

Sunrise Challenge Policy

1. **Purpose.** This Sunrise Challenge Policy (the "Policy") has been adopted by Mobile Top Level Domain, Ltd ("mTLD") and is incorporated by reference into the Sunrise registration agreement (the "Registration Agreement") between you (as the "Registrant") and us (as the "Registrar"). Thus, the Policy applies to all domain names registered during the Sunrise Registration Period, as specified by mTLD, whether or not such names were subsequently transferred. The Policy sets forth the terms and conditions that will apply in the event of a dispute between you and any party other than us regarding the compliance of your registration of a .mobi top-level domain name (the "Domain Name") with the Sunrise Registration Conditions set forth in the Registration Agreement and reproduced in Paragraph 4(c) of this Policy ("Sunrise Registration Conditions"). mTLD may itself also initiate challenges in connection with Sunrise registrations appearing to be made in violation of the Sunrise Registration Conditions ("Registry Challenges"); such Registry Challenges may also be submitted after the conclusion of the Sunrise Challenge Period, which begins Monday August 28, 2006 at 12.00 noon, GMT and ends Friday, December 15, 2006 at 12.00 noon, GMT.

The footnotes to this Policy are an integral part thereof.

Proceedings under Paragraph 4 of this Policy will be conducted pursuant to the Rules for Sunrise Challenge Policy (the "Rules"), which are available online at [www.mtld.mobi].

2. **Registrant Representations.** By applying to register a Domain Name in accordance with the Sunrise Registration Conditions, you hereby represent and warrant to us that (a) the statements that you made in your Registration Agreement are complete and accurate; (b) the registration of the Domain Name complies with the Sunrise Registration Conditions; (c) to your knowledge, neither the registration nor the use of the Domain Name will infringe upon or otherwise violate the rights of any third party; (d) you are not registering the Domain Name for an unlawful purpose; and (e) 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 and complies with the terms and conditions of the Registration Agreement.

mTLD reserves the right to cancel, at any time, a domain name registered in violation of any of the above-mentioned conditions.

3. **Cancellations, Transfers, and Changes.** We will cancel, transfer or otherwise make changes to a domain name registration that is subject to this Policy under the following circumstances:
 - a. Subject to the provisions of Paragraph 5, our receipt of written or appropriate electronic instructions from you or your authorized agent to take such action; and/or
 - 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 requiring such action in any administrative proceeding to which you were a party and which was conducted under this Policy or a later version of this Policy adopted by mTLD.

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

4. **Mandatory Administrative Proceeding.**

This Paragraph sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding. These proceedings will be administered by the World Intellectual Property Organization Arbitration and Mediation Center (the "Center").

a. **Applicable Disputes.** You are required to submit to a mandatory administrative proceeding in the event that a third party (the "Challenger") asserts to the Center, in compliance with the Rules, that:

(i) at the time of your registration of the Domain Name, no current (non-expired) trademark or service mark was registered in your name;¹ or

(ii) the Domain Name is not identical to the textual or word elements of the trademark or service mark registration on which the registration of your Domain Name is based;² or

(iii) the trademark or service mark registration on which the registration of your Domain Name is based is not of national effect;³ or

(iv) the trademark or service mark on which the registration of your Domain Name was based was not registered or applied for, prior to July 11, 2005, with the trademark authority with which the mark is registered⁴.

¹ The trademark or service mark registration must be in the name of the Domain Name registrant. A trademark license will not be considered sufficient, nor will a registration in the supplemental register of the United States Patent and Trademark Office. Unregistered trademark or service marks, or other rights in distinctive signs (such as trade names, personal names, geographical indications etc.), do not meet the Sunrise Registration Conditions.

² Identity will be deemed to exist also where there is a space between the textual or word elements of the mark (e.g., "service mark") and, in the Domain Name, a hyphen is used or the elements are combined (e.g., <service-mark.mobi> or <servicemark.mobi>). Identity will also be deemed to exist when special characters in the trademark or service mark (such as ~ @ # \$ % ^ & * () + = < > { } [] | \ /), spaces, and punctuation (such as : ; " ' , . ?), are, in the Domain Name, eliminated entirely (no space), replaced with hyphens within a domain name or transcribed in a conventionally accepted way. For example, if you own a trademark registration for "Service & Mark" and qualify to register in .mobi, you may apply for <servicemark.mobi>, <service-mark.mobi>, or <serviceandmark.mobi>. If the trademark contains letters which contain additional elements that for technical reasons cannot be reproduced in the domain name, such as ä, é or ñ, the letters concerned must, in the Domain Name, be reproduced without these elements (such as a, e, n), or must be replaced by conventionally accepted spellings (such as ae for ä). In all other respects, the Domain Name must be identical to the textual or word elements of the mark.

³ For instance, European Community trademarks meet the condition of national effect, but United States state trademarks or service marks do not.

⁴ The trademark or service mark must have been registered in the name of the domain name registrant prior to July 11, 2005. It will also be considered sufficient if the Domain Name registrant had applied for the trademark or service mark before that date, provided that the mark is registered by the time of the Domain Name registration.

All challenges under this Policy (except for any Registry Challenges) must be submitted, no later than December 15, 2006 at 12.00 noon GMT. Proceedings under the Uniform Domain Name Dispute Resolution Policy (UDRP) shall not be brought against a Domain Name, as long as such Domain Name is, or can be, subject to a challenge under this Sunrise Challenge Policy.

b. **Challenger's Compliance with the Sunrise Registration Conditions.** A Challenger seeking transfer of the Domain Name is required to demonstrate, as part of the administrative proceeding and as a condition for such transfer, the Challenger's own compliance with the Sunrise Registration Conditions.

c. **How to Demonstrate Compliance with the Sunrise Registration Conditions.** In order to demonstrate compliance with the Sunrise Registration Conditions, a Party must submit, as further specified in the Rules, an original or a copy, certified as correct by the issuing trademark authority, of a trademark or service mark certificate establishing that:

(i) at the time of the registration of the Domain Name, a trademark or service mark was registered in the name of the Party, and was current (non-expired), as evidenced by the date(s) set forth in the certificate itself;⁵ *and*

(ii) the textual or word elements of the trademark or service mark registration are identical to the Domain Name;⁶ *and*

(iii) the trademark or service mark registration is of national effect;⁷ *and*

(iv) the trademark or service mark was registered or applied for, prior to July 11, 2005, with the trademark authority with which the mark is registered⁸.

d. **Multiple Challenges.** In the event more than one challenge is submitted to the Center regarding the same Domain Name, the Center will process only the first challenge received. Any further challenges will not be processed and no challenger's fee will be charged by the Center. The Center is under no obligation to communicate concerning any such further challenges.

However, if a challenge is terminated without a determination by the Center regarding the Respondent's and/or the Challenger's compliance with the Sunrise Registration Conditions, the Center will process the next-filed challenge, provided that this challenge was also filed during the Sunrise Challenge Period.

e. **Decision.** The challenge will be decided upon by the Center as set out in Subparagraphs (i) to (iii) below. The Center's decision of whether the Sunrise Registration Conditions are met will be based on a prima facie examination of any trademark or service mark certificates submitted, in relation to the information contained in the relevant mTLD Whois database. The Center's decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

⁵ Reference is made to footnote 1.

⁶ Reference is made to footnote 2.

⁷ Reference is made to footnote 3.

⁸ Reference is made to footnote 4.

(i) If the Center finds that you have registered the Domain Name in compliance with the Sunrise Registration Conditions, the Center will dismiss the Challenge.

(ii) If the Center is unable to find that you have registered the Domain Name in compliance with the Sunrise Registration Conditions, the Challenge will be granted. If the Challenger has requested transfer, the transfer will be subject to a decision by the Center that the challenge complies with the Sunrise Registration Conditions, failing which Subparagraph (iii) shall apply.

(iii) If a prevailing Challenger sought a cancellation, or if neither Party established compliance with the Sunrise Registration Conditions, the Center shall order that the Domain Name be cancelled.

f. **Fees.** In accordance with the Rules, the submission of a challenge under this Policy (subject to any other arrangements that may apply to the submission of Registry Challenges) is subject to the payment of a Challenger's fee in the amount of USD 750, subject to the provisions of Rules, Paragraph 13. All payments are to be made by credit card. If a challenge is submitted, but the Challenger's fee is not paid in accordance with the Rules, the challenge will be dismissed.

g. **Our Involvement in Administrative Proceedings.** We do not, and will not, participate in the administration or conduct of any proceeding before the Center under this Policy. In addition, we will not be liable as a result of any decisions rendered by the Center. mTLD reserves the right to bring Registry Challenges, as set forth in Paragraph 1.

h. **Remedies.** The remedies available to a Challenger shall be limited to requiring the cancellation of your Domain Name registration or the transfer of your Domain Name registration to the Challenger.

i. **Notification.** The Center shall notify mTLD of any decision made under this Policy with respect to a Domain Name you have registered with us in accordance with the Rules. The outcomes of all administrative proceedings under this Policy shall be published in accordance with the Rules, except as determined otherwise by mTLD with regard to Registry Challenges.

j. **Availability of Court Proceedings.** The mandatory administrative proceeding requirements set forth in Paragraph 4(a) shall not prevent either party from submitting the dispute to a court of competent jurisdiction for independent resolution. Such submission shall not preclude the Center from processing any challenge.

5. Transfers During a Dispute.

a. **Transfers of a Domain Name to a New Holder.** You may not transfer your Domain Name registration that is subject to this Policy to another holder before the end of the Sunrise Challenge Period and until any challenges brought pursuant to this Policy in relation to this Domain Name have been resolved, except that a transfer may be made to the Challenger in a pending administrative proceeding under this Policy (e.g., in the event of a settlement of the dispute), provided that the Center has decided that the Challenger complies with the Sunrise Registration Conditions. Any registration pursuant to such transfer will be subject to the Sunrise Registration Conditions.

b. **Changing Registrars.** You may not transfer your Domain Name registration that is subject to this Policy to another registrar before the end of the Sunrise Challenge Period and until any challenges brought pursuant to this Policy in relation to this Domain Name have

been resolved.

6. Policy Modifications.

mTLD reserves the right to modify this Policy at any time. We will post any revisions of this Policy online at www.mtld.mobi at least seven (7) days prior to its effective date. Unless this Policy has already been invoked by the submission of a challenge to the Center, in which event the version of the Policy in effect at the time it was invoked will apply to you until the challenge has been resolved, all such changes will be binding and apply to all challenges filed on or after the effective date of the modified Policy. 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.
