

## **DOMAIN NAME REGISTRATION POLICY STATEMENT**

(Effective from 1.1.98)

It is hereby declared that PNG University of Technology, Lae (PNGUT) is the sole owner and custodian of the country Domain for Papua New Guinea, .pg.

All applicants for the registration of a Domain Name(s) under .com.pg or .net.pg should apply in writing, by completing the attached registration agreement.

Queries regarding the registration of Domain Names under .ac.pg, .gov.pg, .mil.pg, and .org.pg should be directed to: PNG Internet Name Service, Information Technology Services, UNITECH, PMB, Lae.

**All applicants must demonstrate a local presence or interests in Papua New Guinea. Registration will not be granted if the operation is solely conducted from overseas without any local interests.** It should however be noted that the computers providing DNS services for the organisation, can be situated out of Papua New Guinea.

PNGUT is responsible for the registration of names in the .pg domain on the Internet. PNGUT registers these Domain Names on a "first come, first served" basis. PNGUT has neither the resources nor the legal obligation to screen requested Domain Names to determine if the use of a Domain Name by an applicant may infringe upon the right(s) of a third party. No adjudication is made by PNGUT as to whether the applicant has a legitimate right to the name. Acceptance of any particular applicant by PNGUT confers no right to the applicant regarding the legitimacy or otherwise of the name with the applicant, nor does it confer to the applicant any other rights associated with ownership of the name or any rights to its use. Consequently, as an express condition and material inducement of the grant of an applicant's ("Applicant") request to register a Domain Name, Applicant represents and warrants as follows:-

1. (a) Applicant's statements in the application are true and Applicant has the right to use the Domain Name as requested in the Application;
- (b) Applicant has a bona fide intention to use the Domain Name on a regular basis on the Internet;

- (c) The use or registration of the Domain Name by Applicant does not interfere with or infringe the right of any third party in any jurisdiction with respect to trademark, tradename, company name or any other intellectual property right;
  - (d) Applicant is not seeking to use the Domain Name for any unlawful purpose, including, without limitation, any interference with contract or prospective business advantage, unfair competition, injuring the reputation of another, or for the purpose of confusing or misleading a person, whether natural or incorporated.
- 2. Applicant acknowledges that a discretion shall lie with PNGUT in respect to the granting or otherwise of any request for a domain name.
- 3. Applicant further acknowledges and agrees that this Policy Statement on the registration and use of Domain Names may change from time to time and that, upon thirty (30) days notice PNGUT may modify or amend the terms of this Policy Statement.
- 4. Applicant is responsible for its selection of the Domain Name. Consequently, Applicant shall defend, indemnify and hold harmless PNGUT, its officers, directors, employees and agents, for any loss, damage, expense or liability resulting from any claim, action or demand arising out of or related to the use or registration of the Domain Name, including reasonable lawyers fees. Such claims shall include, without limitation, those based upon trademark or infringement, tradename infringement, dilution, tortious interference with contract or prospective business advantage, unfair competition, defamation or injury to business reputation. PNGUT agrees to give Applicant written notice of any such claim, action or demand within a reasonable time. Applicant agrees that PNGUT shall be defended by lawyers of their choice at Applicant's expense, and that Applicant shall advance the costs of such litigation, in a reasonable fashion from time to time. The failure to abide by this provision shall be considered a material breach of this Agreement and permit PNGUT to immediately withdraw the use and registration of Domain Name from Applicant.
- 5. Applicant agrees that PNGUT shall have the right to withdraw a Domain Name from use and registration on the Internet upon thirty (30) days prior written notice (or earlier

if ordered by the court) should PNGUT receive an order by a court of competent jurisdiction that the Domain Name in dispute rightfully belongs to a third party.

6. (a) In the event that the Applicant breaches any of its obligations under this Policy Statement, PNGUT may request that Applicant relinquish the Domain Name in a written notice describing the alleged breach. If Applicant fails to provide evidence that it has not breached its obligations which is reasonably satisfactory to PNGUT within thirty (30) days of the date of receipt of such notice, then PNGUT may terminate Applicant's use and registration of the Domain Name.
- (b) Applicant acknowledges and agrees that PNGUT cannot act as an arbiter of disputes arising out of the registration and use of Domain Names. At the same time, Applicant acknowledges that PNGUT may be presented with evidence that a Domain Name registered by Applicant violates the rights of a third party. Such evidence includes, but is not limited to, evidence that the Domain Name is identical to a valid and subsisting registration of a trademark within Papua New Guinea that is in full force and effect and owned by another person or entity. In those instances where the basis of the claim is other than a registered trademark Applicant shall be allowed to continue using the contested Domain Name, unless and until a court order or arbitrator's judgement to the contrary is received by PNGUT as provided in Paragraph 5.
- (c) In those instances when the claim is based upon a trademark:-
  - (i) Without prejudice to the ultimate determination and with recognition that trademark ownership does not automatically extend ownership to a Domain Name. **PNGUT shall request from the Applicant a certified copy of trademark registration owned by the Applicant that is in full force and effect and that is the same as the Domain Name registered to Applicant.**
  - (ii) In the event that Applicant provides evidence of ownership of a trademark as provided in Paragraph 6(b), Applicant shall be allowed, subject to Paragraph 6(c)(iv), to continue using the contested Domain Name, unless and until a court

order or arbitrator's judgement to the contrary is received by PNGUT as provided in Paragraph 6(c)(v). In the event the Applicant fails to provide evidence of a trademark registration to PNGUT within fourteen (14) days of PNGUT's request, PNGUT will assist Applicant with assignment of a new Domain Name, and will allow Applicant to maintain both names simultaneously for up to ninety (90) days to allow an orderly transition to the new Domain Name. At the end of the transition period, PNGUT will place the disputed Domain Name on "Hold" status, pending resolution of the dispute. As long as a Domain Name is on "Hold" status, that Domain Name registered to Applicant shall not be available for use by any party.

- (iii) If Applicant fails to provide evidence of a trademark registration to PNGUT within fourteen (14) days and will neither accept the assignment of a new Domain Name nor relinquish its use of the Domain Name, PNGUT will place the disputed Domain Name on "Hold" status, pending resolution of the dispute. As long as a Domain Name is on "Hold" status, that Domain Name registered to Applicant shall not be available for use by any party.
- (iv) If Applicant provides the evidence described in Paragraph 6(b), and wishes to continue use of the contested Domain Name registered by Applicant, Applicant agrees to indemnify PNGUT on the terms stated in Paragraph 4 from any liability relating to the registration or use of the Domain Name registered by Applicant and lodge a security in an amount sufficient to meet the damages sought, or if no specific amount of damages is sought, in an amount deemed reasonable in PNGUT's sole discretion within fourteen (14) days of PNGUT's request. Without such agreement and the lodging of a security, PNGUT may, notwithstanding any trademark registration presented to it, place the use of the Domain Name on "Hold" status pending resolution of the dispute.
- (v) PNGUT will reinstate the use and registration of a Domain Name placed in "Hold" status when and if it receives an order by a court of competent jurisdiction stating which party to the dispute is entitled to use and register the Domain Name or if PNGUT receives satisfactory evidence of a resolution of the

dispute.

7. PNGUT will not be liable for any loss of use, interruption of business, or any indirect, special, incidental, or consequential damages of any kind (including lost profits), regardless of the form of action, whether in contract, tort (including negligence), or otherwise, even if PNGUT has been advised of the possibility of such damages. In no event shall PNGUT maximum liability under the Policy exceed one hundred (K100.00) Kina.
8. Any dispute arising out of this Agreement or, at the request of PNGUT and upon the agreement of the challenging party, a dispute regarding the right to register or use Domain Name shall be resolved by arbitration. A single arbitrator shall be selected jointly by the parties. In the event the parties are unable to agree then the single arbitrator shall be appointed by lawyers as nominated by PNGUT.
9. All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, seven (7) days after deposit in the mail, or upon acknowledgment or receipt of electronic transmission. This Policy Statement can only be amended by PNGUT as provided in Paragraph 3. Nothing contained in this Policy Statement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. The parties agree to amend or replace such provision with one that is valid and enforceable and which achieves, to the extent possible, the original economic objectives and contractual intent of PNGUT as reflected in the original provision. This Policy Statement, as amended, and the Registration Agreement together constitute the complete and exclusive agreement of the parties regarding Domain Names. It supersedes and its terms govern all prior

proposals, agreements or other communications between the parties.

The language of the services offered by this agency is strictly English.

PNGUT retains the right to reserve names for its own use. Names so reserved will be publicly listed by PNGUT. Reserved names may be allocated from time to time by PNGUT for such purposes and with such restrictions as it may decide.

All registration information will be considered as information within the Public domain and will be accessible using the Internet as the publication vehicle. No provision is made concerning acceptance of information under any imposed condition of confidentiality or non-disclosure.

This Policy statement shall only apply to the Applicants right to allocate sub-domains in so far as it confirms no liability shall lie with PNGUT in respect of any dispute arising therefrom.