



**KENYA NETWORK INFORMATION CENTRE**

**ALTERNATIVE DOMAIN NAME DISPUTE RESOLUTION  
POLICY**

## TABLE OF CONTENTS

PART I.....	4
Definitions Interpretation and Applications .....	4
Definitions and Interpretation .....	4
Application.....	5
PART II.....	6
Alternative Dispute Resolution Rules .....	6
Domain name dispute resolution service .....	6
Evidence of Abusive or Offensive Registration.....	6
How a Registrant may indicate that domain name is not an abusive registration.....	7
Mediation .....	8
Arbitration .....	8
Impartiality and Independence .....	9
Language.....	9
Communication .....	9
Involvement in disputes .....	10
General powers of Arbitrator .....	10
Decisions.....	10
Notification and publication .....	11
Repeat disputes, availability of Court proceedings and appeal .....	12
Transfer during a dispute.....	12
Precedent .....	13
Default .....	13
Extension of time .....	13
Exclusion of liability .....	13
Modification of Policy.....	13
PART III.....	15
Alternative Dispute Resolution Procedure .....	15
Filing of a complaint .....	15
Rejection of complaint.....	15
Notification of dispute .....	16
Service of Complaint .....	16
Response to complaint .....	17
Reply .....	18
Mediation .....	18
Transmission to Provider .....	19
Appointment of Arbitrator .....	19
Transmission to Arbitrator.....	19
Further statements .....	19
Arbitration .....	20
Arbitrator decision.....	20
Communication of decision to parties and implementation of decision.....	20
Appeal.....	21
Fees.....	22
Withdrawal, settlement, or other grounds for termination .....	22
PART IV .....	23
ACCREDITATION OF PROVIDERS.....	23
Qualifications for a Provider .....	23
Application Procedure .....	23

40. (1) An applicant for accreditation as a Provider shall submit an application to the Registry. ....	23
Application.....	23
Publication and Amendment .....	24
PART V .....	25

## PREAMBLE

### **WHEREAS:**

- A. This policy is adopted in order to bring some uniformity into alternative dispute resolution in relation to disputes arising out of domain names registration with the view that the interests of the parties can be preserved in settings other than the traditional judicial dispute resolution method in court.
- B. The Alternative Dispute Resolution (ADR) methods which are recognized in this Policy include Mediation and Arbitration
- C. Mediation in general terms refers to a process in which a neutral third person, called a mediator, acts to encourage and to assist in the resolution of a dispute between two (2) or more parties. This is an informal and non-adversarial process. The objective is to help the disputing parties reach a mutually acceptable agreement between or among themselves on all or any part of the issues in dispute. Decision-making authority rests with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, exploring settlement alternatives, and in other ways consistent with these activities.
- D. Arbitration in general terms is a process in which a neutral third person or a panel, called an arbitrator or an arbitration panel, considers the facts and arguments which are presented by the parties and renders a decision. The decision may be binding or nonbinding as provided in these policy.
- E. This Alternative Dispute Resolution Policy (the "ADRP") has been adopted by the Registry ("KENIC"), and sets forth the terms and conditions in connection with a dispute between a registrant and any party other than the Registry over the registration and use of an internet domain name registered in relation to the .ke ccTLD;

## PART I

### Definitions and Application

#### Definitions

1. In this Policy, unless the context otherwise requires:-

**“abusive registration”** means a domain name which either –

- F. was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant’s rights; or
- G. has been used in a manner that takes unfair advantage of, or is unfairly detrimental to the Complainant’s rights;

**“arbitration”** has the same meaning as assigned to the term under the Arbitration Act No.4 of 1995;

**“Arbitrator”** means an adjudicator appointed by a Provider to decide on a dispute by way of arbitration or appeal;

**“Complainant”** means a person who lodges a dispute in terms of this Policy;

**“Court ”** means any court of competent jurisdiction in Kenya;

**“day”** means, unless otherwise stated, any day other than Saturday, Sunday or any public holiday, and “days” have a corresponding meaning;

**“determination ”** means a decision made by an Arbitrator in accordance with this Policy;

**“offensive registration”** means a domain name in which the Complainant cannot necessarily establish rights but the registration of which is contrary to law, *contra bonos mores* or is likely to be offensive to any class of persons;

**“mediation”** means a dispute resolution procedure impartially conducted by the Registry to facilitate a resolution acceptable to both parties;

**“party”** means a Complainant or Registrant and “parties” has a corresponding meaning;

**“Procedure”** means procedural rules in terms of which a dispute is to be conducted as set out in Part III;

**“Provider”** means a domain name dispute resolution service provider duly accredited,

in terms of Part IV of this Policy, by the Registry and whose name appears on the list of accredited Providers published by the Registry.

**“Registrant”** means a domain name holder;

**“Registrar”** means an entity that is authorized to administer the process of registration and modification of domain names;

**“Registry”** means the Kenya Network Information Centre, the entity responsible for managing the .ke ccTLD;

**“reverse domain name hijacking”** means using this Policy in bad faith to attempt to deprive a registrant of a domain name;

**“rights”** include but are not limited to intellectual property rights protected under the Kenyan law;

**“Rules”** means the alternative dispute resolution rules provided for in Part II;

**“Whois database”** means a database of contact details relating to a domain name provided by a domain administrator.

## **Application**

2. (1) This Policy shall apply to disputes contemplated under this policy in connection with a domain name dispute between a Complainant and a Registrant over the registration and use of an Internet domain name in the .ke domain name space PROVIDED HOWEVER THAT:-

- a) This policy shall apply to domain names registered within the .ke domain space.
- b) Where a party is not resident within Kenya, they may appoint a representative who is resident in Kenya.

## PART II

### Alternative Dispute Resolution Rules

#### Domain name dispute resolution

3. (1) In choosing a domain name, a registrant warrants, amongst others, that registering the name will not infringe upon or violate the rights of any third party.
- (2) A Registrant shall submit to proceedings under the rules if a Complainant demonstrates, in accordance with the procedure, that-
  - (a) The Complainant has rights in respect of a name or mark which is identical or similar to the domain name and, under the ownership of the Registrant, is an abusive registration; or
  - (b) The domain name under the ownership of the Registrant is an offensive registration.
- (3) The Complainant shall prove on a balance of probabilities that the required elements in paragraph (2) are present.
- (4) A Complainant may file a single complaint in regard to more than one domain names provided that all such domain names have been registered under the same Registrant
- (5) Where a Complainant has already initiated proceedings relating to the same domain name and involving the same Parties in a court of law, the Complainant shall not file proceedings under this Policy, unless in pursuance of a court order.
- (6) Dispute resolution under these rules shall not emphasize on technicalities or procedure and may waive any where necessary.

#### Evidence of Abusive or Offensive Registration

4. (1) Factors which may indicate that the domain name is an abusive registration include:
  - (a) circumstances indicating that the Registrant has registered or otherwise acquired the domain name primarily to -
    - (i) sell, rent or otherwise transfer the domain name to a Complainant or to a competitor of the Complainant, or any third Party, for valuable

- consideration in excess of the Registrant's reasonable out-of-pocket expenses directly associated with acquiring or using domain names;
- (ii) block the registration of a name or mark in which the Complainant has rights;
  - (iii) disrupt unfairly the business of the Complainant; or
  - (iv) prevent the Complainant from exercising their rights;
- (b) circumstances indicating that the Registrant is using, or has registered, the domain name in a way that leads people or businesses to believe that the domain name is registered to, operated or authorized by, or otherwise connected with the Complainant;
- (c) evidence, in combination with other circumstances indicating that the domain name in dispute is an abusive registration and that the Registrant is engaged in a pattern of making abusive registrations;
- (d) false or incomplete contact details provided by the Registrant in the Whois database;
- (e) domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (f) evidence that the domain name was registered as a result of a relationship between the Complainant and the Registrant, and the Registrant has –
- (i) been using the domain name registration exclusively; and
  - (ii) paid for the registration or renewal of the domain name registration; or
- (g) any other factor that in the opinion of the Arbitrator may be indicative of abusive registration.
- (2) An offensive registration may be inferred if the domain name advocates hatred that is based on race, ethnicity, gender or religion or that constitutes incitement to cause harm.
- (3) There shall be a rebuttable presumption of abusive registration if the Complainant proves that the Registrant has been found to have made an abusive registration in three or more disputes in the 12 months before the dispute was filed.

### **How a Registrant may indicate that domain name is not an abusive registration**

5. (1) Factors which may indicate that the domain name is not an abusive

registration, include:-

- (a) before being aware of the Complainant's complaint, the Registrant has:
  - (i) used or made demonstrable preparations to use the domain name in connection with a good faith offering of goods or services;
  - (ii) been commonly known by the name or legitimately connected with a mark which is identical or similar to the domain name; or
  - (iii) made legitimate non-commercial or fair use of the domain name;
- (b) the domain name is used generically or in a descriptive manner and the Registrant is making fair use of it;
- (c) that the Registrant has demonstrated fair use, which use may include websites operated solely in tribute to or fair criticism of a person or business:

Provided that the burden of proof shifts to the Registrant to show that the domain name is not an abusive registration if the domain name is identical to the mark in which the Complainant asserts rights, without any addition; or

- (d) any other factor that in the opinion of the Arbitrator may be indicative that the domain name is not an abusive or offensive registration.

(3) Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves lawful activities. The Arbitrator shall review each case on its merits.

(4) Sale of traffic, that is, connecting domain names to parking pages and earning click-per-view revenue, is not of itself objectionable under this Policy. However, the Arbitrator shall take into account:

- a) the nature of the Domain Name;
- b) the nature of the advertising links on any parking page associated with the Domain Name; or
- c) that the use of the Domain Name is ultimately the Registrant's responsibility.

## **Mediation**

- 6. (1) The Registry shall endeavour to resolve disputes filed with it as provided for under this Policy by conducting impartial mediation through discussions with both parties confidentially and as a neutral third party, advising how the dispute could be settled.

(2) Where parties reach a settlement under Mediation, such a settlement shall be

binding and enforceable.

(3) The Mediation shall be carried out expeditiously and at such costs as may be determined by the Registry.

### **Arbitration**

7. (1) Where Mediation fails to achieve a resolution within Fifteen (15) days, the Complainant shall select a Provider, from among those accredited by the Registry, to appoint an arbitrator agreed upon between the disputing parties, failing agreement, the Provider shall appoint an Arbitrator adjudicate over the dispute.  
  
(2) Each Provider shall maintain and publish a list of Arbitrators and their qualifications that shall be available to the public.  
  
(3) Each Provider shall maintain a simple and publicly accessible online supplementary procedure to be followed by the parties during proceedings under this Policy.

### **Impartiality and Independence**

8. (1) An Arbitrator shall be impartial and independent and shall disclose to the Provider any circumstances affecting the Arbitrator's impartiality or independence before accepting an appointment to determine a dispute.  
  
(2) Where, at any stage during the dispute, circumstances arise that may affect the impartiality or independence of an Arbitrator, that Arbitrator shall promptly disclose such circumstances to the Provider.  
  
(3) Where an Arbitrator has disclosed circumstances that may affect the impartiality or independence of the Arbitrator, the Provider shall determine whether an alternative Arbitrator shall be appointed.

### **Language**

9. Unless otherwise agreed by the parties, all proceedings and correspondence under this Policy shall be in English. Where a Party requests use of another language, the Registry shall arrange translation at the expense of that Party and

suspend proceedings until the Registry receives such translation.

## **Communication**

10. (1) All communication under this policy shall be in writing, sent in paper or electronic form and copied to all parties to the dispute, the Registry and the Provider (in the case of an arbitration).
- (2) For any communication under this Policy, the sender shall retain evidence of having sent such communication.
- (3) Any communication sent under this paragraph is deemed to have been sent on the date shown on the evidence in sub-paragraph (2).
- (4) Where a Party updates its contact details they shall notify the Registry in writing within one day of any such update.
- (5) The Registry shall at all times communicate to the Registrar information relevant to technical and administrative functions relating to the proceedings under this Policy.
- (6) No Party, or authorized representative of a Party, may communicate with an Arbitrator except as provided for in this Policy.
- (7) All communications between a Party and the Arbitrator shall be through the Provider.
- (8) All e-mail communication under this Policy shall be in plain text

## **Involvement in disputes**

11. The Registry and Registrar may not participate in the administration or conduct of any dispute before an Arbitrator, except as specifically required in terms of this Policy.

## **General powers of Arbitrator**

12. (1) An Arbitrator shall ensure that the parties are treated with equality and that each Party is given a fair opportunity to present its case.

(2) An Arbitrator shall ensure that the dispute is handled as expeditiously as possible.

(3) An Arbitrator shall determine the admissibility, relevance, materiality and weight of the evidence.

(4) An Arbitrator shall have the power to consider and determine whether or not the dispute is a resubmission

(5) An Arbitrator shall decide a request by a Party to consolidate multiple domain disputes in accordance with this Policy.

### **Decisions**

13. An Arbitrator's decision in a dispute is limited to the following :

- a) in the case of abusive registrations the dismissal of the dispute or the transfer of the disputed domain name to the Complainant;
- b) in the case of offensive registrations the dismissal of the dispute or the deletion and prohibition of the domain name from future registration;
- c) in the case of reverse domain name hijacking, a dismissal of the dispute; or
- d) in the case that the dispute is a resubmission, a dismissal of the dispute.

### **Notification and publication**

14. A Provider shall communicate a decision to the parties in accordance with the procedure and shall provide the decision to the Registry for publication on its website and implementation as necessary.

### **Repeat disputes, availability of Court proceedings and appeal**

15. (1) In determining whether a dispute is a resubmission of an earlier dispute, or contains a material difference that justifies a re-hearing, the Arbitrator shall consider the question whether-

- (a) the Complainant, the Registrant and the domain name in issue are the same as in the earlier case;
- (b) the substance of the dispute relates to acts that occurred prior to or subsequent to the close of submissions in the earlier case;
- (c) if the substance of the dispute relates to act that occurred prior to the close of submissions in the earlier case, any exceptional grounds for the re-hearing or reconsideration exist, without affecting the integrity of the alternative dispute resolution process;

- (d) if the substance of the dispute relates to acts that occurred subsequent to the close of submissions in the earlier dispute, the acts on which the re-filed dispute are based are not, in substance, the same as the acts on which the previous dispute were based.
- (2) Either Party shall have the right to appeal a Decision under paragraph 36 of the procedure. The appeal panel shall consider appeals on the basis of a full review of the matter and may review procedural matters.
- (3) Nothing done in terms of this Policy prevents any Party from litigating on any related matter in the Courts of the Republic of Kenya.
- (4) Where a Party initiates any legal proceedings in the course of determination of a dispute, it shall promptly notify the Provider and the Registry.
- (5) Where legal proceedings are initiated during a dispute in respect of a domain name that is the subject of the dispute, the Registry or Arbitrator shall suspend the dispute immediately.

### **Transfer during a dispute**

- 16. (1) A Registrant shall not transfer, delete, or fail to renew a domain name registration:
  - (a) Whilst proceedings under this Policy are ongoing in relation to the Domain Name unless as a result of a written signed settlement reached between the parties and:-
    - (i) approved by the Registry pursuant to Mediation ; or
    - (ii) delivered to the Provider, who shall confirm the validity of the written settlement between the parties and issue relevant instructions to the Registry;or
  - (b) Whilst court proceedings in respect of the Domain Name registration is ongoing and an order is given by the court restraining or prohibiting the transfer, deletion or renewal of the Domain Name.
- (2) A Registrant may update technical information, such as name servers, for the domain name; provided that such updates do not result in the transfer or deletion of a domain name subject to a dispute.
- (3) Where an update of technical information results in the transfer or deletion of the domain name pending resolution of a dispute on the domain name, the Registrant shall be liable for any resultant damages, if the Registrant was aware of a dispute lodged under this Policy in respect of such domain name.

- (4) Where the Registry is informed of a domain name dispute, the Registry shall take steps to ensure that the domain name is not transferred, or allowed to be deleted during the course of the dispute.

### **Precedent**

17. (1) An Arbitrator may consider and be guided by previous decisions made in terms of this Policy.  
  
(2) An Arbitrator may also provide in their decision the full reference to decisions as well as national and international law that the Arbitrator considered

### **Default**

18. (1) Where a Party does not comply with any of the time periods established by this Policy or the Arbitrator, the Arbitrator shall proceed to determine the dispute notwithstanding the default.  
  
(2) Where a Party does not comply with any provision or requirement under this Policy or any request from the Arbitrator, the Arbitrator may, in the absence of exceptional circumstances, draw such inferences as the Arbitrator may consider appropriate.

### **Extension of time**

19. (1) A Party may apply for extension of time for compliance with any of the procedures under this Policy, stating the grounds for such an application.  
  
(2) In considering such an application, the Registry or Arbitrator shall be reasonable and fair and may specify conditions for an extension.

### **Exclusion of liability**

20. The Registry or the Provider shall not be liable to a Party for anything done or omitted in connection with any proceedings under this Policy, provided that the Registry has implemented the decision reached pursuant to such proceedings.

### **Modification of Policy**

21. (1) The Registry reserves the right to make reasonable modifications to the Policy

at any time. Except where the Registry is acting in pursuance of a statutory requirement or a court order, changes shall be implemented following a process of stakeholder consultation. Each such change shall be published in advance, where practicable, 30 calendar days in advance, on the Registry's website.

(2) Where the Policy has already been invoked by the submission of a dispute to a Provider, parties to a dispute shall be bound by the Policy, which was current at the time the dispute commenced until the dispute is concluded.

## PART III

### Alternative Dispute Resolution Procedure

#### Filing of a complaint

22. (1) A person may initiate a dispute by submitting a complaint in Form DRP 0001, in the Schedule, in paper format, in triplicate and in electronic format to the Registry.
- (2) The Complainant shall:-
- (a) provide the name, physical address, e-mail addresses and the telephone numbers of the Complainant or of any representative authorized to act on behalf of the Complainant in the dispute;
  - (b) provide details of the Registrant including the name and contact information of the Registrant to enable the provider to send a copy of the dispute to the Registrant as provided for in terms of paragraph 10;
  - (c) specify the domain name that is the subject of the dispute;
  - (d) identify the Registrar with whom the domain name is registered at the time the dispute is filed;
  - (e) specify, in detail, the rights on which the dispute is based and provide full details of the right which the Complainant relies on, such as trade mark or cultural rights;
  - (f) detail reasons why the domain name, in the hands of the Registrant, is an abusive registration or an offensive registration or both;
  - (g) specify the remedies sought;
  - (h) identify any other legal proceedings that have been initiated or terminated relating to any domain name that is the subject of the dispute;
  - (i) confirm that there is no pending dispute relating to the same complaint that has been filed with any other entity that has jurisdiction to hear and determine the dispute;
  - (j) annex any documentary or other evidence in support of the complaint, together with a schedule indexing such evidence; and
  - (k) sign and affirm before a Commissioner of Oaths that the complaint and the information contained in the complaint is, to the best of the Complainant's knowledge, both complete and accurate, that the complaint is not being used for any improper purpose, and that the assertions in the complaint are grounded under this Policy.

### **Compliance and service of complaint**

23. (1) Upon receiving a complaint under paragraph 22, the Registry shall promptly check the complaint for compliance with this Policy.
- (2) Where the complaint complies with this Policy, the Registry shall forward a copy of the complaint together with any annexures to the Registrant requesting for a response and setting out the consequences of default under this Policy.
- (3) The Registrant shall be deemed to have been notified of the dispute when the Registry:-
- (a) has sent a hard copy of the complaint to the Registrant's postal, physical or facsimile address as displayed on the Whois database; or
- (b) has sent the complaint in electronic format including annexures, to the extent available in electronic form, to the e-mail addresses of the Registrant and their technical, administrative, and billing contacts.
- (4) Where the Registry finds that the complaint does not comply with this Policy, the Registry shall immediately notify the Complainant of the nature of the non-compliance and advise on the necessary amendments.
- (5) The Complainant shall correct any non-compliance within five days, failure to which the complaint shall be deemed to have been withdrawn and the Complainant may file the complaint afresh.
- (6) The date of successful submission of a complaint to the Registry shall be the date of commencement of the dispute.
- (7) The Registry shall notify the Complainant, the Registrant and the relevant Registrar of the date of commencement of the dispute.

### **Response to complaint**

24. (1) The Registrant shall, within ten days of the date of commencement of the dispute, submit a response in form DRP002, in the Schedule, in paper format, in triplicate and in electronic format to the Registry.
- (2) The response shall, in clear and concise terms, :-
- (a) respond to the statements and allegations contained in the complaint and detail any grounds to prove that the domain name is neither an abusive nor offensive registration as the case may be;
- (b) provide the name, physical address, e-mail addresses and the telephone numbers of the Registrant or of any representative authorized to act on

behalf of the Registrant in the dispute;

- (c) identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain names that are subject of the dispute;
- (d) annex any documentary or other evidence in support of the response, together with a schedule indexing such evidence; and
- (e) sign and affirm before a Commissioner of Oaths that the response and the information contained in the response is, to the best of Registrant's knowledge, both complete and accurate and that the assertions in the response are grounded under this Policy.

(3) When a response is received by the Registry, the Registry shall, within one day, forward a copy of the response to the Complainant who is deemed to have been notified of the dispute when the Registry:-

- (a) has sent a hard copy of the response to the Complainant's postal, physical or facsimile address as provided in the complaint; or
- (b) has sent the response in electronic format including annexes to the extent available in electronic form, to the e-mail addresses of the Complainant.

(4) Where the Registrant does not submit a response within the stipulated period, the Registry shall, within one day, notify both parties of such status and the Complainant shall be entitled to apply in form DRP004, in the Schedule, for a summary award by a selected Provider:

Provided that such application for a summary award is made within ten days and upon payment of the fee set out in clause 37.

(5) Where the Complainant does not pay the applicable fee within the stipulated time set out in sub-paragraph (4), the complaint shall be deemed to have been withdrawn and the Complainant shall not be prevented from filing a fresh complaint.

## **Reply**

26. (1) Within five days of receiving the response from the Registry, the Complainant may submit a reply to the Registrant's response in form DRP003, in the Schedule, in paper format, in triplicate and in electronic format to the Registry.

(2) Any reply by the Complainant shall be restricted solely to new matters raised in the response and were not raised in the complaint.

(3) The Registry shall, within one day of receipt, forward a copy of the reply to the Registrant who is deemed to have been notified of the reply when the Registry: -

- (a) has sent a hard copy of the reply to the Registrant's postal, physical or facsimile address as displayed on the Whois database; or
- (b) has sent the reply in electronic format including annexes to the extent available in electronic form, to the e-mail addresses of the Registrant and their technical, administrative, and billing contacts.

(4) Where the Complainant does not submit a reply, the Registry shall proceed to Mediation based on the documents filed.

### **Mediation**

27. (1) Within three days of receiving the reply or response as the case may be, the Registry shall commence the mediation process:

Provided that the Registry shall not conduct mediation where the Registrant does not file a response.

(2) All negotiations conducted between the parties and any settlement reached during mediation shall be confidential and shall not be shown to the Provider or any third party unless in pursuance of a court order or under applicable laws.

(3) Any settlement reached by parties as part of mediation shall be in writing and signed.

(4) Where parties do not achieve an acceptable resolution through mediation within fifteen days, the Complainant shall be entitled to apply for arbitration by selecting a Provider from the list published by the Registry.

### **Selection of Provider**

28. (1) Subject to the Provider's supplementary procedure, the Complainant upon selection of a Provider, shall pay the prescribed fee as set out in paragraph 37 and notify the Registry of their selection and payment.

(2) In selecting a Provider, the Complainant shall specify whether a single or three Arbitrators shall determine the dispute and indicate how payment of the prescribed fee has been made with accompanying proof of payment;

### **Transmission to Provider**

29. (1) Within one day of notification of selection of Provider, the Registry shall forward the complaint, response, and reply, if any, to the selected Provider.

- (2) Within one day of receiving the complaint, response and reply, the Provider shall notify the parties of their selection and the number of Arbitrators requested for by the Complainant.
- (3) Where the Complainant has requested for one Arbitrator, the Registrant may, subject to the Provider's supplementary procedure request for three Arbitrators upon payment of the prescribed fees as set out in clause 37 of this Policy.
- (4) The fees for three Arbitrators shall be paid by the Complainant, except where the request for three Arbitrators was made by the Registrant, in which case the applicable fees shall be shared equally between the parties.

### **Appointment of Arbitrator**

30. (1) Within five days of being selected, the Provider shall appoint either one or three Arbitrators, as the case may be, being the next available Arbitrators appointed by rotation from its list of Arbitrators, and forward to them all documentation relating to the dispute .

(2) Once an Arbitrator is appointed, the Provider shall notify the parties of the Arbitrator appointed and the date by which the Arbitrator shall forward a decision to the Provider.

### **Further statements**

32. In addition to a complaint, response and reply, the Arbitrator may request further statements or documents relevant to the dispute from either of the parties.

### **Arbitration**

33. Arbitration shall be based on the documentation submitted under this Policy. Oral submissions may be allowed if the Arbitrator deems it expedient.

### **Arbitrator decision**

34. (1) An Arbitrator shall determine the dispute in accordance with the principles of law, on the basis of the complaint, response, reply, if any, and further statements or documents submitted in accordance with this Policy.

(2) The Arbitrator shall forward their decision on the dispute to the Provider within 14 days of their appointment under paragraph 30.

(3) The decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name of the Arbitrator.

(4) Where three Arbitrators consider a dispute, the unanimous views of the majority shall constitute the decision:

Provided that any dissenting view shall also accompany the decision.

### **Communication of decision to parties and implementation of decision**

35. (1) Within three days of receipt of the decision from the Arbitrator, the Provider shall communicate the full text of the decision to each Party, the Registry and the Registrar.

(2) The decision shall be published in full except those parts ruled to be confidential by the Arbitrator.

(3) Where the Arbitrator makes a decision that a domain name registration shall be deleted or transferred, the Registry shall implement the decision by making the necessary changes to the domain name registry database after seven days of notification under paragraph (1), unless –

(a) An appeal or a statement of intention to appeal as provided for under paragraph 36, in which case no further action shall be taken in respect of the domain name until the appeal is concluded; or

(b) Official documentation showing that a party has filed and served legal proceedings against the other Party in respect of the domain name; provided that no further action shall be taken in respect of the domain name unless evidence which satisfies the domain administrator that;

(i) the parties have reached a settlement; or

(ii) such proceedings have been dismissed or withdrawn.

### **Appeal**

36. (1) Either Party shall have the right to appeal a decision by submitting a statement of intention to appeal within five days of notification of the decision together with the prescribed appeal fee provided for in paragraph 37(4).

(2) A statement of intention to appeal shall contain such information as to make it clear that an appeal is requested and shall not contain the actual grounds or reasons for appeal.

(4) Within fifteen days of the filing of the statement of intention to appeal the appealing Party shall file an appeal notice.

(5) An appeal notice shall set out detailed grounds and reasons for the appeal and shall not contain new evidence or annexures.

(5) The Provider shall forward the statement of intention to appeal or appeal notice, as the case may be, to the other Party within one day of receipt of: -

the statement of the intention to appeal and the appeal fee; or the appeal notice.

(6) Within 10 days of receiving the appeal notice from the Provider the other Party may submit an appeal notice response to the Provider which shall set out detailed grounds and reasons why the appeal shall be rejected.

(7) Following the filing of an appeal notice response, or the expiry of the deadline to do so, the Provider shall appoint an appeal panel of three Arbitrators.

(8) The Arbitrators on the appeal panel shall be impartial and shall consist of:-

the chairperson of the Provider's group of Arbitrators or their appointee from the Provider's group; and the next available two Arbitrators appointed by rotation from the Provider's list:

Provided that no Arbitrator who had determined the dispute shall sit in the appeal panel.

(9) Unless under exceptional circumstances, the appeal panel shall not take into consideration any new evidence presented in appeal or appeal notice response.

(10) Clause 34 and 35 shall apply mutatis mutandis to appeal decisions, except that: - appeal decision shall be forwarded by the appeal panel to the Provider within 20 days of the appointment of the appeal panel; appeal decisions shall not be subject to any further appeal in terms of this Policy.

## **Fees**

37. (1) A Complainant shall pay a fee in the sum of Kenya Shillings 20,000 to the

Provider for a summary decision application as contemplated in paragraph 25(4).

(2) A Complainant shall pay or a fee in the sum of Kenya Shillings 50,000 where the Complainant requests for one Arbitrator to determine the dispute or the sum of Kenya Shillings 100,000 for three Arbitrators to decide the dispute, where the Complainant requests for the dispute to be determined by three Arbitrators.

(3) If a Registrant requests to have the dispute decided by three Arbitrators, rather than a single Arbitrator requested for by the Complainant, in terms of paragraph 29(3) the Registrant and the Complainant shall pay the Provider a fee in the sum of Kenya Shillings 50,000 each.

(4) The appeal fee for an appeal under paragraph 36 shall be in the sum of Kenya Shillings 100,000.

(5) The application fee for accreditation of Providers under paragraph 41(3) shall be in the sum of Kenya Shillings 10,000.

(6) The Registry may, from time to time, revise and publish the applicable fees.

### **Withdrawal, settlement, or other grounds for termination**

38. (1) Where a dispute is deemed to have been withdrawn, the Provider shall refund the Complainant or the Registrant the fee paid less any administrative costs incurred.

(2) Where before the appointment of an Arbitrator, the parties agree on a settlement, the Provider shall terminate the dispute and refund to the Complainant or the Registrant the fee paid less any administrative costs incurred to date.

(3) Where after the appointment of an Arbitrator but before the Arbitrator's decision is made, the parties agree to settle, the Arbitrator shall terminate the dispute, and the parties shall forfeit all fees paid.

(4) Where before the Arbitrator's decision is made, it becomes unnecessary or impossible to continue with the dispute, the Arbitrator shall terminate the dispute, unless a Party objects to such termination.

In the event that the dispute is terminated in accordance with sub-paragraph (4), the parties shall forfeit all fees paid.

## PART IV

### ACCREDITATION OF PROVIDERS

#### Qualifications for a Provider

39. For any entity to qualify as a Provider under this Policy, the entity shall:-

- (a) have at least five qualified persons of integrity that are experts in commercial, cultural, linguistic, religious, personal or intellectual property rights and who have agreed to serve as Arbitrators;
- (b) ensure that the listed Arbitrators are trained on this Policy, the technology of domain names and the legal principles applicable to domain name disputes;
- (c) possess a familiarity with international domain name dispute resolution mechanisms, processes and decisions; and
- (d) have no relationship with the Registry that may create a conflict of interest.

#### Provider Application Procedure

40. (1) An applicant for accreditation as a Provider shall submit an application to the Registry.

(2) An application submitted under sub-paragraph (1) above shall contain:-

- (a) the name, physical address within the Republic of Kenya, e-mail addresses, telephone numbers, description and nature of business of the applicant;
- (b) an overview of an applicant's capabilities and background in providing alternative dispute resolution services including a description of the applicant's experience in handling alternative dispute resolution proceedings, if any;
- (c) a list of the names and qualifications of the Arbitrators the applicant proposes to use;
- (d) a description of training and education the applicant proposes to undertake for listed Arbitrators with respect to domain name disputes and this Policy;
- (e) a copy of the applicant's proposed supplementary procedure;
- (f) a description of the applicant's proposed internal operating procedures as well as how the applicant proposes to administer disputes, including their interaction with parties to the dispute, registrars, the Registry and other approved Providers; and
- (g) a proposed schedule for applicant's implementation of their programme for administering disputes under this Policy including a statement of applicant's administrative capacity in terms of number of disputes initiated on a monthly basis.

(2) The Registry shall examine an application submitted to it to determine whether or not the applicant has the ability to handle proceedings in an expedited, online context in an orderly and fair manner.

(3) Where the Registry approves an application under sub-paragraph (2), the Registry

shall notify the applicant who shall be required to pay the accreditation fee as set out in paragraph 37.

(4) Accreditation shall be valid for a period of one year and may be renewed on application and payment of requisite fee as set out in paragraph 37.

### **Publication and Amendment**

42. (1) The Registry shall publish a list of Providers together with their Arbitrators on its website.

(2) Any amendment to the list of Arbitrators by the Provider shall be submitted to the Registry for approval.

## **PART V**

### **SCHEDULE**

Dispute lodging Form DRP001

Response Form: DRP002

Reply Form: DRP003

Arbitration Request Form: DRP004