

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 mobile 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 .mobi domain names (the “Domain Auction”) and your subsequent registration, via an ICANN accredited registrar, of any .mobi domain name for which you are the highest bidder. This Auction Agreement is **in addition to, and not in place of**, any other agreements or understandings of any kind 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 other agreement relating to your participation in the Domain Auction, the terms of this Auction Agreement shall prevail.

By registering for and participating in the Domain 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 Domain 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.

“Domain Name” means a .mobi domain name;

“dotMobi Site” means the web site operated by mTLD with the URL address: [http://pc.mtld.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 a .mobi Domain Name in a Domain Auction, to notify mTLD that such funds have been received, and to release such funds to .mTLD upon confirmation that mTLD has released the Registration Code for the Domain Name to You.]

“Event Organizer” means the entity organizing the Domain Auction;

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

“Participant” means a participant eligible to participate in the Domain 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 to administer the registry for a Domain Name.

“Registration” means the registration of a Domain Name by a winning bidder in the Domain Auction.

“Registration Code” means the unique code issued by mTLD to the winning bidder for a Domain Name in the course of a Domain Auction.

“Registry Operator” or “Registry” means mTLD.

1. Eligible Auction Participants

Participation in the Domain Auction is restricted to persons who can form legally binding contracts under applicable law. Without limiting the foregoing, Participants must be at least 18 years old. Participation is also limited to members of the mTLD community, as defined from time to time on the mTLD website at www.mtld.mobi, and subject to any terms outlined by the Event Organizer and/or the Auction Manager.

2. Termination or Modification of Auction Agreement

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

3. Acceptable Use

If a Participant violates the terms described herein, mTLD may, in its sole discretion, with or without notice, cancel any Registration made by the Participant.

You hereby represent and warrant that: (a) You are an eligible Participant pursuant to Paragraph 1 above and (b) You will provide current, accurate and complete information in connection with any Registration, including but not limited to information provided for the

purposes of the Whois records.

4. Fees

mTLD does not charge a fee for participation in the Domain Auction. However, participation in the Domain Auction may be subject to fees charged by other entities, including an attendance fee charged by the Event Organizer and/or the Auction Manager.

No fees will be refunded to You should mTLD choose to terminate this Auction Agreement as a result of a breach of its terms by You.

5. Bids

A bid made by a Participant is a binding offer to purchase the Domain Name 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 in Paragraph 7 below.

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

6. Domain term

Subject to the terms and conditions set forth in this Auction Agreement, including all documents incorporated herein, a Domain Name won through the Domain Auction and successfully registered by the Participant will be granted by the Registry Operator for a period of 1 year with an automatic right of renewal, subject to the Participant's continued compliance with the terms and conditions set forth herein and compliance as a registrant with its obligations under any agreement with a Registrar.

[7. Payment and Escrow Service

Payment of amounts due for winning bids following completion of the Domain 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 Registration Code for the Domain Name to the winning bidder. The Registration Code can then be used by the winning bidder to register the Domain Name with a Registrar of his or her choice.

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

8. Rights to the Domain

Registration of Domain Names are the result of, and are subject to, all of the conditions, limitations, and restrictions contained in the domain name registration agreement between mTLD and a Registrar (the “RAA”), including the Registrant Agreement as posted from time to time on the dotMobi Site, the end-user agreement with the Registrar (the End-User Registration Agreement”), and all applicable policies promulgated by ICANN. Nothing in this Auction Agreement shall be construed to imply that the Participant possesses any rights to a Domain Name beyond those specified in the RAA, including the Registrant Agreement, the End-User Registration Agreement, and all applicable ICANN policies.

A winning bidder will be required to enter into an End-User Registration Agreement with the Registrar he or she chooses to register the Domain Name. By registering a Domain Name, You agree and acknowledge that MTLTLD is an intended third party beneficiary of any such End-User Registration Agreement between You and the Registrar You select.

9. 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 DOMAIN NAMES AND SERVICE(S) REFERENCED HEREIN, INCLUDING, WITHOUT LIMITATION, THE AUCTION ITSELF AND/OR ANY DOMAIN NAME FOR WHICH YOU ARE THE WINNING BIDDER, WHETHER OR NOT YOU ELECT TO REGISTER SAID DOMAIN NAME, WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICE(S) AND/OR ACCESS TO AND USE OF THE DOMAIN NAME 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 SERVICE(S) AND/OR A DOMAIN NAME 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.

10. Participant Obligations

It is your responsibility to ensure that You meet any and all requirements for Registration of a Domain Name.

Without limiting the foregoing, You acknowledge and agree that Your Registration of Domain Name for which You are the winning bidder is contingent upon your agreement to be bound by and comply with applicable ICANN requirements, standards, policies, procedures, and practices and with any standards, policies, procedures and practices specified

by mTLD including without limitation those set forth in the latest dotMobi Switch On! Guide [http://pc.mtld.mobi/mobilenet/dotmobi_guides.html] (the “Style Guide”). You further consent to the monitoring of your website as described in the dotMobi Style Guide monitoring guidelines. Furthermore, You acknowledge and agree that this Style Guide is subject to modification by mTLD, and that You must promptly comply with any such changes in the time allotted.

You acknowledge and agree that if You are selected as the winning bidder, You will launch a website using the Domain Name with the URL address [www.<Domain Name>.mobi] within ten (10) days of the transfer of the Registration Code by mTLD. Such website may initially consist of a parking page approved and provided by mTLD, provided that You agree to use your best efforts to create, launch, and operate a live website to replace the parking page as soon as commercially practicable, and such live website is designed 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 that You sell or otherwise transfer the Domain Name to another party, You agree to contractually require such party to be bound by the terms of this Agreement..

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 for which You may be the winning bidder in the Domain Auction. mTLD cannot and does not check to see whether the Domain Name auctioned (or any use You make of the Domain Name auctioned) infringes the legal rights of others. It is your responsibility to investigate whether a Domain Name You select may infringe the legal rights of others. You acknowledge and agree that You are exclusively liable for any such infringement.

12. Right to Terminate or Cancel Domain Name Registration

You acknowledge and agree that the mTLD reserves the right to deny, cancel or transfer any Registration that it deems appropriate, in its sole discretion (i) to protect the integrity and stability of the Registry, the domain name system, and/or the Internet; (ii) to comply with all applicable laws, regulations, government rules or requirements, any requests of law enforcement, and/or to take any actions 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 the terms of its agreement with ICANN; 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 Domain Name during a resolution of a dispute.

13. 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.

14. UDRP

You agree to be bound by ICANN's Uniform Domain Dispute Resolution Policy ("UDRP"),

as modified or amended from time to time. The UDRP sets forth the terms and conditions in connection with a dispute between a registrant and any other party other than the registry operator or registrar over the registration and use of a domain name registered by the registrant. The UDRP is incorporated herein and made part of this Auction Agreement by reference. The current version of the UDRP may be found at ICANN's web site: www.ICANN.org.

15. 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, 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 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.

16. Indemnification

Participant 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, the Participant's Domain Name Registration and/or use, and any dispute concerning the Domain Name and this indemnification obligation shall survive the termination or expiration of this Auction Agreement and the registration agreement between You and the Registrar for the Domain Name. This indemnification is in addition to any indemnification required under the UDRP.

You also agree that if mTLD is notified that a complaint has been filed with a governmental, administrative, or judicial body regarding a Domain Name won by you in the Domain Auction, mTLD, in its sole discretion, may take whatever action it deems necessary regarding further modification, assignment of and/or control of the 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.

17. Compliance with Applicable Law

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

18. 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.

19. 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.

20. 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 [Traffic] 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

