

Nominet: Standard Terms and Conditions for ENUM Registrars

Introduction

This introduction section does not form part of the contract below, but is designed to help users.

There are various parts to this contract.

- These terms and conditions set out the central legal obligations.
- The Definition And Interpretation Terms set out some standard wording used here and in other Nominet contracts.
- The Payment And Credit Terms which will be of particular use to your accounts staff.
- ENUM Registrar Accreditation Requirements.

The System Instructions and Acceptable Use Policy are not part of the contract, but set policies that you must comply with. They will be of particular interest to your technical staff as they set limits on the use of the system and give instructions on how to use it.

TERMS AND CONDITIONS

1. Interpretation

1.1. In these terms and conditions the following words and expressions shall have the following meanings: Us, our, we
Nominet UK, a company limited by guarantee number 3203859 of Minerva House, Edmund Halley Road, Oxford Science Park, Oxford OX4 4DQ;

You, your

The person, firm, organisation or company with whom we contract in their role as Registrar;

UKEC

The UK ENUM Consortium, a limited company set up with the recognition of the DTI (now BERR) to administer the ENUM top level domain in the UK;

Chief Executive

our chief executive officer, or (in their absence) another senior member of staff they select as their deputy for the purpose;

Contract

- (i) these terms and conditions
- (ii) The Payment And Credit Terms and
- (iii) the ENUM Registrar Accreditation Requirements;

ENUM Registrar Accreditation Requirements

set out the conditions (including continuing obligations) which we require Registrars to satisfy prior to becoming a Registrar, and to continue to act as a Registrar.

Intellectual Property Rights

trade marks, service marks, registered designs, utility models, patents, applications for any of the foregoing, copyright, design rights, database rights, confidential information, trade and business names and any other similar protected rights in any country whether existing or to be created and whether vested or contingent;

Registrant

the person who is recorded on the UK ENUM Register as being the one that the registration is 'for', and for these purposes also means applicants who have not yet been entered the UK ENUM Register;

Registrar

a person who is able to act as the agent for Registrants for the purposes of obtaining/ maintaining an entry in the UK ENUM Register;

System Instructions

our instructions for Registrars on the proper use of our Systems, the way they work, the type, format, quality, layout and structure of data that they accept or should have and related things such as the use of any issued identifiers (for example, tags) and access controls, which we publish on our website from time to time;

Systems

our automated registry systems for Registrars to make entries in the UK ENUM Register (but not including any service or system for which we require users to enter into a separate contract);

Transaction, Transact

any communication between you and us (or a third party and us) entered into with the intention of

- (i) providing information to us
- (ii) obtaining some sort of response from us or
- (iii) entering into a contract with us;

UK ENUM Register

the database of telephone numbers mapping to Internet domain names in the dedicated domain space e164.arpa which is maintained and administered by Nominet on behalf of the UK ENUM Consortium;

2. Recognition and your promises

2.1. On the terms of this Contract, we recognise you as being a Registrar and therefore able to act as an agent for Your Registrants. This Contract contains some limits on what you can do for Registrants.

2.2. We will require Registrants to Transact with us only via you and to receive notices only via you. The only exceptions to this are if we are instructed to deal

directly with a Registrant or to act upon a request from a Registrant by a court of competent jurisdiction, or where this Contract is cancelled or terminated for any reason.

2.3. In relation to Registrants we will recognise you as having authority to act for that Registrant if you are recorded as being the Registrar in the UK ENUM Register.

2.4. In relation to clause 2.1 note that if you have more than one identifier with our Systems (for example, more than one 'tag'), our System Instructions may require that you use a specific identifier for a specific task.

2.5 You promise that you have fully complied with the ENUM Registrar Accreditation Requirements, and will for the duration of this Contract satisfy all the continuing obligations set out in the ENUM Registrar Accreditation Requirements.

2.6. You promise us that in respect of every Transaction request you make:

2.6.1. you have the authority of the Registrant to make that request;

2.6.2. the request for the Transaction is not prohibited by clause 3.2; and

2.6.3. you have complied with the System Instructions in relation to the Transaction.

2.7. If you break any of the promises in clause 2.6 and we or our staff (including contractors or agents) or directors later suffer loss caused in whole or in part upon our reliance on those promises, you will pay us back for those losses, including any damage to our reputation, and the reasonable costs of any investigation, litigation or settlement. If you are only partly responsible, you would only have to pay your fair share.

3. Submitting Transactions

3.1. You must comply with the System Instructions and Acceptable Use Policy in force at any particular time (they will change over time as our systems develop and you must regularly check which are the most recent versions and comply with them).

3.2 You must only submit a Transaction on behalf of a Registrant who can demonstrate that they are the legitimate end user of the telephone number which is being registered for ENUM. A Validation Agency (VA) will carry out this validation on behalf of the Registrant and then provide an appropriate authentication token which will need to accompany your Transaction.

3.3. You should not request a Transaction if you know, or have reason to believe that any of the following apply or probably apply:

3.3.1. some or all of the information provided by or through you to us is false, deceptive, misleading, inaccurate or incomplete;

3.3.2. some or all of the Registrant identity information does not meet the requirements of the System Instructions;

3.3.3. the Registrant you identify to us in the Transaction has not instructed or requested you to act on its behalf or does not exist;

3.3.4. the System Instructions prohibit making that Transaction on behalf of the Registrant; or

3.3.5. you no longer have authority to Transact with us on behalf of the Registrant.

3.4. Unless clauses 2.3 (limits on your authority) or 3.3 (transactions you must not request) apply or the System Instructions require otherwise: you must request the relevant Transaction (as set out in the System Instructions) promptly if:

3.4.1. you are informed by or on behalf of a Registrant of a change in their name or contact information, whether or not they request you to update the Register;

3.4.2. you are aware that there is duplicate information on the Register in relation to a Registrant that can be improved; or

3.4.3. we inform you that the Transaction is required (for example, we tell you that the registrant information you provided is formatted wrongly and ask for it to be corrected).

4. Recording information and data protection

4.1. You will not do anything which could put us in breach of the laws on data protection (in particular the Data Protection Act 1998) and the protection of personal information, or allow us to be put in this position because of your inaction.

4.2. We will hold records of your identity, and any Contacts relevant to the service being provided. You will ensure that every Contact consents to us holding the information and using it as needed (or reasonably helpful) in carrying out this Contract. It is your duty to keep us Notified of your Contacts and your current name and contact details at all times.

4.3. If you are issued with or have an identifier that is supposed to be secret for use with us or our systems you must keep it secret and safe because we shall be allowed to assume that any action done or requested using that identifier or a product of it was done or requested by you or by someone authorised to act for you and we shall have, and be entitled to enforce, procedures as part of the System Instructions for dealing with lost, revoked or compromised identifiers.

5. 'Resellers' and dealing with Registrants indirectly

5.1. You are not prohibited from dealing with Registrants indirectly (for example, through 'resellers') but:

5.1.1. you may not transfer, subcontract or delegate any of your rights or obligations under this Contract;

5.1.2. as between you and us, you are responsible for Registrants and the information, service, marketing and advice they are given, whether or not you actually deal with them directly (in other words, 'the buck stops with you'); and

5.1.3. we are not required to deal with, or give any special status to, any of your resellers.

5.2. It is your responsibility to ensure that information given to your resellers which is relevant to the UK ENUM Register entry filters back to you and that the UK ENUM Register is updated accordingly if appropriate. Any obligation in this Contract stated to happen when you become aware of a change in a Registrant's information or situation applies to a situation where your reseller has become aware of this information.

5.3. On request you will confirm to us whether a person or organisation is your reseller and provide us with full contact details for them.

6. Payment

6.1. The annual fee for becoming a Registrar, making an entry in the UK ENUM Register and for other services, such as amending any such entries, together with credit and payment terms, is set out in the fees schedule on our website www.nominet.org.uk/xxxxxx

6.2. The Payment And Credit Terms are incorporated in this Contract as if set out in full (they are available on our website).

7. Acceptable Use and Enforcement

7.1. We may require you to confirm to us (and provide reasonable evidence) how, and whether, you comply with the requirements of this Contract (including the ENUM Registrars Accreditation Requirements) and the requirements of our use policies (including the System Instructions and Acceptable Use Policy) within a reasonable timescale set by us.

8. Starting and ending the Contract

8.1. This Contract begins on the date that we notify you that we have accepted your application to become a Registrar and, subject to annual reappointment on the basis of a further term of twelve months, will terminate on the first anniversary of such appointment.

8.2. Either party may terminate the Contract for any reason by notifying the other party not less than 30 days in advance.

8.3. Either party may terminate or suspend this Contract by notifying the other if the other:

8.3.1. breaks any term of the Contract and (if it is possible to put right) does not put it right, and explain in writing the steps that have been taken to put it right, within 14 days after the other notifying them that they should do so;

8.3.2. has been notified of three or more breaches before under 8.3.1 (whether or not they were put right) and is then notified of a further breaking of the terms (whether or not it can be put right); or

8.3.3. stops (or threatens to stop) trading or enters any process (such as administration or liquidation) which may lead to that party not existing any more (except for the purpose of a genuine scheme of solvent amalgamation or reconstruction) or being bankrupt or insolvent.

8.4. If a party stops existing the duty to notify under clause 8.3 shall not apply.

8.5. Any termination, suspension or ending of the contract will not affect

8.5.1. any rights of action that either party has built up,

8.5.2. the coming into force or continuation in force of any provision of this Contract which is expressly, or by implication, intended to come into or continue in force on or after the Contract ends (including, in particular, clauses TBC).

9. Exclusions of Liability

9.1. Nothing in this Contract shall be taken to attempt to exclude or limit liability for death or personal injury caused by negligence, or for fraudulent misrepresentation.

9.2. Subject to clause 9.1;

9.2.1. all representations, and all warranties, whether express or implied by statute, law or otherwise, relating to the operation of our Systems and the data in them are excluded to the maximum extent permissible by law; and

9.2.2. we will not have any liability whatsoever to you or any Registrant to whom you relay results as a result of any failure or inaccuracy, delay or error in the operation of our Systems or the information from them.

9.3. Subject to clause 9.1, we will not be liable (on any legal basis, including the principles of law called 'tort') for any loss to you arising out of this Contract or your use of our Systems which could be described as;

9.3.1. loss of revenue;

9.3.2. loss of profits;

9.3.3. loss of goodwill;

9.3.4. loss of data;

9.3.5. indirect losses; or

9.3.6. consequential loss suffered by you.

10. Intellectual Property and Relationship of the Parties

10.1. Nothing in this Contract, or the actions we or you take because of it creates any sort of partnership, joint venture or other association between us. Neither party shall have any authority to bind the other in any way.

10.2. The UK ENUM Register, and the data contained within it, belongs to UK ENUM Consortium Ltd (UKEC). As exclusive licensee of UKEC we have the ability to modify and update such data at any time and to enforce any Intellectual Property Rights of UKEC.

10.3. As a confirmatory assignment you assign to us as exclusive licensee of UKEC any Intellectual Property Rights you have in the UK ENUM Register.

10.4. You must not use any of UKEC's Intellectual Property Rights or information they protect without our written permission. We do provide various materials which may help you in marketing or explaining the ENUM system, and information about those services is on our website.

11. General

11.1. If you or we cannot do what we must do under this contract for reasons totally out of our control (like wars, terrorism, natural disasters or major accidents) then the person involved is excused from having to do anything that it is unable to do until the cause is fixed (even if they should have had procedures in place to minimise disruption and did not).

11.2. We may make reasonable changes to the terms of the Contract from time to time. We will notify you of any such changes at least 30 days before they are due to take effect.

11.3. This Contract is the entire contract between you and us in relation to the topics that it covers and replaces all earlier agreements, arrangements and understandings between you and us. However, nothing in this Contract changes or ends any contract in relation to any other service provided by us to you.

11.4. Nothing in this Contract is intended to grant rights to anyone other than you and us whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise. This does not stop third parties (for example, Registrants) from asking us to enforce this Contract, but it means that they cannot do it themselves.

11.5. The Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts, save in matters of enforcement of the judgment of an English Court, where the parties submit to the non-exclusive jurisdiction of the English Court.

11.6. If any clause of this Contract is held to be invalid or unenforceable in whole or in part, the invalid or unenforceable wording shall be treated as if it did not exist.