

## General comments on the .uk Registrar Agreement

I agree this document needs updating. Most of the changes seem reasonable.

I am concerned about the three 'levels' of tag holder introduced here. If these levels represent a sort of 'minimum standard' of behaviour available and the ability to put a badge on a web site (or similar), then I would cautiously welcome it. However, I am not sure these should entitle the tag holder to further controls over the registrant's domain name; I think this is probably a step too far at this stage.

I have some specific concerns about the self-managed tag, specifically that it excludes harmless activities (e.g. registering domains for family if one doesn't have a portfolio of domain names, charitable activity etc). These could be relatively easily remedied.

I am also concerned about the number and extent of 'benefits' given to accredited registrars, and the lack of any apparent policing of that accreditation.

## 4. Definition and Interpretation Terms

---

### Your comments on this section

No comments - all seems sensible.

## 5. Recognition and promises as to authority to act

---

### Your comments on this section

Clause 2.6 states that "we will specify a range of ... Service Levels". Are these not what are set out in Schedule 1? Amendment to these should be done in the same way as any other amendment to the contract. This addition seems otiose.

Clause 2.7.4 is not reasonable. This requires that you have "paid all outstanding Nominet Invoices". Firstly, this should be limited to the invoices that are actually due and are not the subject of legitimate dispute. Secondly, it is unclear whether "in respect of every Transaction request you make" limits this to invoices relating that that transaction request, which would be odd as the invoice cannot have been issued prior to the transaction request being made. Thirdly, it is unclear why Nominet requires a warranty that invoices have been paid when they are already aware as to whether invoices have or have not been paid. If the intention is to allow Nominet to refuse to honour transaction requests if there are overdue invoices, then a clause should say that plainly and simply rather than being hidden within a promise. I suspect the idea is to gain the leverage given by 2.8, but this will surely fail if Nominet knows at the time of the transaction that the promise made is not true.

Otherwise the changes seem reasonable.

## 6. Submitting Transactions

---

### Your comments on this section

These changes seem reasonable.

## 7. Recording information and data protection

---

### Your comments on this section

These changes seem reasonable.

## 8. 'Resellers' and dealing with Your Registrant indirectly

---

### Your comments on this section

Clause 5.1.6: Registrars should only be obliged to provide copies of such contracts with their resellers as relate to the registration (etc.) of uk domain names. Perhaps it would be wise to require that such contracts are in writing. There should be an obligation on Nominet to hold them in confidence.

Under 5.2, I think you are substituting the Reseller's knowledge for the Registrar's. So, under 3.2 "reason to believe" here would mean that either the Registrar or the Reseller has reason to believe. This approach is correct but should be explicitly highlighted.

Other than that, the changes seem reasonable.

## 9. Payment

---

#### Your comments on this section

6.1: It's all very well to say you may charge for tags, but Nominet should give at least 12 months notice of any increase to such charges.

Otherwise this seems OK.

### 10. Enforcement

---

#### Your comments on this section

7.2: the meaning of "relevant party" is opaque. Please clarify.

7.4 is unreasonable. Any party "gains some advantage" by registering any domain name or they would not have made it. This clause says in effect that if Nominet believes a registrar may have been in breach of any clause whatsoever, then without notice and without the opportunity to remedy, and without any recourse should Nominet be wrong, Nominet may suspend, cancel or transfer that registration. This clause (i) should be limited to actual breach (not belief in breach), (ii) should be limited to breaches concerning the domain name in question, and (iii) the registrar should be given the opportunity to dispute or remedy the breach. Right now, if registrar X charges registrant Y for registering a domain name, and completely unrelatedly Nominet misclassifies a payment an invoice for registration Z (hence Nominet believing the registrar is in breach), Nominet can cancel registration for registration Y, and the registrar will have no recourse. This is grossly imbalanced. I would go further and restrict this action to Special Status.

Otherwise the changes seem OK.

### 11. Starting and ending the Contract

---

#### Your comments on this section

These changes seem OK.

### 12. Exclusions of Liability

---

#### Your comments on this section

This seems OK.

### 13. Intellectual Property and Relationship of the Parties

---

#### Your comments on this section

I am wondering whether anyone will find the additional comma (the only change in this section) controversial. OK by me.

### 14. General

---

#### Your comments on this section

The Force Majeure clause was far more readable before you altered it. Given Nominet's reputation for simple and easy to read contracts, perhaps you would like to readdress this (see e.g. 11.2.2.3).

Otherwise OK.

### 15. Schedule 1 - Service Level Requirements

---

The major concern I have with this section (and indeed the document as a whole) is about self managed tags. The intent (which is laudable) appears to be to give those acting for themselves a lightweight agreement. However, there are other cases where a lightweight agreement is more appropriate. I am particularly concerned about those who register (a) for family and friends, (b) for related companies or businesses, (c) for charitable purposes. The common theme here is that small numbers of registrations are made without any money changing hands. IE the registration is made to a registrant which is different to the registrar, but the registrar is paying.

The explanatory notes suggest that there is a 'carve out' for registering domains for friends and family, but this is not the case (within the existing wording) unless you happen to have your own large portfolio of domain names. This carve out is 3.3 para 2, I think. However, a registrar that registers 5 domains for himself and 10 for family cannot fit within the carve out as the carve out is the LOWER of fifty or 5% of the total domains, the latter in this example being less than one. Effectively this is saying those without their own domain name portfolio cannot benefit from the carve out. This makes no sense. Rather, there should be a limit (I would actually raise this to 100), AND it should be required that the registrar does not charge (in money or through any other obligation upon the registrant) for its services.

I'll admit to being personally affected by this one. I think I have under 20 domain names on my tag. A few are for companies I've started. A few are for family members. A few are for friends. And a couple are in essence charitable acts. I see no threat to Nominet here!

I have heard similarly from others who as far as I know are the least amount of problem to Nominet, whose activities (I'd hesitate to call them businesses) Nominet would needless abridge. To give examples: an incubator investor registering domains on behalf of his start-up. A provider of networking to charities. Various people registering domain names for families. Pushing these people into a 'Channel Partner' tag classification seems completely excessive, and is likely to cause MORE work for Nominet rather than less. This is particularly so as providing minimal compliance with the channel partner tag requirements is a tedious process which would discourage no one with malicious intent - i.e. it will only penalise the innocent. As it is, the innocent will need to do a lot of work for very little gain apart from unwanted access to whois2.

Hence I suggest 1.8 is modified to "The Self Managed Tag is intended for Registrants wishing to act as their own Registrar OR REGISTER A SMALL NUMBER OF DOMAIN NAMES FOR OTHERS FOR NO CHARGE. The Channel Partner and Accredited Channel Partner Tags are designed for those Registrars wishing to provide PAID services to third parties.". I'd suggest (b) be struck from 3.3 para 2, and I'd suggest a requirement that the domain names not be charged for be inserted. And the 'usually be registered only' should be removed from the head of 3.3.

On other matters:

2.1.5: it seems peculiar to require the registrar to 'take reasonable steps to ensure the resilience and security of ... our systems'. Those things are a matter for you. The registrar should instead be taking reasonable steps not to adversely affect the security and resilience of your systems.

2.1.7 I think this should read "your customer (or your reseller's customer)" else it is requiring people to register domain names in the name of their reseller, particularly given the contrast with the bracketed use of 'or your reseller' later.

2.1.12: "You must always allow a Registrant to renew a domain name (and maintain the registration in their own name) at any point up to the point at which we would otherwise have cancelled and deleted that domain name": surely this cannot be right! This is an obligation to renew a domain name even if the Registrant is (a) engaging in criminal activity (b) delinquent in payment to the Registrar, (c) uncontactable, (d) refusing to accept Nominet's terms and conditions. Why is this?

2.1.12 / 5.3.6: I do not see why Accredited registrars should have this carve out. Please remove.

2.1.14: If the Registrar has nothing to do with the gaining tag, how can the Registrar possibly know whether this is the case?

3.1.2: this appears to be circular. Clearly registrars will want to use the self managed tag to avoid the more onerous requirements of the channel registrar, else they would have selected that in the first place. Given 3.1.3, what is the requirement for this?

5.1.1: 'validate your financial position' against what? Validate simply means check that it is how the partner has said it is. Are these documents compulsory? If so, this should be framed in terms of demonstrating that the registrar has the ability to perform its obligations to its customers and to Nominet, rather than simply asking for copies of documents (which might show a very negative position). There is no requirement in UK law to produce an annual report unless a company is quoted, so why require that? How does it help the registrant? I believe you should stick to objective measures e.g. third party credit scoring here. On the other than you should be doing this as part of your credit terms anyway!

5.1.1 the thing you are missing here is that accredited partners should be subject to regular and frequent proactive testing of their performance against that accreditation. Else accreditation means nothing other than the provision of some documents.

5.3 I am dubious about these other rights. Why should accreditation permit a discount on the transfer of names (5.3.2)?

Why should accreditation permit changes in registrant name (5.3.1)? And in particular, what is the justification for 5.3.6? Please remove each of these.

5.3.7 seems like an open chequebook. Please remove.

## **16. Schedule 2 - Sanctions Policy**

---

### **Your comments on this section**

The contract permits Nominet to sanction the registrar in several places where the Sanctions Policy is not used (e.g. 7.4). It should be consistent.

There seems to be overlap between this section and the subclauses of 8.3.

## **17. Any additional comments**

---

### **Any additional comments**

None