



DISPUTE RESOLUTION POLICY

MAY 2023

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1. INTERPRETATION

In this Policy, unless the context otherwise requires, the following expression shall have the following meaning:

- i. **“Authority”** means Konza Technopolis Development Authority;
- ii. **“Appointed Officer”** means authorised person(s) appointed to the Dispute Resolution Team/ Committee;
- iii. **“Board”** means Konza Technopolis Development Authority Board of Directors;
- iv. **“CEO”** means the Chief Executive Officer of KoTDA;
- v. **“CM, LS”** means Chief Manager, Legal Services;
- vi. **“Legal Services”** means the Corporation Secretary and Legal Services Department;
- vii. **“Mwongozo”** means the Code of Governance for State Corporations;
- viii. **“Process Owner”** means Department, division, unit or office where the dispute arose; and
- ix. **“Stakeholder (s)”** means both Internal and External stakeholders or any person with an interest in Konza Technopolis or doing business with KoTDA.

1.0 OUR IDENTITY

1.1 Vision

A leading global Technopolis and innovation hub.

1.2 Mission

To develop a thriving sustainable smart city and a vibrant innovation ecosystem contributing to Kenya's knowledge Economy.

1.3 Mandate

To develop Konza Technopolis as a globally competitive smart city by creating an enabling environment through utilization of ICT for socio-economic development.

1.4 Strategic Objectives

- i. To attract, onboard and retain investors and create a strong brand for the Technopolis.
- ii. Form partnerships with other actors in the National Innovation System, to recruit, attract, and develop high-end talent as well as create relevant, and smart innovative solutions and commercialize them.
- iii. In partnership with other actors in the Innovation Ecosystem, create a conducive environment for technology start-ups and SMEs to thrive and scale.
- iv. To develop flexible "World Class" smart infrastructure.
- v. To ensure effective smart city coordination and governance.
- vi. To develop adequate institutional capacity for efficiency, effectiveness and sustainability.

2. 0 FOREWARD

As a good governance practice, Mwongozo requires the Board to ensure that disputes with and among stakeholders are resolved efficiently, effectively, and expeditiously. Further, the Board should take reasonable steps to encourage stakeholders to solve disputes through alternative dispute resolution mechanisms.

The Board of KoTDA is alive to the fact that Disputes are inevitable and when they arise within an organization, it is in the best interest of the organization to have them managed effectively, expeditiously and efficiently. How such disputes are managed determines whether the underlying issues can be resolved or whether the disputes can ripen and have detrimental effects on the affairs of the organization including its financial performance and public image.

It is thus essential for the Authority to develop and adopt efficient dispute management mechanisms. Efficient dispute management within the Authority is step towards good risk management since it will enable the Authority to cushion itself against the adverse effects of disputes whenever they occur.

This Policy will therefore take a proactive approach to the resolution of disputes by ensuring reduction of disputes and retention of good relationships with both its internal and external stakeholders.

I therefore call for a concerted effort from all stakeholders to support the Authority through adherence to this Policy.


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Dated 19/6/2023

Mr. John Paul Okwiri

Ag. Chief Executive Officer

3.0 INTRODCUTION

Konza Technopolis Development Authority ("KoTDA") is a state agency established under the State Corporations Act vide the Legal Notice No. 23 of April 2012.

The mandate of KoTDA is to develop the Konza Technopolis as a globally competitive smart city by creating an enabling environment through utilization of ICT for socio-economic development with an additional mandate to engage in stakeholder management and mobilization to facilitate smooth operationalization of the Technopolis.

4.0 LEGAL FRAMEWORK POLICY

Being a State Corporation, KoTDA is governed by various statutes and government circulars published from time to time as follows:

- i. The Constitution of Kenya 2010;
- ii. Legal Notice No. 23 of 2012;
- iii. State Corporations Act;
- iv. Leadership, integrity and ethics legislation;
- v. Equality, national cohesion, and integration statutes;
- vi. Corporate governance legislation and guidelines; and
- vii. Relevant Laws, regulations, circulars and gazette notices.

Mwongozo requires the Board to take reasonable steps to encourage stakeholders to solve their disputes through Alternative Dispute Resolution mechanisms.

5.0 POLICY STATEMENT

KoTDA is committed to the reduction of disputes and retention of good relationships with both its internal and external stakeholders. The Authority in its interaction with its stakeholders invariably encounter disputes in performance of its core mandate. Acknowledging its responsibility towards its stakeholders, the Authority has adopted this policy that seeks to serve as a tool that will support the efficient, timely and cost-effective resolution of disputes. Implementation of the policy will foster accountability, preserve working relationships, and ensure efficient resolution of disputes.

6.0 PURPOSE

The purpose of this Policy is to encourage good governance practices of ensuring the efficient, effective, and expeditious resolution of disputes by:

- 6.1. Promoting alternative dispute resolution mechanisms
- 6.2. Reducing disputes thereby saving on financial, time and human resources that may be required to resolve disputes.
- 6.3. Increasing overall efficiency in the Authority's operations by providing sustainable dispute resolution mechanisms.
- 6.4. Providing an early opportunity to resolve disputes before they escalate to the more formal and costly processes.
- 6.5. Giving employees an opportunity to own outcomes in dispute resolution processes and retain working relationships.

7.0 SCOPE

This Policy is applicable to disputes between Konza Technopolis Development Authority and its stakeholders. For the avoidance of doubt, this Policy does not apply to internal disputes between employees, departments or divisions.

8. PROCEDURE FOR DISPUTE RESOLUTION

8.1. Methods

Unless provided otherwise by law or subsisting contractual engagements, the Authority's approach towards resolution of disputes shall be through the following dispute resolution mechanisms:

- i. Negotiation
- ii. Mediation
- iii. Expert Determination
- iv. Adjudication in the case of engineering and construction disputes
- v. Arbitration
- vi. Litigation

8.2. Approach To Dispute Resolutions

Process Owners are in charge of delivering on the Authority's key functional processes. Their roles in coordination of processes and communication with the relevant stakeholders places them at the centre of any dispute resolution approach that affects their particular process.

8.2 1. A proactive Approach

Process Owners shall take a proactive approach to ensuring that disputes that can be avoided at first instance, do not materialize, or are minimized. The following steps shall be adopted across all levels of process implementation:

- (a) **Development of a Risk Management & Allocation Plan** - Process Owners shall lead the process of identification of all risks that commonly or are likely to occur within their process. The Process Owners shall then allocate responsibilities by establishing the parties most suited to handle issues within any contractual and overall process framework. The Risk Management Plan shall be developed by the process owners as well as parties implementing the same.
- (b) **Establishment of Dispute Resolution Mechanisms within Contracts** - All contracts shall have a clearly laid out dispute resolution mechanism taking into consideration the nature of the contract in terms of complexity, value and similar considerations.
- (c) **Document Review** - The Process Owner shall define and clarify the essential elements within a document that is crucial to delivery of the particular task.
- (d) **Development of a Communications Plan** - The process owners having analysed the risks and identified the parties most likely to encounter them at first instance, shall come up with an effective communication plan specifically suited to addressing the risk. The proposed Communication Plan shall be divided into the following:
 - i. **Routine Communication** - This section shall set out how everyday project communication occurs.
 - ii. **Budget Communication** - This will keep relevant stakeholders in the know regarding any potential difference between the budgets set out and the actual cost of the project as it proceeds.
 - iii. **Compliance Communication** - This contains details of all legal compliance issues such as approvals, licenses, contract durations, and any other standard requirements.
 - iv. **Risk and Issues** - This will accommodate a plan on how to communicate unforeseen matters/emergencies within the project. Who is to be communicated to? How? Where & When

- (e) **Confidentiality** - The Process Owners shall take all reasonable measures to ensure that sensitive information is protected from potential exploitation by external parties.

8.2.2. A Post-Dispute Approach

The following steps shall be taken in respect of disputes relating to projects and contract administration.

- (a) **Collation of Documentary Evidence** - Once a dispute arises, the Process Owner shall collect all documents and information relevant to the dispute. The said information will then be presented to the Legal Services office within three (3) days of the dispute arising or a shorter time as maybe required depending on the urgency.

(b) Notices and Document Review

- i. Where the Authority is invoking a dispute resolution mechanism, the Process Owner shall communicate the details of the Dispute to Legal Services office within three (3) days of the dispute arising or a shorter time as maybe required depending on the urgency. The Communication will entail all documents with regard to the dispute as well as any additional information regarding the same.
- ii. Where the external stakeholder is raising the dispute, such dispute notice shall be addressed to the CEO.

(c) Appointment of Dispute Resolution Committee

The CEO may appoint a Dispute Resolution Committee in-case of complex disputes or in case of high value claims. The Committee will be appointed by the CEO and shall consist of the following members:

- i. The Process Owner, who shall have overall responsibility for resolution of the dispute;
- ii. The CM, LS or a duly appointed representative.
- iii. Such other person with material knowledge, experience, expertise or information relevant to the dispute; and
- iv. The CEO in his/her discretion may appoint any employee to be the chair of the Panel. In the event that there is no such appointment, the panel shall appoint one of their own to be the chair at the first meeting.

The functions of the Dispute Resolution Committee shall be:

- i. Identification of facts and stakeholders with regard to the dispute;
- ii. To review all the documentation and evidence by witnesses on issues surrounding the dispute in preparation for any upcoming dispute resolution procedure;
- iii. To review and analyse the possibilities of an amicable settlement of the matter where this is an option;
- iv. To propose any suitable mechanisms for resolving of the dispute;
- v. If the case would be the subject of an Adjudication, Arbitration, Mediation, and litigation; the Dispute Resolution Committee would propose representatives/witnesses who will be useful in the resolution of the dispute;
- vi. Where the case warrants arbitration, the Dispute Resolution Committee will nominate/appoint an arbitrator from the proposed pre-qualified panel if the parties to the dispute have not agreed on any other mode of nomination/appointment of an arbitrator;
- vii. The Committee shall also propose to the CEO the Terms of Reference for the arbitrators;
- viii. All the minutes of proceedings held by the Committee shall be duly recorded; and
- ix. All amicable settlements shall be approved by the Board of Directors.

8.2.3. General Procedure for Matters Referred to Arbitration/Statutory/Judicial Forums

Where a dispute has been referred to arbitration, statutory or judicial forum, the following procedure will be adopted:

- (a) **Document/information Collection** - the Process Owner shall ensure that all documents relevant to a particular matter are collected and shared with Legal Services who shall promptly share the same with the lawyers representing the Authority. Where the Statutory/Judicial body requires the said documents or information, the Process Owner shall ensure delivery of the same as per the directives issued.
- (b) **Compliance with applicable Statutory Timelines** -where statutory timelines are set for responding to or instituting particular cases, the Legal Services office and the Process Owner shall ensure compliance with the same.
- (c) **Appearance as Witnesses and Swearing of Affidavits** - Process Owners shall be responsible for the swearing of affidavits and appear as witnesses in accordance with the rules of evidence and procedure. Any person who is a compellable witness shall give

the evidence required and wilful failure to give such evidence shall constitute a disciplinary offence under the Human Resource policies.

(d) **Authority to plead** - where the Authority is instituting a suit, the verifying affidavit shall be sworn by an officer of the Authority duly authorized by the CEO to do so.

9.0 APPROVAL OF SETTLEMENTS BY THE BOARD

All amicable settlements on any dispute involving the Authority shall be approved by the Board.

10.0 TERMINATION OF DISPUTES

The CEO shall in consultation with Legal Services seek the approval of the Board for the termination of any pending claim or dispute.

11. POLICY IMPLEMENTATION RESPONSIBILITY

This Policy will be implemented by the CM, LS, Process Owners and the Dispute Resolution Committee (where the dispute the dispute has been referred to the Committee).

12. REVIEW

This Policy shall be reviewed every three (3) years or from time to time as informed by changes in the operational environment of the Authority.

13. EFFECTIVE DATE

This policy comes into effect on this^{19TH}.....day of^{JUNE}.....2023

