
DNCL Licence Agreement

Domain Name Commission Limited (**DNCL**)

Internet New Zealand Incorporated (**Internet NZ**)

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DNCL LICENCE AGREEMENT

THIS DNCL LICENCE AGREEMENT (this **Agreement**) is made this ___ day of _____ 2015

BETWEEN

DOMAIN NAME COMMISSION LIMITED (NZCN 2072182) a duly incorporated company having its registered office at c/- izard Weston, Level 13, 89 The Terrace, Wellington (**DNCL**)

AND

INTERNET NEW ZEALAND INCORPORATED, a duly incorporated society having its registered office at Level 11, 80 Boulcott Street, Wellington (**Internet NZ**)

In consideration of the mutual agreements contained herein, the parties hereto agree as follows:

1 DEFINITIONS

1.1 In this Agreement, the following terms shall have the following meanings:

Commencement Date means the date that the last party executes this Agreement;

Data means the data and records contained in the Register that is the domain registrant data, being the contact details of the registrant, the domain zone data, being the data that is published by the WHOIS service provided by NZRS, and the domain status data, being the rest of the data and records in the Register including the registration date, expiry date and registrar details.

Exclusive Licence means the licence granted by Internet NZ to DNCL in clause 4.1;

Intellectual Property Rights means copyright, database rights, all rights in relation to inventions (including patents), registered and unregistered trade marks, registered and unregistered designs, semiconductor or circuit layout rights, trade or other proprietary rights or rights derivative of those rights (including licence rights) anywhere in the world, and any other rights in intellectual property which are recognised or protected under law;

Non-Exclusive Licence means the licence granted by Internet NZ to DNCL in clause 4.2;

.nz Domain Name Space means the internet domain names ending in the suffix code ".nz";

.nz Nameservers means the authoritative .nz nameservers operated by, or on behalf of, NZRS;

NZRS means NZRS Limited, a duly incorporated company having its registered office at c/- Quigg Partners Level 7, 36 Brandon Street, Wellington;

Operating Agreement means the 'Operating Agreement' dated 1 April 2008 between Internet NZ and DNCL;

Other Registrar Systems means any web site or system accessed through an application programming interface, known as an API, provided by NZRS for the use of registrars or provided for registrars to enable their registrant or reseller customers to use;

Purpose means the overseeing of the .nz Domain Name Space, determining, enforcing and facilitating compliance with policy in relation to the .nz Domain Name Space and any other purposes required or permitted by the Operating Agreement or otherwise agreed from time to time between Internet NZ and DNCL;

Register means the database that is the register of .nz domain names and is the authoritative record of top level domains in New Zealand and registrants;

Register Rights means the Intellectual Property Rights in the Register; and

SRS means the system operated by NZRS used by registrars to create and manage domain name registrations.

2 TERM

- 2.1 This Agreement shall come into force on the Commencement Date and shall continue in until it terminates in accordance with clause 6.1.

3 OWNERSHIP OF REGISTER

- 3.1 DNCL acknowledges that Internet NZ owns the Register Rights and that all right title and interest in such Register Rights will on creation (whether created by DNCL or otherwise) vest in Internet NZ.

- 3.2 In respect of any:

- (a) existing Register Rights created and owned by DNCL under the Operating Agreement or otherwise, DNCL hereby assigns to Internet NZ absolutely its entire right title and interest in such Register Rights; and
- (b) future Register Rights created by DNCL that, notwithstanding the intention of the parties that all rights in the Register vest in Internet NZ, still vest in DNCL, DNCL agrees to assign such rights to Internet NZ promptly on creation and shall hold such rights on trust for Internet NZ until such assignment is completed.

- 3.3 DNCL agrees to carry out all acts including the signature of any confirmatory assignment documents as Internet NZ may require to give effect to this clause 3. Any assignment of Register Rights pursuant to this clause should not be interpreted as restricting or otherwise impacting the grant of the Exclusive Licence or Non-Exclusive Licence to DNCL.

4 LICENCE

- 4.1 Internet NZ grants to DNCL a royalty free, exclusive, non-transferable, worldwide licence of the Register Rights to use the Data and or Register to:

- (a) publish the Data in bulk;
- (b) publish historical or non-current versions of the Data;

(c) contact registrants in bulk using contact details of those registrants contained in, or that has been contained in, the Register;

(d) access the Register in bulk through the WHOIS service; and

(e) make multiple WHOIS requests for the purpose of bulk collection of the Data,

but this exclusive licence does not include the right to make the Data or Register available:

(f) on an individual record basis through the WHOIS service provided by NZRS;

(g) through the .nz Nameservers, SRS or Other Registrar Systems; or

(h) in the form of aggregated data that does not contain any individual records,

which rights may, however, fall within the scope of the non-exclusive licence in clause 4.2.

4.2 Subject to and in addition to the Exclusive Licence, Internet NZ grants to DNCL a royalty free, non-exclusive, non-transferable, worldwide licence to use the Register to the extent necessary for the Purpose where such use is not licensed under the Exclusive Licence.

4.3 DNCL may amend, update or vary the Register as necessary to meet the Purpose. Any such amendment to the Register will form part of the Register, will be covered by the Exclusive Licence or Non-Exclusive Licence (as applicable) and all rights in such amendment will vest in Internet NZ.

5 RELATIONSHIP TO OPERATING AGREEMENT

5.1 Where there is any conflict between this Agreement and the Operating Agreement in relation to the Register Rights, this Agreement will apply.

6 TERMINATION

6.1 This Agreement shall continue while the Operating Agreement remains in force. When the Operating Agreement is terminated, expires or otherwise ceases to exist and no alternative agreement is entered into between DNCL and Internet NZ for the same purposes as the Operating Agreement, this Agreement shall immediately terminate.

6.2 When this Agreement is terminated:

(a) clauses 3 and 5 together with the other provisions of this Agreement which are required to give effect to those clauses, will remain in effect; and

(b) each party must immediately return to the other any information, equipment or any other item which is in its possession and which belongs to the other party.

7 USE OF REGISTER

7.1 DNCL acknowledges that the Register consists of valuable information of Internet NZ. DNCL will treat the Register with the same care as if it was the owner of the Register and shall only use or permit the Register to be used for the Purpose.

7.2 DNCL will comply with the requirements of the Privacy Act 1993 and any other applicable law or regulations relevant to its use of the Register.

8 DISCLAIMER AND LIMITATION OF LIABILITY

8.1 Except as set out in this Agreement, neither party makes any warranty to the other whether written or oral, express, implied or statutory, in any manner or form whatsoever and all of such other warranties are expressly disclaimed and excluded.

8.2 Except for use of the Register Rights by DNCL outside of the scope of its licence, or otherwise as expressly set out in this Agreement, neither party shall, directly or indirectly, be responsible or liable for any claim, loss, damage, liability, cost or expense (including without limitation legal fees) in connection with, this Agreement. This clause is not intended to impact in any way a claim by one party against the other under the Operating Agreement or the recovery of any loss, damage, liability, cost or expense suffered by a party as a result of the other party's breach of the Operating Agreement.

9 FORCE MAJEURE

9.1 Neither of the parties hereto shall have any liability whatsoever or be deemed to be in default, for any delay or failure in performance under this Agreement resulting from acts beyond the control of that party, including, but not limited to, acts of God, acts or regulations or order of governments, war or national emergency, accident, fire, riot, break down of plant or machinery strikes, lock-outs, industrial disputes or epidemics.

10 NOTICES

10.1 Notices under this Agreement may be served either:

- (a) By delivery to the registered office of the recipient; or
- (b) by electronic delivery to any email address or facsimile number supplied to the sender by the recipient

and such notice shall be deemed to have been served on the day following the date of sending.

11 ENTIRE AGREEMENT

11.1 This Agreement is intended to operate in conjunction with the Operating Agreement and, together with the Operating Agreement, represents the entire agreement between the parties regarding the subject matter of this Agreement.

11.2 No variation or waiver of any provision of this Agreement shall be recognised or binding unless it is in writing and signed by authorised representatives of both parties.

12 ASSIGNMENT

12.1 This Agreement may not be assigned or transferred by a party to any third party without the prior written consent of the other party.

13 HEADINGS

13.1 The headings in this Agreement are for convenience only, and shall not have any legal effect.

14 LAW AND INTERPRETATION

14.1 This Agreement shall be governed in all respects by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

Executed as a Deed

SIGNED for and on)
behalf of **DOMAIN NAME COMMISSION**)
LIMITED)

Signature of Director

Name of Director

Signature of Director

Name of Director

The COMMON SEAL OF INTERNET NEW)
ZEALAND INCORPORATED was affixed in the)
Presence of:)

Signature of President / Vice-President

Name of President / Vice-President

Signature of Councillor

Name of Director

