

.NZ REGISTRAR AUTHORISATION AGREEMENT

V5.2, 24 May 2018

BETWEEN: Domain Name Commission Limited

TRADING AS Domain Name Commission

AND: _____

[full name of Registrar's legal entity]

TRADING AS _____

Background

The Internet Assigned Numbers Authority has delegated responsibility to the Internet New Zealand Incorporated (InternetNZ) to manage the .nz domain name space.

InternetNZ has appointed Domain Name Commission Limited (the Domain Name Commission) to manage and administer the .nz domain name space on behalf of InternetNZ.

You have applied to become a registrar in the .nz domain name space. We have considered your application and decided that you meet our preliminary requirements to authorise you to be one of our registrars.

You agree that these terms apply to our relationship and that is indicated when we both sign this agreement.

Please read these terms carefully before agreeing to them.

Note: this standard Agreement applies to all authorised registrars.

You may e-mail us on **registrars@dnc.org.nz**.

1. DEFINITIONS

In this agreement except where the context requires otherwise:

"business" means any undertaking whether carried on for gain or reward or not, or in the course of which goods or services are acquired or supplied whether free of charge or not;

"company" means a legal entity other than a natural person, including but not limited to a body corporate or unincorporated group;

"domain name" means an alphanumeric string which resolves to Internet resources as detailed in RFC 1034;

"GDPR" means the General Data Protection Regulation ((EU) 2016/679) issued by the European Parliament and the Council of the European Union;

"Individual Registrant Privacy Option" means the optional privacy feature available for individuals who are not using the domain name it is applied to in significant trade;

"the Internet" means a confederation of regional and local networks based on TCP/IP;

"notify" means communicate in writing (including by e-mail);

".nz domain name" means any domain name which ends in .nz;

".nz policies" means all standards, policies, procedures, technical specifications, rules and practices issued by the Domain Name Commission for the management of .nz domain name space and published on our website from time to time;

Operations and Procedures means .nz operations and procedures policy as amended from time to time.

"person" includes any non-personal legal entity or groups whether incorporated or not;

"register" means the database of information about the .nz domain name space and which is the authoritative repository for the creation of the primary zone files for the .nz country code;

"registrant" means a person that is allocated a domain name registered to them within the .nz domain name space;

"registry" means Internet New Zealand Incorporated, its delegates or such other organisation, that holds, operates and manages the register, including the transfer to the zone files;

"services" means anything we do or arrange for you;

"Take down request" means any written request from any person, government agency, authority or company to cancel or suspend a domain name on suspicion that the domain name is being used for phishing, fraud or other unlawful purposes (excluding copyright infringement) or that the Registrant is engaged in phishing, fraud or other unlawful activity (excluding copyright infringement). For the avoidance of doubt, a copyright infringement notice issued pursuant to the Copyright (Infringing File Sharing) Amendment Act 2011 does not constitute a take down request for the purposes of this agreement;

"we" "our" or "us" means Domain Name Commission Limited (the Domain Name Commission) which is responsible for regulating the .nz domain name space and enforcing .nz policies;

"you" means the party which signed this application to become one of our .nz registrars, who while authorised has rights within the .nz domain name space to provide domain name registration services to registrants.

2. IMPORTANT: GENERAL CLAUSE

This clause 2 takes priority over all other clauses of this agreement.

Acquiring Services for the Purposes of a Business

If you are acquiring our services for the purposes of a business or use our services for such purpose then you agree to the extent legally permitted your rights in respect of the services or this agreement are limited to the rights expressly stated in this agreement. By way of example only, registrars for business purposes will not have the remedies available under the Consumer Guarantees Act 1993 (New Zealand) for the services we provide under this agreement.

3. IMPORTANT: INTERPRETATION

This agreement sets out the terms and conditions relating to your relationship with us as an authorised .nz registrar which shall be read in light of the contents of the .nz policies released by InternetNZ and us, as may be amended by InternetNZ in their discretion from time to time.

4. IMPORTANT: PRELIMINARY REQUIREMENTS

Before you can become an authorised .nz registrar, you must meet these preliminary requirements to our satisfaction.

Our preliminary requirements are that you:

4.1 accept this agreement without qualification;

4.2 pay the application fee to us in full;

4.3 provide evidence that you are a legal entity;

4.4 demonstrate that you have access to, and will continue to have, the appropriate standard of technical and organisational skills and knowledge to be an authorised registrar;

4.5 demonstrate that you are solvent including providing us with a letter from your bank recommending you as an entity who can pay your day to day debts as they come due;

4.6 demonstrate that you have, and will continue to have, the customer support services including billing capability to meet your responsibilities to registrants;

4.7 permit us to carry out third party checks that enable us to satisfy ourselves that you meet the above requirements;

4.8 until we notify you that you have met our preliminary requirements you have no right to represent to anybody that you are an authorised registrar for the .nz domain name space;

4.9 we reserve our absolute discretion, without assigning cause, to determine whether you satisfy the requirements, or whether to impose special conditions of acceptance.

5. AUTHORISED REGISTRAR

5.1 When we notify you that you have met our preliminary requirements, you will become one of our registrars and be authorised to act as a registrar for the .nz domain name space until this agreement ends. Your appointment is in addition to our right to appoint as many registrars as we think fit. You are permitted to state that you are an authorised registrar for the .nz domain name space. You are not permitted to make any other representations to the public in relation to your status and/or role as one of our registrars.

5.2 You agree that you are an independent party who has been permitted access to the register subject to you complying with this agreement and your obligations under any agreement you have with the registry. You are not authorised to act as

our agent; will not suggest you are our agent or make any promise on our behalf in any way at all.

5.3 Pursuant to this agreement and .nz policies, you are authorised to access the .nz register in order to register and maintain domain names on behalf of registrants. To the extent that you collect information for the purpose of carrying out these services, DNCL expressly authorises you to collect and store the following personal information (“personal information”) from registrants:

- name;
- email;
- address;
- country; and
- phone number.

6. OUR COMMITMENTS TO YOU

We agree that we will:

6.1 notify you when we have decided you have met our preliminary requirements;

6.2 provide and maintain .nz policies;

6.3 maintain an active oversight and management of the .nz domain name space;

6.4 exercise our responsibilities in a fair, open, transparent and timely manner;

6.5 regularly convene an advisory group of representatives of registrars and the registry to discuss issues regarding the management of the .nz domain name space;

6.6 take all reasonable precautions to protect your personal information against: loss or unauthorised access or use, disclosure or other misuse;

6.7 contact you and send information to you, using the Internet as the medium wherever possible, to the e mail address specified by you.

6.8 Our responsibility is to use all reasonable endeavours to fulfil these commitments within the constraints of the resources and knowledge available to us. The commitments are statements of general principle only; subject to other express provisions in this agreement (including the provisions in this agreement excluding or limiting our liability); and may not be used to challenge the validity of any policies, statements of process or guidelines issued by us or InternetNZ.

7. YOUR DUTIES TO US

General Duties

You agree to meet these general duties. To:

7.1 make sure all information you give us or anybody we authorise to act on our behalf is accurate and complete;

7.2 ensure you comply with and accurately represent all .nz policies at all times including those published by the registry or us;

7.3 pursuant to section 8 of Operations and Procedures, offer eligible registrants the Individual Registrant Privacy Option;

7.4 maintain a business operation necessary for, and technical and organisational equipment capable of, handling the volumes of transactions managed by you;

7.5 comply with the requirements for being a registrar, including your obligations under this agreement and your .NZ CONNECTION AGREEMENT with the registry;

7.6 ensure you do not engage in any activity that could or does bring management of the .nz domain name space into disrepute;

7.7 comply with any order of any authority having jurisdiction regarding a .nz domain name of any registrant for whom you act;

7.8 comply with all relevant legislation and in particular, the Fair Trading Act 1986 and the Privacy Act 1993 (or any substitute enactment) and GDPR (to the extent that it applies to you);

7.9 safeguard the rights of registrants for whom you act;

7.10 treat registrants' personal information confidentially, and other than complying with reasonable requests made by us, only disclose the personal information to third parties in accordance with clause 7.6 or clause 11 of this agreement;

7.11 retain all documentation regarding your activity as a registrar for a period of not less than 6 years, and in particular, all instructions from registrants regarding their domain name.

7.12 advise us immediately if you or your officers:

- are adjudicated bankrupt;
- have a receiver appointed for any of your assets;
- go into liquidation;

- are convicted of an offence involving: dishonesty, fraud, misuse of funds, misuse of information, or found to have breached the Privacy Act (or any substitute enactment);

7.13 make available to us, or anybody authorised to act on our behalf, all information requested by us about your activities as a registrar and to provide access to your premises during normal business hours for that purpose;

7.14 maintain a record of any .nz domain names registered in: your name, any entity in which you have an interest, or any entity which has an interest in you, and make this available to us when requested;

7.15 ensure you have an agreement with each registrant for whom you act which contains at a minimum, the registrant's rights and obligations as specified by us in .nz policies (as may be amended from time to time). Any additional terms added by you must be consistent with those rights and obligations. This agreement should be accepted by each registrant, with a record of the date and time of acceptance maintained;

7.16 disclose accurately and completely all your terms and conditions associated with domain name registration and management in the .nz domain name space including your prices and billing terms;

7.17 comply with the lawful directions of registrants in a diligent and timely manner regarding their .nz domain name. For example registrant directions concerning: registration, registration period, cancellation, amendment, deletion, transfer, inaccuracy of information and any technical support and billing matters regarding such directions.

7.18 not use personal information relating to registrants that you collect in the course of your business related to domain name registration or management, for any reason other than for reasonable purposes associated with that except as otherwise expressly agreed by the registrant;

7.19 provide registrants with confirmation of the registration of their domain name including details of: the domain name, their registrar, the registration period, the Unique Domain Authentication ID, and obligations of the registrant;

7.20 inform registrants about the existence of the Domain Name Commission and our activities;

7.21 ensure everything you do is always carried out in a prudent and competent manner and according to best practice standards to prevent: technical failure, breach of security, and disruption to the register, or any of the services the registry provides;

7.22 notify us, by written notice, as soon as practicable, following a security breach which leads to the unauthorised disclosure of, or access to, registrants' personal information;

7.23 ensure you pay any sum of money owing to us;

7.24 keep us protected against any legal action taken against us because of the receipt or use of our services by you or someone you are responsible for or have a business relationship with, regarding our services;

7.25 provide to us promptly upon request all such information as may reasonably and lawfully be requested concerning the operation of your registry and registrants to enable us to implement and develop and monitor compliance with the .nz policies, statements and guidelines;

7.26 comply with any direction we make pursuant to our powers as stated in the .nz policies, statements and guidelines or made to enforce compliance with them.

Duties of Other Persons

7.27 You agree to make sure everyone you are responsible for (including your employees) or have a business relationship with in relation to your role as an authorised registrar also meets the above duties.

8. YOUR DUTY TO PAY THE APPLICATION FEE

8.1 You agree to pay the authorisation application fee. You incur liability for the application fee from the time we receive your application for our services.

8.2 The application fee is detailed in the Authorisation Process document published on the website at www.dnc.org.nz, is stated in New Zealand dollars and includes goods and services tax (GST).

9. METHOD OF PAYMENT

We accept payment by cheque and on-line by Visa, MasterCard, American Express and Diners.

10. CHANGE OF REGISTRAR

InternetNZ operates a shared registry system for management of the .nz domain name space. It is a fundamental principle of a shared registry system that a simple mechanism exists for registrants to change registrars. If a registrant for whom you act wishes to change registrar we both agree to follow the procedure specified by us in the .nz policies.

11. RIGHT TO ENGAGE CONTRACTORS

11.1 You are authorised to engage third parties (including resellers) to fulfil your services under this agreement. If you choose to engage a third party you will ensure that the third party (and its employees) agree in writing to be bound by the obligations (as are relevant to the third party) set out in this agreement (including but not limited to obligations in clauses 4.4, 7.4, 7.6-7.10) and the .nz policies. You agree that you are responsible to us for the third party's (and third party's employees) actions and in particular, those of your duties under this agreement which are performed by the third party.

11.2 If the actions of the third party cause you to breach any duty of this agreement we may cancel it.

12. YOUR ABILITY TO ASK FOR COMPENSATION FROM US

You agree that your rights to compensation are determined and limited by clauses 13 and 14 of this agreement.

13. LIABILITY

13.1 You acknowledge that we are a not for profit organisation carrying out its functions as a public service. In consideration of our having taken out liability insurance on your behalf as set out in clause 14 of this agreement, you agree to our excluding and limiting our liability to you as set out in this clause.

13.2 Except to the extent that liability cannot be limited or excluded by law, and save as expressly provided for in this agreement, we exclude all liability that we may have to you for all events giving rise to liability on our part arising out of or in connection with this agreement. This exclusion also applies for the benefit of the following persons:

- (a) any entity we are in any business relationship with;
- (b) every officer, employee, contractor, agent of us or any entity in clause 13.2(a);
- (c) the NZ Domain Name Commissioner;
- (d) anyone else we get to perform our duties under any agreement you have with us.

13.3 None of the persons specified above in clause 13.2 is liable or has to pay you for anything else in connection with or resulting from anything any of us does or does not do, or delays in doing, whether or not it is contemplated or authorised by any agreement you have with us.

13.4 This exclusion of liability:

- (a) shall apply whether the liability claim is based on breach of contract, breach of warranties, tort, negligence, strict liability or other legal theory; and
- (b) does not prevent you from getting a court order requiring us to do anything we have agreed to do for you.

13.5 Notwithstanding the foregoing, if any of the persons outlined above is ever liable to you and, for any reason, cannot rely on the exclusion of liability set out in this clause 13, the maximum combined amount of damages recoverable for all events, acts or omissions will not exceed the amount of the application fee paid by you to us at the time when your application for authorisation as a registrar was submitted.

13.6 The exclusion of liability in clause 13 is subject to the indemnity provided in clause 15 of this agreement in respect of take down requests to the extent expressly provided in clause 15.

14. INSURANCE

Notwithstanding and without prejudice to clause 13, we have taken out and will maintain professional liability insurance for you as an authorised .nz registrar. A copy of this policy is available on request, the terms of which may be amended from time to time by us in our sole discretion.

15. TAKE DOWN REQUESTS

You may refer any take down request that you receive to us. If you refer a request to us then we will:

- (a) Identify the appropriate action to be taken in response to the take down request;
- (b) If required, liaise with the person, government agency, authority or company making the take down request on your behalf;
- (c) If necessary and prudent in the circumstances, contact the Registrant in control of the domain name in respect of which the take down request is made;
- (d) Advise you of the appropriate response to the take down request or any actions to be taken; and
- (e) If necessary, take any actions or make any representations in response to the take down request on your behalf.

We will indemnify you for any liability you incur as a result of any action or inaction you take in respect of a take down request if:

- (a) you referred the take down request to us immediately upon receipt of the take down request; and
- (b) you did not take any substantive action or provide any substantive response to the take down request before referring it to us (a substantive action includes, without limitation, notifying the Registrant of the take down request); and
- (c) you complied with any recommendations we made to you in relation to the take down request; and
- (d) you did not take any action or make any response to the take down request that was, or could be construed as being, contrary to our advice.

The indemnity contained in this clause is exempt from the general liability exclusion contained in clause 13 of this agreement and the indemnity is provided by the Domain Name Commission and not by any of the persons listed at clause 13.2(a) - (d).

16. INFORMATION ABOUT YOU

During our relationship we will collect information about you from yourself and others.

Under the Privacy Act 1993, we follow strict security procedures in storing and disclosing information about you, to prevent unauthorised access. Our security measures mean that we may request proof of identity before we disclose sensitive information to you.

You may decide whether to provide any information we seek from you. However, if you do not provide it we may not be able to process your application and/or continue to treat you as an authorised registrar.

You may ask to see information we hold about you and ask for any details that are wrong to be corrected.

We may hold the information and share it with our officers, employees, contractors, and agents. This enables us and those other persons to provide information to you, to send you invoices and keep you informed of new information or services as they become available.

We and the registry may share with any person the numbers of:

- domain name registrations arranged by you according to: date of registration/name of registrar/zone/status, or any combination of these criteria;
- domain names arranged by you and transferred and cancelled according to: date of transfer or cancellation/name of registrar/zone/status, or any combination of these criteria.

17. REGISTRATION OF A DOMAIN NAME

You are not obliged to accept any application for a domain name. When you accept an application for a domain name in the .nz domain name space you are:

17.1 registering a domain name to a registrant because no other person has it according to the records of the register;

17.2 not representing anything else to anybody regarding that domain name or any other domain name. The entry of a domain name in the "who is" database shall not be taken as evidence of anything other than such registration;

17.3 responsible to notify any registrant for whom you act that use of the domain name may breach third party legal rights and that it is the registrant's responsibility as a condition of registration of the domain name, to satisfy itself that such legal rights are not infringed and to protect you, us and everybody who has the benefit of this agreement, from any claim arising out of the domain name being registered to that person.

18. LAW & JURISDICTION APPLYING TO THIS AGREEMENT

Unless we otherwise agree in writing, this agreement contains all the terms of our relationship and continues to apply no matter where you are located at the time any of the services are provided or where you reside. This will be the case until this agreement is cancelled except to the extent clause 27 says otherwise.

To the extent legally permitted:

18.1 these terms shall be governed by and interpreted in accordance with New Zealand law;

18.2 any claim or dispute arising out of or in connection with this agreement must be notified in writing within 60 days from the date the relevant service was supplied to you;

18.3 any dispute, difference or claim arising out of or in connection with this agreement shall be finally resolved by either you or us serving on the other, notice in writing requiring that the matter be determined by arbitration before an

independent qualified person to be appointed by the President or Vice President for the time being of the New Zealand Law Society.

18.4 except as otherwise stated, you may take action against us only in a New Zealand court;

18.5 where you or any registrant for whom you act supplies incorrect information regarding a domain name and we incur cost in any matter concerning that name then we may recover the costs incurred by us from you.

19. RIGHT TO MAKE POLICIES REGARDING THE .NZ DOMAIN NAME SPACE

InternetNZ will provide and maintain .nz policies and at anytime InternetNZ may amend those policies. InternetNZ and us agree to publicise such amendments before implementing them. All changes to .nz policies will be notified to you by e-mail and by posting them on our website before the date they become effective.

20. ALTERING THESE CLAUSES

We may alter or remove existing clauses of this agreement or add new ones. Alterations may be in the nature of completely new clauses. We can do this without the need to obtain your consent or the consent of the persons in clause 22.

We will notify you by e-mail of any alterations we are making and the changes shall come into effect one month later.

Please ask us at any time for a copy of our current agreement with you.

21. ESTABLISHMENT OF REGISTRAR ADVISORY GROUP

As soon as practicable we will establish a standing committee comprising representatives of: you, the registry, and us to resolve technical issues regarding: the technical specifications of the register, its interfaces, and the management of the .nz domain name space.

22. SENDING NOTICES

We will send notices to the last e-mail address or fax number you have given us. We can assume any:

22.1 e-mail has been received when it has been sent to the e-mail address we sent it to even if it has not been downloaded from the Internet Service Provider hosting the e-mail address.

22.2 fax has been received when we receive confirmation of transmission to the number we sent it to.

You may send any notice to us by: e-mailing it to registrars@dnc.org.nz or sending it by fax to +64 4 4952115. Please tell us if you change your e-mail address or fax number.

23. MEETING OUR DUTIES THROUGH AGENTS

We may have any agent approved by us in writing perform any part of our side of the agreement you have with us. If that occurs, each of those persons and their officers, employees, contractors or agents shall have the benefit of any terms that confer benefits on us.

24. TRANSFERRING RESPONSIBILITIES

We may transfer the whole or parts of our rights and obligations under this agreement to another person. We will tell you if we do this. Our entitlement to rights and duties to perform obligations transferred will cease and be replaced by the entitlements and duties of the transferee from the date we notify you, or such later date as we specify. If you are a body corporate or other non-personal entity, and your ownership, management or control changes, you must notify us promptly, and seek our consent to your authorisation agreement continuing. You may not transfer this agreement or any benefit or obligation of it to another person. If you are a business and your management or control is altered without our written consent, then this will be treated by us as a transfer of this agreement entitling us to end it.

25. MORE THAN ONE PERSON

All the persons who you permit to perform or carry out your role as a registrar, and use or acquire services from us, are treated by us as persons you are responsible for under this agreement and must meet all your duties under it.

26. EACH CLAUSE SEPARATELY BINDING

Each clause of every agreement you have with us is separately binding.

If for any reason we, you, or any of the persons specified in clause 13 cannot rely on any clause, all other clauses of this agreement remain binding.

27. TERM AND TERMINATION

27.1 The term of this agreement will start on the date that both parties sign the agreement and shall continue until terminated in accordance with this agreement.

27.2 We may, at any time, by giving one month's written notice to you, terminate this agreement for any reason whatsoever which we, in our sole discretion, consider sufficient. Advice of that reason shall be included in the notice to you.

27.3 You may, at any time, by giving two months' written notice to us, terminate this agreement without cause.

27.4 Either party may terminate this agreement by giving 5 days' written notice of termination to the other if there is a breach or default by a party of a material obligation under this agreement.

27.5 Unless the parties agree otherwise, the agreement will end immediately upon the expiry of the written notice period specified in clauses 26.2, 26.3 and 26.4.

27.6 Upon termination of this agreement, you shall:

- (a) take all actions necessary to safeguard the rights of registrants for whom you act; and
- (b) cease to hold yourself out as one of our registrars; and
- (c) immediately discontinue acting as a registrar; and
- (d) (where termination is by you) arrange for the transfer of registered domain names for which you are the designated registrar to a new registrar(s) and the notification of this to each registrant for whom you act; and
- (e) (where termination is by us) you agree we have the right to direct you to transfer registered domain names for which you are the designated registrar, to other registrars of ours in line with the policy published by us; and
- (f) work co-operatively with all persons who we say are involved in transfers of registered domain names for which you are the designated registrar to other registrars.

27.7 Termination of this agreement means the .NZ CONNECTION AGREEMENT is cancelled.

28. RIGHTS AND RESPONSIBILITIES THAT CONTINUE

The cancelling of any agreement you have with us does not affect any rights and responsibilities which are intended to continue or come into force afterwards. These include the rights and duties under clauses 2, 4, 5, 7, 8, 10, 12-18, 23, 25, 26 and this clause 28.

Signed for and on Behalf of
Domain Name Commission Limited

Signed for and on Behalf of

[insert full and formal name of
Registrar's legal entity]

Trading as Domain Name Commission

Trading as

[insert name of person signing]

[insert name of person signing]

Title _____

Title _____

Date _____

Date _____

Signature _____

Signature _____