

MEDIATION RULES FOR A DISPUTE BETWEEN APTLD MEMBERS PARTICIPATING IN THE DNS SERVER SHARING PROJECT

Definitions in these Rules:

- ‘Agreement’ is any agreement between the Parties embodying a submission of present or future Disputes to mediation.
- ‘Days’ means normal working days and shall exclude Saturdays, Sundays and public holidays.
- ‘The Dispute’ means the Disputed issues which are referred to as mediation.
- ‘Mediation’ is a process in which Parties to a Dispute with the assistance of a neutral third party represented by an APTLD Board Director(s) (‘the Mediator’) identify the Disputed issues, find alternative options and endeavor to reach an agreement. The Mediator has no advisory or other determinative role in regard to the content of the Dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

RULE 1 Appointment of Mediator

- 1.1. The Parties agree that the mediation shall be conducted by an APTLD Board Director or Directors, or a third party nominated by the Board at its discretion who accepts appointment as Mediator.
- 1.2. Where a Mediator represents or is associated with a Party to the Dispute, then the Mediator should resign from the process due to the conflict of interests.

RULE 2 Application of the Rules

- 2.1. Where the Parties to a Dispute have agreed to mediation in accordance with these Rules, they are bound to comply with these Rules unless any part thereof is held to be void or voidable, in which case that part shall be severed from the remainder of the procedure. Otherwise, these Rules are subject to the law of APTLD’s ‘economy of incorporation’ which governs mediation.

RULE 3 Confidentiality

- 3.1. The Mediator, the Parties and all advisers and representatives of the Parties shall: a. except as provided in paragraph 2 of this Rule, keep all information disclosed during the mediation process confidential; b. not use any information disclosed during the mediation process for any purpose other than the mediation; c. if requested by the Mediator or a party to do so, sign Confidentiality Agreements in the terms of this Rule.

3.2. The obligation of confidentiality under sub-paragraph a. of paragraph 1 above shall apply except: a. if disclosure is compelled by law; b. to the extent necessary to give effect to or to enforce any agreement to settle or resolve the whole or any part of the Dispute; c. where disclosure is only of the occurrence of the mediation (and not any communication during the conciliation), and the occurrence of the mediation is relevant to subsequent arbitral, adjudicative or judicial proceedings relating to the Dispute

RULE 4 Role of the Mediator

- 4.1. The Mediator shall be independent of, and act fairly and impartially as between the Parties.
- 4.2. The Mediator shall assist the Parties to negotiate between themselves a mutually acceptable resolution of the Dispute, by: a. helping the Parties to identify and define the issues in Dispute; b. implementing a procedure which is aimed at achieving resolution of the Dispute quickly, fairly and cost-effectively; c. where appropriate, suggesting particular Dispute resolution techniques for individual issues aimed at narrowing the issues in Dispute quickly, fairly and cost-effectively; d. acting as the facilitator of direct negotiations between the Parties.
- 4.3. During the mediation process, the Mediator may convene such meetings, offline or online, between the Parties (hereafter respectively called Mediation Meetings) as the Mediator considers appropriate, for the purpose of: a. identifying and defining the issues in Dispute, b. resolving or narrowing the issues in Dispute, on terms acceptable to the Parties.
- 4.4. During the mediation process, the Mediator may, in his or her unfettered discretion, communicate and discuss the Dispute privately with any of the Parties or their representatives or advisers. The Mediator shall preserve absolute secrecy of the content of any such communication, and shall not expressly or impliedly convey the content of such communication (or part thereof) unless specifically authorized to do so.

RULE 5. Role of the Parties

- 5.1. The Parties shall do all things reasonably necessary for the proper, expeditious and cost-effective conduct of the mediation.
- 5.2. Without limiting the generality of paragraph 1, each party shall: a. be expected to participate bona fide in the Mediation process; b. comply without delay with any direction made on procedural matters and the final decision the Mediator has made on the Dispute; c. if not appearing in person: (i) be represented at any Preliminary Meeting by a person or persons with authority to agree on procedural matters; (ii) be represented at any Mediation Meeting by a person or persons with full and unfettered authority to settle the Dispute unless, prior to the Mediation Meeting, it has disclosed to the Mediator and each other party the nature of any

limitation on that authority and the procedure required to obtain that party's approval to settle the Dispute.

RULE 6. Preliminary Meeting

6.1. Unless otherwise agreed by the Parties, the Mediator shall convene a Preliminary Meeting with the Parties, in person or by teleconference, to be held as soon as practicable after reference of the Dispute to mediation.

6.2. The purpose of the Preliminary Meeting is for the Parties, with the assistance of the Mediator, to: a. discuss and agree on the issues in Dispute, or formulate a process by which those issues can be clarified and agreed; b. plan and agree on how a negotiated resolution of the Dispute is to proceed including, where appropriate, a timetable for exchange of position papers and other documents and provision of copies to the Mediator; c. make arrangements, if required, for Confidentiality Agreements to be signed by all persons taking part in the mediation process, in accordance with Rule 3; d. make such other planning and administrative arrangements as may be required for the mediation to proceed, including in respect of the terms of appointment of the Mediator.

RULE 7 Termination of the Mediation

7.1. Any party may terminate the mediation, by written notice to each other party and the Mediator.

7.2. The Mediator may terminate the mediation, by written notice to each of the Parties, if the Mediator forms the opinion that the further conduct of the process will not be productive in achieving a resolution of the Dispute.

RULE 8 Subsequent Proceedings

8.1. The Parties agree that the following will be privileged and will not be disclosed or relied upon or be the subject of a subpoena to give evidence or produce documents in any subsequent arbitral or judicial proceedings arising out of or in connection with the Dispute: a. any view expressed, or admission or concession made, by or on behalf of a party; b. any view expressed, or suggestion made by the Mediator; c. any document created for the purpose of the Mediation.

RULE 9. Counting of Days

9.1. For the purpose of counting days under these Rules, such period shall begin to run on the day following the day when notice, notification, communication or proposal is actually received or deemed to be received under paragraph 2 of this Rule, whichever is earlier. If the last day of such a period is a public or official holiday or a non-business day at the residence or place of

business of the addressee, then the period is extended until the first business day which follows.

9.2. Any such notice, notification, communication or proposal which is posted is deemed to have been received on the second day following the day of posting. Any such notice, notification, communication or proposal which is sent by facsimile or other means of Telecommunication or electronic transmission is deemed to have been received on the day of transmission.

RULE 10 Liability for Acts or Omissions

10.1. The Parties agree that the Mediator, its officers and employees are not liable to any party for or in respect of any act or omission in the discharge or purported discharge of their respective functions under these Rules unless such act or omission is shown to have been fraudulent.