

## **ROTD AUCTION AND BROKERAGE TERMS OF SERVICE**

**Updated: November 1, 2015**

**This document governs your participation in any live or online auction of internet domain Domain(s) names, ("Domain(s)") including silent auctions, extended online auctions, and/or brokered sales conducted by RightoftheDot.com, LLC and/or a third party partner in conjunction with RightoftheDot.com, LLC, including NameJet, LLC (collectively referred to herein as "ROTD", "RightoftheDot.com, LLC", "we," "us" or "our") of Domain(s) submitted by you (in such capacity, a "Seller") for inclusion in an Live Auction, Online Auction, Extended Auction and/or Brokered Sale (any and all of which are referred to herein as a "ROTD Auction").**

**By creating a Seller account or submitting any Domain(s) for sale in any ROTD Auction you are agreeing to be bound by these terms of service (the "ROTD Terms"), which includes all of our terms and conditions and policies referenced herein such as our Fee Schedule and Policies, and ROTDs Privacy Policy ("Privacy Policy") referenced in Paragraph 8 herein. We strongly encourage you to read the Terms of Service reflected herein, as well as the terms of service of any other linked information referenced herein.**

**In the event ROTD utilizes a third party to conduct or assist in the ROTD Auction, such as NameJet, LLC, such third party will**

**have it's own Terms of Service, attached or linked in Addendum 2 and are incorporated herein (both the ROTD Terms as well as those attached or linked in Addendum 2 are herein referred to as the "ROTD Terms of Service" and/or "Terms of Service"). In the event of any conflict between these Terms of Service and the terms of such a third party, the ROTD Terms shall control.**

**In order to participate in any ROTD Auction you MUST first agree to be bound by these Terms of Service. ROTD reserves the right to change any of the terms and conditions contained in these Terms of Service, our Fee Schedule and Policies and our Privacy Policies at any time with notice. You are responsible for complying with any changes to these documents within ten (10) days of the date of change.**

## **1. Seller Responsibilities**

**A. In order to list a Domain(s) in a ROTD Auction Seller agrees to the following:**

**i. Seller shall submit to ROTD one or more Domain(s) to sell at such Auction or along with a minimum reserve price for each Domain. Submission maybe made at ROTD discretion electronically through ROTD website and/or by email, or other online submission process including a third party service. By submitting one of more domain Domain(s), the Seller agrees to ROTD Terms of Service.**

**As used herein, the term "reserve price" means the minimum price that the Seller is willing to accept, net of commissions and fees for a Domain.**

**ii. The Seller shall promptly upon request by ROTD, provide ROTD with complete and accurate information regarding Seller, the Domain(s) and such other information and data as ROTD may reasonably request from time to time in order to permit ROTD to perform its duties hereunder**

**B. In the event any Domain(s) submitted to ROTD has been accepted by ROTD for Live or Online Auction the Seller is bound to the following terms, from the date of acceptance by ROTD until the Live, Online and/or Extended auction is completed and for sixty (60) days thereafter: (the "Exclusive Sale Period"). Seller agrees not to (a) sell, or offer for sale, the Domain(s) except for sale through an Auction or private / public sale or (b) use, appoint or engage any person or entity other than ROTD to act as its agent, sales representative or in a similar capacity with respect to the Domain(s) during the term of this Agreement.**

**In accordance with the foregoing, Seller shall:**

**i. Refer to ROTD all previous, pending and future inquiries from brokers, agents, purchasers or others interested in the Domain(s);**

**ii. Assist ROTD with the marketing and sale of the Domain(s) as may reasonably be requested (such assistance shall be at ROTD sole expense unless Seller provides express written authorization in advance);**

**iii. The Seller may not increase the reserve price under any circumstances or withdraw the Domain from auction. The Seller Agrees that if it attempts to reduce the reserve price or withdrawn the Domain(s) from the Auction ROTD will have, in addition to any other rights it may have at law, have the right to file an action for Declaratory Judgment seeking that the Domain(s) maybe sold at the submitted net reserved price. In such event the Seller shall bear all court costs as well as all the reasonable legal fees of ROTD regardless of if the Domain(s) actually sells in the auction or the Broker Period. However ROTD reserves the right, but is under no obligation to lower its fees to consummate a transaction at Sellers Reserve Price;**

**iv. In the event that (i) Seller fails to honor its obligation to deliver a Domain which has been purchased in an Auction or if Seller has accepted an offer, written or oral, presented in ROTD Brokerage or if (ii) Seller erroneously submits a Domain(s) to ROTD which Seller does not in fact own or otherwise have the right to sell and such error is not discovered by ROTD or by Seller prior to the sale of such Domain(s) or (iii) Seller sells, or otherwise transfers the Domain(s) prior to during of for the 60 days after then end of the Live, Online or Extended auction, the Seller acknowledges and Agrees that they are obligated to pay**

**to ROTD a the fee equal to the amount that ROTD would have earned hereunder if the sale had it occurred at the reserve price (See Fee Schedule and Policies), in addition to any other remedies that ROTD may have at law or in equity;**

**v. Not under any circumstance bid on Domain(s) it has submitted at Auction, either directly or through an agent or engage in any conduct that could be considered bid rigging and/or bid tampering or collusion within the meaning of the laws of the United States; and**

**vi. Seller agrees to execute the ROTD Sales Agreement upon the sale of Seller's domain(s).**

## **2. ROTD Responsibilities**

**A. In selling a Domain submitted by Seller for sale at an Auction or private Brokerage sale and accepted by ROTD for inclusion in such Auction, ROTD shall:**

**i. Use commercially reasonable efforts to secure buyers for such Domain(s) at or above the reserve price, provided that in ROTD sole discretion it may choose not to sell or list a particular Domain(s) for sale or Auction for any reason;**

**ii. To not consummate the sale of a Domain(s) on Seller's behalf (i) unless and until the reserve price has been met or if an offer is presented to and accepted by the Seller (via email or phone)**

**between ROTD and Seller, (ii) in the event that the reserve price has been agreed upon, but is not met, unless and until Seller has given its written consent (which may be accomplished by e-mail or text) to the proposed sales price for such Domain below the reserve price and (iii) if the buyer of the Domain has defaulted in its obligation to consummate the sale of the Domain;**

**iii. Handle customer billing, collections and order fulfillment and payment to the Seller (unless ROTD uses the Services of an Escrow company for this purpose);**

**iv. Work directly with Seller and Buyer to attempt to quickly resolve disputes, if any arise; and**

**v. Perform its responsibilities in a diligent, competent and professional manner.**

**B. Seller acknowledges that nothing in these Terms of Service require ROTD to render services solely to Seller or to devote its entire business time and effort to the performance of its duties hereunder. In furtherance of the foregoing, Seller further agrees that ROTD shall have the right to act as an agent, sales representative, distributor and/or marketing agent for persons and entities other than Seller, including, without limitation, persons and entities who are or whom may be in competition with Seller.**

### **3. Non-Circumvention**

**A. In addition to any other rights ROTD may have, if a Domain is accepted for a ROTD Auction during the Exclusive Sales Period, and for a period of one year following the termination of the Exclusive ROTD Sale Period, Seller shall not, directly or indirectly:**

**i. Make contact or attempt to make contact, solicit or attempt to solicit, negotiate or attempt to negotiate, enter into or attempt to enter into any agreement, and/or transact or attempt to transact any business with any potential purchaser (or such purchaser's attorneys, agents (other than ROTD), representatives, employees, officers, directors, principals, owners, shareholders, members, managers or any person or entity that is connected, directly or indirectly, with such purchaser) procured by or introduced to Seller by ROTD, except to the extent such contact is through, or with the prior written consent of, ROTD; or**

**ii. Commit any other acts, directly or indirectly, which would affect in any way whatsoever, circumvent the restrictive covenant stated herein.**

**B. In the event that Seller violates the provisions of this Section, ROTD shall be entitled to receive its full fee as if such Domain were sold for the reserve price, or an offer otherwise accepted by the seller (See Addendum 1 Fee Schedule and Policies).**

#### **4. Domain Transfer**

**For all Sellers who submit Domain(s) for sale using the ROTD Auction, all Domain(s) to be sold using the ROTD Auction Services (and if privately brokered within the 60 day period after) will be transacted through ROTDs or its designated partner, domain transfer and Escrow Service such as Escrow.com or NameJet.com (the "Transfer Service"). Further terms and conditions applicable to the designated Transfer Service are set forth in the designated "Transfer Service" Policies and Procedures (See Addendum 2) and such terms and conditions are deemed a part of these Terms of Service. ROTD provides the links or TOS of the designated transfer service as part of the submission and selection process and are attached as Addendum 2. Sellers agree to transfer all Domain(s) sold promptly following the sale of any such Domain.**

#### **5. Fees and Taxes**

**A. For every Domain(s) submitted by Seller which is accepted by ROTD and sold in a ROTD Auction or Privately Brokered (i) ROTD shall be entitled to a fee in accordance with the Fee Schedule and Policies, and (ii) ROTD shall use commercially reasonable efforts to remit the sale price, net of all applicable fees, to the Seller within fourteen (14) days following the consummation of the sale and completed transfer of an applicable Domain, it being understood that in certain circumstances it may not be possible or practical to remit such sale price within such period**



**and a longer period of time may be required to remit the applicable purchase price.**

**B. Seller understands and agrees that taxes with respect to any sales of Domain(s) in any Auction will not be withheld or paid directly or indirectly by ROTD. Seller understands and agrees that it is Seller's responsibility to pay all local, state, federal, and/or foreign taxes on the proceeds received by it from any sale of a Domain at an Auction, other than any Fees collected and retained by ROTD. ROTD understands and agrees that it is its responsibility to pay all local, state, federal, and/or foreign taxes on the Fees received by it with respect to the sale of any Domain at an Auction.**

## **6. Representations, Warranties and Covenants**

**A. Seller hereby represents warrants and covenants as follows:**

**i. It has the full power and authority to perform its obligations set forth herein, including the power to sell, transfer, convey and deliver, good, valid and marketable title to the Domain(s) proposed to be sold by it in the Auction;**

**ii. To the best of the Seller's knowledge the Domain(s) does not infringe upon or violate the intellectual property rights of any third party;**

**iii. The Domain(s) is not subject to litigation, arbitration, claims, disputes or other legal proceeding, either pending or threatened;**

**iv. The Seller has full right, title and interest and the authority to sell to the Domain(s) free and clear of all liens, claims, encumbrances, licenses and security interests and that the Seller is not insolvent or in Bankruptcy Court. If the Domain(s) is owned by a company, the Seller agrees it has the full corporate authority to submit the Domain on behalf of the Corporate owner no action or relationship described or contemplated by these Terms of Service (including the sale of Seller's domain by ROTD) infringes, or will cause to be infringed, the intellectual property rights of any third person;**

**v. Any material information provided by Seller about any Domain(s) submitted for sale at an Auction, including but not limited to traffic statistics, previous purchase prices, and/or pay per click advertising earnings, is accurate to the best of Seller's knowledge;**

**vi. Seller's performance under this Agreement shall comply with all applicable laws, regulation and policy; and**

**vii. Seller shall not use jointly produced marketing materials without written permission.**

**B. ROTD hereby represents warrants and covenants as follows:**

- i. It has the full power and authority to perform its obligations set forth herein;**
- ii. It will perform its obligations under this Agreement in a timely manner, in good faith and with all due skill and care; and**
- iii. Its performance under this Agreement shall comply with all applicable laws, regulation and policy.**

#### **C. Limitations on Representations and Warranties**

**SELLER ACKNOWLEDGE THE ADVANCED AND SPECULATIVE NATURE OF DOMAIN SALES AND AUCTIONS AND FURTHER UNDERSTANDS THAT NO GUARANTEES OR WARRANTIES CAN BE MADE OR EXPECTED WITH RESPECT TO SUCH CONCEPT OR THE SERVICES CONTEMPLATED HEREIN. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER THEREFORE DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH REGARD TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR THE PARTICULAR PURPOSE OR USE, AND EACH PARTY AGREES THAT THERE ARE NO WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ROTD AND ITS PARTNERS SPECIFICALLY DISCLAIM ANY REPRESENTATION OR WARRANTY REGARDING (A) THE SUCCESS OF A SALE OF ANY DOMAIN, (B) THE NUMBER OF PERSONS, IF ANY, WHO MAY VIEW THE DOMAIN**

**FOR SALE, AND (C) THE ERROR-FREE, DISRUPTION-FREE OR INTERRUPTION-FREE NATURE OF THE SERVICES OFFERED HEREUNDER.**

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ROTD OR ITS PARTNERS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE INABILITY OF A DOMAIN TO BE SOLD, EVEN IF ROTD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF ROTD FOR ANY DIRECT DAMAGES SHALL NOT EXCEED FIVE DOLLARS (\$5.00). BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO SELLER.**

## **7. Indemnification; Remedies**

**A. Seller agrees to indemnify, defend and hold harmless ROTD and its parent and its respective subsidiaries and their respective officers, directors, shareholders, affiliates, employees, agents, successors and assigns as well as any of ROTD's partners or third parties that ROTD utilizes to conduct or assist in the ROTD Auction (the "ROTD Parties"), at its expense, from and against any and all liability, demands, claims, costs,**

**losses, damages, recoveries, settlements, and expenses (including interest, penalties, attorney fees, accounting fees, and expert witness fees) incurred by the ROTD Parties, known or unknown, contingent or otherwise, directly or indirectly arising from or related to any breach of a warranty by Seller or failure to perform any covenants required of Seller under these Terms of Service.**

**B. Seller agrees that irreparable damage would occur in the event that any of the provisions of these Terms of Service were not performed by Seller in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the ROTD Parties shall be entitled to an injunction or injunctions to prevent breaches of these Terms of Service by Seller and to enforce specifically the terms and provisions of these Terms of Service, this being in addition to any other remedy to which the ROTD Parties are entitled at law or in equity.**

## **8. Privacy Policies**

**The ROTD Privacy Policy, if any, is hereby incorporated by reference into these Terms of Service. The ROTD Privacy Policies provide your rights and ROTD responsibilities with regard to your personal information. ROTD shall not use your information in any way inconsistent with the purposes and limitations provided in the Privacy Policies. For purposes of these Terms of Service, information about the Domain(s) provided by Seller and the transactions those Domain(s) generate, including pricing,**

**reserve prices, and actual sales prices shall not be considered personally identifiable information or confidential information subject to any duty of confidentiality.**

## **9. Intellectual Property**

**As between ROTD and Seller, ROTD shall own all right, title and interest, including without limitation all Intellectual Property Rights (as defined below), including but not limited to, all software, technology, materials, guidelines, documentation (and any derivative works or enhancements thereof), relating in any way to the conduct of the Auction and the Services provided hereunder. For purposes of the Agreement, "Intellectual Property Rights" means any and all rights existing from time to time under patent law, copyright law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, as well as, any and all applications, renewals, extensions, restorations and re-instatements thereof, now or hereafter in force and effect worldwide.**

## **10. Modifications and Waivers**

**ROTD reserves the right to change any of these terms and conditions at any time without notice. Seller is responsible for complying with any changes to the terms and conditions within ten (10) days of the date of change. No waiver of a breach, failure of any condition, or any right or remedy contained in or**

**granted by the provisions of these Terms of Service shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No failure or delay by ROTD in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.**

## **11. Governing Law; Jurisdiction and Venue**

**These Terms of Service will be governed by, and construed in accordance with, the laws of the State of Florida, without reference to conflict of laws principles thereof. Any claim, dispute or litigation based hereon, or arising out of, under, or in connection with these Terms of Service, shall be brought and maintained exclusively in the state or federal courts located in Florida. Seller hereby expressly and irrevocably consents to, and waives all defenses of lack of personal jurisdiction and forum non-convenes with respect to, venue and jurisdiction in the state and federal courts of Florida. Seller irrevocably consents to the service of process by personal service within or without the State of Florida. SELLER AND ROTD AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THESE TERMS OF SERVICE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.**

## **12. Attorney's Fees**

**If ROTD or any of its auction partners prevail in any action, suit, or proceeding arising from or based upon these Terms of Service, or in the case of a Seller of a domain name of which the buyer refuses to pay, then the Seller of the domain and/or ROTD jointly and severally shall be entitled to recover from Seller ROTDs reasonable attorneys' fees in connection therewith in addition to the costs of such action, suit, or collection proceeding.**

## **13. No Joint Venture/No Assignment**

**ROTD, Seller and Namejet, LLC, are independent contractors and do not intend to create any partnership, joint venture, agency, franchise, sales representative or employment relationship between them. Seller may not assign any of its rights or delegate any of its duties under these Terms of Service without the prior written consent of ROTD. Despite such consent, no assignment shall release Seller of any its obligations or alter any of its primary obligations to be performed under these Terms of Service. These Terms of Service shall bind and inure to the benefit of Seller's and ROTD successors, permitted assigns, heirs, executors and administrators of the parties to these Terms of Service.**

## **14. Force Majeure**



**If ROTD or Namejet, LLC fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, government regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused. ROTD and Namejet, LLC reserve the right in their sole judgment, to temporally postpone or extend the closing time for an auction in the event of Internet connectivity issues, or system failures or similar issues.**

## **15. Severability**

**If a court or an arbitrator of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected. Except as may be set forth in a written agreement signed between ROTD and Seller which specifically amend or supplement these Terms of Service, these Terms of Service constitute the final, complete, and exclusive statement of the terms of the use of the Services between the parties and supersedes all prior and contemporaneous agreements, negotiations or understandings or agreements with respect hereto.**

## **16. Notices.**

**Notice must be given to ROTD at the address set forth on its respective web site and to Seller at the administrative address listed in the Seller's account. Notice will be deemed to have been received upon personal delivery one day after mailing by nationally known overnight carrier or five days after mailing by certified mail, return receipt requested.**

## **17. Headings, Miscellaneous**

**These Terms of Service are made solely for the benefit of ROTD and Seller and their respective successors and permitted assigns, and no other person or entity shall have or acquire any right by virtue of these Terms of Service. The headings in these Terms of Service are included for convenience only and shall neither affect the construction or interpretation of any provision in these Terms of Service nor affect any of the rights or obligations of the parties these Terms of Service.**

### **Addendum 1**

#### **Auction and Brokerage Seller Fees & Policies**

**It is free to submit a domain for consideration in a live, online or extended auction. Fees are only charged for sold Domain(s) at the completion of a sale.**

**Additionally, policies have been set-up to promote a fair and efficient marketplace for buyers and sellers.**

## **Fee Schedule and Policies**

### **ROTD Private Sale and Premium Auction Fees**

Auctions feature Hand-picked Domain(s) with online bidding

<b>Submission Fee</b>	Free
<b>Commission Fee ( ROTD may at lower its commission to consummate a sale at approved net to seller)</b>	25% of the final selling price on auction Domain submission;  15%  of agreed sale price if sold through private brokerage only
<b>Handling Fee</b>	Free
<b>Placement in Promotional Emails and Auction Lists</b>	Free
<b>Auction Example:</b>	
Your desired Net Payout	\$75,000
Reserve Price Before 25% Commission	\$100,000 minimum
Winning Sales Price	\$200,000
Commission Fee @ 25%	(\$50,000)

---

Your Net Payout

\$150,000

## **Policies**

**Please review the policies before submitting or scheduling a domain for auction.**

**Sellers can promote Domain(s) for auction by referring others to the ROTD Services and forwarding all leads and inquiries to your ROTD Broker representative.**

**Sellers cannot do the following:**

- Take any action to avoid fees while under non-circumvent or exclusivity terms (see examples below).**

**Examples of circumvention of the ROTD and fees include, but are not limited to:**

- Contacting potential buyers or bidders with the intention of avoiding fees by selling a domain outside of the ROTD live or online auction;**

- Requesting an auction cancellation or removing a domain submitted for consideration in an auction;**

- Setting a reserve price above the market value in an attempt to gain exposure for a sale outside of the ROTD services; or**

- Directly selling a domain to an interested party within one year that was a direct or indirect result of sales and marketing efforts**

**of a Live or Extended Auction; such as exposure generated from articles, press releases, advertising and sales any other activities.**

- Attempt to avoid paying any applicable fees on the sale of a domain outside of the ROTD services while under an exclusivity period.**
  - Accept a Bid through auction or private brokerage communications and then later renege/cancel the acceptance of the sale for any reason.**
  - Bid on a domain that is owned or represented by the Seller, often referred to as shill bidding.**
  - Misrepresent any data or information provided about the domain including traffic statistics, revenue, use complaints, ownership rights, or legal proceedings.**
- (See the Terms of Service for additional exclusivity and non-circumvention details.)**

**If a policy violation occurs, commission fees are immediately due, an auction may be ended and parties involved may be prevented from participating in the ROTD services.**

**All site contents 2015, Rightofthedot.com. LLC\_All rights reserved.**

## **Addendum 2**

### **NameJet Terms of Use**

**For all ROTD auctions held in conjunction with NameJet's online auction platform, the Terms of Use found online at the following link also apply:**

**<http://www.namejet.com/Pages/Terms.aspx>**