

## **.nz Dispute Resolution Service**

### **Agreement to Mediate via Online Dispute Resolution**

**Matter Number:**

**Between:**

[ ]

**And**

[ ]

**And**

**Mediator**

[ ]

**And**

**Domain Name Commission (“DNCL”)**

#### **Appointment of the mediator**

1. The complainant and the respondent (the parties) have agreed to mediate their dispute about a domain name or names that have been submitted to the online dispute resolution service (ODR). They agree to be bound by, and use the service, in accordance with ODR terms notified and accepted on the ODR platform and as stated in this agreement. They have agreed that the DNCL may appoint a person to act as mediator to assist the parties to reach agreement on the domain name(s) in dispute.

#### **Role of the mediator and the parties**

2. Mediation is a voluntary process in which an independent mediator facilitates negotiation by the parties of their own solution to a dispute. Mediation is entirely without prejudice to the party’s positions on their disputes. The mediator will help the parties to reach agreement by:

- identifying the issues
- exploring options
- seeking to identify resolutions that meet the interests and needs of both parties.

The mediator will:

- be neutral and impartial
- treat the parties in an even-handed way

- be allowed to communicate privately with any of the parties or persons brought into the mediation by them on the condition that the mediator will not reveal the content of any such communication to the other party without specific authority.

The mediator will not:

- give legal or professional advice to either party
- impose an outcome, or
- make any decision on the outcome

The parties acknowledge that the DNC has the authority to enforce the provisions of this agreement.

### **Conflicts of interest**

3. The mediator will not act in any mediation where he or she has a personal interest in the matters in dispute. Prior to accepting an appointment, the mediator will disclose any dealings or acquaintance with any of the parties or knowledge of the dispute. If the mediator discloses any circumstances that might be considered to affect the mediator's capacity to act impartially, he or she will not act unless the parties both agree that he or she may do so. If the parties do not agree the DNC will appoint another mediator.

4. If in the course of the mediation the mediator becomes aware of any circumstances that might be considered to affect the mediator's capacity to act impartially, the mediator must cease to act as a mediator unless the situation permits the mediator to inform the parties of those circumstances and the parties both agree that the mediator may continue to mediate.

### **Co-operation of the parties**

5. The parties agree to take part in the mediation in good faith and to try to settle their dispute in the time allowed for the mediation.

6. Each of the parties will comply with the reasonable requests and directions of the mediator in respect of the mediation.

### **Online dispute resolution**

7. The mediator and the parties will rely primarily upon the Online Dispute Resolution platform (zoom) to communicate and to participate in the mediation process. Each party agrees not to have another person in the room or within hearing distance when using any communication video conferencing technology to participate in the mediation.

8. Each party agrees to take all reasonable measures to ensure that they are not interrupted during any video conferencing mediation session.

9. Each party agrees to use a secure Wi-Fi or Ethernet (hard-wired) connection for your computer

10. You, or anyone on your behalf, may not audio or video record any mediation session or portion thereof. In the event that you learn of an audio or video recording of any session, you will take immediate measures to destroy the recording and will not disseminate the recording to any third

parties. You further agree that you will not transmit a live or deferred video or audio relay of the online sessions to third parties.

11. Each party commits to minimising the chance of inappropriate disclosures, including protecting access to any e-mails, notes or other information relating to the mediation which may be stored in their computers or elsewhere, and to minimising the consequences of any such disclosures should they occur.

12. By acknowledging this Contract, each party specifically agrees to the mediator using information and communication technologies in the context of the mediation and releases the Mediator from any liability in the event of any inadvertent disclosure.

### **Confidentiality of the mediation process**

13. The mediation shall be confidential as between the parties, the mediator and the DNC.

14. Neither the DNC, the mediator nor either of the parties may reveal details of the mediation to any third parties unless a court or decision-making body of competent jurisdiction orders disclosure, or the DNC, the mediator or either of the parties is otherwise required to do so by applicable laws or regulations.

15. Neither of the parties shall use any information, document or record of any kind obtained during mediation for any ulterior or collateral purpose or include it in any submission or evidence likely to be seen by any court or other decision making body in this dispute or any later dispute or litigation. However the fact of mediation may be referred to by either party in subsequent court or equivalent proceedings. The parties acknowledge that after the end of the mediation, the mediator may destroy any notes made during the process.

16. Neither of the parties may ask the DNC (including its officers, employees, contractors, agents and any expert or mediator) to reveal information or materials gained as a result of any informal mediation under the dispute resolution service unless such disclosure has been ordered by a court or decision-making body of competent jurisdiction. Neither party shall call the expert, mediator or the DNC (including its officers, employees, contractors, or agents) as a witness (either in person or to produce documents or other materials) in any proceedings which arise from, or are in connection with, the matters discussed in the mediation.

### **Mediated settlement agreement**

17. If agreement is reached during mediation, the existence, nature and terms of the settlement shall be confidential as between the parties, the mediator and the DNC, unless the parties specifically agree otherwise, a court or equivalent body of competent jurisdiction orders otherwise, or applicable laws or regulations require it.

18. No binding verbal agreements can be reached as part of the mediation: any mediated settlement agreement reached by the parties must be in writing to be enforceable. The mediator will attempt to record any mediated settlement agreement in writing but the parties must satisfy themselves that any written mediated settlement agreement accurately represents their intention and execute it by the earlier of either two working days after the end of the mediation or the expiry of the ten (10) day period allowed for mediation under clause B6.7 of the .nz DRS Policy.

**Indemnity and exclusion of liability**

19. The parties agree that neither the mediator nor the DNC will be liable to any party for any act or omission (including negligence) by the mediator in the performance of the mediator’s duties under this agreement unless the act or omission is fraudulent.

20. The parties, together and separately, indemnify the mediator against any claim for any act or omission (including negligence) in the performance of the mediator’s duties under this agreement, unless the act or omission is fraudulent.

21. The parties and the mediator agree that no written or oral statements or comments made or used during the mediation are capable of being used to bring or maintain any action for defamation libel or slander, or any related complaint. This document may be pleaded as a bar to any such action. Any party or the mediator who brings such an action agrees to indemnify the other party and the mediator against any losses or costs resulting from the action.

**Termination of mediation**

22. The complainant or the respondent may withdraw at any time from the mediation after consultation with the mediator.

23. The mediator may terminate the mediation if, after consultation with the parties, the mediator feels unable to assist them to achieve a resolution of the issues.

**Full Name and Role**

**Date**

**Signature**

[ ] [ ] [ ]

[ ] [ ] [ ]

**Mediator** [ ] [ ]