

Consent to Act as a Committee Member of New Zealand Internet Exchange Inc.

This document confirms the consent by a person to act as a Committee member of New Zealand Internet Exchange Inc.

Part A – Personal Details

Name	
Address	
Postal Address (if different)	
Email Address	
Phone Number	
Effective Date	

Part B – Consent

- A. I hereby consent to act as a Committee Member of the New Zealand Internet Exchange Inc. from the Effective Date set out above.
- B. I certify that I am not disqualified under section 47 of the Incorporated Societies Act 2022 from being elected or appointed or otherwise holding office as a Committee Member of the New Zealand Internet Exchange Inc (whether or not that section is currently in force)
- a.
- C. Attached to this Consent is a Nondisclosure Agreement, Conflict of Interest Policy and Code of Conduct for Committee Members, each duly executed by me.

Part C – Execution

Signature

Sign here

Signature of Witness

Sign here

Name of Witness

Date

[Date]

Between

The New Zealand Internet Exchange Incorporated of c/- Botting Legal Limited, 2 Amara Place, Huntington Park, Auckland, 2013 (**NZIX**)

and

[recipient name] of address: _____
(**Recipient**)

Background

- A. Recipient, as a result of his or her or its association with NZIX, has been, will be exposed to or has otherwise requested access to certain information of NZIX, which may include Protected Information.
- B. Any unrestricted disclosure or use of Protected Information would reduce the value of the information and would be harmful to the interests of NZIX.
- C. NZIX and Recipient have agreed that any disclosure or use of Protected Information is subject to and governed by the terms and conditions of this agreement.

It is agreed

1. Definitions

In this agreement:

Authority means an administrative, judicial, legislative, regulatory or other competent authority;

Permitted Purpose means any purpose directly related to a proposed or current position for Recipient on the committee of NZIX or any employment or contract relationship between the parties;

Protected Information means any confidential, sensitive or proprietary information of NZIX which is disclosed to or otherwise becomes known to Recipient as a consequence of the Recipient's relationship with NZIX, and includes any copies or reproductions of that information.

2. Confidentiality

- 2.1 Recipient must hold Protected Information of NZIX in confidence and must only use or disclose that Protected Information in accordance with this agreement.
- 2.2 Recipient may use NZIX's Protected Information for the Permitted Purpose and may share that information with his or her directors (including board or committee members), officers, employees, professional advisers and contractors for the Permitted Purpose, provided that any such person has signed a nondisclosure agreement directly with NZIX on the same terms and conditions as this agreement. Recipient must record the full name of any person to whom it discloses NZIX's Protected Information and must promptly provide those names to NZIX on request.
- 2.3 Recipient must not, directly or indirectly, disclose, publish, release or make available any Protected Information of NZIX (and must not approve any such disclosure, publication, release or making available), except to the extent that this agreement specifically allows it.
- 2.4 Recipient must not use Protected Information of NZIX for any purpose other than the Permitted Purpose. In particular, Recipient must not use Protected Information of NZIX for any unlawful purpose.
- 2.5 Recipient must not make any copies or reproductions of NZIX's Protected Information, whether in printed, electronic, hardcopy, soft copy or other form.
- 2.6 Recipient must implement reasonable security measures for the storage and handling of NZIX's Protected Information and must ensure that the security measures are at least as good as those implemented for Recipient's own equivalent information.
- 2.7 Recipient must immediately notify NZIX if he, she or it becomes aware of any disclosure or use of Protected

Information that is contrary to the terms and conditions of this agreement.

3. Exceptions

3.1 This agreement does not restrict Recipient's use, disclosure or copying of information which:

- (a) is or becomes available to the public through no fault or omission of Recipient;
- (b) was already known to Recipient without any restrictions on use or disclosure; or
- (c) is provided to Recipient by a third party whose use and disclosure of the information is not subject to any confidentiality or nondisclosure restrictions.

3.2 If an Authority orders Recipient to disclose any Protected Information, Recipient must promptly provide NZIX with details of the order and the Protected Information to which it relates (to full the extent Recipient is lawfully permitted do so), and must use his or her best efforts to cooperate with NZIX if steps are taken to challenge the order and prevent or limit disclosure. Provided that a party complies with this clause, any disclosure or copying of Protected Information required by the order does not breach this agreement.

4. Duration

4.1 This agreement starts on the Effective Date specified above and, if not earlier terminated under clause 4.2, remains in effect until the later of:

- (a) the date on which Recipient ceases to be a member of the committee of NZIX; or
- (b) the date on which any employment or contract relationship between the parties ceased.

4.2 Either party may terminate this agreement without cause by giving the other party 14 days' written notice of termination. NZIX may immediately terminate this agreement by written notice to Recipient if Recipient breaches any provision of this agreement.

4.3 On termination or expiry of this agreement, or within 7 days after any written request, Recipient must return, destroy or permanently delete all copies of NZIX's Protected Information in its possession or control, and must confirm in writing that he, she or it has done so.

4.4 Recipient's obligations in relation to confidentiality and non-disclosure, and any restrictions on Recipient's use of Protected Information, will continue for a period of 5 years after termination or expiry of this agreement for any reason.

5. Disclaimer

Recipient acknowledges and agrees that this agreement does not oblige NZIX to disclose or make available any Protected Information and that any such information is disclosed or made available "AS IS" and without any representation or warranty. To the extent permitted under applicable law, NZIX excludes and disclaims all direct and indirect liability to Recipient arising under contract, negligence or any other theory of liability from the use of any Protected Information or otherwise connected with this agreement.

6. Remedies

Recipient acknowledges and agrees that any breach of this agreement may cause irreparable harm to NZIX for which the payment of damages would not be an adequate remedy and that NZIX is therefore entitled, in addition to any other rights and remedies it may have, to apply for and obtain immediate injunctive or equitable relief to enforce obligations under this agreement.

7. General

7.1 This agreement is made under and will be governed by and construed according to the laws of New Zealand, excluding its choice of law rules, and each party irrevocably submits to the jurisdiction of the courts in that state.

7.2 If a provision of this agreement is held by a court to be illegal, void or unenforceable, the offending provision will be severed from the agreement to the extent and in the manner that best gives effect to the remaining provisions.

7.3 A party must not assign or transfer this agreement, or any right or interest under this agreement, to any person unless that person is approved in writing by the other party and gives that other party a written undertaking to comply with the terms and conditions of this agreement. This agreement is binding on the successors and assigns of each party.

7.4 This agreement may be executed in counterparts, each of which will be deemed an original, and which together will be deemed to constitute one and the same instrument.

Executed as a deed poll

Signed and delivered by:

Name

of

Address

(the **Committee Member**):

Sign here

Sign here

Signature

Signature of Witness

Name of Witness

Date

Occupation of Witness

City of Residence of Witness

Purpose

The purpose of the conflict of interest policy is to protect the New Zealand Internet Exchange Incorporated (the Society) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a committee member, officer or member of a sub-committee of the Society or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable laws governing conflict of interest applicable to not-for-profit organisations.

Definitions

1. *Interested Person*

Any committee member, officer or member of a sub-committee who has a direct or indirect Financial Interest in a transaction, arrangement or proposed transaction or arrangement involving the Society.

2. *Financial Interest*

A person has a financial interest if the person has, directly or indirectly, through business, investment, employment or family:

- An ownership or investment interest in any entity with which the Society has a transaction or arrangement,
- A compensation arrangement with the Society or with any entity or individual with which the Society has a transaction or arrangement, or
- A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Society is negotiating a transaction or arrangement.

For the purposes of this Policy, "compensation" includes direct and indirect remuneration as well as gifts or favours that are more than trivial in nature.

A Financial Interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the Society's committee ("Committee") decides that a conflict of interest exists.

Procedures

1. *Duty to Disclose*

In connection with any actual or possible conflict of interest, an Interested Person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the members of the Committee considering the proposed transaction or arrangement

2. *Determining whether a conflict of interest exists*

After disclosure of the financial interest and all material facts, and after any discussion with the Interested Person, he/she shall leave the Committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Committee members shall decide if a conflict exists.

3. *Procedures for Addressing the Conflict of Interest*

An Interested Person may make a presentation at a Committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

The president of the Committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

After exercising due diligence, the Committee shall determine whether the Society can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Committee shall determine by a majority vote of the disinterested Committee members whether the transaction or arrangement is in the Society's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, the Society shall make its decision as to whether to enter into the transaction or arrangement.

4. Violations of the Conflicts of Interest Policy

If the Committee has reasonable cause to believe a Committee member has failed to disclose actual or possible conflicts of interest, it shall inform the committee member of the basis for such belief and afford the committee member an opportunity to explain the alleged failure to disclose.

If, after hearing the Committee member's response and after making further investigation as warranted by the circumstances, the Committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Records of Proceedings

The minutes of the Committee meetings shall contain:

- The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Committee's decision as to whether a conflict of interest in fact existed.
- The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Compensation

- A voting member of the Committee or any sub-committee who receives compensation, directly or indirectly, from the Society for services is precluded from voting on matters pertaining to that Committee member's compensation.
- A voting member of the Committee or any sub-committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Society for services is precluded from voting on matters pertaining to that Committee member's compensation.
- No voting member of the Committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Society, either individually or collectively, is prohibited from providing information to any Committee member regarding compensation.

Annual Statements

Each Committee member, officer or member of a sub-committee shall annually sign a statement which affirms such person:


- Has received a copy of the conflicts of interest policy,
- Has read and understands the policy, and
- Has agreed to comply with the policy.

Signature

I, the undersigned, affirm that I have received a copy of the above Conflict of Interest Policy, and that I have read and agree to be bound by and comply with it.

_____ (name)

___/___/___ date

_____ (signature) 

The members of the Committee of the New Zealand Internet Exchange Inc. (the **Society**) (**Committee Members**) are bound by this Code of Conduct. The objective of this Code of Conduct is to ensure that high standards of corporate and individual behaviour are observed by members of the Committee in the context of discharging their duties as Committee Members. All Committee Members must familiarise themselves with this Code of Conduct.

The Committee Members are the leaders of the Society and must act with high standards of corporate and individual behaviour when discharging their duties as Committee Members of the Society, to promote the good names and reputation of the Society. This Code of Conduct applies when any Committee Member is in contact with Society staff and members, and at all other times where a Committee Member is, or could be seen as, representing the Society.

As a Committee Member of the Society, you are required to:

1. Act with honesty and integrity:

- be open and transparent in your dealings as a Committee Member;
- discharge your duties as a Committee Member responsibly;
- ensure that any possible conflict of interest is dealt with under the Society's Conflict of Interest Policy;
- strive to earn and sustain public trust and the trust of the Society's membership at a high level.

2. Exercise due care, diligence and skill:

- ascertain all relevant information;
- make reasonable enquiries;
- understand the financial, strategic and other implications of decisions that you make as a Committee Member.

3. Act in good faith and in the best interests of the Society:

- demonstrate accountability for your actions;
- accept responsibility for your decisions;
- avoid activities that may bring you or the Society into disrepute.

4. Act fairly and impartially:

- avoid bias, discrimination, caprice or self interest;
- demonstrate respect for others by acting in a professional and courteous manner.

5. Use information appropriately:

- ensure confidential information of the Society is kept confidential and that you comply with any Confidentiality Undertaking that you provide in favour of the Society;
- ensure that any personal information coming to your attention as a Committee Member is handled in compliance with the Society's privacy obligations.

6. Use your position appropriately:

- avoid the use of your position as a Committee Member to seek an undue advantage for yourself, family members or associates;
- avoid the use of your position as a Committee Member in any way that causes detriment to the Society;
- ensure that you decline gifts or favours that may cast doubt on your ability to apply independent judgement as a Committee Member.

7. Act in a financially responsible manner:

- understand financial reports, audit reports and other financial material that comes before the Committee;
- actively inquire into this material.

8. Comply with the Society governance rules:

- have a good working knowledge of the Society Rules governing documents pertaining to your role as a Committee Member.
- act within the powers and for the functions set out in the Society’s governing documents.

9. Demonstrate leadership and stewardship:

- promote and support the application of the Society’s values;
- acknowledge and act in accordance with the responsibility you as a Committee Member have in regard to the rights of members of the Society and other stakeholders of the Society;
- actively foster a safe and comfortable environment for members, staff and fellow Committee Members, and sub-committee members of the Society;
- act in accordance with this Code of Conduct.

Furthermore, Committee Member must not:

- make improper use of information acquired as a Committee Member;
- engage in conduct likely to bring discredit upon the Society;
- behave inappropriately at Society events or premises such as by bullying, engaging in sexual or other harassment, or by consuming illicit substances;
- personally benefit at the expense of the Society or give the appearance of doing so;
- take inappropriate advantage of their fiduciary positions;
- make improper use of information acquired in their role as Committee Member; or
- exercise powers of the Committee individually without delegation by the Committee.

I, the undersigned, affirm that I have received a copy of the above Code of Conduct, and that I have read and agree to be bound by and comply with it.:

(name)

___/___/___
date

(signature)

Sign here