

## **Executive Summary of changes to Terms and Conditions**

### **1. Reasons for change**

- 1.1 Introduce powers to transfer to reflect proposed Dispute Resolution Service
- 1.2 Ease Nominet's operational tasks, in particular with regard to renewals and indemnities.
- 1.3 Reflect legislation implemented since Nominet's incorporation, including Data Protection Act 1998, Unfair Terms in Consumer Contracts Regulations 1999 and Distance Selling Regulations 2000.

### **2. Overview of Changes**

#### **2.1 Dispute Resolution Service - draft clauses 4 and 5.8**

- The terms of the DRS Policy and Procedure are incorporated. We reserve the ability to make reasonable changes to the DRS materials.
- We have the power to transfer as a result of a DRS decision.
- We also have the right to amend the register in response to a court order, or to correct an error.

### **3. Changes to reflect operational concerns**

#### **3.1 Renewals**

- The registrant is under an obligation to provide correct and up to date information (2.4). Failure to do so will be a material breach of contract (2.4), which entitles us to terminate (5.6.3). It is hoped that these provisions will make it clear that it is the registrant's responsibility to ensure that we are provided with good quality data which is up to date. The registrant's address is contained within the "organisation" field on the template, which is now mandatory.
- The draft sets out the intended procedure on renewals: we invoice the tag holder unless the register states that the registrant is to be billed direct (1.7 and 1.8). We make it clear that we will not undertake any further manual checks in an attempt to track down the registrant on renewal if we do not have the correct address.
- If we do not receive the renewal fee within 30 days of our invoice, we are entitled to cancel the contract (1.9, and 5.6.1).

#### **3.2 Indemnities**

- The Registration Department currently issues approximately 1,000 indemnities per month to address minor changes highlighted by returned Reply Forms. They do this because the current indemnity

would only cover costs incurred by Nominet in connection with court proceedings. The draft indemnity at 3.9 covers all costs claims and expenses which we reasonably incur and would remove the need to send out indemnities for Reply Forms.

### 3.3 Future changes to terms and conditions

- Nominet reserves the right to make reasonable changes to the terms and conditions during the contractual term. Changes to follow appropriate consultation with stakeholders. No changes would lead to a registrant having to pay increased fees during the term (7.3), whilst draft clause 1.5 makes it clear that if a domain name is renewed, it is by entering into a new contract. This means that we will be able to charge higher fees on renewal if necessary.

### 3.4 Other changes

- The concept of a "pending registration"../ is gone. The contract is concluded when we confirm acceptance of the domain name (see clauses 5.4 and 1.2). Trading Standards recently indicated that, given delays of up to 8 months in sending out Certificates and Reply Forms, in their view it was not reasonable for Nominet's existing Terms to state that the contract is not concluded until the Reply Form is returned.
- Every domain name registration must have at least 2 operationally active name servers associated with it (draft clauses 2.6 and 2.7). We are entitled to cancel lame delegations on notice (5.6.2).
- Our procedures for registrant's surrender of a domain name are set out (5.1 to 5.4).
- Apart for our rights to transfer or cancel as set out in clauses 5.7 and 5.8, clause 1.11 and 1.12 of the draft state our current policy of not making changes to the legal registrant field without the registrant's authority.
- Our policy on tag changes is set out in draft clause 6.

## 4. What changes need to be made to comply with current legislation?

### 4.1 Data Protection Act - draft clause 3.10

- We need to comply with the Data Protection principles, in particular the first and second principles<sup>1</sup>. This involves setting out the purposes for which data will be processed, and obtaining the data subject's consent. Draft clause 3.10 sets out the purposes to which we intend to put personal data, and includes a provision to publish names and addresses (but not telephone, fax or email details) as part of the WHOIS

### 4.2 Unfair Terms in Consumer Contracts Regulations - general

- Contracts with consumers must be expressed in plain language and must be fair. The draft is intended to be "plain English" and fair.

#### 4.3 Distance Selling Regulations - draft clauses 5.5 and 5.6

- Consumers have a right to cancel a contract and obtain a full refund. Draft clauses 5.5 and 5.6 reflect this right.

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<sup>1</sup> "Personal data shall be processed fairly and lawfully" (Schedule 1) - data is not processed fairly unless the data subject is made aware of the purposes to which the data is intended to be processed. Data is processed lawfully if the consent of the data subject has been obtained (Schedule 2) "Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes" (Schedule 1)