



**ASIC**  
Australian Securities &  
Investments Commission

# ASIC REGISTERED AGENT

## TERMS AND CONDITIONS

Version: 1.0

Date: 22 October 2018

### 1. About Registration as an ASIC Registered Agent

- 1.1. Registration with ASIC as an ASIC Registered Agent facilitates streamlined submission of documents for lodgement to the registers maintained by ASIC and the receipt of notifications from ASIC about the annual review obligations of registered Australian companies.
- 1.2. Registered Australian companies and other entities registered with ASIC have responsibilities and obligations under the laws administered by ASIC, and may be required to lodge documents with ASIC from time to time. ASIC Registered Agents are persons that are authorised by registered Australian companies to submit documents to ASIC for lodgement, may receive notifications on behalf of the company and may provide other administrative services to businesses.
- 1.3. Registration with ASIC as an ASIC Registered Agent is subject to these terms and conditions.
- 1.4. ASIC Registered Agents may also be subject to ASIC's terms and conditions relating to our Machine to Machine Services and Electronic Lodgement.

### 2. Application

- 2.1. These terms and conditions apply from the date we publish this version.
- 2.2. We may update these terms and conditions from time to time. We will notify you of updates to the terms and conditions via our online services or by email or publication in our newsletter.

### 3. Eligibility Requirements

- 3.1. An ASIC Registered Agent may be:
  - (a) a registered Australian company, or
  - (b) an entity that has a registered business name, or
  - (c) an individual that carries on business under the individual's name. The individual must be over 18 years of age and must reside in Australia.
- 3.2. At all times, the ASIC Registered Agent must have an Australian Business Number.
- 3.3. An ASIC Registered Agent that is a company or an entity that has a registered business name must appoint an individual to act as a responsible person on your behalf. The responsible person is accountable for the performance of your obligations under these terms and conditions.
- 3.4. The responsible person **must**:
  - (a) be over 18 years of age and reside in Australia,and if the ASIC Registered Agent:
  - (b) is a company – be currently registered with ASIC as an officeholder for that company, or
  - (c) has a registered business name and is not a company – be currently registered with ASIC as the business name holder or a representative for that business name registration.
- 3.5. The ASIC Registered Agent and the responsible person **must not**:
  - (a) be disqualified from managing corporations under the *Corporations Act 2001* (Cth),
  - (b) have been cancelled as an ASIC Registered Agent by ASIC in the past six months for any reason unless the ASIC Registered Agent is reinstated under paragraph 10.5 of these terms.
- 3.6. We may conduct checks of ASIC's records or the records of other government agencies to verify you are eligible to be an ASIC Registered Agent. We may request the date or place of birth of any individual that is not a company officeholder or business name holder to conduct our checks.
- 3.7. We may request further information about you or your employees to determine your eligibility.
- 3.8. We may refuse an application for registration as an ASIC Registered Agent if we reasonably believe an applicant is not of good fame or character.
- 3.9. You must cancel your registration as an ASIC Registered Agent if, at any time, you cease to meet these eligibility requirements and the requirement cannot be rectified within 14 days.

## 4. Registered Agent Obligations

### *Keeping your agent details up to date*

- 4.1. You must provide ASIC with your agent details and notify ASIC within 14 days if your agent details change. Agent details are:
  - (a) postal address and if different to postal address, physical business address,
  - (b) email address,
  - (c) telephone during business hours,
  - (d) name, direct telephone number and direct email address of the responsible person, and
  - (e) if different to the responsible person - name, direct telephone and direct email address of a contact person.

### *ASIC online services*

- 4.2. You must register to use ASIC online services for ASIC Registered Agents and submit documents for lodgement with ASIC online unless a service is unavailable or a document cannot be lodged online.
- 4.3. You may submit documents for lodgement with ASIC through an alternative lodgement channel specified by us if a service is unavailable or a document cannot be lodged online.
- 4.4. When submitting documents to ASIC online, you must ensure that you comply with the terms and conditions of the ASIC Electronic Lodgement Protocol.

### *Carry on a business*

- 4.5. You will carry on a business that includes providing assistance to companies to meet registration or statutory lodgement or statutory review obligations and we expect you will frequently lodge documents with ASIC.

### *Lodging Documents with ASIC*

- 4.6. If you submit a document for lodgement with ASIC, you must ensure that:
  - (a) you store in your records the written authority from an officeholder of a company before you submit a document for lodgement with ASIC and produce to the company a copy of the written authority upon request,
  - (b) you provide to ASIC a copy of the written authority to submit a document within 7 days of a request from ASIC,
  - (c) documents you submit for lodgement are accurate and do not contain false or misleading information to the extent that the document is submitted in the current approved form, is fully completed, is unlikely to require typographical correction and you have no reason to believe that the document will be rejected for lodgement by ASIC (for example, you must not provide a date of birth for a director that is 01/01/1990 if you suspect the date of birth is not accurate),

- (d) you provide reasonable advice and assistance to registered Australian companies to duly complete and submit documents for lodgement.

4.7. If you submit a document to apply to ASIC for company registration, you must store in your records the written authority from the applicant to make an application to register an Australian company.

*Acting as the company agent of a registered Australian company*

4.8. If a registered Australian company authorises you to act on its behalf to lodge documents and receive notifications from ASIC, you:

- (a) must store in your records written authority to act as the company’s agent,
- (b) may submit for lodgement with ASIC a *Form 362 Notification by a company to nominate or cease a registered agent or contact address* for the company,
- (c) must store a signed copy of each *Form 362 Notification by a company to nominate or cease a registered agent or contact address* submitted for lodgement with ASIC in your records,
- (d) must use reasonable endeavours to ensure that documents to be submitted for lodgement with ASIC are submitted within statutory timeframes,
- (e) must use reasonable endeavours to ensure statutory fees relating to companies are paid on time including ensuring that officeholders receive invoices issued by ASIC in sufficient and reasonable time to make payment,
- (f) must store in your records a copy of the written consent of persons to act as a director or secretary of a company for each notification that you submit to ASIC concerning the appointment of an officeholder.
- (g) must, if you change your physical business address and the address is also the registered office address for the company and you wish to change that address, receive consent from an officeholder of the company before you submit a document to change the registered office of the company.

4.9. If you are authorised to act as a company’s agent, you must:

- (a) retrieving from our online services each company annual statement within 14 days of the company’s annual review date, and
- (b) retrieving from our online services each company invoice statement within 7 days of notice to you of the invoice statement delivery, and
- (c) ensuring that officeholders receive the annual company statement to facilitate review of the company details and payment of the annual review fee in a timely manner.

*Ceasing to act for a registered Australian company*

4.10. If you cease to act as a company’s agent, you must complete the ordered steps in the table.

<b>Step 1</b>	If your address is the registered office for the company, you must either:
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	<p>(a) seek authorisation from the company to lodge with ASIC a change to the registered office, or</p> <p>(b) notify ASIC in writing that you withdraw consent for your premises to be the registered office.</p>
<b>Step 2</b>	<p>(a) If you have authorisation from the company - lodge a <i>Form 362 Notification by a company to nominate or cease a registered agent or contact address</i>, or</p> <p>(b) If you do not have authorisation from the company - lodge a <i>Form 361 Notification of a registered agent ceasing to act for a company</i>.</p>

## 5. Fees

- 5.1. You must disclose your service fees to your customer prior to accepting the payment for a lodgement and you must clearly distinguish your service fees from any applicable statutory fees for any document to be lodged.
- 5.2. If you submit a document to apply to ASIC for company registration, you must have sufficient funds to pay the statutory fee for the company registration application lodged with ASIC prior to the submission.

## 6. Customers

- 6.1. You must maintain client files that accurately record the transactions and instructions provided by your customers to you that relate to your obligations as an ASIC Registered Agent.
- 6.2. You will use your best endeavours to ensure that your services and products including any customer help or guidance will comply with and keep up to date with legislative requirements and ASIC's requirements that facilitate the administration of legislation.
- 6.3. You must act honestly, fairly and in a timely manner in dealing with customer disputes.
- 6.4. If a customer complains to you about your conduct in relation to your obligations as an ASIC Registered Agent, you must give the customer details about how to contact ASIC.

## 7. General Obligations

- 7.1. You warrant that you will not make misleading or deceptive statements, in relation to the ASIC online services, ASIC Registers or any other services or information provided by ASIC.
- 7.2. You must not engage in conduct in the course of your activities carried on as an ASIC Registered Agent or otherwise, which is likely to diminish the public confidence in the information on the registers maintained by ASIC or bring the role of ASIC Registered Agent into disrepute.
- 7.3. You must act in accordance with any reasonable directions given by ASIC.

## 8. Transfer or Assignment

- 8.1. You must not transfer your registration with ASIC or assign your rights and obligations as an ASIC Registered Agent to another person.

## 9. Cancelling your registration as an ASIC Registered Agent

9.1. You may cancel your registration as an ASIC Registered Agent by completing the ordered steps in the table.

<b>Step 1</b>	If your address is the registered office for any company, you must either:  (a) seek authorisation from the company to lodge with ASIC a change to the registered office, or  (b) notify ASIC in writing that you withdraw consent for your premises to be the registered office.
<b>Step 2</b>	Lodge <i>Form 361 Notification of a registered agent ceasing to act for a company</i> for each company for which you are the nominated registered agent.
<b>Step 3</b>	Lodge <i>Form RA01 Notification to register, change details of, or cease as an agent</i> with ASIC to cancel your registration.

## 10. Cancellation of your registration by ASIC

10.1. You must notify us immediately if:

- (a) you become aware of any breach or possible breach of these terms and conditions, and
- (b) advise us of all actions taken to remedy the breach, and
- (c) advise us of any actions undertaken to avoid a reoccurrence.

10.2. We may cancel your registration as an ASIC Registered Agent at any time where we know or reasonably believe:

- (a) you have breached any of these terms and conditions, or
- (b) you have not submitted documents to ASIC for lodgement for more than 12 months, or
- (c) you have provided us with incomplete, inaccurate, false or misleading information, or
- (d) you have ceased to carry on business as a company agent for registered Australian companies, or
- (e) you have entered into an insolvency event, or
- (f) you cause significant adverse impacts to our systems or processes, or
- (g) you have failed to observe any other requirements provided for under these terms and conditions.

10.3. We may cancel your registration as an ASIC Registered Agent at any time with or without notice if you or the responsible person:

- (a) are the subject of an unresolved complaint, inquiry or investigation into the conduct of your business activities, or
- (b) are the subject of any disciplinary action relating to your occupation or profession, or
- (c) are disqualified from managing corporations under the *Corporations Act 2001* (Cth).

10.4. We may exercise our discretion:

- (a) not to cancel your registration as an ASIC Registered Agent even if we may cancel your registration under paragraphs 10.2 or 10.3, or
- (b) to reinstate your registration as an ASIC Registered Agent.

10.5. If we cancel your registration as an ASIC Registered Agent, we will:

- (a) immediately cease your access to our online services for ASIC Registered Agents, and
- (b) notify all companies for which you are the nominated ASIC Registered Agent that your registration has been cancelled.

## **11. Contacting ASIC**

- 11.1. You should contact us through our online enquiry service for matters relating to your registration, lodging documents or acting for or ceasing to act for a registered Australian company.
- 11.2. We may use any information you have given to us to verify your identity.
- 11.3. You must not at any time provide false or misleading information about your identity when you deal with ASIC.

## **12. Marketing**

- 12.1. You must ensure that any marketing or promotion of your services and your business is accurate, lawful and not prejudicial to the good reputation or the objectives of ASIC.
- 12.2. You must not send direct communications to offer, advertise or promote your services or products unless:
  - (a) you clearly set out on the communication your entity name and ABN details and how to contact you, and
  - (b) you remove the name and details of any recipient from your mailing list upon their request.
- 12.3. You must ensure that your business marketing and communication products include content that clearly distinguishes you as a private service provider and independent of ASIC. The content is to include the following:
  - (a) you must clearly display your registered business name on each product,
  - (b) you must not make any statements that infer or may suggest that ASIC endorses your services or products or that you are authorised by ASIC, and

- (c) your logo, colours and designs of your products and marketing materials must not be similar to or potentially confused with those of ASIC.
- 12.4. You must not use words or expressions in your business name or marketing materials that will mislead customers about your business or suggest you are authorised or endorsed by a government body.
- 12.5. At any time, ASIC may direct that you must cease the use of the expressions below or expressions with the same meaning if we reasonably believe your use of the expressions is potentially misleading:
- (a) Registered Agent,
  - (b) Business Name Registration,
  - (c) Business Name Renewal,
  - (d) Company Registration,
  - (e) Company Review.

### **13. Use and disclosure of information**

- 13.1. Information collected, stored, used and disclosed by us may include personal information. Our Privacy Policy ([www.asic.gov.au/privacy](http://www.asic.gov.au/privacy)) describes how we handle personal information, rights to seek access to and correct personal information, and to complain about breaches of privacy by ASIC.
- 13.2. You must comply with the collection, use and management of personal information in accordance with the Australian Privacy Principles under the *Privacy Act 1998* (Cth).
- 13.3. You must immediately notify ASIC if you become aware of a breach or possible breach of any of the obligations contained in the Australian Privacy Principles.
- 13.4. You must not disclose the information obtained from ASIC in your capacity as an ASIC Registered Agent to any person unless the disclosure is permissible by law.

### **14. Confidentiality**

- 14.1. You must not, without our prior written consent, disclose any Confidential Information received by you from ASIC unless:
- (a) the Confidential Information is generally available to the public, or
  - (b) any use or disclosure by you is required by law.

### **15. Disclaimer**

- 15.1. While we endeavour to ensure that information provided by us is accurate and error-free, you acknowledge that we will not be responsible for any inaccuracy, omission, defect or error in this information. We will not be liable for any loss or damage, however arising, which may be caused by use of this information.



## **16. Indemnity**

- 16.1. You indemnify us from and against any losses or claims arising out of, or as a consequence of your negligent, wrongful, or unlawful act or omission in relation to your registration as an ASIC Registered Agent.

## **17. Intellectual Property**

- 17.1. You acknowledge that all materials, documentation or other information including any Intellectual Property Rights provided by ASIC to you are the property of, and will at all times, remain the property of ASIC.
- 17.2. Nothing in these terms and conditions grants you any right to use or display any trademarks registered to ASIC or any other ASIC logo.
- 17.3. You must not use the word "ASIC" either on its own or in combination with other words and/or symbols:
- (a) in a domain name,
  - (b) in an email address,
  - (c) in a user name in any social media forum,
  - (d) as the name or description of any of your services or products if we direct you not to use the word "ASIC" in a Services or product.

## **18. General**

- 18.1. If any term or part of a term of these terms and conditions is held to be invalid or unenforceable, that term may be severed and the remaining terms or parts of the terms of these terms and conditions continue in force.
- 18.2. Waiver of any term or condition of these terms and conditions must be in writing and is effective only to the extent set out in any written waiver.

## **19. Notices**

- 19.1. We may advise or notify you of any matter on or via our website, our online services, by telephone, SMS, email, or mail to any relevant address you have provided to us.

## **20. Governing law and jurisdiction**

- 20.1. You agree your registration as an ASIC Registered Agent will be governed by and interpreted in accordance with the laws in force in the State of Victoria. You agree to submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia for all matters relating to your registration as an ASIC Registered Agent.

## Definitions

Term	Meaning
ASIC Electronic Lodgement Protocol or ELP	The terms and conditions for lodging documents electronically with ASIC.
ASIC, we, us or our	Australian Securities and Investments Commission
ASIC online services or online services	The services provided by ASIC to allow data to be sent to and from ASIC to carry out the submission of documents for lodgement pursuant to legislation and search the registers maintained by ASIC
ASIC Registered Agent	A person that is registered by ASIC and has been given a Registered Agent number
Business name registration or registered business name	A business name registered under the <i>Business Names Registration Act 2011</i> (Cth)
Confidential Information	Information that is by its nature confidential and a registered user knows or ought to know is confidential
Insolvency event	Any one or more of the following events or circumstances: <ul style="list-style-type: none"> <li>(a) Being in liquidation or provisional liquidation or under administration,</li> <li>(b) Having a controller or analogous person appointed to you or any of your property,</li> <li>(c) Failing to comply with a statutory demand,</li> <li>(d) Entering into a personal insolvency agreement,</li> <li>(e) Being bankrupt,</li> <li>(f) Being unable to pay your debts as and when they become due and payable or being otherwise insolvent.</li> </ul>
Intellectual Property Rights	All intellectual property rights, including the following rights: <ul style="list-style-type: none"> <li>(a) patents, designs, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names,</li> <li>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a),</li> <li>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,</li> </ul> whether or not such rights are registered or capable of being registered.

<b>Term</b>	<b>Meaning</b>
Machine to Machine Services	The service provided by ASIC allowing messages in Extensible Mark-Up Language (XML) to be generated, received and sent to and from ASIC in the prescribed format through the internet.
Officeholder	A director or secretary of a registered Australian company
Registered Australian company or company	A company registered under section 118 of the <i>Corporations Act 2001</i> (Cth)
Responsible person	The individual appointed by an ASIC Registered Agent in accordance with these terms and conditions
Services Fees	Fees charged by you excluding fees imposed by legislation
You or your	An ASIC Registered Agent and, if appointed, the ASIC Registered Agent's responsible person and contact person