

**For discussion
on 14 December 2009**

**Legislative Council Panel on
Information Technology and Broadcasting**

**Progress Update of the Review of the Administration of
Internet Domain Names in Hong Kong**

Purpose

This paper updates Members on the latest progress on implementing the recommendations arising from the review of the administration of Internet domain names in Hong Kong, and briefs Members on a recent development relating to the Chinese language country code top level domain (ccTLD) for Hong Kong.

Background

2. At the meeting of the Panel on Information Technology and Broadcasting (the Panel) held on 8 June 2009, we briefed Members on the progress of the new governance arrangements of the Hong Kong Internet Registration Corporation Limited (HKIRC). These included the setting up of the Consultative and Advisory Panel (CAP) of HKIRC and the drafting of the new Memorandum of Understanding (MOU). In response to the Panel's request and with the input from HKIRC, we provided on 10 July 2009 supplementary information on the prior performance of those former Directors reappointed to the current Board of Directors of HKIRC and on the mechanism put in place by HKIRC to handle objections raised by domain name applicants whose applications had been refused.

Progress Update

(a) Consultative and Advisory Panel of HKIRC

3. HKIRC formed the CAP in June 2009 comprising (a) 12 members nominated by organisations and associations from various stakeholder sectors, and (b) for the first two years, 6 former Directors who had served on the HKIRC Board in 2007-08 and who accepted HKIRC's invitation to serve on the CAP. The list of members on the CAP is at **Annex A**.

(b) Memorandum of Understanding Documentation

4. Subsequent to receiving comments from Members and the public on the draft outline of the MOU at the ITB Panel meeting in April 2009, HKIRC sought comments from members of the CAP at its first meeting on 17 June 2009. Taking into account these comments, the Government and HKIRC have prepared draft MOU documentation. Further comments from the CAP and from the ITB Panel are being sought this month, with the aim of executing the final documents following approval by the HKIRC Board at its meeting next January.

5. The Government and HKIRC now agree in principle that the appropriate form for the MOU documentation comprises a legally-binding Designation Agreement together with a non-binding MOU. The Designation Agreement covers legally binding elements such as the duties of HKIRC, intellectual property rights and termination arrangements. The MOU sets out principles which both parties agree to observe, but which cannot be conveniently expressed in legally-binding language.

6. Despite the non-binding nature of the MOU, the Government recognises that third parties have a legitimate expectation that both parties will act in accordance with its provisions. In order to give confidence that this will be the case, the MOU provides for an open and transparent dispute procedure, with the ultimate sanction being to dissolve the Designation

Agreement. To ensure that this is a practical possibility, the Designation Agreement contains provisions which oblige HKIRC to transfer its duties and relevant assets to a successor registry (the new designee) in a way which protects the interests and preserves the rights of “.hk” domain name registrants. (Such a transfer has in fact occurred once before, when HKIRC itself took over the administration of the “.hk” domain from the Joint Universities Computer Centre Limited in 2002). In addition, the Government and HKIRC can consider alternative methods of resolving disputes, such as mediation.

7. The full text of the draft Designation Agreement and the draft MOU are attached at **Annexes B and C** respectively. Paragraphs 8 - 13 below highlight some major improvements on the MOU documentation.

i) Designation Agreement

Duties of HKIRC

8. The Designation Agreement makes it a legally-enforceable duty on the part of HKIRC to, among other things, establish and maintain a complaint handling process to provide for conciliation or redress of grievances arising from domain name registration service. This will help to uphold the principles in managing and administering “.hk” domain names in the public interest, including in particular upholding the rights of freedom of speech, of publication, of communication and of religious belief in accordance with the laws in force in Hong Kong.

Termination and Post-Termination Duties

9. Both parties have the right to terminate the Designation Agreement upon giving due notice. In the event of termination, HKIRC is under a duty to transfer its relevant property to the new designee for administration of “.hk” domain names. HKIRC shall make an arrangement for the transfer of HKIRC’s domain name registrants to the new designee in a

way which preserves the rights of registrants under their registration agreements. HKIRC shall also ensure that there is no failure or disruption in provision of services of domain name registration and domain name system.

ii) MOU

10. The MOU provisions are largely the same as those contained in the draft outline considered by the Panel in April this year. We have, however, made a number of changes in response to Members' suggestions as highlighted below.

11. As stated in the previous draft outline of the MOU, HKIRC will consult the CAP on matters where the consequence of HKIRC's decisions is of public interest. In this proposed MOU, HKIRC will also need to consult the CAP in the process of developing the company's policies and guidelines, including about the disclosure of audited financial reports and use of retained profits and maintenance of reserves of HKIRC.

12. To facilitate its open and transparent operation, HKIRC will develop and publish policies or guidelines for members of the Board and members of the CAP to consult stakeholders on company matters that are of public interest.

13. The MOU includes a formal dispute procedure under which the parties would be obliged to make public any notice of dispute, and then to document and publish how the dispute had been resolved. In the event that it proves impossible to resolve a dispute, then each party recognises that the other may decide to give notice of termination of the Designation Agreement, triggering transfer of HKIRC's duties to a successor entity. We would expect there to be informal discussions prior to triggering a formal notice of dispute, and we expect that the parties will consider alternative methods of resolving disputes, such as mediation, before resorting to termination of the Designation Agreement.

Chinese Language Domain Names for Hong Kong

14. We would like to take this opportunity to brief Members on a recent development relating to the introduction of Chinese language ccTLD for Hong Kong (i.e. an equivalent to “.hk” ccTLD, as provided for in the current MOU as well as the proposed Designation Agreement).

15. HKIRC has submitted an application for “.香港” ccTLD to the Internet Corporation for Assigned Names and Numbers (ICANN).¹ If the application is approved, Hong Kong will become one of the first in the world to have a non-Latin alphabet ccTLD.² This will strengthen Hong Kong’s position as a leading digital city. The introduction of “.香港” ccTLD will also enable over a billion Chinese-speaking people to access websites of Hong Kong-related organisations using an address that is written wholly in their mother tongue.³ This increase in accessibility is in the interests of end-users and of domain name registrants alike. We hope that it can be implemented as soon as possible and have therefore given our support for the application.

Way Forward

16. By the time of this Panel meeting, HKIRC should have sought comments from members of the CAP on the draft MOU documentation (i.e. Designation Agreement and MOU) at its meeting scheduled for 9 December 2009. Members of this Panel will be briefed on the latest update at the Panel meeting. Members are also invited to comment on the draft MOU documentation. HKIRC plans to seek the Board’s approval of the MOU documentation at its meeting in January 2010, taking into account Members’ comments. We aim to have the MOU documentation signed in the first quarter of 2010.

¹ ICANN is a non-profit making organisation responsible for the management and oversight of the global coordination of the Internet domain name systems.

² It is noted that as at the end of November there have been at least 10 applications submitted to ICANN.

³ Examples of the domain names under “.香港” ccTLD are “商務及經濟發展局.政府.香港”, “數碼 21.香港”.

17. Separately, we will keep Members informed of the progress of introducing Chinese language ccTLD for Hong Kong, as well as other major developments such as the registry-registrar model, in the regular updates on the Digital 21 Strategy.

**Office of the Government Chief Information Officer
Commerce and Economic Development Bureau
December 2009**

List of Members on the Consultative and Advisory Panel

1. Mr Gilbert CHAN Kam Shing
(nominated by the Communications Association of Hong Kong)
2. Mr S K CHEONG
(nominated by the Hong Kong Management Association)
3. Mr Barry CHIN Chi Yung
(nominated by the Law Society of Hong Kong (Technology Committee))
4. Mr Geoffrey DENGATE
(nominated by the University of Hong Kong)
5. Dr John FUNG Yat Chu
(nominated by the Hong Kong Council of Social Service)
6. Ms Wendy LAM Yuen Mui
(nominated by the Consumer Council)
7. Mr Jolly WONG Chun Kau
(nominated by the Institution of Engineering and Technology Hong Kong (IT Division))
8. Mr Eric YEUNG
(nominated by the Hong Kong Chamber of Small and Medium Business)
9. Ms Winnie YEUNG Cheung Wah
(nominated by the Hong Kong General Chamber of Commerce)
10. Mr Michael YUNG Wai Kee
(nominated by the Hong Kong Institute of Certified Public Accountants)
11. Mr Eric LAM Lung (Alternate Member : Mr. Warren KWOK)
(nominated by the Office of the Telecommunications Authority)
12. Mr Stephen MAK Hung Sung
(nominated by the Office of the Government Chief Information Officer)

13. Mr David CHEUNG Tai Wai
(HKIRC ex-Director)
14. Mr Ken FONG Kin Kiu
(HKIRC ex-Director)
15. Mr Andrew LAW Shiu Kai
(HKIRC ex-Director)
16. Mr Joseph LEUNG Wai Fung
(HKIRC ex-Director)
17. Mr Christopher TO Wing
(HKIRC ex-Director)
18. Mr Lento YIP Yuk Fai
(HKIRC ex-Director)

Total: 18 members

(Draft)
**Designation Agreement
for the Management and Administration of Internet Domain Names
in Hong Kong**

THIS **DESIGNATION AGREEMENT** (this “**Agreement**”) is made in the Hong Kong Special Administrative Region on [*insert date*] by and between:

- (1) **THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION** (“**HK Government**”); and
- (2) **HONG KONG INTERNET REGISTRATION CORPORATION LIMITED**, a company incorporated and existing under the laws of Hong Kong with its registered office at Unit 2002-2005, 20/F ING Tower, 308 Des Voeux Road Central, Sheung Wan, the Hong Kong Special Administrative Region (“**HKIRC**”).

(HK Government and HKIRC, each a “**Party**” and collectively, the “**Parties**”).

Recitals

- (i) HKIRC is a not-for-profit company limited by guarantee and not having a share capital incorporated on December 14, 2001.
- (ii) Prior to March 25, 2002, all Internet domain names under .hk country code top-level domain were managed and administered by Joint Universities Computer Centre Limited (“**JUCC**”) through its wholly-owned subsidiary, Hong Kong Domain Name Registration Company Limited (“**HKDNR**”).
- (iii) Pursuant to the Sale and Purchase Agreement dated March 15, 2002 between JUCC and HKIRC, on March 25, 2002, JUCC transferred all the issued shares in HKDNR to HKIRC and relinquished any interest arising from its management and administration of Internet domain names under .hk country code top-level domain (the “**Operational Transfer Date**”).
- (iv) Under an earlier Memorandum of Understanding signed on April 22, 2002 (the “**First Memorandum**”), HK Government designated HKIRC to manage and administer all Internet domain names under .hk country code top-level domain in English or its equivalents as from the Operational Transfer Date upon the terms and conditions therein.

- (v) Following a review of international good practices on domain name administration and public consultation, HK Government and HKIRC were desirous to restructure the Board of Directors of HKIRC, establish a consultative and advisory panel and revise the First Memorandum.
- (vi) Pursuant to the special resolutions of HKIRC passed on August 23, 2008, HKIRC restructured the Board of Directors of HKIRC (the “**Board**”) on December 15, 2008.
- (vii) Pursuant to the special resolutions of HKIRC that passed on August 23, 2008 and took effect on December 15, 2008, a consultative and advisory panel was established on June 17, 2009 in relation to the management and affairs of HKIRC.
- (viii) The Parties have reached an understanding on the arrangements for the management and administration of .hk domain names, as documented in a second Memorandum of Understanding signed by the Parties on [*insert date*].

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Parties agree as follows:

1. Definitions

In this Agreement, except where the context otherwise requires:

“domain name registration” means the process through which individual and organisation obtain a domain name, and which enables the individual or organisation to use that particular domain name for a specified period of time, provided certain conditions are met and payment for services is made;

“domain name system” means a system which helps users to find their way around the Internet and makes using the Internet easier by allowing a familiar string of letters (the "domain name") to be used instead of IP address;

“.hk country code”	means the Hong Kong country code in English, i.e. .hk, or its equivalents in other languages, in the country code top-level domain of the Internet domain name system, in connection with the delegation by ICANN of the right to operate the registration of the Hong Kong country code top-level domain;
“.hk domain names”	means all Internet domain names under .hk country code top-level domain of the Internet domain name system;
“HKIRC member”	means a person admitted to membership of HKIRC by the Board and whose name appears on the Register of Members for the time being;
“ICANN”	means the Internet Corporation for Assigned Names and Numbers;
“intellectual property rights”	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights of whatever nature and wheresoever arising, whether now known or hereafter created, and in each case whether registered or unregistered and including applications for the grant of any such rights;
“person”	means such person as defined in the Interpretation and General Clauses Ordinance (Cap 1), association, organisation, body, or HK Government;
“registrant”	means a person that has registered a domain name for the time being valid;
“registrar”	means a person which has entered into an agreement with a registry concerning the right to submit applications and notifications of amendments to the registry on behalf of applicants for and holders of domain names under country code top-level domains;
“registry”	means a person which, as designated by the relevant government or public authority and by agreement with the international administrator of top-level domains, is entitled to assign domain names under country code top-level domains;
“subsidiary”	has the meaning ascribed to it in Section 2 of the Companies Ordinance, Chapter 32 of the Laws of Hong

Kong, and any modifications thereto.

2. Designation

- 2.1 HK Government reconfirms the exclusive designation of HKIRC, and HKIRC reconfirms its acceptance of HK Government's designation, to manage and administer .hk domain names, subject to the terms herein.
- 2.2 HK Government and HKIRC agree that upon the execution of this Agreement, the First Memorandum shall expire and become void.

3. Management and Administration of Domain Names

- 3.1 The duties of HKIRC in managing and administrating .hk domain names shall be as follows:
 - (a) Providing services of domain name registration and conversion of domain names into IP addresses, and services incidental or related to services in respect of .hk domain names;
 - (b) Operating and maintaining a stable, secure and interoperable domain name system which abides by the policies and technical requirements laid down by ICANN;
 - (c) Establishing and maintaining an alert mechanism which will inform HK Government promptly of the following:
 - (i) serious or prolonged disruption of domain name system operation for .hk domain names and of domain name registration services, and
 - (ii) incident leading to a failure on the part of HKIRC to perform duties in accordance with the terms set out in this Agreement;
 - (d) Establishing and maintaining complaint handling process to provide for conciliation or redress of grievances arising from domain name registration service and other services provided by HKIRC;
 - (e) Establishing and maintaining domain name dispute resolution process, with reference to industry practice such as ICANN's Uniform Domain Name Dispute Resolution Policy;

- (f) Liaising with national and international bodies on issues relating to the development and administration of domain name system.

4. Intellectual Property Rights

- 4.1 Any claim by HKIRC of intellectual property rights in or to the .hk country code and .hk domain names and in all expressions of information and data relating to, in connection with, or arising from the management and administration of .hk domain names shall not impede any possible future change of registry of .hk domain names or termination of the designation under this Agreement.

5. Contracting with Third Parties

- 5.1 HKIRC may enter into a written agreement with third party(ies) (the “**third party contractor(s)**”) to perform the duties in managing and administrating .hk domain names, as long as HKIRC remains responsible for all duties under this Agreement to the same extent as if those duties were performed by HKIRC.
- 5.2 HKIRC shall ensure that the third party contractor meets the technical qualifications and requirements set forth by ICANN from time to time if the duties performed by the third party contractor are related to the registry operation of Internet domain names. HKIRC shall also meet requirements set forth by ICANN for the arrangement of such third party contractor.
- 5.3 In the written agreement between HKIRC and the third party contractor, HKIRC shall ensure that the terms of the written agreement are consistent with, and include duties at least as onerous on the third party contractor as those imposed on HKIRC in this Agreement.

6. No Assignment of this Agreement

- 6.1 HKIRC shall not assign this Agreement to any person unless HKIRC obtains prior written consent of HK Government.

7. Termination

- 7.1 Upon occurrence of any of the following events, HK Government may at its sole discretion terminate this Agreement by giving ninety (90) days prior written notice to HKIRC:
- (a) The levying of any distress or execution against HKIRC or the making by him of any composition or arrangement with its creditors or if HKIRC shall pass a resolution, or the court shall make an order that HKIRC be wound up otherwise than for the purposes of reconstruction or amalgamation, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle a court or a creditor to appoint a receiver or manager or which entitle the court otherwise than for the purposes of amalgamation or reconstruction to make a winding up order; and
 - (b) Finding by a court of law of HKIRC's offering or giving any advantage, gratuity, commission, bonus, discount, bribe or loan of any sort or in any form whether directly or indirectly to any agent or employee of HK Government.
- 7.2 Notwithstanding anything provided under this Agreement, HK Government may at any time terminate this Agreement without giving any cause by giving HKIRC twelve (12) months prior written notice of such termination.
- 7.3 HKIRC may at any time terminate this Agreement by giving HK Government what HK Government considers to be sufficient prior notice to allow HK Government to make the necessary arrangements to designate another person to manage and administer .hk domain names and for that other person to take over from HKIRC the management and administration of .hk domain names.
- 7.4 Upon termination of this Agreement all rights and duties of the Parties shall automatically terminate except for such rights of actions as shall have accrued prior thereto and any duties which expressly or by implication are intended to come into or continue in force on or after such termination.
- 7.5 The provisions of Clauses 4 and 8 shall survive the termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

7.6 Notwithstanding anything provided under this Agreement, upon termination of this Agreement the designation of HKIRC to manage and administer the .hk domain names shall be forthwith terminated and HK Government may designate any person to manage and administer the .hk domain names without making any compensation to HKIRC.

8. HKIRC's Duties after Termination Notice

8.1 If HK Government or HKIRC gives notice to terminate this Agreement as provided in Clause 7, HKIRC shall transfer and assign to such person as HK Government may designate within the time specified by HK Government, at HKIRC's own costs and expenses and without seeking compensation from HK Government, all property, ownership of all its subsidiaries which provide part of or all services of domain name registration and conversion of domain names into IP addresses, and services incidental or related to services in respect of .hk domain names, ownership of property of hardware and software, all licences of software, documentation, data and information, present and future intellectual property rights in or to the .hk country code and .hk domain names and in all expressions of information and data relating to, in connection with, or arising from the management and administration of .hk domain names, intellectual property rights and any rights under contracts with third party contractors, which are necessary for provision of all services of domain name registration and conversion of domain names into IP addresses, and services incidental or related to services in respect of .hk domain names.

8.2 With effect from the date of the notice of termination of this Agreement, HKIRC shall in consultation with HK Government and such person ("the new designee") as HK Government may designate to take over from HKIRC the management and administration of .hk domain names, develop and deliver to HK Government and the new designee a transition plan within three months from the date of the notice of termination of this Agreement to the satisfaction of HK Government and the new designee. The transition plan shall include, among others, an arrangement for the transfer of HKIRC's registrants to the new designee in a way which preserves the rights of registrants under their registration agreements. HKIRC shall execute the transition plan to ensure that there is no failure or disruption in provision of services of domain name registration and conversion of domain names into IP addresses and services incidental or related to services in respect of .hk domain names to registrants and users of .hk domain names.

- 8.3 HKIRC shall assign without consideration all right, title and interest in and to the mark .hk to such person as HK Government may designate and HKIRC shall cease to use or have any right in or to the mark .hk, including, if HKIRC has registered or applied to register in its name the mark .hk with the Hong Kong Trade Marks Registry or other trade marks registries, the relevant rights in or to the mark .hk.
- 8.4 If HKIRC does not have the right to assign or novate any licences or contracts with third party contractors, HKIRC shall, at its own costs and expenses, use its best endeavours to procure the assignment or novation of such licences and contracts for the benefits of such person as HK Government may designate.
- 8.5 Notwithstanding the exclusive designation of HKIRC under Clause 2.1, HK Government reserves the right to designate another person to manage and administer .hk domain names after the date of the notice of termination of this Agreement pursuant to Clause 7.
- 8.6 Following such termination, if there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the HKIRC members but shall be given or transferred to such person having objects similar to the objects of HKIRC and having been designated by HK Government.

9. Waiver

- 9.1 Failure or neglect by the HK Government to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of the HK Government's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the HK Government's rights to take subsequent action.

10. Severability

- 10.1 In the event that any of these terms, conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

11. Governing Law

11.1 The validity, interpretation and implementation of this Agreement shall be governed by the laws of the Hong Kong Special Administrative Region.

12. Miscellaneous

12.1 This Agreement shall become effective upon execution.

12.2 Except as otherwise provided herein, no addition, amendment to, or modification of, this Agreement shall be effective unless it is in writing and signed by, and on behalf, of both parties.

12.3 This Agreement shall be binding upon, and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first above written.

**THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION**

By: _____

Name:

Title: Government Chief Information Officer

HONG KONG INTERNET REGISTRATION CORPORATION LIMITED

By: _____

Name:

Title: Chairman

(Draft)

**Memorandum of Understanding
for the Management and Administration of Internet Domain Names
in Hong Kong**

- (1) **THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION** (“HK Government”), and
- (2) **HONG KONG INTERNET REGISTRATION CORPORATION LIMITED**, a company incorporated and existing under the laws of Hong Kong with its registered office at Unit 2002-2005, 20/F ING Tower, 308 Des Voeux Road Central, Sheung Wan, the Hong Kong Special Administrative Region (“HKIRC”),
hereinafter each referred to as a “Party”, and collectively to as the “Parties”,

RECOGNISING that under the Designation Agreement for the Management and Administration of Internet Domain Names in Hong Kong signed by the Parties on [*insert date*] (the “**Designation Agreement**”), HK Government reconfirms the exclusive designation of HKIRC, and HKIRC reconfirms its acceptance of HK Government’s designation, to manage and administer .hk domain names, subject to the terms therein,

HAVE REACHED THE FOLLOWING UNDERSTANDING:

1. Definitions

In this Memorandum of Understanding (the “Memorandum”), except where the context otherwise requires:

“domain name registration” means the process through which individual and organisation obtain a domain name, and which enables the individual or organisation to use that particular domain name for a specified period of time, provided certain conditions are met and payment for services is made;

“domain name system” means a system which helps users to find their way around the Internet and makes using the Internet easier by allowing a familiar string of letters (the “domain

	name") to be used instead of IP address;
“.hk country code”	means the Hong Kong country code in English, i.e. .hk, or its equivalents in other languages, in the country code top-level domain of the Internet domain name system, in connection with the delegation by ICANN of the right to operate the registration of the Hong Kong country code top-level domain;
“.hk domain names”	means all Internet domain names under .hk country code top-level domain of the Internet domain name system;
“HKIRC member”	means a person admitted to membership of HKIRC by the Board and whose name appears on the Register of Members for the time being;
“ICANN”	means the Internet Corporation for Assigned Names and Numbers;
“intellectual property rights”	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights of whatever nature and wheresoever arising, whether now known or hereafter created, and in each case whether registered or unregistered and including applications for the grant of any such rights;
“person”	means such person as defined in the Interpretation and General Clauses Ordinance (Cap 1), association, organisation, body, or HK Government;
“registrant”	means a person that has registered a domain name for the time being valid;
“registrar”	means a person which has entered into an agreement with a registry concerning the right to submit applications and notifications of amendments to the registry on behalf of applicants for and holders of domain names under country code top-level domains;
“registry”	means a person which, as designated by the relevant government or public authority and by agreement with the international administrator of top-level domains, is entitled to assign domain names under country code top-level domains;

“subsidiary” has the meaning ascribed to it in Section 2 of the Companies Ordinance, Chapter 32 of the Laws of Hong Kong, and any modifications thereto.

2. Principles of Management and Administration

2.1 HKIRC will adopt the following principles in managing and administering .hk domain names in the public interest:

- (a) **Independence:** HKIRC shall operate independently of HK Government in managing and administering .hk domain names. HKIRC shall act, and be able to demonstrate that it acts, in the interests of the Internet community in Hong Kong and the global Internet community, without undue interference by any single group of stakeholders or by HK Government.
- (b) **World-class standards:** HKIRC shall perform all activities in connection with the domain name system and registration service in good quality, security, stability and reliability.
- (c) **Competition:** HKIRC shall support competition and consumer choice in the sourcing and management of .hk domain name holders.
- (d) **Stakeholder involvement:** HKIRC shall ensure that balanced attention will be given to the interests of all stakeholders in the Internet community in Hong Kong when making decisions in connection with the domain name system and registration service.
- (e) **Transparency:** HKIRC shall conduct its activities in an open and transparent manner that ensures wide public access to all relevant information.
- (f) **Future orientation:** HKIRC shall seek to be innovative in the provision of new services, and to anticipate and respond flexibly to new technological and market developments which may impact domain name sourcing, registration and usage.
- (g) **Protection of rights of individuals and organisations:** HKIRC shall uphold the rights of freedom of speech, of publication, of communication and of religious belief in accordance with the laws in force in Hong Kong in its management and administration of .hk domain names.

3. Openness and Transparency

3.1 The HKIRC will operate in an open and transparent manner, including -

- (a) Maintaining a Consultative and Advisory Panel (CAP) as required by HKIRC's Memorandum and Articles of Association Article 47A;
- (b) Consulting the CAP on matters where HKIRC may have to make decisions and where the consequence of such decisions are of legitimate public interest;
- (c) Giving attention to advice given by the CAP, whether solicited or unsolicited. Where the Board of HKIRC decides not to follow such advice and where so asked by CAP or any member of HKIRC, HKIRC will provide a written explanation of its reasons to CAP and the members of HKIRC without unreasonable delay;
- (d) Developing and publishing, following consultation with the CAP, policies and rules for domain name registration including such matters as:
 - (i) Eligibility for licensing of .hk domain names including general principles and procedures for the application and registration of .hk domain names,
 - (ii) Measures to preserve the legitimate interest of registrants and users of .hk domain names and ensure their satisfaction,
 - (iii) Conditions of use of .hk domain names, and policies and procedures for cancellation of registration for breach of conditions of use,
 - (iv) Rules and procedures for modification, change and transfer of .hk domain names,
 - (v) Permitted formats of .hk domain names, and
 - (vi) Reserved .hk domain names;
- (e) Publishing its policies about openness and transparency in the governance and operations of HKIRC and its subsidiaries including policies about disclosure of information related to the following:
 - (i) Statistics of .hk domain names (including total number of registrations by domain name category at each month end, and the new, renewed, and discontinued registrations during the month by domain name category),
 - (ii) Incidents of refused registration applications and suspended or cancelled registrations, with reasons (but not revealing the names of the involved parties),
 - (iii) Incidents of complaints or disputes,
 - (iv) Audited financial reports of HKIRC, and
 - (v) Use of retained profits and maintenance of reserves of HKIRC.

- (f) Developing and publishing, following consultation with the CAP, the policies or guidelines for members of the Board and members of the CAP to consult stakeholders in general and with specific interest groups on matters of HKIRC.

4. Strategic Plan

- 4.1 HKIRC will develop and publish, following consultation with the CAP, a rolling strategic plan for the next three years. The first rolling strategic plan shall include the plan to,
 - (a) Broaden the base for participating in the governance of HKIRC by promoting membership of HKIRC members and streamlining the process for admitting an HKIRC member; and
 - (b) Following market analysis, financial implication assessment and consultation with stakeholders via the CAP, determine whether and, if appropriate, how a “Registry/Registrar” model shall be introduced, whereby (i) appropriate bodies may provide .hk users with registrar services on an equal competitive basis and (ii) Internet Service Providers may provide a complete service to their customers removing the necessity for those customers also to have to interact with HKIRC.

5. Assuring Performance

- 5.1 HKIRC will introduce measures to assure that HKIRC is discharging its duties under this Memorandum. Such measures shall include monitoring system performance and compiling system performance statistics in respect of those performance indicators stipulated in a document of system performance monitoring and measurement, which is to be updated following consultation with the CAP. System performance statistics shall include domain name system service availability and performance statistics of registration servers and servers hosting HKIRC’s website.

6. Relationship with Government

- 6.1 HKIRC will operate independently of HK Government. If HK Government wishes to express its views on the strategy or policy of HKIRC or other matters within the terms of reference of the CAP, it will communicate those views either (a) through the

CAP by virtue of the HK Government's representative on the CAP or (b) in writing addressed to the Chairman of the Board of Directors.

- 6.2 HKIRC will provide HK Government with information described above under Clause 5.1 plus quarterly financial reports and reports of human resource issues.
- 6.3 HKIRC will submit an annual report to HK Government confirming that HKIRC has abided by its obligations under this MOU.
- 6.4 HK Government will have the right to commission an independent audit of HKIRC's compliance with the terms of this MOU and HKIRC will cooperate with this audit.
- 6.5 HKIRC will cooperate with HK Government in connection with any formal review of the Designation Agreement and this Memorandum that the HK Government wishes to conduct or commission.
- 6.6 It is recognised that HK Government may wish to communicate with HKIRC on the following or similar matters. Where the matter is strictly non controversial and will not involve significant consumption of HKIRC resources, HK Government may communicate in writing or other appropriate means directly with the Chief Executive Officer (or his/her designate) of HKIRC. Where these conditions do not apply, HK Government will in the first instance communicate with the Chairman of the Board.
 - (a) Providing HK Government with the information it needs in order to report to the Legislative Council on issues relating to the management and administration of .hk domain names;
 - (b) Coordinating the position to be taken by HK Government and HKIRC in ICANN forums in which they participate;
 - (c) Providing input for discussions between HK Government and other interested parties on current and future Internet policy issues;
 - (d) Liaising on certain operational issues including but not limited to incident or crime investigation, prevention of phishing and spamming, complaints from the public and consumer related matters; and
 - (e) Liaising on matters of mutual interest related to the industry, including but not limited to partnership or participation in industry events.

7. Dispute

- 7.1 In the event that either party is of the view that the other party has acted in a manner inconsistent with the provisions of this Memorandum, the party may give written notice to the other of that view. Such notice will be made public by the parties.
- 7.2 Upon receipt of the notice by that other party, the parties will consult together for the purpose of agreeing a resolution of the matter and will publish a record of the resolution once it is agreed. Each party recognises that if no agreement can be reached, then this would be a factor to be considered by each party in deciding whether to give a notice of termination of the Designation Agreement.

8. Miscellaneous

- 8.1 This Memorandum will become effective when the Designation Agreement becomes effective and will terminate upon termination of the Designation Agreement (howsoever occasioned).
- 8.2 This Memorandum may be amended at any time by written mutual consent of the Parties.
- 8.3 This Memorandum does not create any legally-binding obligation on either party,

SIGNED in the Hong Kong Special Administrative Region on [date] in duplicate.

**THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION**

By: _____

Name:

Title: Government Chief Information Officer

HONG KONG INTERNET REGISTRATION CORPORATION LIMITED

By: _____

Name:

Title: Chairman