

## **Draft Terms and Conditions 2 (21/05/01)**

WARNING: by registering a domain name in the .uk Top Level Domain (a "Domain Name"), you enter into a contract of registration with Nominet UK ("We", "Our" or "Us") on the following terms and conditions. This is a separate contract to any arrangement you may have with any third party for the provision of internet services.

Nominet is the Registry for all internet Domain Names ending in .uk and provides a public service for the .uk namespace on behalf of the Internet community. You can find out more information about Nominet from our web site at <http://www.nominet.org.uk>. Nominet is a not - for - profit company limited by guarantee which is performing services on a cost recovery basis. This is why we consider it reasonable to limit our liability in certain respects so that we may continue to offer our services in the interests of the whole internet community.

This Contract includes our current Rules For The .uk Domain And Sub-Domains ("Rules") and the Policy and Procedure for our Domain Name Dispute Resolution Service ("Policy" and "Procedure" as appropriate).

You may have registered a Domain Name through a third party (usually, but not always, your internet service provider). In these terms and conditions, the term "Agent" means such a third party.

### **1. What we will do**

1.1. We will process your application to register your Domain Name and consider whether or not to accept it in accordance with the criteria laid down in the Rules;

1.2. If your application is accepted, we will inform you or your Agent. If your application is rejected, we will inform you or your Agent as soon as reasonably practicable and return to you or your Agent (as appropriate) any payments received;

1.3. Unless the current Rules of the relevant sub-domain state to the contrary, we will register Domain Names on a first come, first served basis. Until we accept your application, there is no guarantee that the Domain Name you applied for will be entered in the Register as such. We therefore recommend that you do not take any action in respect of a Domain Name until you have received confirmation from us that your application has been accepted.

1.4. After your application has been accepted, we will enter the Domain Name and other relevant details in the Domain Name Register Database for the relevant second level of the .uk top level domain (the "Register").

1.5. We will use the information in the Register entry for the Domain Name to enable the resolution of requests for the Domain Name, by pointing to the authoritative name servers listed in the Register Entry for the Domain Name.

1.6. After your application has been accepted and we have received your registration fee, we will issue you with a Registration Certificate and a Reply Form.

1.7. Subject to clause 8 below, we will transfer your Domain Name and update the Register accordingly on receipt of correctly completed transfer documentation from you and any relevant transfer fee applicable at the time of transfer. We will not transfer a Domain Name whilst it is the subject of legal proceedings or proceedings under our Dispute Resolution Service.

1.8. Please note that subject to clauses 8.5 and 8.6 we will not refund any fees after your Domain Name and details have been entered in the Register.

1.9. Subject to clauses 8.7 and 8.8 below, we will only make changes to the details contained on the Register (other than the registrant field), if we receive instructions and approval from you or your Agent.

1.10. Subject to clauses 8.7 and 8.8, we shall only alter the details contained in the "registrant" ../ field of the Register if we receive authorisation directly from you.

## **2. What you must do**

2.1 You must ensure that we receive the registration or renewal fee within one month after the issue of our invoice. For the avoidance of doubt, if you use an Agent it will be your responsibility to ensure that the Agent has paid the registration or renewal fee to us within one month of the issue of our invoice;

2.2. You must sign and return to us any Reply Form which we will send to you after registration or renewal as appropriate;

2.3. You must inform us promptly of any change in your registered details, and those of your Agent if applicable. It will be your responsibility to maintain and update any details you submit to us and to ensure that your details are up to date, and accurate. In particular, it is your responsibility directly or by your Agent to ensure that we have your full and correct postal address;

2.4. You must promptly inform us of any court proceedings brought in respect of the Domain Name;

2.5. Any name server listed in the Register entry for the Domain Name must respond authoritatively to requests for the Domain Name at all reasonable times.

## **3. Renewal of your Domain Name Registration**

3.1. The registration period is two years from the date of entry into the Register of your Domain Name registration. Provided you pay us your renewal

fee and subject to clause 8 below, you will have the right to renew the Domain Name registration by entering into a new Contract with us for further periods of two years.

3.2. Subject to clause 3.3 below, when the Domain Name registration falls due for renewal, we will contact your Agent (at the Agent's address appearing in the Register) to request payment of the relevant renewal fee.

3.3. If no Agent is listed on the Register entry for the Domain Name we will request payment of the relevant renewal fee direct from you at the registrant address appearing in the Register.

3.4. If we fail to receive the renewal fee within thirty (30) days of our making a request for the renewal fee, we will suspend your registration for a reasonable period of time and if we do not receive payment within the suspension period we will ultimately cancel your registration without further notice to you. During any period of suspension, we will not point to any name servers listed in the Register entry for the Domain Name, and you will be unable to use or transfer the Domain Name.

#### **4. Exclusions and Limitations of Liability**

4.1. Nominet does not carry out any investigation as to whether you are entitled to register or have any rights in the Domain Name. By registering the Domain Name we are not acknowledging that you have any rights in the name comprised in the Domain Name, and we are not authorising you to use the Domain Name in the course of trade.

4.2. Nothing in these terms and conditions limits or excludes our liability for death or personal injury caused by our negligence or for fraudulent misrepresentation.

4.3. We shall not be liable to you whether in contract, tort (including negligence) or otherwise for:

4.3.1. any loss of profit, revenue or other type of economic loss (whether direct or indirect);

4.3.2. loss of business or contracts;

4.3.3. loss of anticipated savings or goodwill; or

4.3.4. any losses which a court holds to be consequential, or indirect losses;

arising out of or in connection with the Contract, including but not limited to:

4.3.5. any error or omission in entries to the Register; and

4.3.6. loss of registration and/or use (for whatever reason and whether temporary or otherwise) of the Domain Name.

4.4. All conditions and warranties which may be implied by law into any Contract with you are excluded to the fullest extent permissible by law.

4.5. Our aggregate liability to you whether under these terms and conditions or otherwise (including liability for negligence) shall not exceed [2,000]% of the total registration fees, including renewal fees, which you have paid to us.

4.6. Nothing in these terms and conditions affect your statutory rights, as a consumer.

## **5. Warranties**

By entering into this agreement you consent to and warrant the following:

5.1 That you (or your Agent) have obtained the consent of any individual whose personal data is to be held on the Register in accordance with clause 6;

5.2 That the details and information submitted by you to us are true and correct, and that any future additions or alterations to your details and information will be true and correct, and that you will submit them in a timely manner. You shall pay us (including the current or past members of Nominet UK's Council of Management) any and all reasonable costs, claims and expenses (whether direct or indirect) arising out of any claim resulting from your breach of this warranty.

5.3 That by registering or using the Domain Name (in whatever manner) you will not knowingly infringe the intellectual property rights of a third party, that you are entitled to register the Domain Name, and that you have not registered the Domain Name in breach of trust. Our right to rely upon this warranty will continue to be available after completion of the registration process and will not be affected by any surrender, cancellation or transfer of the Domain Name. You shall pay us (including the current or past members of Nominet UK's Council of Management) any and all reasonable costs, claims and expenses (whether direct or indirect) arising out of any claim that your registration or use of the Domain Name directly or indirectly infringes the intellectual property rights of a third party.

## **6. Personal Data**

6.1. The Register is a public register for the purposes of Data Protection Legislation. The Register will include your name and a postal address, telephone, fax and email addresses together with any other relevant details. This information (if it refers to individuals) is 'personal data' for the purposes of data protection legislation.

Personal data submitted by you will be:

- a. Posted onto the Register.
- b. Posted onto the WHOIS database by us. The WHOIS database is provided on our web site at <http://www.nominet.org.uk>. Other Agents which provide an online Domain Name registration service may point to our WHOIS database. We will publish your name and address but will not publish your telephone or fax number or email address as part of the WHOIS database.
- c. Used as part of the Public Register Subscription Service ("PRSS"../), under which we provide a compressed form of the Register to subscribers. We provide the PRSS only to trusted third parties, based within the European Economic Area, under strict contractual terms which prohibit the use of PRSS data for the purposes of direct marketing. The PRSS enables subscribers to perform WHOIS queries and reverse look-ups. We will publish your name and address but not your telephone or fax number or email address as part of the PRSS.
- d. We may provide your personal data to Governmental or law enforcement agencies at their written request for any reason whatsoever including but not limited to the conducting of any general investigation of criminal activities.
- e. We will provide your personal data to third parties only if required to do so by a Court Order.

You may write to us to request a copy of the personal data held by us about you. We may charge a reasonable fee for the provision of such data. As required by the Data Protection Act 1998, we will adopt appropriate security procedures in relation to the storage and disclosure of information provided by you in order to prevent unauthorised access. Our security procedures mean that we may occasionally request proof of your identity before we are able to disclose personal information to you. Other than the uses identified above, Nominet UK will not disclose your personal information to others.

You should be aware that personal data posted on the WHOIS database may be accessible to countries outside the European Economic Area. By registering a Domain Name you consent to your personal data being transferred out of the European Economic Area and to our use of your personal data for the purposes specified above.

## **7. Domain Name Dispute Resolution Service**

7.1. You will be bound by the Policy and Procedure of our Dispute Resolution Service which are incorporated into these terms and conditions and made a part of the Contract by reference.

7.2. If a dispute arises, you agree to be bound by the Policy and Procedure which are current at the time that proceedings under the Dispute Resolution Service are commenced until the dispute is over.

7.3. Neither we nor our directors, officers, employees or servants nor any expert shall be liable to a party for anything done or omitted in connection with any proceedings under the Dispute Resolution Service unless the act or omission is shown to have been in bad faith.

## **8. Termination/Cancellation, Suspension and Amendment of the Register**

8.1. You or your Agent may surrender registration of the Domain Name by notice in writing to us at any time prior to our receiving payment.

8.2. After we have received payment for a Domain Name registration, only you (and not your Agent) may surrender the registration.

8.3. After payment has been received but prior to the issue of a Registration Certificate you may surrender the registration by writing to us on headed note paper which corresponds to the registrant address field of the Register entry for the Domain Name.

8.4. If a Registration Certificate has been issued, you may surrender the Domain Name by correctly completing the Surrender of Registration form (on the reverse of the Registration Certificate).

8.5. If you are a consumer (i.e. you are not registering or intending to use the Domain Name in the course of a business, trade or profession) then you may cancel the Contract by giving notice in writing to us at any time up to and including 7 working days following the day on which the Contract is concluded, i.e. the date on which we give notice to you or your Agent that we have accepted your application to register a Domain Name. If you register or use the Domain Name in the course of a business, trade or profession, you will not have this right to cancel the Contract.

8.6. If you cancel the Contract in accordance with clause 8.5 then we will provide you or your Agent (as appropriate) with a full refund of our registration fee within 30 days from the day on which we receive notice of your cancellation. If we refund your Agent, you may have to seek direct from your Agent any further component of the fees which you have paid.

8.7. We may cancel or suspend the registration of a Domain Name by providing you with notice in writing in the event of the following.

8.7.1. if we do not receive your registration or renewal fees in accordance with clause 2.1 above;

8.7.2. if you are in breach of the terms of this Contract (including the Rules) and in the case of a breach which is capable of remedy you fail to remedy this within 30 days of receiving written notice from us to do so;

8.7.3. if we receive independent verification that you have provided grossly inaccurate, unreliable or false registrant contact details, or failed to keep such contact details up to date;

8.7.4. if you are in breach of the warranties contained in clauses 5.1 and 5.3 of the Contract;

8.7.5. if the Domain Name is being administered in a way likely to endanger the operation of the Domain Name System;

8.8. We may transfer, suspend, cancel or amend the Domain Name registration in the following circumstances:

8.8.1. upon receiving written instructions from you to take such action together with any relevant fee;

8.8.2. upon receiving a copy of a perfected order of a court of competent jurisdiction requiring such action, or where the retention of a Domain Name registration by you would be inconsistent with the terms of a perfected court order received by us or any other legal requirements;

8.8.3. if such changes are necessary in order to correct an error relating to the Domain Name registration;

8.8.4. following a Decision requiring such action or an agreement reached between the parties and approved by us relating to proceedings under the Dispute Resolution Service.

8.8.5. If a name server listed for the Domain Name registration does not respond authoritatively to requests for the Domain Name, we may remove the name server from the Register entry for the Domain Name.

## **9. Change of Agent**

9.1. If you wish to change your Agent, you should first approach your current Agent to arrange this. If your approach is unsuccessful, we may at your request record a change of Agent directly onto the Register entry for your Domain Name registration. On receipt of your request, we will approach your Agent (unless exceptional circumstances apply). We will only comply with your request if:

9.2. we are satisfied that you have first approached your Agent, and that the approach has been unsuccessful; and

9.3. we are not informed by your Agent that there is an express term in your contract with your Agent which can prevent us from recording such a change.

## 10. General

10.1. If any clause of these terms and conditions is held to be unenforceable in whole or in part the other terms and the rest of the provisions shall continue to be valid and enforceable.

10.2. We may transfer our rights and obligations under the Contract to any third party. You may transfer the Contract, only on the transfer of the Domain Name, in accordance with clauses 1.7 and 8 above.

10.3. The internet is an emerging and evolving medium and the regulatory and administrative framework under which we operate is constantly developing. For these reasons we reserve the right to make reasonable modifications to the terms and conditions of this Contract (including the Policy, Procedure and Rules) at any time during the term. We will only do so when we have good reason. No change will have the effect of requiring an increase in fees from you in advance of the next renewal of the Domain Name. Except where we are acting in pursuance of a statutory requirement or a Court Order, changes will be implemented across the board in all of our Domain Name contracts following a process of open public consultation. Each such change will be published in advance (where practicable, 30 days in advance) on our web site: <http://www.nominet.org.uk/> and will become binding and effective upon the date specified therein. You should review our web site regularly in order to be aware of all such changes. If you do not agree with any change or proposed change to these terms and conditions you are entitled to terminate the Contract by providing us with thirty (30) days notice in writing, in which case you will receive a pro-rata refund of your registration fee in respect of any unexpired portion of the term.

10.4. If you wish to contact us our postal address is Nominet UK, Sandford Gate, Sandy Lane West, Oxford, OX4 6LB, England and our telephone number is +44(0) 1865 332211. Our offices are open from 9.00a.m. to 5.30pm (UK local time) Monday to Friday, except for public holidays. Except as set out in the Policy and Procedure any notice to be given under the Contract shall only be deemed to be served if delivered by hand or sent by pre-paid post, by fax or e-mail, to the party to whom it is given at its last known postal or e-mail address or fax number. Except as otherwise set out in the Policy and Procedure the notice will be effective: if delivered, on delivery; if sent by fax, when the sender receives confirmation of receipt; and if sent by email, on the day of transmission and if by post, on the fourth day after posting. For the avoidance of doubt, any notice sent to you will be deemed served if sent to the address appearing in your Registrant's Address Field.

10.5. These terms and conditions, together with the Rules Policy and Procedure, constitute the entire agreement between you and us for the registration of the Domain Name, and supersedes all prior agreements, understandings and representations whether oral or written.

10.6. These terms and conditions shall be governed by English law, and by agreeing to be bound by them you agree to submit to the exclusive jurisdiction of the English Courts.