

PROPOSED AMENDMENTS TO THE .NZ REGISTRAR AUTHORISATION AGREEMENT

1. NEW CLAUSE AND HEADING '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).

CLAUSE 13 AMENDMENT

The following amendments to clause 13 would then be required:

- cl.13.2 should read “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:...”
- The following clause should be inserted as clause 13.6

“The exclusion of liability in clause 13 is subject to the indemnity provided in clause [xx] of this agreement in respect of take down requests to the extent expressly provided in clause [xx].”

2. DEFINITIONS

The Definitions clause will then need to be amended to include the following definition:

“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.