

AGREEMENT FOR THE APPOINTMENT OF AN EXPERT TO THE DOMAIN NAME COMMISSION'S DOMAIN NAME DISPUTE RESOLUTION SERVICE

The Domain Name Commission hereby appoints:

xxx xxxxx (the "Expert") for the purpose of its Dispute Resolution Service ("DRS") Policy and Procedure.

The Expert's appointment (the "Appointment") is on the following basis:

1. The Expert agrees to accept appointment as an Expert, as set out in the Role Outline attached as Schedule 1.
2. The Expert agrees to adjudicate all Disputes referred to him/her in accordance with InternetNZ's DRS Policy and Procedure, attached as Schedule 2, as amended from time to time.
3. The Domain Name Commission will offer the Expert domain name Disputes for a written Decision on a rotational basis from a list of Experts, with the next available Expert being selected to decide the next Dispute, subject to any conflict of interest.
4. The Domain Name Commission agrees to pay the Expert's fees as set out in Schedule 3 and in accordance with the DRS Policy and Procedure at Schedule 2.
5. The Appointment is for a fixed period of three years from the Effective Date, subject to the right of each party to terminate on one month's prior written notice. In default of any written agreement on extension or renewal of the Appointment, the Appointment shall lapse three years from the Effective Date.
6. The other terms and conditions of the Appointment shall be as per Schedule 4. The Domain Name Commission reserves the right to change these on one month's notice.
7. The Expert hereby declares that s/he is not an employee of The Domain Name Commission and the Appointment will automatically lapse in the event that the Expert becomes an employee of The Domain Name Commission.
8. This Appointment shall be governed by the law of New Zealand and the parties to the Agreement submit to the exclusive jurisdiction of the New Zealand courts.

Signed on behalf of
Domain Name Commission Ltd

Effective Date

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Signed by the Expert

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SCHEDULE ONE – ROLE OUTLINE

The Role of the Expert

The role of the Expert is to make impartial, reasoned decisions on domain name disputes that have been submitted under the Domain Name Dispute Resolution Service. Specifically this requires the Expert to:

- consider fully the submissions of both the complainant and the respondent
- determine the admissibility, relevance, materiality and weight of the evidence contained in the submissions
- consider the dispute in the context of the .nz Policies, the DRS Policy and Procedure, DRS case law and/or the general law to the extent relevant (including being satisfied that the dispute falls within the scope of the DRS)
- make a decision that resolves the dispute
- write up the decision (in accordance with the DRS Expert Guidelines)
- complete this process within 10 working days
- forward the decision and all relevant paperwork to InternetNZ.

Requirements for DRS Experts

Relevant Knowledge

- a working knowledge of the .nz policies, and the DRS Policy and Procedure
- a general understanding of domain name issues

Relevant Experience

- current membership of AMINZ (as Affiliate or Fellow and preferably as a member of the Panel of Arbitrators and/or List of Adjudicators, and to maintain this status while holding appointment as a DRS Expert (highly desirable))

or

- previous experience as a judge, an arbitrator or adjudicator or as a member of a decision-making tribunal or equivalent body (highly desirable)

or

- significant experience in writing expert opinions and/or determinations

Personal Qualities and Skills

- integrity
- impartiality
- good judgement and common sense
- be a person of good standing
- able to absorb and analyse competing and often complex factual and legal material
- able to make decisions quickly after considering all the relevant facts and issues
- well developed written communication skills
- able to devote adequate time to meet the ten working day timeframe for a DRS expert decision
- passionate about, and committed to, the .nz dispute resolution process

SCHEDULE TWO – DRS POLICY AND PROCEDURE

http://dnc.org.nz/content/dispute_resolution_service.pdf

SCHEDULE THREE - REMUNERATION

3.1 Expert's Fee

- (a) The Expert will receive a fee of \$1,800 for each dispute that is assigned to the Expert by the DNC, and which the Expert accepts for adjudication.
- (b) The fee payable to the Expert is inclusive of any costs incurred during the adjudication process, and irrespective of the simplicity or complexity of the dispute involved. It covers all work performed during an adjudication including preparation for, work during, and any follow-up following the DRS dispute process.
- (c) The fee will be paid by the DNC on completion of the adjudication process and on submission of an invoice. This will require receipt by the DNC of:
 - o a written decision,
 - o the invoice, and
 - o any other relevant paperwork
- (d) The fee paid is exclusive of GST.
- (e) All fees or other sums payable to the Expert under this Agreement are due on the 20th day of the month following the invoice date.

3.2 Tax

- (a) The appointee is responsible for the payment of any Income Tax, Accident Compensation levies or premiums and Goods and Services Tax arising as a result of the fees paid by the DNC to the appointee for their work as an Expert.

SCHEDULE FOUR – TERMS AND CONDITIONS

4.1 Training

- (a) The Expert will be required, as a precondition of appointment, to have attended an induction training session run by the DNC. The initial training will require attendance of two days at a time and place nominated by the DNC.
- (b) Ongoing training will be provided by the DNC as required (generally annually) and every effort will be provided to run this at times suitable for all attendees. As a minimum, three months notice will be provided for these ongoing training sessions.
- (c) A fee will be paid for attendance at training days, at a rate of \$1,000/day (excl GST). The DNC will also pay airfares, accommodation and other actual and reasonable expenses incurred that are related to the travel.

4.2 Professional Membership

- (a) As a condition of this Appointment, the Expert is required to maintain membership in good standing of their professional bodies to the same level while holding appointment as an Expert under this Agreement.
- (b) For the purposes of this Agreement, this membership is considered to be: (delete those not applicable)
 - o Member of the AMINZ List of Arbitrators/Adjudicators
 - o Other
- (c) If the Expert ceases to hold membership of their professional body at this level, s/he must notify the DNC in writing promptly.

4.3 Good Standing

- (a) The Expert is required to notify the DNC in writing promptly if a disciplinary matter or complaint is made against them in any of their professional capacities.

4.4 Managing Conflicts of Interest

- (a) The Expert agrees to abide by the DRS Conflict of Interest Policy (attached).
- (b) The Expert is required to declare any conflict of interest promptly when assigned a Dispute to determine by the DNC. In the event of a conflict

of interest being notified, the DNC will reassign the Dispute to the next expert on the list. The next available Dispute will then be assigned to the Expert.

- (c) No fee will be payable to the Expert for any work undertaken in respect of an assigned Dispute prior to identifying any conflict of interest.

4.5 Confidentiality

- (a) The Expert shall keep secret and confidential at all times all information provided by parties to an adjudication carried out by himself/herself and all information confidential to the DNC supplied to the Expert in connection with the Dispute Resolution Service.
- (b) The obligations under paragraph (a) above require the Expert to:
 - a. not use, communicate, copy, make available or re-supply any information received under paragraph (a) to any person other than those of their employees or subcontractors to whom disclosure is necessary for the purposes of providing the adjudication services under this Agreement;
 - b. put in place and maintain adequate security measures to safeguard the information from access or use by unauthorised persons and keep the information under the Expert's control; and
 - c. ensure that any employees or subcontractors it discloses the information to are aware of, and comply with, the provisions of this clause.
- (c) The obligations of confidentiality under this clause do not apply to any disclosure of information:
 - a. that the Expert reasonably believes is necessary as part of giving a determination as a part of the adjudication services being provided under this Agreement
 - b. required by law;
 - c. which is publicly available through no fault of the Expert or any of the Expert's employees or subcontractors; or
 - d. which the DNC agrees to in writing before the disclosure is made.
- (d) The Expert must, on termination of this agreement, promptly:
 - a. return to the DNC all information received as part of an adjudication (whether in documents, reports, exhibits, data or other papers, and whether on paper or in any electronic information storage and retrieval system or in any other storage medium) in the Expert's possession or control; and
 - b. destroy or delete, or arrange the destruction or deletion of, all copies (whether on paper or in any electronic information

storage and retrieval system or in any other storage medium) of any analysis, notes, memoranda, data or other documents prepared by or for the Expert which contain or reflect any information received as part of an adjudication.

- (e) If requested by the DNC, the Expert will provide a certificate stating that the information returned or destroyed comprises all the information relating to the provision of adjudication services in the Expert's possession or control.
- (f) The Expert shall not make any public or other announcement or communication in relation to the Dispute Resolution Service except with the prior approval of the DNC as to the form and content of such communication.

4.6 Due Skill and Care

- (a) Both parties agree to exercise due skill and care in the performance of their responsibilities under this Agreement.

4.7 Assignment

- (a) Neither the DNC nor the Expert is able to assign their rights or otherwise dispose of their interest in this Agreement.

4.8 Dispute Provision

- (a) Any dispute between the parties regarding the interpretation of this Agreement or the rights and obligations of either party under the Agreement or anything connected with the Agreement shall be referred to mediation in the first instance. Such mediation may be initiated by either party giving notice in writing to the other party identifying the dispute which is being suggested for mediation. The parties will agree on a suitable person to act as mediator or, failing agreement within five working days of giving notice of a dispute will ask the Arbitrators' and Mediators' Institute of New Zealand Inc or LEADR to appoint a mediator. If the matter cannot be resolved between the parties it shall be the subject of confidential arbitration before a sole arbitrator in accordance with the provisions of the Arbitration Act 1996 or any amendment or replacement of that Act.

4.9 Waiver for Breaches

- (a) The fact that one party may ignore or not do anything about a breach of the Agreement by the other party does not mean that it is not entitled to take any action regarding a previous or subsequent breach of the Agreement.

4.10 Termination

- (a) the DNC has the right to terminate the Agreement by giving the Expert one month's notice in writing if:
- the Expert commits any serious breach of the Agreement and does not remedy the breach within 14 days of notice in writing from the DNC requiring the breach to be remedied
 - the Expert commits any serious breach of his/her obligations under the Agreement that is not capable of being remedied
 - the Expert commits an act of bankruptcy
 - the Expert does anything which causes or is likely to cause substantial damage to the reputation of the DNC and/or the .nz domain name DRS
 - where, due to the ill health of the Expert, the work required to be done by the Expert cannot reasonably be expected to be completed within the timeframes and there is a reasonable expectation that this situation will continue
- (b) The Expert can terminate this Agreement by giving InternetNZ one month's notice in writing if:
- the DNC has not paid the Expert's invoice for more than 20 working days after any payment is due, unless the DNC has given notice before payment is due that there is a dispute over the payment.
 - the DNC has breached any of the terms of this Agreement and fails to remedy the breach within 14 days notice in writing from the Expert requiring the breach to be remedied.

Please note that for the purpose of payment of invoices, the Expert is required to have completed and forwarded to the DNC all the requisite paperwork (see Guidelines) before an invoice will be paid.

4.11 Cancellation of Former Agreements

- (a) This Agreement contains the entire provisions of the Agreement between the Expert and the DNC and replaces any previous arrangements between the parties which may have existed

4.12 Indemnity

- (a) The DNC agrees to indemnify the Expert against all liabilities, damages, losses, costs and expenses (including legal expenses) which the Expert may incur as a result of any claim, demand, action or suit that may be made against the Expert, except as a result of breach of this Agreement or other unlawful conduct by the Expert or any of the Expert's employees or subcontractors.
- (b) The Expert agrees to indemnify the DNC and its employees and agents against all liabilities, damages, losses, costs and expenses (including legal expenses) from any claim, demand, action or suit that may be made against the DNC as a result of breach of this Agreement or other unlawful conduct by the Expert or any of the Expert's employees or subcontractors; provided that the Expert shall not be liable to the DNC for losses resulting from negligence in anything done or omitted to be done in the conduct of any adjudication.

CONFLICT OF INTEREST POLICY

A conflict of interest arises where a mediator or expert has an interest which conflicts (or might conflict, or might be perceived to conflict) with the interests of the DNC in providing a fair, impartial and effective domain name dispute resolution service. While the conflict of an interest in itself is unlikely to be improper, it could lead to improper conduct or allegations of such.

What is a conflict?

In determining whether a conflict is present or not, there are two questions to ask:

- Would a reasonably informed objective observer infer from the circumstances that the mediator or expert's professional judgement is likely to be compromised in either mediating or adjudicating the dispute?

or

- Does the interest create an incentive (or a perception of an incentive) for the mediator or expert to act in a way that would be contrary to the objectives of a fair, impartial and effective dispute resolution process?

If the answer to either question is 'yes', a conflict of interest exists.

The conflict may be more perceived than actual. Whether or not the mediator or expert would actually be compromised or act on the incentive is irrelevant. The processes of the DRS must be fair and ethical, and must be very clearly seen to be so.

Even where the conflict of interest is able to be managed for the period that the mediator or expert is involved in the dispute, it is better that it is avoided and the dispute is assigned to another mediator or expert.

Examples

Examples of conflicts of interest that may arise include where the mediator or expert:

- has represented either the complainant or respondent in a professional capacity
- is a partner in a professional practice that is representing either the complainant or respondent
- holds shares in either the complainant or respondent
- has a personal or family relationship with either the respondent or complainant or with a person representing either of these parties in the dispute
- is an employee or employer of either the complainant or respondent.