; provided that this Auction Agreement shall control if there is a conflict between it and the Rules. The seat of the arbitration shall be Dublin, Ireland. The language of the arbitration shall be English, and all documentation, testimony, or other materials submitted to the arbitrators shall be in the English language.

## **13. Liability Disclaimer**

IN NO EVENT SHALL mTLD BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES RESULTING FROM OR RELATING TO THIS AUCTION AGREEMENT OR RESULTING FROM ANY DATA, INFORMATION, GOODS, OR SERVICES OBTAINED OR TRANSACTIONS ENTERED INTO THROUGH OR ARISING FROM OR IN CONNECTION WITH THIS AUCTION AGREEMENT, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA, OR OTHER INTANGIBLES, EVEN IF mTLD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOR SHALL mTLD BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

WITHOUT LIMITING THE FOREGOING, mTLD EXPRESSLY DISCLAIMS ANY LIABILITY RESULTING FROM: THE CONDUCT OF OR PARTICIPATION IN THE

DOMAIN AUCTION; DATA NON-DELIVERY OR MIS-DELIVERY BETWEEN YOU AND mTLD; PROCESSING, REGISTRATION, AND/OR LOSS OF REGISTRATION OF A DOMAIN NAME; USE OF A DOMAIN NAME; DISPUTES OVER DOMAIN NAME REGISTRATIONS, INCLUDING THE DECISION OF ANY DISPUTE RESOLUTION PROCEEDING; ERRORS, OMISSIONS OR MISSTATEMENTS; AND/OR EVENTS BEYOND mTLD'S CONTROL (I.E. ACTS OF GOD).

IN NO EVENT SHALL mTLD'S LIABILITY TO YOU OR ANY THIRD PARTY IN CONNECTION WITH OR ARISING FROM THIS AUCTION AGREEMENT EXCEED THE AMOUNT OF FEES YOU HAVE PAID TO mTLD PURSUANT TO THIS AUCTION AGREEMENT.

IF ANY STATE OR JURISDICTION DOES NOT PERMIT THE ELIMINATION OR LIMITATION OF CERTAIN TYPES OF LIABILITY, mTLD'S LIABILITY SHALL BE LIMITED TO THE SMALLEST AMOUNT PERMITTED BY LAW.

#### **14. Indemnification**

You shall release, defend, indemnify, and hold harmless to the maximum extent permitted by law mTLD, and its directors, officers, employees, affiliates, contractors, 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 participation in the Domain Auction, Your use of an Authorization Code or a Domain Name subsequently Registered using such code, any dispute concerning the Authorization Code, and the Domain Name associated with such code. This indemnification obligation shall survive the termination or expiration of this Auction Agreement and any agreements between You and Your Registrar. This indemnification is in addition to any indemnification required under the UDRP and/or the Standard Registration Obligations.

You also agree that if mTLD is notified that a complaint has been filed with a governmental, administrative, or judicial body regarding an Authorization Code won by you in the Domain Auction or a Domain Name subsequently Registered using such code, mTLD, in its sole discretion, may take whatever action it deems necessary regarding further modification,

assignment of and/or control of the Authorization Code or associated Domain Name deemed necessary to comply with the actions or requirements of the governmental, administrative, or judicial body until such time as the dispute is settled. In this event, you agree to hold mTLD harmless for any action taken by mTLD.

### **15. Compliance with Applicable Law**

You agree to comply with all applicable laws, statutes, ordinances, and regulations regarding your participation in the Domain Auction.

### **16. Choice of Law and Forum**

You agree that this Auction Agreement, its terms and conditions, and the relationship between You and mTLD shall be governed by and construed in accordance with the laws of the District of Columbia, excluding its conflict of laws rules. Any action arising out of or related to this Auction Agreement must be filed in the courts of the District of Columbia. For any disputes arising under or related to this Auction Agreement, You agree to the exclusive subject matter jurisdiction, personal jurisdiction, and venue of the courts of the District of Columbia. YOU AGREE TO WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING THAT TAKES PLACE RELATING TO OR ARISING OUT OF THIS AUCTION AGREEMENT.

mTLD's failure to exercise or enforce any right or provision of this Auction Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by mTLD in writing.

### **17. Severability**

You agree that the terms of this Auction 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.

### **18. Notices**

You agree that all notices from mTLD to You concerning this Auction Agreement may be posted on the dotMobi Site and will be deemed delivered upon posting.

Notices from you to mTLD shall be made to: \_\_\_

**[Premium Name Auction]**

**dotMobi**

**11 Exchange Place**

**IFSC**

**Dublin 1**

**Ireland**

General Inquiries:

**Mail:**

dotMobi

11 Exchange Place

IFSC

Dublin 1

Ireland

**Telephone:**

[00 353 1] 8541100

**Facsimile**

[00 353 1] 7918569

**Email:**

premium@mtld.mobi