

# .NZ REGISTRANT AGREEMENT CORE TERMS AND CONDITIONS

V2, 24 May 2018

## 1. Marcaria.com's Obligations

We agree that we will:

- 1.1 comply with all .nz policies and accurately represent these to you;
- 1.2 disclose accurately and completely all our terms and conditions associated with your use of our services to register and maintain a domain name sought to be used by you, including price and billing information;
- 1.3 comply with your lawful directions in a diligent and timely manner regarding your .nz domain name, (for example, registration, cancellation, amendment, deletion, and associated technical support and billing);
- 1.4 process any new .nz domain name registrations with the registry within 48 hours from the time we receive all the information required to complete a registration if it is within our advertised business hours of 8:00 am.- 6:00 pm Monday- Friday;
- 1.5 notify you of the registration of your domain name(s), including the details of: the domain name, your own contact details, our contact details, the registration period, the unique authentication ID for your domain name and your obligations as a registrant;
- 1.6 arrange for correction of any error in the information in the register about any domain name registered to you when requested;
- 1.7 provide to you, or to someone we reasonably believe to be acting on your behalf, the unique authentication ID for your domain name when requested and for no charge;
- 1.8 use your personal information only as authorised by you;
- 1.9 take all reasonable steps to safeguard and protect all information about you stored in our databases and system(s);
- 1.10 comply with any order of any authority having jurisdiction regarding any domain name registered to you;

1.11 use our best endeavours to deal with any complaints you may have about the services we provide for you.

## **2. The Registrant's Obligations**

You agree that you will:

2.1 comply with the .nz policies. You agree that you have read and understood the current policies;

2.2 make sure all information you give us is accurate and complete, keep us informed of changes to any information you give us, and that you have the authority to enter into this agreement;

2.3 keep the unique authentication ID for your domain name and any other security information that we give to you confidential, safe and secure;

2.4 satisfy yourself that your use of a domain name will not infringe anybody's intellectual property rights and protect us, and everybody we are in any business relationship with to provide services to you, from any such claim;

2.5 ensure that you only use our services for a lawful purpose;

2.6 ensure that the use of any domain name registered to you does not interfere with other users of the Internet;

2.7 ensure that any order of any authority having jurisdiction regarding any domain name registered to you is complied with;

2.8 protect us, and everybody we have a business relationship with, against any legal action taken against us because of the receipt or use of our services by you or someone you are responsible for, including reliance by us or anybody we have a business relationship with, on information supplied by you.

### **Duties of Other Persons**

2.9 You agree to make sure everyone you are responsible for or who uses a domain name registered to you also meets the above duties.

## **3. Registration of a Domain Name**

3.1 Operation of the .nz domain name space requires the collection of information, including some personal information, from you. In order to have a domain name registered in your name, this information must be entered into the register (see clause 4 below for more details regarding the register).

3.2 By entering into this agreement, you consent to providing us with the following personal information (“personal information”):

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

3.3 While you have the right to withdraw your consent to providing us with your personal information, without this personal information we cannot perform our obligations under this agreement (including registering and maintaining a domain name for you) because:

- i) the personal information is necessary in order for your domain name to be recorded on the .nz register;
- ii) we need to be able to contact you in relation to the administration of the domain name; and
- iii) we are required by .nz policies to collect your personal information;

3.4 If you decide to transfer management of your domain name to another registrar, or if your domain name is cancelled, or if this agreement ends for any other reason, we will continue to store your personal information for a period of not less than 6 years for limitation and tax administration purposes.

3.5 You further agree that:

- i) the domain name is registered in your name only because no other person has it according to the records of the register; and
- ii) neither we nor anybody else is representing anything else to anybody regarding that domain name. The entry of a domain name in the Query Service shall not be taken as evidence of anything other than such registration; and
- iii) you protect us and everybody we have a business relationship with to provide services to you, from any claim arising out of the domain name being registered in your name or as you direct.

#### **4. Register and registry**

4.1 The register is the authoritative database of .nz domain names and the details shown in the register is treated as the correct record. The register is operated by the registry branch of InternetNZ (“registry”).

4.2 In order to have a domain name, it is necessary that the registry store your personal information on the register.

4.3 When a domain name is no longer registered in your name, the registry will continue to store your personal information (“historical personal information”). Historical personal information may only be disclosed where authorised or required by New Zealand law.

4.4 To the extent GDPR applies, EU registrants have the right to object to the registry storing historical personal information and/or disclosing it as authorised or required by New Zealand law.

4.5 Despite clause 4.4, pursuant to Article 21 of GDPR, the registry maintains that it has compelling legitimate grounds for storing an historical auditable record of all domain names and disclosing historical personal information as authorised or required by New Zealand law. This is because without carrying out these functions, the integrity and operation of the register would be significantly undermined.

## **5. DNC**

5.1 DNC is the entity which regulates the .nz domain name market space.

5.2 DNC provides a domain name registration data query service (“Query Service”) (see section 21 of .nz Operations and Procedures policy for further details). Through the Query Service, the public is able to access the register with respect to a particular domain name from DNCL’s website. Subject to the Individual Registrant Privacy Option (“IRPO”) referred to in clause 5.7 below, in response to a Query, registrants’ personal information will be available (along with the domain name, its commencement and expiry dates and addresses/details of the name servers for it, and our name).

5.3 When a name is cancelled it holds a pending release status. During the pending release period of 90 days from date of cancellation, a registrar may fully re-instate the domain name for the registrant, so that it becomes active again. This means that your personal information remains viewable on the Query Service for that 90 day period.

Following the 90 day period when your name is released, your personal information will no longer be disclosed on the Query Service.

5.4 To the extent GDPR applies, EU registrants have the right to object to their personal information being made available through the Query Service. However, pursuant to Article 21 of GDPR, DNC maintains that it has compelling legitimate grounds for disclosing the personal information on the Query Service. This is because without the Query Service, the integrity of the .nz domain name space would be significantly undermined.

5.5 For the avoidance of doubt, by entering into this agreement, you hereby give consent to your personal information being made available on the Query Service.

5.6 To the extent GDPR applies, EU registrants have the right to withdraw their consent under clause 5.5. However, any withdrawal of consent is without prejudice to DNC's position that it has a legitimate interest in disclosing the personal information on the Query Service.

5.7 The IRPO is an optional feature available for individuals who are not using the domain name it is applied to in significant trade. If you are eligible and choose to use IRPO, your telephone number and contact address information will not be disclosed on the Query Service ("Withheld Data"). If you use your domain name for significant trade purposes you will not be eligible for the IRPO (see section 8 of .nz Operations and Procedures policy for further details).

5.8 Despite clause 5.7, Withheld Data may be released in the following circumstances:

- Where applications are made by any person, entity or organisation who have established a legitimate need for the Withheld Data (see sections 22.2-22.22 of .nz Operations and Procedures policy);
- Where disclosure is ordered by a court of competent jurisdiction or is required by any other order with the force of law (see sections 22.23-22.24 of .nz Operations and Procedures policy);
- Where an entity has a Memorandum of Understanding with DNC, such that the entity has automatic access, or alternatively streamlined access, to the Withheld Data (see sections 22.25 to 22.40 of .nz Operations and Procedures policy).

5.9 To the extent that GDPR applies, EU registrants, who are eligible for the IRPO, have the right to object to Withheld Data being disclosed in the circumstances described in clause 5.8. However, pursuant to Article 21 of GDPR, DNC maintains

that, based on the Privacy Act 1993 (or any substitute enactment) (and in particular Principle 11) it has compelling legitimate grounds to disclose Withheld Data on these circumstances.

## **6. Payment of Fees**

6.1 You agree to pay for the services we provide for you.

6.2 If you transfer a domain name registered to you to another registrant or to be managed by another registrar, all charges owing to us shall become immediately due and payable on the date of that transfer.

6.3 We may alter our fees from time to time. When we alter them we will send you notice of the alteration 30 days before the new fee takes effect.

6.4 Our usual fees can be found here: <https://www.marcaria.com/ws/en/domains/new-zealand-domain-registration-nz>. We may also charge for owner updates and transfers provided by us. We will tell you before any additional charge is incurred.

6.5 Our prices are stated in US dollars and include local tax.

## **7. Suspension And Refusal To Supply Services**

If you do not pay our charges for a domain name registered to you we may:

- cancel registration of that domain name; or
- refuse to provide a service you request.

## **8. Cancellation of a Domain Name**

If we are going to cancel the registration of a domain name registered to you as a result of you not paying our charges relating to that registration, we will give you fourteen days notice before we initiate action to cancel that domain name.

## **9. Exclusion of Liability**

We exclude all liability we may have to you for any claim except where we have acted in bad faith. This exclusion also applies for the benefit of:

9.1 InternetNZ, the registry and any other entity we are in any business relationship with;

9.2 every officer, employee, contractor, agent of us or any entity in clause 8.1;

9.3 anyone else we get to perform our duties under any agreement you have with us. None of the persons specified above 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.

This exclusion applies whatever you are claiming for and in whatever way liability might arise. This exclusion does not prevent you getting a court order requiring us to do anything we have agreed to do for you and does not limit any rights you may have under the Consumer Guarantees Act 1993.

## **10. Limitation of our Liability**

We have excluded all other liability we or any of the persons specified in clause 8 may have to you. If any of those persons is ever liable to you and, for any reason, cannot rely on the exclusion of liability set out in clause 8 then this clause applies. Where this clause applies, the maximum combined amount the persons specified above (together) will have to pay you and anyone else who uses the services we provide for you (together) is the amount of the last month's fee paid by you under this agreement.

## **11. Law and 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 14 says otherwise.

To the extent legally permitted:

11.1 all our services are provided under New Zealand law;

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

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

11.4 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.

## **12. Cancelling the Agreement**

12.1 We may cancel or suspend this agreement by giving you one months notice if you do not meet your duties to us.

12.2 We may end the agreement for any other reason by giving you one month's notice.

## **13. More Than One Person**

You are responsible for everybody who you permit to act for you as a registrant. We will take reasonable care to satisfy ourself that you have permitted those persons to act for you.

## **14. Each Clause Separately Binding**

Each clause of the agreement you have with us is separately binding. If for any reason we, you, or any of the persons specified in clause 8 cannot rely on any clause, all other clauses of it are binding.

## **15. 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 2, 4 - 10, 12 - 13, and this clause 15.

