



# Request for proposal

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Online dispute resolution

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## Contents

<b>Domain Name Commission</b>	<b>3</b>
<b>Background &amp; Purpose</b>	<b>3</b>
Dispute resolution process and trial goals	4
<b>Key dates</b>	<b>5</b>
Briefing sessions	6
Clarifications	6
Closing date	6
Notices	6
<b>Key details</b>	<b>7</b>
Lodgment of responses	7
Unauthorised communication	8
Correction of errors	8
Privacy and confidentiality	8
Conflict of interest	9
Rights to vary	9
<b>Required information</b>	<b>9</b>
Respondent confirmation letter	10
Respondent executive summary	11
Respondent qualifications and references document	11
Respondent agreement(s)	12
Respondent project plan	12
Respondent test environment	12
<b>Response format &amp; content</b>	<b>13</b>
Response format	13
Response content	13
<b>Evaluation criteria</b>	<b>14</b>
<b>Next stage of the RFP process</b>	<b>16</b>
Negotiations	16
<b>Additional terms &amp; conditions</b>	<b>17</b>
Acceptance of terms & conditions	17
Offer to contract	17
Validity of response	17
Responsibility for costs	17
Overseas respondents	17
Consortium	17
Collusive or anti-competitive conduct	18
Intellectual property	18
No warranties or representations	19
Reliance by respondents	19

Reliance by the Domain Name Commission	20
Liability	20
Domain Name Commission decisions	21
Language and statutory units	21
Governing law	21

## Domain Name Commission

We at the [Domain Name Commission \(DNC\)](#) are responsible for regulating the .nz domain name space – helping individuals with their .nz online presence. Headed by the Domain Name Commissioner, we are appointed to develop and monitor a competitive registrar market, as well as create a fair environment for the registration and management of .nz domain names.

We are wholly-owned by [InternetNZ](#), who is responsible for the day to day oversight of the .nz country code Top Level Domain (ccTLD) registration and management system.

We are one of 150 ccTLDs, with whom we form a close knit global community, having representation in multiple international forums, such as Internet Corporation for Assigned Names and Numbers (ICANN) body [Country Code Names Supporting Organisation](#) (ccNSO) and the [Asia Pacific Top Level Domain](#) (APTLD) Association.

Our Services include:

- authorising service providers (Registrars) to sell .nz domain names;
- monitoring the health and competitiveness of the .nz market;
- ensuring .nz policy compliance for domain name service providers and domain name users;
- handling any enquiries relating to .nz domain names; and
- administering an independent [Dispute Resolution Service](#) (DRS).

In 2015, the Ministry of Business, Innovation and Employment (MBIE) indicated there were [~120 independent dispute resolution providers](#) operating in New Zealand, and that demand for Alternative Dispute Resolution (ADR) was growing.

## Background & Purpose

In Q3 2019 we undertook a [review](#) of our Dispute Resolution Service, with the outcome of identifying a number of opportunities for improvement.

Our goal is to enable members of the public with little or no legal experience to initiate a negotiation and manage it to conclusion. This goal, combined with recent developments in Online Dispute Resolution (ODR) technologies, business continuity and COVID-19 pandemic working, makes us believe now is the right time to trial an ODR solution.

We therefore intend to appoint a supplier to trial an ODR SaaS solution for the .nz TLD.

We will take a human-centered approach, focusing on user experience, and an experimental and iterative approach to development. We envision running a public pilot, where we engage early with our stakeholders for feedback and measure the

effectiveness of the service. Where practical, incremental improvements can be made throughout the pilot period.

The trial is expected to launch in early 2021 and operate for six months. With a decision made quickly afterwards about whether to continue development or end the trial.

As such, we are looking for a collaborative partner with an appropriate level of expertise; a partner who will engage with us to continuously improve the service based on mutual experience and insights collected from our customers.

This is a closed proposal, only open to Respondents who have been invited to reply.

### **Dispute resolution process and trial goals**

Our overarching goal is to increase confidence in the integrity of .nz registrations as well as to enable members of the public with little or no legal experience to initiate a negotiation and manage it to conclusion.

Our 2019 review of the current process identified a number of problem areas to address:

- there is an absence of negotiation as a service, as a subset of mediation;
- there is a need for self-directed negotiation;
- we need a 24/7 online service to cater to international registrars and self-representing individuals working outside of normal business hours;
- party negotiated settlement terms need to be binding;
- we have no initial triage; and
- current policy requires the physical filing and submission of dispute documentation in triplicate, which is outdated and incompatible with the Covid pandemic way of working.

The current dispute resolution process, volumes and pain points are outlined in the consultation documentation, specifically the [Domain Name Dispute Resolution Consultancy](#) paper and on our website: [here](#).

Our domain name dispute resolution service is different from intellectual property disputes and the World Intellectual Property Organisation (WIPO) way of working. While trademarks are important, common law is equally as important and our current [policy](#) has a broader focus on anything unfairly detrimental to the Complainant's Rights, stating: "Unfair Registration means a Domain Name which either:

- I. was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or

- II. has been, or is likely to be, used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant’s Rights.”

The trial will be run with the following objectives:

- introduce negotiation as a service;
- reduce the complainant abandonment rate, i.e. increase lodgements, to lower than the industry average of 30%;
- increase the active involvement of respondents;
- increase the level of settlement of disputes;
- decrease dissatisfaction with registrant and complainant issues;
- have a minimum of ten participants complete the process end to end;
- successfully implement access to the service from the DNC website;
- increase non-representative applicant and respondent access to the process; and
- use technology effectively to deliver better more cost effective services to support the development of a business case to continue the service beyond the trial.

## Key dates

The Domain Name Commission may carry out its Online Dispute Resolution Project however it chooses, but at this stage intends to operate to the following timetable. Please note that we may modify or change the timetable at any time at our discretion.

If we modify or change the timetable and/or timeframes of the RFP for any reason we will notify the Respondents.

Due to the commercially sensitive and confidential nature of the information that will be provided to Respondents under this RFP, each Respondent is required to sign a Confidentiality Agreement prior to being issued with a copy of the RFP.

Key dates	
Agreement and signing of Confidentiality Agreements prior to issuing RFP	August 2020
Issuance of RFP	September 2020
Briefing sessions (optional)	Week beginning Monday, 5 October 2020
Closing date for requests for clarification	Friday, 16 October, 12 noon (NZDT)
Closing Date and Time for RFP	Monday, 26 October 12 noon (NZDT)

<b>(Closing Date and Time)</b>	
Consideration of Responses—during this stage additional information may be sought from Respondents and face-to-face or telephone interviews may be conducted	During November 2020
Contract negotiations with one or more Respondents	During November - December 2020

### **Briefing sessions**

We will hold briefing sessions for potential Respondents to this RFP, via video or telephone conference in the week beginning Monday, 05 October 2020. Please send a request to the ODR Project Lead Ann Ibrahim by email to: [ODRpilot\\_RFP@dnc.org.nz](mailto:ODRpilot_RFP@dnc.org.nz) if you would like to attend.

### **Clarifications**

Any questions or requests for clarification or further information regarding this RFP or the RFP process must be submitted to the ODR Project Lead [ODRpilot\\_RFP@dnc.org.nz](mailto:ODRpilot_RFP@dnc.org.nz) by email in accordance with the dates set out in the key dates table. The Domain Name Commission is not obliged to respond to any question or request for clarification or further information.

If the Domain Name Commission considers a query to be a request for clarification or additional information of sufficient importance to all Respondents it may make available to other prospective Respondents details of such a request for clarification together with any response, in which event those details shall form part of this RFP. This will not entitle the Respondent to amend or withdraw its Response unless the Domain Name Commission considers it is sufficiently material to the RFP, in which case we will notify the Respondent of the terms on which it may amend or withdraw its Response.

### **Closing date**

Respondents that are unable to meet the closing date should discuss their concerns with the ODR Project Lead Ann Ibrahim by email to: [ODRpilot\\_RFP@dnc.org.nz](mailto:ODRpilot_RFP@dnc.org.nz) by 16 October 2020.

### **Notices**

Any notices from the Domain Name Commission to Respondents in relation to this RFP will be sent by email to the email address nominated by each Respondent.

## Key details

Key details	
Required format for RFP Responses	<p>All Responses must be completed and submitted in accordance with the format requirements set out in the following sections.</p> <p>All Responses must be submitted in PDF format.</p> <p>All documents must be written in English.</p>
Lodgment requirements	<p>All Responses must be lodged by the Closing Date and Time.</p> <p>All Respondents must submit Responses by email to: <a href="mailto:ODRpilot_RFP@dnc.org.nz">ODRpilot_RFP@dnc.org.nz</a></p>
Contact with the Domain Name Commission and the project lead	<p>All enquiries regarding this RFP must be in writing and sent by email to: <a href="mailto:ODRpilot_RFP@dnc.org.nz">ODRpilot_RFP@dnc.org.nz</a></p>
Validity period	<p>The terms of the Response to this RFP must remain valid for 12 months from the date of receipt by the Domain Name Commission.</p>

### Lodgment of responses

The closing date for Responses to this RFP is Thursday, 2 November 2020, 12 noon (NZST).

All Respondents must email their Responses to the ODR Project Lead Ann Ibrahim by email to: [ODRpilot\\_RFP@dnc.org.nz](mailto:ODRpilot_RFP@dnc.org.nz) before the Closing Date and Time.

If you would like to ask any questions regarding the process for responding to this RFP, please contact the ODR Project Lead Ann Ibrahim by email to:  
[ODRpilot\\_RFP@dnc.org.nz](mailto:ODRpilot_RFP@dnc.org.nz).

Any Responses submitted after the Closing Date and Time may only be accepted at the Domain Name Commission's discretion.



Respondents who are unable to meet the Closing Date and Time should discuss their concerns with the ODR Project Lead Ann Ibrahim prior to that date.

The Domain Name Commission may, at its discretion, extend the Closing Date and Time.

### **Unauthorised communication**

Communications (including promotional or lobbying activities) with staff of the Domain Name Commission is not permitted during the RFP process except as provided in this RFP, or otherwise with the prior written consent of the Project Lead.

This does not prevent communications with staff of, or consultants to, the Domain Name Commission to the extent that such communications do not relate to this RFP or the RFP process.

Respondents must not provide any form of incentive to Domain Name Commission representatives during this RFP process.

### **Correction of errors**

If a Respondent identifies an error in their RFP Response after lodgment (excluding clerical errors which would have no bearing on the evaluation), they must promptly notify the Domain Name Commission.

The Domain Name Commission may, at its discretion, permit a Respondent to correct an unintentional error in its Response where that error becomes known or apparent after the RFP closing time. No correction will be permitted if the Domain Name Commission reasonably considers that the correction would materially alter the substance of the Respondent's response.

### **Privacy and confidentiality**

The Domain Name Commission will retain all documents and materials supplied as part of a Respondent's response to this RFP and may make use of any information or materials supplied for any purpose reasonably related to this RFP, including release to external consultants and advisers of any organisation engaged to assist with the RFP process.

Any personal information provided to the Domain Name Commission as part of this RFP process or Respondent's response will be handled and protected in accordance with applicable law including the provisions of the Privacy Act 1993 and the relevant privacy principles.

Respondents must not make blanket claims of confidentiality in respect of their Response but, if necessary, Respondents may clearly mark any information which they wish to have treated as confidential information. The Domain Name Commission will use reasonable endeavors to protect the Respondent's confidential information.

The Domain Name Commission may make periodic public statements concerning the progress of the RFP process, which may include the names of organisations or individuals that have submitted Responses to this RFP.

The Respondent must maintain in confidence the contents of its Response to this RFP, any material supplied to it by the Domain Name Commission which the Domain Name Commission nominates as confidential, and the fact and contents of any discussions or interviews with the Domain Name Commission. The Respondent will only disclose such information to other professionals it engages to assist it in this RFP process or where required by law.

### **Conflict of interest**

Except to the extent identified as part of a Respondent's response to this RFP, the Respondent represents and warrants that they are not in a position which may, or does, give rise to an actual, potential or perceived conflict of interest with this RFP.

### **Rights to vary**

Notwithstanding anything else in this RFP, the Domain Name Commission reserves the right, in its absolute discretion at any time, to vary or extend any time or date specified in this RFP for all or any Respondent, or terminate the participation of any Respondent or any other person in the RFP process.

The Domain Name Commission also reserves the right at any time and for any reason to require additional information from Respondents, change the scope of its requirements or the process and steps set out in this RFP.

### **Required information**

Respondents must submit their Response in separate electronic files according to the structure shown in the table below. Respondents must respond to this RFP using the attached templates. Please note that some of these template forms will require the Respondent to upload additional supporting material.

<b>Response document</b>	<b>Requirements template/form</b>
Confirmation letter	Requirements described below
Executive summary	Requirements described below
Qualifications and references	Requirements described below
Agreement(s)	Requirements described below
Project plan	Requirements described below
Price quote	Template A attached
Response to the project goals and risks	Template B attached
Response to the technical requirements	Template C attached
Test environment details	Requirements described below

All Responses received by the Closing Date and Time, and which include all of the required information above, will be evaluated against the evaluation criteria.

### **Respondent confirmation letter**

Respondents must provide a confirmation letter, as a separate file entitled "[Respondent's Name] Confirmation" (please replace '[Respondent's Name]' with your company's name or acronym). The signatory to this confirmation letter must have appropriate delegation of authority to sign and confirm the matters contained in the letter.

The confirmation letter should be prepared by the Respondent and must confirm the following:

- that they understand and agree to the terms and conditions of the RFP set out in this document;
- that their Response to this RFP constitutes an offer to provide the Services and will remain valid for 12 months from the date of receipt by the Domain Name Commission;
- that they are prepared to enter into discussions and negotiations in good faith with the Domain Name Commission and are committed to taking appropriate action to conduct such negotiations in a constructive and timely manner; and
- the names and positions of persons with the delegated authority to represent the Respondent to negotiate and enter into a new agreement with the Domain Name Commission.

The confirmation letter must also include a declaration of any current or potential conflicts of interest, including if the Respondent itself or any related entity is directly or indirectly involved in any trade, business or undertaking as a Domain Name Commission accredited registrar.

### **Respondent executive summary**

Respondents must provide, as a separate file entitled "[Respondent's Name] Executive Summary" (please replace '[Respondent's Name]' with your company's name or acronym). The executive summary must not exceed two pages in length (excluding title page), and no appendices or specific references to additional information will be accepted.

The executive summary should be prepared by the Respondent and addressed to the Domain Name Commissioner. Respondents should summarise their offering, approach and value in relation to ODR SaaS solutions and, more specifically, the proposed trial for the Domain Name Commission. Respondents must not, under any circumstances, include any financial information or estimated savings in the executive summary.

### **Respondent qualifications and references document**

Respondents must provide, as a separate file entitled "[Respondent's Name] Qualifications and References" (please replace '[Respondent's Name]' with your company's name or acronym).

The qualifications and references document must contain the following:

- Corporate information: provide a narrative describing the Respondent's background, history, services and corporate organisation.
- Strategic direction: Provide a description of the Respondent's strategic direction, and the implications of the strategy for the Domain Name Commission. Respondents must also indicate the relative size that TLD Dispute Resolution Services form in relation to the Respondent's overall business.
- Approach to quality: provide details of the Respondent's approach to measuring and maintaining high-quality services, including details of any industry-recognised quality standard to which the Respondent is, or will become, compliant (including a timeframe for compliance, if not already achieved), as well as awards received during the last 18 months.
- References: list three of the Respondent's references where similar services are provided, i.e. similar scope of services, geographies, industry, and scale as the Domain Name Commission and the dispute resolution service. Respondents must include a contact name, title, address and phone number for each of the references provided. Respondents must also provide a brief description of the services provided for each reference and must take all reasonable action to ensure that the Domain Name

Commission is able to have appropriate access to each reference nominated by the Respondent.

### **Respondent agreement(s)**

Respondent's must provide, as a separate file(s) entitled "[Respondent's Name] [Agreement name] Agreement" (please replace '[Respondent's Name]' with your company's name or acronym and replace '[Agreement name]' with the type of agreement being submitted e.g. SaaS, Support Services etc.)

The agreement(s) should cover all standard terms and conditions applicable to the delivery of the ODR trial project, including:

- SaaS subscription terms and conditions;
- support service terms and conditions, if separate;
- initial configuration terms and conditions, if separate; and/or
- any special ODR Trial project engagement terms and conditions.

### **Respondent project plan**

Respondent's must provide, as a separate file entitled "[Respondent's Name] DNC ODR Trial Project Plan" (please replace '[Respondent's Name]' with your company's name or acronym).

The project plan should outline the:

- approach/methodology;
- sequence of events, timelines, milestones, decision review points and phases;
- deliverables;
- resources allocated and which will work closely and collaborate with the Domain Name Commission directly;
- split of roles and responsibilities for each organisation;
- resources and inputs required from the domain name commission; and
- a work breakdown structure with estimated size, cost and duration.

### **Respondent test environment**

Respondent's must provide, as a separate file entitled "[Respondent's Name] test environment" (please replace '[Respondent's Name]' with your company's name or acronym).

The file should contain the connection details for a test environment which is pre-configured with your standard dispute resolution workflow.

Login details should be provided for multiple users, there should be a minimum of one user per applicable role, e.g.:

1. Complainant;
2. Respondent;
3. DNC user/administrator;
4. Expert decision maker;
5. Mediator etc.

The file should also contain a description of the following:

- the configured workflow; and
- the permissions for each role.

## Response format & content

### Response format

This section contains instructions about the format and content of a Response to this RFP. The Domain Name Commission may, at its discretion, reject any Response that does not comply with the requirements in this section or any of the other terms and conditions in this RFP.

Respondents must use the template forms attached and prepare the required information set out above.

The documents created by the Respondent should be formatted as follows:

- paper size: A4 size;
- minimum font size: 11 point (except for footnotes, headers, or footers);
- ready for printing: all electronic files submitted will be pre-formatted for printing;
- except where otherwise requested, all documents relating to a Response and all communications with the Domain Name Commission must be in the English language;
- monetary amounts in the Response are to be expressed in New Zealand dollars; and
- all electronic files must be submitted in PDF format.

All Respondents should replace 'Respondent's Name' in the title of each template form with their company name or acronym.

### Response content

The Respondent must comply with the terms and conditions of this RFP and must respond to the requirements contained in this document and each template form attached. Late, incomplete, incorrectly submitted or otherwise non-conforming

proposals may be rejected, not considered, or considered, at the sole discretion of the Domain Name Commission.

The Respondent's response will form a critical basis of the Domain Name Commission's evaluation process.

Respondents should provide clear, concise and reasonable responses.

Respondents should not postpone a Response. "Respondent would be happy to discuss this at a later time" is an example of a postponed Response.

## Evaluation criteria

The Domain Name Commission will take the criteria set out in this section into account when reviewing a Response to this RFP.

Criteria	Weight	Definition
Price	20%	<p>This includes the following:</p> <ul style="list-style-type: none"> <li>• SaaS subscription;</li> <li>• Trial project;</li> <li>• Support services;</li> <li>• Future configuration changes.</li> </ul> <p>This criteria takes into account the price, value for money and cost effectiveness of the proposal.</p> <p>The Respondent confirms that there are no additional or third party costs that are required for their system and the prices provided cover all technical requirements.</p>
Technical and operational capability	40%	<p>This includes consideration of the Respondent's:</p> <ul style="list-style-type: none"> <li>• ability to provide the software and perform the associated services within agreed timeframes and in accordance with the Domain Name Commission's requirements;</li> <li>• quality and completeness of response to the Technical requirements; and</li> <li>• ability to commit to a requirement for continuous service improvement in collaboration with the Domain Name Commission.</li> </ul>
Project Goals and Implementation	20%	<p>This includes consideration of the Respondent's commitment and ability to:</p>

		<ul style="list-style-type: none"> <li>● meet and deliver on the Project Goals;</li> <li>● make changes to software to customise and configure for Domain Name Commission's requirements and the degree of ongoing innovation and expertise that the Respondent can use/apply in order to meet the Project Goals and emerging requirements of the ODR trial;</li> <li>● ability to provide appropriately qualified resources to deliver the Services during the required time period;</li> <li>● share knowledge, identify skills gaps and build relationships;</li> <li>● demonstrate experience with similar customers in other jurisdictions and have the capability to understand the Domain Name Commission's business model; and</li> <li>● minimise switching costs in the event of a decision to stop further development of an ODR solution after the completion of the trial.</li> </ul>
<p>Risk management, privacy, security and legal</p>	<p>20%</p>	<p>This includes consideration of the Respondent's:</p> <ul style="list-style-type: none"> <li>● proposed management and technical personnel nominated to provide Services and the Respondent's commitment to retaining these key personnel;</li> <li>● experience and performance history in applying services to other top level domains;</li> <li>● quality, adequacy and appropriateness of the proposed business continuity and disaster recovery plan;</li> <li>● approach to change management at an organisational and operational level;</li> <li>● approach to monitoring and responding to regulatory (e.g. privacy) changes and security and cyber threats;</li> </ul>



		<ul style="list-style-type: none"> <li>● approach to monitoring and responding to cyber security incidents; and</li> <li>● security capabilities with respect to confidentiality, integrity and availability.</li> </ul>
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We wish to obtain the best value-for-money over the whole-of-life of the contract. This means achieving the right combination of fit-for-purpose, quality, on time delivery, quantity and price as well as value in terms of return to the .nz Internet community.

If a Respondent offers a price that is substantially lower than other Responses (an abnormally low bid), the Domain Name Commission may seek to verify with the Respondent that the Respondent is capable of fully delivering the Services and meet the Project Goals for the price quoted.

### Next stage of the RFP process

After evaluating the Responses to this RFP, the Domain Name Commission may, without limiting other options available to it, do any of the following:

- Invite further detail from any of the Respondents in relation to their Responses to this RFP, this may include an interview to be conducted by the Domain Name Commission and/or its advisers;
- conduct negotiations for the ODR pilot with one or more Respondents to procure the Services;
- decide not to proceed further with the RFP process or any other procurement process for services, products or technology in connection with the ODR project; or
- check references.

As the scope of this proposal is only for a trial, full due diligence is not expected to be carried out; however, the Domain Name Commission may at its discretion, elect to carry out due diligence for any further procurement activities or future contractual negotiations.

### Negotiations

The selection of the preferred Respondent will also be influenced by the willingness of the preferred Respondent to negotiate in a responsive and co-operative manner, an agreement that meets the needs of the Domain Name Commission.

The Domain Name Commission may invite a Respondent to enter into negotiations with a view to contract. Where the outcome is unsatisfactory the Domain Name Commission may discontinue negotiations with a Respondent and may then initiate negotiations with another Respondent.

## **Additional terms & conditions**

### **Acceptance of terms & conditions**

Without limiting any other term or condition in this RFP, a Respondent will, by lodging a Response to this RFP, be deemed to have accepted all the terms contained in this RFP.

### **Offer to contract**

This RFP does not constitute an offer by the Domain Name Commission to enter into an agreement or any contract for the provision of the Services or any other products, technology or services.

No action or inaction in relation to this RFP or any Response submitted by a Respondent, creates any contract or binding obligations of any kind upon the Domain Name Commission. The Domain Name Commission makes no representation in relation to any evaluation process for any Responses submitted or that any Respondent will be selected.

The Domain Name Commission reserves the right to amend or terminate the RFP process at any time. The Domain Name Commission is not obliged to provide reasons for its actions.

### **Validity of response**

The Respondent's response must remain valid and open for acceptance at least until the end of the validity period of 12 months from the date of receipt, as set out above.

### **Responsibility for costs**

Respondent acknowledges that by participating in this RFP process it does so entirely at its own risk and cost. The Respondent agrees to bear its own costs and expenses, including any advisory costs, associated with the process and the preparation of a Response to this RFP.

## **Overseas respondents**

Overseas-based organisations and individuals are eligible to respond to this RFP.

## **Consortium**

Where the Respondent is a member of a consortium, their Response must stipulate which parts of the Services, products and/or technology each entity comprising the consortium would provide, and how the parties would relate to each other to ensure provision of the required Services, products and/or technology.

All consortium members are to provide details relating to their legal structure and where applicable provide details of any special purpose vehicle established, or proposed, for the supply of the Services, products and/or technology in connection with their Response to this RFP.

## **Collusive or anti-competitive conduct**

Respondents and their officers, employees, agents, advisers and representatives must not engage in any collusive, anti-competitive or similar conduct with any other Respondent or any other person in relation to the preparation, content or lodgement of their Response.

In addition to any other remedies available to it under law or any contract, The Domain Name Commission may, in its absolute discretion, disqualify a Respondent that it considers has engaged in any such collusive or anti-competitive conduct.

## **Intellectual property**

Persons obtaining or receiving this RFP and any other documents issued in relation to this RFP may only use them for the purpose of preparing a Response to this RFP.

All intellectual property rights in this RFP and any information provided by the Domain Name Commission to any Respondent in relation to this RFP are retained by the Domain Name Commission.

All Responses or additional information provided by the Respondent to the Domain Name Commission will become the property of the Domain Name Commission and will not be returned to the Respondent. Ownership of Intellectual Property rights in any Response remain the property of the Respondent or its licensors. However, the Respondent grants to the Domain Name Commission a non-exclusive, non-transferable, perpetual licence to retain, use, copy and disclose information contained in the Response for any purpose related to the RFP process.

Intellectual property rights may exist in this RFP or any other documents provided to the Respondents by or on behalf of the Domain Name Commission, and where those intellectual property rights are owned or otherwise held by the Domain Name Commission, the Respondent must not do anything that would endanger, be inconsistent with, or challenge those rights.

### **No warranties or representations**

This RFP contains statements derived from information which the Domain Name Commission believes to be reliable at the date obtained, but does not purport to provide all of the information which may be necessary or desirable to enable Respondents to determine whether to submit a Response to this RFP.

It is a Respondent's responsibility to examine this RFP, examine all other information available on reasonable enquiry and satisfy itself as to the completeness and sufficiency of its Response.

While every attempt has been made to ensure the accuracy of details in this RFP, The Domain Name Commission makes no warranty or representation as to the currency, accuracy, reliability or completeness of the content of this RFP (and the contents cannot be relied upon).

The Respondent represents and warrants that its Response to this RFP is true, accurate and not misleading.

The Respondent must promptly inform the Domain Name Commission of any material change in circumstances that affects the truth, completeness or accuracy of any of the information provided by that Respondent or its ability to participate in the RFP process or perform the Services.

### **Reliance by respondents**

All information contained in this RFP or given to the Respondent by the Domain Name Commission is for the purpose of allowing the Respondent to prepare its Response and is provided on the condition that the Respondent agrees and signs a Confidentiality Agreement with the Domain Name Commission prior to this RFP being provided. The Domain Name Commission has endeavored to ensure the integrity of such information, however it has not been independently verified. The Domain Name Commission does not represent or warrant the completeness or accuracy of such information.

This RFP document may not, and does not purport to, contain all information that a Respondent may require to prepare or finalise its proposal, or make decisions relating to its proposal or the RFP process. The information provided in this RFP, including requirements and obligations which have been detailed, are based on assumptions made by the Domain Name Commission about future requirements, which may or may not prove to be correct in practice. Each Respondent must

make, and base, any proposal on the information provided by the Domain Name Commission together with its own independent assessment of future requirements.

### **Reliance by the Domain Name Commission**

The Domain Name Commission may rely on any statements made by a Respondent (including their employees, contractors, advisors and agents) in their Response to this RFP, any written or verbal communications and in any negotiations with the Domain Name Commission. If a Respondent is selected by the Domain Name Commission as a successful Respondent (with whom the Domain Name Commission wishes to contract), then any such statements will be deemed to be included as part of the resulting contract between the parties.

If the Domain Name Commission believes a Respondent has made any false or misleading statements, the Domain Name Commission may exclude their Response from the evaluation process at any time.

Each Respondent must ensure all information provided to the Domain Name Commission is complete and accurate. The Domain Name Commission is under no obligation to check any Response for errors, omissions or inaccuracies. The Respondent must promptly notify the Domain Name Commission if any matter in their Response changes after the Closing Date and Time. The Domain Name Commission will, at its sole discretion, determine whether it will consider, accept or reject any proposed amendment to the RFP. The Respondent's obligation to notify the Domain Name Commission continues until such time as a Respondent is notified by the Domain Name Commission that they have not qualified to participate in any subsequent stage of the RFP process, or upon execution of an agreement in relation to this RFP. Upon learning that any information provided by the Respondent contains a material error, omission or inaccuracy, the Domain Name Commission may cease evaluating the Respondent's proposal, and, where applicable, may cease negotiating with that Respondent.

### **Liability**

To the maximum extent permitted by law, the Domain Name Commission excludes all liability for all loss or damage (including consequential loss or damage), suffered or incurred by any person, firm or company, as a result of the use of, or reliance on this RFP or any further information or representations made by the Domain Name Commission, in any form, in relation to this RFP, or otherwise in connection with this RFP however caused, whether in contract, tort (including negligence), in equity, under statute or on any other basis.

By participating in the RFP process, each Respondent waives any right that it may have to make a claim against the Domain Name Commission. To the extent that any legal or equitable relations between the Domain Name Commission and the

Respondent cannot be excluded as a matter of law or equity, the liability of the Domain Name Commission is limited to \$25,000.

### **Domain Name Commission decisions**

Domain Name Commission decisions are final and the Domain Name Commission is not required to provide feedback to unsuccessful Respondents.

### **Language and statutory units**

All documents relating to the Respondent's response and all communications between the Respondent and the Domain Name Commission must be in the English language, and all measurements and quantities will be metric. All monetary amounts in the Respondent's response are to be expressed in New Zealand dollars.

### **Governing law**

This RFP is governed by the laws of New Zealand. The Respondent must comply with all relevant laws in preparing its Response and in taking part in the RFP process. The Respondent submits to the non-exclusive jurisdiction of the courts of New Zealand.