Terms and conditions for domain name registrations under the ".be" domain operated by DNS BE

Version 4.1 – 30 January 2008

1. Definitions

- "DNS BE" means the Belgian non profit organisation DNS Belgium vzw, Belgische vereniging voor Internetdomeinregistratie, situated at 3001 Leuven, Ubicenter, Philipssite 5, box 13, and with enterprise number BE046618640, administrator of the ".be" domain;
- "the registrar" means the undertaking that enters into a non-exclusive registrar agreement with DNS BE and obtains from DNS BE the right to apply for the registration and renewal of domain names under the ".be" domain on behalf of its clients but for its own account;
- "the domain name holder" means the person having obtained or having applied for the registration of a particular name in the ".be" domain;

2. Acceptable domain names

DNS BE will not accept the following domain names for registration :

- Names that are already registered ("first come, first served" -principle), names in quarantine, names that are put "out-of-support" or on hold. Names that consist of characters other than "a-z", "A-Z", "0-9" and "-", or that start or end with "-" (as recommended in RFC 1035, published on the web site of DNS BE).
- Names of less than two (2) or more than sixty-three (63) characters.
- Names with "-" on the third and the fourth position.

Names will be registered for the person whose application is completed first, notwithstanding earlier applications for those names that are not yet complete. An application is complete when it is received by the DNS BE computer system (not when it was sent), and when it contains all the data required by DNS BE.

The refusal to register a domain name does not create any rights (priority rights or other) for the applicant. The applicant may file a new application, in competition with anybody else, if that name later becomes available to the public.

3. Right of use

a) After the registrar completes the registration process and pays the registration fees, the domain name holder is granted the exclusive right to use the domain name applied for.

b) The right of use is valid for one year and is renewable as far as the registration fee has been settled.

c) A domain name is put on hold if DNS BE is notified that legal proceedings, whether within or outside the scope of a court of law, are in progress over that name. A domain name that is on hold cannot be transferred or deleted, nor can the details of the domain name be modified. The domain name holder can, however, still use his domain name.

d) DNS BE may terminate the registration if the domain name holder breaches any of the terms and conditions of the domain name registration. In case of a breach of the terms and conditions, DNS BE can send a reminder by e-mail to both the registrar and the domain name holder informing them that the registration will be terminated if the breach is not remedied within 14 days.

e) After termination of the registration for reasons outside the scope of item d) of this article, the concerned domain name shall be placed in quarantine for forty (40) days. During this period the registrar can restore the domain name to its original status at the request of the domain name holder provided that a reactivation fee is paid. At the end of this period the concerned domain name can be made available again for registration provided that it has not been reactivated.

f) A domain name is labelled "out-of-support" in case the registrar contract with DNS BE is terminated and DNS BE has asked the domain name holders to find a new registrar.

4. Fees and payment

a) The domain name holder is aware that the registrar acting on his behalf must pay the initial registration fee and the renewal fee according to the agreement between the registrar and DNS BE.

b) The registrar has access to the computer system of DNS BE in order to verify the status and expiration date of the domain names that he manages. The registrar is responsible for the timely information of the domain name holder that the registration of his domain names is due to be renewed.

c) DNS BE is not responsible for the registrar's non-payment of registration or renewal fees, which may result in the non-registration or cancellation of a domain name (even if the domain name holder has paid the registrar).

5. Obligation to have a working e-mail address

The domain name holder must have a working e-mail address, which is inserted in the DNS BE data base. DNS BE and the domain name holder must use this e-mail address for official communication between them, and the domain name holder must keep the address up-to-date through his registrar. If the e-mail address is not kept up-to-date, the domain name holder is in breach of these terms and conditions and DNS BE may terminate the registration as provided in article 3 above.

6. Agreement between domain name holder and registrar

a) The registration and renewal process with DNS BE can only be conducted by the domain name holder through an authorised registrar, who is acting on behalf of the domain name holder but for its own account. DNS BE must make available on its web site a list of the authorised registrars, and a copy of the typical agreement between DNS BE and the registrar. DNS BE is not a party to the agreement between the domain name holder and his registrar incurs no obligation or liability from that agreement.

b) If a registrar is no longer an authorised registrar because the agreement with DNS BE is terminated, DNS BE must send an e-mail to the domain name holders informing them that their domain name is put "out-of-support" and asking them to appoint another registrar within one month. If the domain name holder does not appoint another registrar within one month, the registration agreement between DNS BE and the domain name holder will be terminated at the end of its term with no possibility of renewal. The domain name holder's domain name will remain "out-of-support" until the later of three months after DNS BE sent the notice-mail to the domain name holder, or two months after the registration was terminated.
While the domain name is "out-of-support" the domain name holder may appoint another registrar who may send a request, including its reasons, to DNS BE to become the new registrar of the domain name holder and restore the registration if terminated.

c) If a domain name holder terminates the agreement with his registrar, he must at the same time designate a new registrar who must inform DNS BE of the proposed change of registrar. After the reception of the transfer request made by the new registrar, DNS BE will inform the domain name holder of the proposed change by e-mail. This e-mail will contain a code which will permit the domain name holder to confirm or to reject the transfer via the website of DNS BE. The domain name holder must bring in his confirmation or rejection via the website of DNS BE within 7 days following the e-mail from DNS BE. If the domain name holder does not respond within 7 days, DNS BE must send a reminder by e-mail to the new registrar informing him that the transfer will only take effect if the domain name holder confirms the change to DNS BE by a duly undersigned fax message within 7 days following the reminder by e-mail. In absence of confirmation within 7 days, the initiated transfer will be cancelled.

d) When a domain name holder wants to transfer a domain name to a third party, the latter must ask his registrar to start the procedure described in item c) of this article with the exception that the domain name holder *and* the third party must confirm the proposed change via the website or fax.

e) The successful execution of the procedures described in items c) and d) of this article means that a new registration period is started for the concerned domain names and implies payment of the original registration fee as specified in article 4 a). No reimbursement of fees paid for the initial registration period shall be made.

7. Privacy policy

a) The domain name holder authorises DNS BE to process personal and other data required to operate the ".be" domain name system. DNS BE shall only use these data within the framework of the management of the .be domain name zone and related services. DNS BE may only transfer these data to third parties if ordered to do so by the public authorities (local or national, judicial or administrative), upon demand of the dispute resolution entity mentioned in article 10 or as provided in paragraph (c) of this article. The domain name holder has the right to access his personal data and to arrange for it to be amended, where errors exist.

b) The domain name holder must keep DNS BE immediately informed through the registrar of any change in name, address, e-mail address, telephone and fax numbers. An omission or delay in informing DNS BE of such changes may result in the termination of the registration.

c) The domain name holder authorises DNS BE to make the following personal data accessible on its web site (through the so called WHOIS-search facility) – along with some other technical data - to guarantee the transparency of the domain name system towards the public:
- name, address and telephone and fax number of domain name holder;
- date of registration and status of the domain name;
- e-mail address of domain name holder;
- language chosen for the dispute resolution set out in article 10.

The domain name holder also authorises DNS BE to transfer these data to third parties within the scope of domain name information or monitoring services.

In exception to the two previous paragraphs, the name, address, telephone and fax number of the domain name holder will not be accessible on the website (through WHOIS search facility) nor be transferred to third parties if the domain name holder is a private person.

Third parties that want to know the personal data of a private domain name holder and that have legitimate reasons for such a disclosure, can send a motivated request to DNS BE. DNS BE will evaluate the invoked legitimacy for the disclosure and take a decision whether or not to communicate the requested data.

8. Representations and warranties

a) The domain name holder represents and warrants that::
- 1° all statements made during the registration process and the term of the registration are complete and accurate;
- 2° registering the domain name will not infringe or otherwise violate the rights of a third party;
- 3° the domain name is not registered for an unlawful purpose;
- 4° the domain name is not used in violation of any applicable laws or regulations, such as a name that helps to discriminate on the basis of race, language, sex, religion or political view;

5° the domain name is not contrary to public order or morality (e.g. obscene or offensive names);

b) DNS BE is not liable for any damage, including direct or indirect damage, consequential damage and loss of profits, whether in contract, tort (including negligence), or otherwise, resulting from or related to the registration or use of a domain name or to the use of its software or web site, even if DNS BE has been advised of the possibility of such damage, e.g. regarding :

- registration or renewal (or the default of registration or renewal) of a domain name in favour of a domain name holder or a third party due to an error concerning their identity;
- termination of DNS BE's authority to register domain names in the ".be" domain;
- rights that third parties claim to domain names;
- technical problems or faults;
- acts or omissions of the registrars regarding the application, registration or renewal of domain names which may result in the non-registration or cancellation of a domain name.

DNS BE will use its best efforts to provide its services according to the "best practices" standards adopted and approved in national or international context.

The domain name holder must indemnify DNS BE against any claim (and the resulting costs, including attorneys' fees) originating from the use or registration of a domain name that infringes the rights of a third party.

Disputes between DNS BE and the domain name holder must be brought before the courts of Brussels who will have exclusive jurisdiction, and must be governed and interpreted in accordance with the laws of Belgium.

9. Change of terms and conditions

a) The rules of the domain name registration procedure are dynamic and subject to change.

b) If DNS BE decides to change its rules, it will make the new rules available to the public by posting them on its web site at least thirty (30) days before the new rules take effect. Each registration procedure will be handled according to the rules in effect on the date the application is complete.

c) As a deviation of the previous rule, DNS BE can modify the technical registration rules of article 2 without the application of the mentioned minimum delay of thirty (30) days. Such modifications will take effect from the moment of their announcement on the website of DNS BE. DNS BE can only make use of this specific procedure as far as those modifications seem justified within the national or international technical context and as far as they are intended to prevent registrations of speculative nature.

d) DNS BE will not personally inform domain name holders, whose domain names have been rejected in the past, that new rules apply, even if the rejected names would be allowed under the new rules.

10. Dispute resolution policy

a) Dispute resolution. The domain name holder must submit the type of disputes set out below to alternative dispute resolution proceedings and accepts in this regard the competence of an accredited Dispute Resolution Entity. The domain name holder accepts that those proceedings must be conducted before one of the accredited Dispute Resolution Entities listed at the web site of DNS BE. The procedure will be conducted in the language chosen by the domain name holder during his application. Every dispute will be governed by the dispute resolution policy applicable when the complaint is filed.

b) Applicable disputes.

1. The domain name holder must submit a dispute to alternative dispute resolution proceedings if a third party (a "Complainant") asserts to the Dispute Resolution Entity, in compliance with the rules of procedure, and proves that :
(i) the domain name holder's domain name is identical or confusingly similar to a trademark, a trade name, a social name or corporation name, a geographical designation, a name of origin, a designation of source, a personal name or name of a geographical entity in which the Complainant has rights; and
(ii) the domain name holder has no rights or legitimate interests in the domain name; and
(iii) the domain name holder's domain name has been registered or is being used in bad faith.

2. The evidence of such in bad faith registration or use of a domain name can inter alia be demonstrated by the following circumstances:

- circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the Complainant who is the owner of the trademark, trade name, social name or corporation name, geographical designation, name of origin, designation of source, personal name or name of the geographical entity, or to a competitor of that Complainant, for valuable consideration in excess of the costs directly related to the domain name; or
- the domain name was registered in order to prevent the owner of a trademark, a trade name, a social name or corporation name, a geographical designation, a name of origin, a designation of source, a personal name or a name of a geographical entity from reflecting this name in a corresponding domain name, provided that the domain name holder has engaged in a pattern of such conduct; or
- the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- the domain name was intentionally used to attract, for commercial gain, Internet users to the domain name holder's web site or other on-line location, by creating a likelihood of confusion with the Complainant's trademark, trade name, social name or corporation name, geographical designation, name of origin, designation of source, personal name or name of a geographical entity as to the source, sponsorship, affiliation, or endorsement of the domain name holder's web site or location or of a product or service on his web site or location.

- the domain name holder registers one or more personal names without the existence of a demonstrable link between the domain name holder and the registered domain names.

3. If a complaint is filed, the domain name holder can demonstrate his rights or legitimate interests to the domain name by the following circumstances:

- prior to any notice of the dispute, the domain name holder used the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services or made demonstrable preparations for such use; or
- the domain name holder (as an individual, business, or other organization) has been commonly known by the domain name, even if he has acquired no trademark; or
- the domain name holder is making a legitimate and non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark, trade name, social name or corporation name, geographical designation, name of origin, designation of source, personal name or name of the geographical entity at issue.

c) Rules of procedure. The rules of procedure of the Dispute Resolution Entity state the process for initiating and conducting the proceedings and for appointing the Third-party Decider that will decide the dispute.

The rules of procedure also determine the fees that the Complainant must pay.

The Dispute Resolution Entity publishes the rules of procedure on its web site.

d) Non-intervention of DNS BE. DNS BE does not, and will not, participate in the administration or conduct of any proceedings before a Third-party Decider. Neither DNS BE, the Dispute Resolution Entity or the Third-party Decider will be liable as a result of any fault made in the dispute resolution process, except for intentional faults.

e) Remedies. The remedies available to a Complainant under any proceedings before the Third-party Decider are limited to requiring the cancellation of the domain name registration or the transfer of the domain name to the Complainant.

f) Notification and publication. The Dispute Resolution Entity must publish all decisions under this dispute resolution policy on the Internet during a reasonable term. DNS BE must also be informed of these decisions. If the domain name holder is involved in other legal procedures concerning his/her domain name, he/she must inform DNS BE of the final decision(s). DNS BE may decide to publish the decisions referred to in the present article.

g) Courts of competent jurisdiction. The submission to the alternative dispute resolution procedures does not prevent either the domain name holder or the Complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before, during or after those proceedings. If a Third-party Decider decides that the domain name registration should be cancelled or transferred, DNS BE will implement that decision 15 days after being informed of the Third-party Decider's decision except if the domain name holder has started the appeal procedure of the dispute resolution in due time If the appeal procedure was started in time, DNS BE will not take further action (whilst leaving the domain name on hold) until the appeal procedure has ended or has been cancelled.

h) Other disputes. All other disputes between the domain name holder and any party other than DNS BE over the domain name registration that are not brought under the alternative dispute resolution procedures must be resolved through any court proceedings, arbitration or other available proceedings.

i) Defences. DNS BE will not participate in any dispute between the domain name holder and any party other than DNS BE over the registration and use of the domain name, neither in the alternative dispute resolution proceedings, nor in any other proceedings. The domain name holder must not name DNS BE as a party or otherwise include it in any such proceedings. If DNS BE is named as a party in any such proceedings, it reserves the right to raise any and all defences deemed appropriate, and to take any other action necessary to defend itself.

j) Domain name on hold. As soon as a request for alternative dispute resolution is properly filed with the Dispute Resolution Entity and the appropriate fee is paid, the Dispute Resolution Entity must inform DNS BE of the identity of the Complainant and the domain name involved. DNS BE must immediately put the domain name involved "on hold", under article 3 of these terms and conditions. The domain name remains on hold until the end of the proceedings set out in paragraph (g).

k) Costs of dispute resolution. The dispute resolution fee is payable by the Complainant. However, if the Third-party Decider concludes that the domain name registration needs to be struck out or transferred, DNS BE shall repay half of these costs to the Complainant and reclaim the thus repaid part from the domain name holder. Upon DNS BE's first request, the domain name holder shall reimburse the repaid amounts. The domain name holder shall not have a right of recourse against DNS BE, the Dispute Resolution Entity, the Third-party Decider or the Complainant for the thus suffered financial loss. The potential financial loss for the domain name holder is the risk that the latter took for the speculative registration of domain names on which third parties have rights.

The repayment provision specified in the previous paragraph does not apply to the appeal procedure of the dispute resolution. The costs of the appeal procedure are payable by the party that instituted this procedure.