



# **(.my) DOMAIN REGISTRY'S SENSITIVE NAME DISPUTE RESOLUTION POLICY**

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## **THE RULES**

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### **1. General**

- 1.1 All Sensitive Name disputes are governed and administered in accordance with .my DOMAIN REGISTRY's Sensitive Name Dispute Resolution Policy ("**SNDRP**"), these Rules and the Supplemental Rules of the Provider (collectively referred to as the "**Policy and Rules**").

### **2. Definitions**

- 2.1 In these Rules, the following words shall have the following meanings:-

**Chairman** means the person selected by the Provider from its list of Panel members, to preside as Chairman of a Sub-Reference Panel;

**Complainant** means the Party (including its duly authorised representative, if any) which initiates a Complaint against the Registrant's Domain Name;

**Complaint** means the complaint made by the Complainant against the Registrant's Domain Name, alleging that it is a Sensitive Name;

**Domain Name** refers to the .my Country Code Top Level Domain which is the subject of a Complaint;

**Fees** means the fees stipulated in the Supplemental Rules of the Provider;

**MCMC** means the Malaysian Communications and Multimedia Commission;

**.my DOMAIN REGISTRY** Means MyNIC Berhad (i.e. Malaysian Network Information Centre), its officers and employees ("**Employees**");

**Sub-** means qualified persons appointed to decide the Proceeding

<b>Reference Panel</b>	between the Parties, constituted by a Chairman appointed by the Provider and two other Panel members selected by the said Chairman, in accordance with the Policy and Rules;
<b>Party</b>	means the Complainant or Registrant, as the case may be, and " <b>Parties</b> " means the both of them;
<b>Proceeding</b>	means a SND RP proceeding between the Parties brought under the Policy and Rules;
<b>Provider</b>	means a body appointed by .my DOMAIN REGISTRY to provide Sensitive Name dispute resolution services in accordance with the Policy and Rules;
<b>Reference Panel</b>	means the Reference Panel listed in the website of the Provider; ;
<b>Registrant</b>	means the Party (including its duly authorised representative) which has registered a Domain Name and against which a Complaint is filed by the Complainant;
<b>Sensitive Name</b>	means a name deemed to be obscene, scandalous, indecent, offensive and/or contrary to Malaysian public norms or otherwise falling within any one or more of the categories detailed in Paragraph 5 of the SND RP;
<b>Supplemental Rules</b>	means the Provider's rules concerning the administration of a Proceeding, which shall not be inconsistent with the SND RP and these Rules;
<b>Working day</b>	means any day other than a Saturday, Sunday, Federal Day or a Federal public holiday.

### **3. Communications**

- 3.1 Unless otherwise specified herein, all communication between the Parties and the Provider must be sent by:-
- (i) electronic-mail and
  - (ii) registered post, courier, or facsimile,

and will be considered to have reached its intended recipient:-

- (a) Where sent by electronic mail, after twenty-four (24) hours from date of transmission, but only if the time and date of transmission can be confirmed.

- (b) Where sent by registered post to an address in Malaysia, three (3) working days after the date of posting;
  - (c) Where sent by registered post to an address outside of Malaysia, seven (7) working days after the date of posting;
  - (d) Where sent by courier to an address in Malaysia, one (1) working day after the date of being dispatched via courier;
  - (e) Where sent by courier to an address outside of Malaysia, three (3) working days after the date of being dispatched via courier ;
  - (f) Where sent by facsimile, upon confirmation of transmission by way of a transmission report; and
  - (g) Where sent by way of hand delivery upon recipients employees have acknowledged receipt of such communication.
- 3.2 All communication made by electronic-mail must as far as possible be sent in plain text. All attachments and/or annexures accompanying communications must as far as possible be in the format stipulated by the Provider.
- 3.3 No Party may communicate with the other Party except through the Provider.
- 3.4 It is the sender's responsibility to keep a record of the sending of any such communication with the Provider. These records must be available for the inspection of any other parties whenever required.
- 3.5 If either the Complainant or Registrant receives a notification that a communication sent by them to the Provider has not been received, it must immediately inform the Provider. Subsequent to this, all communication concerning a Proceeding will be conducted as instructed by the Provider.
- 3.6 Either Party may update its contact details by notifying the Provider, which shall then inform the Sub-Reference Panel (if a Sub-Reference Panel has been appointed).
- 3.7 Except as otherwise provided in these Rules, all time periods calculated herein shall begin to run on the earliest date that the communication is deemed to have reached its recipient in Rule 3.1.
- 4. The Complaint**
- 4.1 In order to initiate a Proceeding, a Complaint must be submitted to the Provider in accordance with the Policy and Rules.
- 4.2 The Complaint must be submitted in electronic form using **the appropriate forms provided on the Provider's website** and in hard copy either by registered post, by courier or by hand delivery.₂

4.3 The Complaint must:-

- (i) provide the name, postal address, telephone and facsimile numbers and electronic-mail address of the Complainant and/or its authorised representative(s) in a separate document;
- (ii) provide the name of the Registrant and any other relevant information (including the Registrant's postal address, telephone and facsimile numbers and electronic-mail address), which will be able to assist the Provider in sending the Complaint to the Registrant; and
- (iii) specify the Domain Name which is complained of;
- (iv) state the grounds on which it is made, specifically, as to why the Domain Name should be considered as being a Sensitive Name or otherwise falling within any one or more of the categories detailed in Paragraph 5 of the SNDRP;
- (v) identify any legal proceedings which involve the Domain Name that may have been commenced or terminated by the Complainant; and
- (vi) end the Complaint with the following statement and the signature of the Complainant:-

*"The Complainant agrees that its claims herein and any remedy sought in respect of the registration or use of the said Domain Name (i.e. the sensitive name dispute) or its resolution, shall be solely against the Registrant and accordingly, the Complainant waives all other claims and remedies against .my DOMAIN REGISTRY, the Provider and its Panel members, as well as their respective officers and employees."*

*"Further thereto, the Complainant certifies that the information contained in this Complaint is, to the best of the Complainant's knowledge, complete, current, accurate and true, that this Complaint is not being presented for any improper purpose and that the assertions in this Complaint are warranted under these Rules and under all applicable law, as it now exists or as it may be extended by a good faith and reasonable argument."*

*"The Complainant, in consideration of this sensitive name dispute resolution procedure made available by .my DOMAIN REGISTRY, hereby agrees and acknowledges to be bound by the provisions set out in .my DOMAIN REGISTRY's Sensitive Name Dispute Resolution Policy, these Rules and the Supplemental Rules of the Provider ("Policy and Rules"). Further thereto and also in consideration of the said sensitive name dispute resolution procedure made available by .my DOMAIN REGISTRY, the Complainant agrees, acknowledges and undertakes to indemnify .my DOMAIN REGISTRY, the Provider and its Panel members, as well as*

*their respective officers and employees, as the case may be, for any damages or losses which they have suffered or will suffer as a result of all claims or actions which are brought against .my DOMAIN REGISTRY, the Provider and/or its Panel members as a direct or indirect result of the sensitive name dispute or pursuant to the Policy and Rules.”*

- 4.5 All relevant documents and evidence which the Complainant is relying on must be attached to the Complaint, together with a schedule indexing the same and, should be submitted in electronic form.
- 4.6 The Complainant must then pay the Provider the Fees stated in Rule 19 within five (5) Working days after it has submitted the Complaint to the Provider.
- 4.7 All Complaints must comply with the Policy and Rules, which may be revised by .my DOMAIN REGISTRY from time to time, without any prior notification.
- 4.8 Upon initiation of a Complaint, .my DOMAIN REGISTRY will lock the Registrant's Domain Name while the Proceeding is on-going and as otherwise provided for herein.

## **5. Notification of the Complaint**

- 5.1 Upon receipt of the Fees stated in Rule 4.6, the Provider will appoint a Panel member as Chairman to review the Complaint to ensure that it is complete and complies with the requirements of the Policy and Rules.
- 5.2 Where it is found that the Complaint is complete and in compliance with the Rules, the Provider will send the Complaint to the Registrant (without the contact details of the Complainant) within three (3) Working days of the receipt of the Fees stated in Rule 4.6.
- 5.3 The Provider is responsible for taking all reasonable steps to make sure that the Registrant receives the Complaint. The Provider shall discharge this responsibility by sending the Complaint in electronic form by e-mail to:-
  - (i) the electronic-mail addresses of those administrative, technical and billing contacts as made available by the Reseller of the Domain Name in question or as contained in .my DOMAIN REGISTRY's records;
  - (ii) postmaster@<the Domain Name>; and
  - (iii) if the Domain Name (or "www." followed by the Domain Name) leads to a web page (but not a web page which is used for parking Domain Names), any electronic-mail address which are shown or linked to that web page.

- 5.4 Where it is found that the Complaint is incomplete or is not in compliance with the Policy and Rules, the Provider will notify the Complainant accordingly. The Complainant then has five (5) Working days to make the necessary corrections to the Complaint. If the Complainant is unable to do so, the Complaint will be considered to have been withdrawn.
- 5.5 Where it is found that the Complaint does not fall within the scope of the SNDRP, the Provider will notify the Complainant in writing of the same and the complaint will be deemed to have been withdrawn.
- 5.6 The Proceeding will commence when the Registrant is considered to have received the Complaint from the Provider under any of the modes stated in Rule 5.3.

## **6. The Proceeding**

- 6.1 The Registrant has fifteen (15) Working days from the date the Proceeding commences to submit the Response to the Provider in electronic form and in hard copy either by registered post, by courier or by hand delivery within fifteen (15) working days of date of commencement of proceedings.
- 6.2 The Response must respond specifically to the Complainant's claims in the Complaint and specify the reasons why the Registrant should be allowed to keep the registration and use of the Domain Name and why the Registrant's Domain Name should not be construed as a Sensitive Name or otherwise falling within any one or more of the categories detailed in Paragraph 5 of the SNDRP.
- 6.3 The Response must:
- (i) provide the name, postal address, telephone and facsimile numbers and electronic-mail address of the Registrant and/or authorised representative(s) in a separate document;
  - (ii) subject to Rule 3.1, specify a preferred method for communications and the Registrant's contact person, if any;
  - (iii) identify any legal proceedings which involve the Domain Name that may have been commenced or terminated by any party; and
  - (iv) end the Response with the following statement and the signature of the Registrant:-

*"The Registrant certifies that the information contained in this Response is, to the best of the Registrant's knowledge, complete, current, accurate and true and that the assertions in this Response are warranted under*

*these Rules and under all applicable law, as it now exists or as it may be extended by a good faith and reasonable argument".*

*"The Registrant hereby agrees and acknowledges to be bound by the provisions set out in the Registration Agreement, .my DOMAIN REGISTRY's Sensitive Name Dispute Resolution Policy, these Rules and the Supplemental Rules of the Provider ("Policy and Rules"). Further thereto and for the avoidance of doubt, the Registrant further agrees, acknowledges and undertakes to indemnify .my DOMAIN REGISTRY, the Provider and its Panel members, as well as their respective officers and employees, as the case may be, for any damages or losses which they have suffered or will suffer as a result of all claims or actions which are brought against .my DOMAIN REGISTRY, the Provider and/or its Panel members as a direct or indirect result of the sensitive name dispute or pursuant to the Policy and Rules."*

- 6.4 All relevant documents and evidence on which the Registrant is relying should be attached to the Response together with a schedule indexing the same and should be submitted in electronic form.
- 6.5 Where there are exceptional circumstances, the Registrant may request the Sub-Reference Panel for more time to submit its Response but only if the Registrant supplies the Sub-Reference Panel with an explanation or evidence of these exceptional circumstances. The Sub-Reference Panel has the sole discretion to decide whether to give the Registrant more time to submit its Response.
- 6.6 Once the Response has been submitted to the Provider, a copy of the Response (without the contact details of the Registrant) will be sent to the Complainant.
- 6.7 Should the Registrant not submit a Response, the Sub-Reference Panel will proceed with the Proceeding without any further reference to the Registrant.

## **7. Sub-Reference Panel**

- 7.1 The Chairman and two (2) members of the Panel will form the Sub-Reference Panel that deliberates over a Proceeding.
- 7.2 The Chairman will be randomly appointed from the Reference Panel by the Provider, upon the Provider's receipt of the Complaint. Once the Proceeding is deemed to have commenced in accordance with Rule 5.6, the Chairman will select two (2) other members of the Panel to sit with him on the Sub-Reference Panel.
- 7.3 The Sub-Reference Panel shall be made up of individuals representing various fields of expertise relevant to the issue of Sensitive Names, namely a linguist, an Information Technology practitioner and a legal practitioner.

- 7.4 The Sub-Reference Panel may appoint experts to assist them in discharging their duties in hearing and deciding the Proceeding, with the prior approval of the Provider.

**8. Impartiality & Independence of the Sub-Reference Panel**

- 8.1 Each member of the Sub-Reference Panel must be impartial and independent. Before accepting any appointment, the members of the Sub-Reference Panel must inform the Provider of any circumstances or facts which may raise justifiable doubts as to the Sub-Reference Panel's impartiality or independence. The Sub-Reference Panel and/or either of the Parties, as the case may be, must also immediately inform the Provider if they discover such circumstances or facts during a Proceeding.
- 8.2 If the Provider finds that such justifiable doubts are warranted, whether raised by the Sub-Reference Panel in question, another member of the Sub-Reference Panel or any of the Parties in a Proceeding, the Provider will remove the current member of the Sub-Reference Panel and appoint a new member of the Sub-Reference Panel in the same manner specified in Rule 7. The Provider shall have the discretion whether or not to dissolve and replace the entire Sub-Reference Panel in accordance with the Supplemental Rules to .my DOMAIN REGISTRY's SND RP.
- 8.3 For the purposes of Rule 8.1, each member of the Panel appointed to sit in a Sub-Reference Panel must supply the Provider with a Declaration of Impartiality and Independence. This Declaration will be evidence of the Sub-Reference Panel's impartiality and independence in deciding a Proceeding.

**9. Communication between the Parties and the Sub-Reference Panel**

- 9.1 Neither Party may initiate any communication with the Sub-Reference Panel.
- 9.2 Any communication between the Sub-Reference Panel and a Party or vice versa must be forwarded to the other Party (via the Provider) and the Provider in the same manner and at the same time the communication is made.

**10. Transmission of the file to the Sub-Reference Panel**

- 10.1 The Provider will forward the file containing the Complaint, the Response and any other relevant documents received from the Parties to the Sub-Reference Panel once the Provider has ascertained that the file is complete.

## **11. General Powers & Conduct of the Sub-Reference Panel**

- 11.1 The Sub-Reference Panel must conduct the Proceeding in compliance with the Policy and Rules. The Sub-Reference Panel must also make sure that the Parties are treated fairly and that each Party is provided with a fair opportunity to present its case.
- 11.2 The Sub-Reference Panel must make sure that the Proceeding runs smoothly and efficiently. In exceptional circumstances, where requested by the Parties or as determined to be necessary by the Sub-Reference Panel, the Sub-Reference Panel has the right and discretion to extend any time periods stated in the Rules and where it does so, it will inform the Parties accordingly.
- 11.3 The Sub-Reference Panel will decide whether the evidence presented by the Parties is admissible. If the evidence is admissible, the Sub-Reference Panel will then decide on the relevance and importance of such evidence.

## **12. Language of the Complaint**

- 12.1 The Proceeding must be conducted in Bahasa Melayu and/or the English Language.
- 12.2 The Sub-Reference Panel, however, has the right and discretion to accept any evidence in languages other than Bahasa Melayu or the English Language. However, such evidence must be accompanied by a duly certified translation of the entire or relevant portion of the evidence in either Bahasa Melayu or the English Language.

## **13. Further Statements**

- 13.1 The Sub-Reference Panel has the right and discretion to request for further statements or documents from either Party through the Provider and to take such further statements or documents into consideration.

## **14. Default**

- 14.1 In the event that a Party does not comply with the time periods in the Policy and Rules or the time periods of the Sub-Reference Panel, the Sub-Reference Panel must proceed to a decision on the Proceeding unless there are any exceptional circumstances.
- 14.2 Where a Party does not comply with any request made by the Sub-Reference Panel or any provision or requirement of the Policy and Rules, the Sub-

Reference Panel may draw inferences from it as the SubReference Panel considers appropriate unless there are any exceptional circumstances.

## **15. Decision of the Sub-Reference Panel**

- 15.1 The Sub-Reference Panel will decide a Proceeding based on the documents and evidence submitted by the Parties, the Policy and Rules as well as any other rules and principles of law which are applied in Malaysia. For the avoidance of doubt, the decisions of other Sub-Reference Panels in previous Complaints or other Domain Name dispute cases are not binding precedent and should not be treated as such. However, once a Domain Name has been found to be a Sensitive Name, the said Domain Name will be deleted and will no longer be available for registration, until such time as it is determined otherwise by the Panel (if at all).
- 15.2 In coming to a decision in relation to the Domain Name in question, the Sub-Reference Panel shall be guided by the SND RP.
- 15.3 A Domain Name may only be held by the Sub-Reference Panel to be a Sensitive Name based on a unanimous decision of the Sub-Reference Panel. Any other decision shall be deemed to be a decision in favour of the Registrant.
- 15.4 If the Sub-Reference Panel decides in favour of the Complainant, the Sub-Reference Panel shall instruct that the Registrant's registration of the Domain Name be deleted. The Sub-Reference Panel is not allowed to make any other order such as an award of damages or a payment of compensation.
- 15.5 If the Sub-Reference Panel decides in favour of the Registrant, the Sub-Reference Panel shall instruct that the Registrant's Domain Name be unlocked.
- 15.6 If the Sub-Reference Panel finds that the Domain Name does not fall within the scope of the SND RP, the Sub-Reference Panel must state so in its written decision.
- 15.7 The Sub-Reference Panel's decision must be in writing. It must state the reasons on which the Sub-Reference Panel's decision is based, the date of the decision and the members of the Sub-Reference Panel deciding the Proceeding.
- 15.8 Barring any exceptional circumstances, the Sub-Reference Panel will forward its decision to the Provider within fifteen (15) Working days after it has received the file in Rule 10.1.

## **16. Communication of the Decision to the Parties**

- 16.1 The Provider must inform the Parties and .my DOMAIN REGISTRY of the decision within three (3) Working days after it receives the decision from the Sub-Reference Panel. The Provider will also inform the Parties and .my DOMAIN REGISTRY of the date when the decision is to be implemented, where applicable, subject to Rule 17.
- 16.2 The decision of the Sub-Reference Panel shall remain confidential and may only be made available to the Parties and the Malaysian Communications and Multimedia Commission.
- 16.3 A Proceeding will be considered to have concluded when the Provider informs .my DOMAIN REGISTRY of its outcome, whether it is decided upon by the Sub-Reference Panel or otherwise terminated in accordance with the Policy and Rules.

#### **17. Challenging the Decision of the Sub-Reference Panel**

- 17.1 A decision of the Sub-Reference Panel may be challenged in accordance with the process outlined in Paragraph 12 of the SND RP.
- 17.2 Where a Party wishes to challenge the decision of the Sub-Reference Panel as outlined in Paragraph 12 of the SND RP, the Provider shall, on receipt of a written notice requesting the same, make available to the requesting Party the relevant contact details of the other Party (as lodged with the Provider).

#### **18. Termination of Proceeding**

- 18.1 If any Court action or any other alternative dispute resolution process is initiated before or during a Proceeding in respect of the Domain Name, the Sub-Reference Panel has the right and discretion to suspend or terminate the Proceeding or to continue with the Proceeding.
- 18.2 The Parties must immediately inform the Provider if they agree to settle the Complaint before the Sub-Reference Panel is appointed, or where the Sub-Reference Panel has been appointed, inform the Provider and the Sub-Reference Panel of the same before the Sub-Reference Panel comes to a decision. The Parties must also supply the Provider and the Sub-Reference Panel (where appointed), with a written and signed agreement indicating the settlement. Once the Provider and the Sub-Reference Panel (where appointed), receive this agreement, the Proceeding will be terminated and the Provider will inform the Parties and .my DOMAIN REGISTRY of the same
- 18.3 If at any time after the Sub-Reference Panel is appointed, the Sub-Reference Panel finds that it is unnecessary or impossible to continue with the Proceeding, the Sub-Reference Panel will inform the Parties that the Proceeding is to be

terminated and the reasons therefor. Either Party may then object to the termination of the Proceeding but must do so within a reasonable time period as set by the Sub-Reference Panel. If the objections raised are not acceptable or no objections are raised at the end of the said time period, the Sub-Reference Panel will proceed to terminate the Proceeding

18.4 Where a Proceeding is terminated by:-

- (i) the Sub-Reference Panel, the Sub-Reference Panel will inform the Provider of the same and the reasons therefor and thereupon, the Provider will inform .my DOMAIN REGISTRY and the Parties accordingly;
- (ii) the Provider, the Provider will inform .my DOMAIN REGISTRY and the Parties of the same and the reasons therefor accordingly.

18.5 For the avoidance of doubt, Rule 19.4 and 19.5 shall apply to the entirety of Rule 18.

## **19. Fees**

19.1 The Complainant must pay the Provider the Fees within five (5) Working days from its submission of the Complaint to the Provider. If the Complainant does not do so, the Complaint will be considered withdrawn.

19.2 The Provider will not take any action on the Complaint or commence a Proceeding unless it receives payment of the Fees stated in Rule 19.1 from the Complainant.

19.3 For the avoidance of doubt, any payment made by the Complainant to the Provider pursuant to these Rules, shall only be considered to have been received by the Provider when the payment is credited to the Provider's account.

19.4 If a Proceeding is withdrawn by the Complainant at any time before a Sub-Reference Panel has been appointed, the Provider will retain the Fees.

19.5 Further to Rule 19.4, no refund of the Fees will be made whatsoever at any stage of the Proceeding.

## **20. Limitation of Liability**

20.1 Except and only in cases of deliberate wrongdoing, neither the Sub-Reference Panel members, .my DOMAIN REGISTRY nor the Provider and its Employees will be liable to any Party for the acts, omissions or negligence on their part or that of their Employees in connection with any matter brought before them

pursuant to the Policy and Rules or any matters relating thereto or resulting therefrom.

- 20.2 Further thereto and notwithstanding anything contained herein, the Sub-Reference Panel members, .my DOMAIN REGISTRY and the Provider and its Employees shall not, under any circumstances whatsoever, be liable to either Party or any other third party for its acts, omissions or negligence or that of its Employees in connection with any matter brought before them pursuant to the Policy and Rules as well as any matters relating thereto or resulting therefrom.

## **21. Indemnity**

- 21.1 The Parties, jointly and severally, undertake to indemnify .my DOMAIN REGISTRY, the Provider and its Employees and each of the Sub-Reference Panel members for any damages or losses which they have suffered or will suffer as a result of any claims or actions which are brought against .my DOMAIN REGISTRY, the Provider and the Sub-Reference Panel members as a direct or indirect result of the disputed Domain Name or pursuant to the Policy and Rules.
- 21.2 Further to Rule 21.1, the Parties agree that .my DOMAIN REGISTRY and the Provider reserves the sole rights and discretion as to which Party to claim an indemnity against and for the avoidance of doubt, where a claim for indemnity is brought by .my DOMAIN REGISTRY or the Provider against one Party, such claim shall not pre-empt, extinguish or limit .my DOMAIN REGISTRY's or the Provider's rights and discretion to claim an indemnity against the other Party. .my DOMAIN REGISTRY or the Provider shall also be entitled to exercise its rights and discretion to claim an indemnity against the Parties in any order or concurrently and .my DOMAIN REGISTRY's or the Provider's delay or failure to exercise its said rights and/or discretion herein shall not be deemed as a waiver of the same.

## **22. Amendments**

- 22.1 The version of the Policy and Rules which are in force when the Complaint is submitted to the Provider will govern the Complaint.
- 22.2 .my DOMAIN REGISTRY may amend these Rules from time to time as it considers fit. The amended Rules will be posted on .my DOMAIN REGISTRY's and the Provider's web site at least one (1) month before becoming effective except where circumstances beyond the control of .my DOMAIN REGISTRY or the Provider prevent it from doing so.

## **23. Miscellaneous**

- 23.1 Words applicable to natural persons shall include any body of persons, company, corporation, firm or partnership incorporated or unincorporated and vice versa.
- 23.2 Words importing any gender shall include any other gender.
- 23.3 Words importing the singular number shall include the plural number and vice versa, including the definitions referred to in Rule 2.1 herein.