

## **POLICY FOR UNIFORM DOMAIN NAME DISPUTE RESOLUTION**

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### **1. Purpose and application.**

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This Uniform Domain Name Dispute Resolution Policy (the "Policy") has been adopted and is incorporated in the Registration Agreement. Proceedings under Section 4 of this Policy will be conducted according to the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules of Procedure"). The policy is between the registrar and its customers (domain name holder or registrant). In this policy, the words "we" and "our" are used to refer to the registrar while "you" and "your" refer to the customer.

This policy has been adopted by all accredited domain name registrars and will be effective from 1<sup>st</sup> January 2009.

### **2. Your Representations.**

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By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that:

- a) the statements that you made in your Registration Agreement are complete and accurate;
- b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;
- c) you are not registering the domain name for an unlawful purpose; and
- d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights.

### **3. Cancellations, Transfers, and Changes.**

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We will cancel, transfer or otherwise make changes to domain name registrations under the following circumstances:

- a) subject to the provisions of Section 8, our receipt of written or appropriate electronic instructions from you or your authorized agent to take such action;
- b) our receipt of an order from a court or arbitral tribunal, in each case of competent jurisdiction, requiring such action; and/or
- c) our receipt of a decision of an Mediation panel requiring such action in any mediation proceeding to which you were a party and which was conducted under this Policy and other outstanding tzNIC policies and rules.

We may also cancel, transfer or otherwise make changes to a domain name registration in accordance with the terms of your Registration Agreement or other legal requirements.

#### 4. Mandatory Mediation proceeding.

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This Section sets forth the type of disputes for which you are required to submit to a mandatory mediation proceeding.

These proceedings will be conducted as defined in the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules of Procedure")

**a). Applicable Disputes**

You are required to submit to a mandatory mediation proceeding in the event that a third party (a "complainant") asserts to tzNIC , in compliance with the Rules of Procedure, that

- (i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) you have no rights or legitimate interests in respect of the domain name; and
- (iii) your domain name has been registered and is being used in bad faith.

In the mediation proceeding, the complainant must prove that each of these three elements are present.

**b). Evidence of Registration and Use in Bad Faith**

For the purposes of Section 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

**c). How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint**

When you receive a complaint, you should refer to Section 5 of the Rules of Procedure in determining how your response should be prepared. Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Section 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

**d). Initiation of Proceeding and Process and Appointment of Mediation panel**

The Rules of Procedure state the process for initiating and conducting a proceeding and for appointing the panel that will decide the dispute (the "Mediation panel").

**e). Consolidation**

In the event of multiple disputes between you and a complainant, either you or the complainant may petition to consolidate the disputes before a single Mediation panel. This petition shall be made to the first Mediation panel appointed to hear a pending dispute between the parties. This Mediation panel may consolidate before it any or all such disputes in its sole discretion, provided that the disputes being consolidated are governed by this Policy.

**f). Fees.**

All fees charged by tzNIC in connection with any dispute before a Mediation panel pursuant to this Policy shall be paid by the complainant, except in cases where you elect to expand the Mediation panel from one to three panelists as provided in Section 5(b)(iv) of the Rules of Procedure, in which case all fees will be split evenly between you.

**h). Our Involvement in Mediation proceedings**

Apart from processing the complaints and electing panelists as indicated in the Rules, tzNIC do not, and will not, participate in the administration or conduct of any proceeding before an Mediation panel. In addition, we will not be liable as a result of any decisions rendered by the Mediation panel.

**i). Remedies**

The remedies available to a complainant pursuant to any proceeding before a Mediation panel shall be limited to requiring the cancellation of your domain name or the transfer of your domain name registration to the complainant.

**j). Notification and Publication**

The panel shall notify us of any decision made by a Mediation panel with respect to a domain name you have registered with us. All decisions under this Policy will be published in full over the Internet, except when a Mediation panel determines in an exceptional case to redact portions of its decision.

**k). Availability of Court Proceedings**

The mandatory mediation proceeding requirements set forth in Section 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory mediation proceeding is commenced or after such proceeding is concluded. If an Mediation panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) Mediation panel's decision before implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that you have commenced a lawsuit against the complainant in a jurisdiction to which the complainant has submitted under Section 3(b)(xiii) of the Rules of Procedure. (In general, that jurisdiction is either the location of our principal office or of your address as shown in our Whois database. See Sections 1 and 3(b)(xiii) of the Rules of Procedure for details.) If we receive such documentation within the ten (10) business day period, we will not implement the Mediation panel's decision, and we will take no further action, until we receive (i) evidence satisfactory to us of a resolution between the parties; (ii) evidence satisfactory to us that your lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing your lawsuit or ordering that you do not have the right to continue to use your domain name.

**5. All Other Disputes and Litigation.**

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All other disputes between you and any party other than us regarding your domain name registration that are not brought pursuant to the mandatory mediation proceeding provisions of Section 4 shall be resolved between you and such other party through any court, arbitration or other proceeding that may be available.

**6. Our Involvement in Disputes.**

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We will not participate in any way in any dispute between you and any party other than us regarding the registration and use of your domain name. You shall not name us as a party or otherwise include us in any such proceeding. In the event that we are named as a

party in any such proceeding, we reserve the right to raise any and all defenses deemed appropriate, and to take any other action necessary to defend ourselves.

## 7. Maintaining the Status Quo.

We will not cancel, transfer, activate, deactivate, or otherwise change the status of any domain name registration under this Policy except as provided in Section 3 above.

## 8. Transfers during a Dispute.

### **a) Transfers of a Domain Name to a New Holder**

You may not transfer your domain name registration to another holder (i) during a pending mediation proceeding brought pursuant to Section 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded; or (ii) during a pending court proceeding or arbitration commenced regarding your domain name unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the court or arbitrator. We reserve the right to cancel any transfer of a domain name registration to another holder that is made in violation of this sub-section.

### **b) Changing Registrars**

You may not transfer your domain name registration to another registrar during a pending mediation proceeding brought pursuant to Section 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded. You may transfer administration of your domain name registration to another registrar during a pending court action or arbitration, provided that the domain name you have registered with us shall continue to be subject to the proceedings commenced against you in accordance with the terms of this Policy. In the event that you transfer a domain name registration to us during the pendency of a court action or arbitration, such dispute shall remain subject to the domain name dispute policy of the registrar from which the domain name registration was transferred.

## 9. Policy Modifications.

We reserve the right to modify this Policy at any time. We will post our revised Policy at least thirty (30) calendar days before it becomes effective. Unless this Policy has already been invoked by the submission of a complaint to tzNIC, in which event the version of the Policy in effect at the time it was invoked will apply to you until the dispute is over, all such changes will be binding upon you with respect to any domain name registration dispute, whether the dispute arose before, on or after the effective date of our change. In the event that you object to a change in this Policy, your sole remedy is to cancel your domain name registration with us, provided that you will not be entitled to a refund of any fees you paid to us. The revised Policy will apply to you until you cancel your domain name registration.