

**HONG KONG INTERNET REGISTRATION CORPORATION LIMITED**

and

**InterNetX GmbH**

## **REGISTRAR AGREEMENT**

**Version 4.6**

**[ Effective 28 Jan 2021 ]**

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## REGISTRAR AGREEMENT

THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_ 202

### BETWEEN

- (1) **Hong Kong Internet Registration Corporation Limited**, a company duly organised and existing under the laws of Hong Kong and having its registered office at Unit 501, Level 5, Core C, Cyberport 3, 100 Cyberport Road, Hong Kong (“**HKIRC**”); AND
- (2) **InterNetX GmbH**, a company incorporated and subsisting under the laws of **Germany**, and having its registered office at **Johanna-Dachs-Str. 55, 93055 Regensburg** (the “**Registrar**”).  
(referred to together as the “**Parties**”, and individually as a “**Party**”).

### BACKGROUND

- A. HKIRC is responsible for the administration of Internet domain names under the '.hk' and ‘.香港’ ccTLDs. It is also defined under the Prevention of Bribery Ordinance (“**POBO**”) as a public body.
- B. The Registrar wishes to be accredited by HKIRC as a registrar and to provide the Registrar Services for the Designated Domain Name Categories.

### IT IS AGREED:-

#### 1 TERM

- 1.1 This Agreement will commence on the Commencement Date and will remain in force until terminated by either Party in accordance with the provisions of clause 18.

#### 2 REGISTRAR ACCREDITATION

- 2.1 Subject to the terms and conditions herein and the Registrar fulfilling the Accreditation Criteria, HKIRC agrees to issue an Accreditation Certificate to the Registrar and accredit, on a non-exclusive basis, the Registrar as a registrar for the Designated Domain Name Categories.
- 2.2 Upon becoming HKIRC-Accredited, the Registrar:
  - (a) shall perform the Registrar Services in accordance with this Agreement and the Related Documents;
  - (b) may access the dedicated registration platform of HKIRC for the sole purpose of performing the Registrar Services; and
  - (c) may hold itself out as a HKIRC-Accredited registrar offering Registrar Services.
- 2.3 The Registrar shall, within three (3) months of the earlier of the Commencement Date or date on which the Registrar becomes HKIRC-Accredited, or else on such other date as the Parties shall agree in writing, commence offering Registrar Services to members of the

public. The Registrar shall ensure that its systems and setup are ready and fully operational for this purpose.

2.4 Subject to becoming HKIRC-Accredited under clause 2.1, the Registrar acknowledges and agrees that:

(a) HKIRC may post on its web site the Registrar's name and contact information, together with a link to the Registrar's web site. HKIRC may also include as part of relevant WHOIS search results the names of the Registrar and the Reseller and their contact information.

(b) The Registrar hereby grants to HKIRC a non-exclusive, non-transferable and revocable licence to use the Registrar's name and trade or service mark for the purpose of advertising, marketing, promoting and publicising the accreditation of the Registrar and/or the Registrar Services provided by the Registrar. The Registrar agrees to execute, upon the reasonable request of HKIRC, any documents, licences or forms or do any act necessary to ensure that HKIRC can exercise the rights granted to it by the Registrar under this clause 2.4(b).

(c) HKIRC may publicly disclose any information relating to:

(i) its cooperation with the Registrar under this Agreement and the Related Documents; and

(ii) the performance by the Registrar of its obligations pursuant to this Agreement and the Related Documents, including, without limitation, information relating to customer complaints and service standards.

2.5 The Registrar must, as soon as practicable, notify HKIRC if the Registrar becomes aware:

(a) that the Registrar has failed to meet any of the Accreditation Criteria; or

(b) of any circumstance, fact or thing that affects or is likely to affect the Registrar's ability to continue to meet the Accreditation Criteria.

2.6 The Registrar's fulfilment of the Accreditation Criteria shall be a continuing obligation under this Agreement and the Related Documents. If the Registrar fails to meet any of the Accreditation Criteria, HKIRC shall have no obligation to perform its obligations under this Agreement and the Related Documents. The Registrar shall, at the request of HKIRC, provide evidence to satisfy HKIRC that it is in compliance with the Accreditation Criteria.

2.7 HKIRC may, in its sole and absolute discretion and by notice in writing to the Registrar:

(a) waive or suspend, in whole or in part, any or all of the Accreditation Criteria;

(b) waive or suspend, in whole or in part, any or all of the prevailing procedures and requirements set forth in this Agreement and/or the Related Documents relating to the accreditation of registrars; and/or

(c) impose any condition on any waiver or suspension granted, as it sees fit.

2.8 All costs, fees and expenses associated with the Registrar's performance of the Registrar Services and its obligations under this Agreement shall be borne in full by the Registrar alone.

### **3 REGISTRAR'S OBLIGATIONS**

- 3.1 The Registrar shall at all times during the Term of this Agreement perform the Registrar Services for the Designated Domain Name Categories in accordance with this Agreement and the Related Documents.
- 3.2 The Registrar shall verify all documents submitted in relation to the Registrar Services, and shall keep and maintain all such documents after review. HKIRC may, from time to time and in its sole and absolute discretion, require the Registrar to provide to HKIRC any such documents for HKIRC's review.
- 3.3 The Registrar shall continue to meet all the technical and operational requirements set forth in Schedule 2. The Registrar shall also comply with any applicable legislative provisions regulating such technical and operational requirements.
- 3.4 The Registrar shall forthwith implement any order or judgment relating to any Domain Name issued by a court or tribunal of competent jurisdiction in Hong Kong, or any decision of an arbitration panel established in accordance with the DNDRP.

### **Regulation of the use of Domain Names**

- 3.5 The Registrar shall monitor the Domain Names registered through the Registrar and shall, at its own initiative or on receipt of any complaint or as directed by HKIRC:
  - (a) investigate and verify whether the relevant Domain Name is being used for phishing or "spam" advertising;
  - (b) delete or suspend the relevant Domain Name upon HKIRC's written request on the basis that, in HKIRC's reasonable belief, the continuation of registration of the Domain Name and the operation of web site referenced by the Domain Name is likely to damage, adversely affect or prejudice the goodwill, reputation and operation of HKIRC or the internet registration industry in Hong Kong, or may expose HKIRC to risks of third party claims or civil or criminal prosecution; and
  - (c) delete or suspend the relevant Domain Name on receipt of any notice from any regulatory or law enforcement authority in Hong Kong (including, without limitation, the Hong Kong Police Force and the Office of Telecommunications Authority) that the web site referenced by the Domain Name is in breach of any laws, directives, guidelines, codes of practice or regulations issued by local authorities in Hong Kong or is used for or in connection with illegal activities.
- 3.6 HKIRC shall also have the power to suspend or delete any Domain Name that falls into the category set out in clause 3.5. The Registrar shall, at the request of HKIRC, provide HKIRC with evidence of such use, together with all relevant information in connection with the Domain Name for the purpose of investigation, prevention and enforcement.
- 3.7 Where the Registrar, as a result of its investigations under clause 3.5(a), identifies any Domain Name that it believes is being used in connection with phishing or "spam" advertising, the Registrar shall suspend the Domain Name and shall immediately provide HKIRC with the evidence of such use, together with all relevant information in connection with the Domain Name for the purpose of investigation, prevention and enforcement.

- 3.8 The Registrar shall indemnify and hold HKIRC harmless from all liabilities, losses, and damages arising out of and in connection with any investigation or enforcement action taken pursuant to clauses 3.5, 3.6 and 3.7.
- 3.9 Where the Registrar receives a notice from any regulatory or law enforcement authority in Hong Kong pursuant to clause 3.5(c), the Registrar shall provide HKIRC with a copy of such notice.
- 3.10 The Registrar shall use its best endeavours to ensure that Domain Names are not registered for use in connection with phishing or "spam" advertising. Best endeavours in this regard includes, but is not limited to, only accepting verified and secured credit cards for any payments made in connection with Registrar Services. HKIRC may at any time require the Registrar to apply specific procedures and/or processes for verification and payment before accepting Domain Name applications. Where the Domain Name registration is terminated due to such malicious use or suspected malicious use, HKIRC will not refund any Fess paid in relation to the Domain Name.

### **Service to Registrants**

3.11 The Registrar shall:

- (a) offer the Registrar Services to all Registrants without requiring that the Registrants must also purchase or subscribe for any other goods or services offered by the Registrar or any third party;
- (b) only register a Domain Name on behalf of a prospective Registrant of that Domain Name, and only perform any Registrar Services on behalf of a Registrant where the Registrar is the registrar on record for the relevant Domain Name, or where the Registrar has been so requested by the relevant Registrant or the relevant Registrant's agent;
- (c) be solely responsible for providing the Registrar Services, and billing, technical and administrative support for handling transaction requests from Registrants, and ensure that its services meet all quality standard and other specification as may be stipulated by HKIRC from time to time;
- (d) perform the Registrar Services promptly and at all times cooperate with HKIRC, Registrants and other registrars;
- (e) at all times accurately represent to the general public the Registration Agreement and Published Policies, the HKIRC's status as the registry of Domain Names, and the relationship between the Registrar and HKIRC;
- (f) promptly investigate any and all Registrant inquiries and complaints relating to Domain Names and any Registrar Services, and immediately notify HKIRC if any Registrant requests the assistance of HKIRC with any such inquiry or complaint, and in such case the Registrar agrees to fully cooperate with HKIRC;
- (g) ensure that the most updated versions of the following documents be made easily accessible through its web site to members of the public as soon as practicable after they have been issued:

- (i) the Registration Agreement;
- (ii) the Registration Policies;
- (iii) the Acceptable Use Policy;
- (iv) the DNDRP;
- (v) the Code of Practice; and
- (vi) the Published Policies.

3.12 HKIRC may review and modify the Performance Objectives for registrars from time to time. The Registrar shall meet the Performance Objectives within the time prescribed by HKIRC.

3.13 The Registrar shall make all reasonable efforts to resolve any claims or complaints made by members of the public, Registrants or registrants of other registrars in relation to the Registrar Services. Registrar shall notify Registrants of their right to contact HKIRC (website: [www.hkirc.hk](http://www.hkirc.hk), email: [info@hkirc.hk](mailto:info@hkirc.hk)) for dispute or complaint to the Registrar.

3.14 In some cases, HKIRC may request, and the Registrar shall provide, any document relating to an application for Domain Name Services. The Registrar shall provide the requested document before approving the provision of the relevant Domain Name Services.

3.15 The Registrar shall use its best endeavours to assist HKIRC in complying with the MOU and the Designation Agreement. This includes, but is not limited to, providing complaint reports and data, indicating the frequency and details of complaints, reasons for refusing a Domain Name Application, and reasons for suspending or cancelling a Domain Name.

3.16 The Registrar shall provide HKIRC with the name of any Reseller used for every Domain Name Application, and shall inform HKIRC as soon as practicable of any changes to the identity of any Reseller used.

3.17 The Registrar shall not engage in or authorise any activity which may:

- (a) directly or indirectly bring HKIRC into disrepute;
- (b) interfere with HKIRC's operations;
- (c) expose HKIRC to any liability or claim, including, without limitation, the commission of any act or omission which may be defamatory, constitute unlawful discrimination or infringe any Intellectual Property Rights; or
- (d) be in contravention of the Applicable Data Protection Law.

- 3.18 Nothing in this clause 3 limits or otherwise affects the Registrar's obligations as provided elsewhere in this Agreement.

#### **4 REGISTRAR'S WARRANTIES**

4.1 The Registrar represents and warrants to HKIRC that all information and documentation which it has furnished, or will furnish, to HKIRC in connection with this Agreement is true, accurate and not misleading (whether by omission or otherwise) in all material respects and, to the Registrar's best information and knowledge, sufficient, accurate and complete. The Registrar agrees and undertakes to promptly inform HKIRC in writing of any change or circumstances which may result in the Registrar being in breach of the aforesaid warranties.

4.2 The Registrar represents and warrants that:

- (a) it has, and will at all times during the Term of this Agreement have, full power and authority to execute, deliver and perform its obligations under this Agreement and the Related Documents and that, if the Registrar is a corporate entity, it is valid and subsisting under the laws of the applicable jurisdiction in which it is incorporated;
- (b) the execution, delivery and performance by it of this Agreement and the performance of its obligations under this Agreement have been and will at all times during the term of this Agreement be duly authorised, and do not contravene or conflict with:
  - (i) its memorandum and articles of association or other constitutional documents of a similar nature;
  - (ii) any existing law, statute, rule, regulation, guideline, judgment, approval or permit to which it is subject;
  - (iii) the terms of any agreement or other document to which it is a party or which is binding upon it.
- (c) there is no requirement for any consent from, approval of, or notice to any governmental authority or other person in connection with the execution and performance of this Agreement and the Related Documents, or, if any such consent, approval, or notice is required, that it has duly and fully complied with and obtained the same prior to execution of this Agreement, and such consent, approval, or notice shall be valid during the Term of this Agreement.
- (d) the Registrar has and will at all times during the Term of this Agreement have all relevant capacity, expertise, technology and infrastructure to perform the Registrar Services, including without limitation, to:
  - (i) process and maintain applications for Domain Names;
  - (ii) provide and maintain systems which meet the requirements prescribed by HKIRC from time to time and in compliance with the Applicable Data Protection Law in relation to the confidentiality and security of Registrant Data;
  - (iii) provide and maintain a reliable data transfer system; and

- (iv) provide and maintain archival, backup and disaster recovery systems and databases at all times.

## **5 USE OF HKIRC NAME AND LOGO**

- 5.1 Provided that the Registrar is not in breach of any of its obligations under this Agreement, HKIRC grants to the Registrar a non-exclusive, non-transferable, non-assignable, non-sub-licensable, revocable, worldwide, royalty-free licence to:
  - (a) state that it is accredited by HKIRC as a registrar for the Designated Domain Name Categories for the Term of this Agreement;
  - (b) use the Web Registrar Logo and all underlying Intellectual Property Rights thereto to indicate that the Registrar is accredited by HKIRC as a registrar for the Designated Domain Name Categories for the Term of this Agreement; and
  - (c) provide hyperlinks on the Registrar's official web site to pages and documents on the HKIRC web site, provided they are not framed by any other materials and are solely for the purpose of the advertising, promoting and providing the Registrar Services in accordance with this Agreement.
- 5.2 Other than in accordance with clause 5.1, the Registrar is not permitted to use the Web Registrar Logo, name or trademark of HKIRC for any other purpose or in any other manner unless with the prior written consent of HKIRC.
- 5.3 The Registrar shall not alter, copy, modify or otherwise change the Web Registrar Logo in any way. The Registrar shall not use the Web Registrar Logo in any way that is likely to disparage, prejudice or otherwise undermine the public image of HKIRC.
- 5.4 Save as expressly provided in this clause 5, all rights, title and interest in and to the Web Registrar Logo and all related materials, together with the Registry Server and systems information which HKIRC may permit Registrar to use or access, shall remain vested in HKIRC and/or its licensors, as the case may be. Any use by the Registrar and any benefit (including any goodwill) shall accrue to the sole benefit of HKIRC.

## **6 FEES**

- 6.1 The Registrar shall pay all Fees to HKIRC in the manner set forth in Schedule 4. HKIRC may impose new types of Fees in its Published Policies from time to time and at its sole and absolute discretion. If no written objection is raised by the Registrar within fourteen (14) days after notice is given by HKIRC to the Registrar, such new type of Fees shall become part of the Fees under this Agreement upon the expiry of such fourteen (14) days and shall be payable by the Registrar in accordance with the terms of this Agreement.
- 6.2 All Fees shall be paid in Hong Kong Dollars and shall be paid to HKIRC in the manner specified by HKIRC. Notwithstanding the establishment of the Registrar Account as set out in clause 6.4, HKIRC may specify alternative or additional modes of payment.
- 6.3 All enquiries or disputes concerning any invoice must be notified to HKIRC, along with any supporting documentation, on or before the payment due date. Nothing in this clause shall relieve the Registrar of its obligation to pay HKIRC the undisputed portion of any invoice on

or before the due date. The parties shall work together in good faith to resolve any bona fide invoice enquiry or dispute notified to HKIRC in accordance with this clause.

- 6.4 The Registrar shall at all times maintain an account with HKIRC (the "**Registrar Account**") with a minimum balance ("**Minimum Balance**") as prescribed by HKIRC from time to time. This Minimum Balance will be reviewed every year by HKIRC. The Registrar shall maintain the required amount on account with HKIRC in order to remain HKIRC-Accredited. HKIRC shall have the right to offset this amount against any monies owing from the Registrar to HKIRC. If at any time the balance held in the Registrar Account with the HKIRC falls below the Minimum Balance prescribed by HKIRC, the Registrar shall within five (5) days thereof deposit such sums as shall be necessary to bring the Registrar Account balance up to the Minimum Balance prescribed by HKIRC.
- 6.5 All Fees payable are unless otherwise stated exclusive of bank charges and taxes of any nature. If the Registrar is required under any law, regulation or other government order to deduct or withhold any sum for the purposes of taxes, levies, duties or any other fee imposed on any amount payable to HKIRC under this Agreement and the Related Documents, the amount payable to HKIRC must be increased by such amount necessary to ensure that HKIRC will receive a net amount equal to the amount which HKIRC would have received without such deduction or withholding.
- 6.6 The Registrar agrees that HKIRC shall be entitled, at its sole and absolute discretion, to publicly disclose the Fees charged by HKIRC to the Registrar in connection with any Registrar Services and/or this Agreement.
- 6.7 If a Domain Name is not renewed one (1) month after the expiry date of the Domain Name registration (or such other period as specified by HKIRC from time to time), the Domain Name may be deleted. HKIRC may also at any time renew a Domain Name registration that is due to expire, and may automatically debit any applicable renewal fee from the Registrar Account in HKIRC. Within a period of time as specified by HKIRC and notified to the Registrar in writing, the Registrar shall notify HKIRC of any Domain Name registration which the Registrar does not intend to renew. Upon such notification, HKIRC shall cancel the renewed registration and refund the deducted charges to the Registrar Account. Nothing in this clause 6.7 affects HKIRC's right to charge a reinstatement fee in the event that the Registrar subsequently notifies HKIRC of its intention to renew the relevant Domain Name registration.
- 6.8 Subject to clause 6.7, HKIRC shall not refund any Fees paid by the Registrar, including but not limited to, the registration fee, renewal fee or other service or other applicable fee for Domain Name Services.

## **7 REGISTRAR SERVICES**

- 7.1 In processing a Domain Name Application, the Registrar shall ensure that the Domain Name Application complies with the Registration Agreement and Published Policies and shall use reasonable endeavours to verify the information provided to the Registrar in the Domain Name Application.
- 7.2 The Registrar shall only approve an application for Domain Name Services if the Registrar is satisfied that the application complies with this Agreement and the Related Documents. Where an application is rejected, the Registrar shall promptly notify the Registrant of such rejection and provide the Registrant with written reasons for such rejection.

- 7.3 The Registrar shall, in relation to each approved Domain Name Application:
- (a) ensure that the Registrant is bound by the mandatory provisions of the Registration Agreement set out in Schedule 5 in respect of that approved Domain Name in accordance with clause 8 below; and
  - (b) promptly submit the Registrant Data to HKIRC.
- 7.4 The Registrar acknowledges that even if the Registrar has approved a Domain Name Application or other Domain Name related service requests, HKIRC retains the right to perform further checks on a Domain Name Application or other Domain Name related service requests, and reserves the right to reject the same or cancel a Domain Name registration.
- 7.5 The Registrar shall, as soon as practicable after approving a Domain Name Application, issue a notice of registration to the Registrant, together with confirmation that the Registrant Data has been placed in the Registry Server.
- 7.6 The Registrar may assist the Registrant to register and renew the Domain Name for the maximum number of years allowed by HKIRC.
- 7.7 The Registrar may decide on the retail price for Domain Name Services, subject to any range or specific retail price set by HKIRC. In the event that HKIRC specifies any such retail price, any such specification shall be binding and effective on the Registrar fourteen (14) days after HKIRC gives written notice to the Registrar of such specification.

## **8 REGISTRATION AGREEMENTS**

- 8.1 The Registrar shall make it a precondition to the Registrar's acceptance of a Domain Name Application that any registration or renewal of a Domain Name arising out of such Domain Name Application shall be subject to the terms and conditions set out in the Registration Agreement. The Registrant shall procure as far as possible that the Registrant complies with the terms of the Registration Agreement during the term of the Domain Name registration. In cases of material breach or non-compliance, the Registrar shall take all steps to enforce the terms of the Registration Agreement against the Registrant in default.
- 8.2 No Registration Agreements shall contain any term that is inconsistent with, or in any way modifies, overrides, limits, contradicts or cancels the terms and conditions of this Agreement or the Related Documents, and shall in any event contain the mandatory provisions set out in Schedule 5.
- 8.3 The Registrar shall, on receipt of any notice from HKIRC, inform its Registrants by e-mail about any changes or additions to the Registrar Agreement, Published Policies or Code of Practice or any changes which may affect the rights of the Registrar and/or Registrants.
- 8.4 Upon the request of HKIRC, the Registrar agrees to act as agent for HKIRC, for the sole purpose and only to the extent necessary to enable HKIRC to receive the benefit of rights and covenants conferred to HKIRC under the Registration Agreement.

## **9 REGISTRANT DATA**

- 9.1 The Registrar shall:

- (a) promptly submit, via any accepted platforms agreed with and connecting to HKIRC, the Registrant Data relating to the provision of Domain Name Services.
  - (b) immediately after receiving any updated Registrant Data, submit the updated Registrant Data to HKIRC, or place the updated Registrant Data in the Registry Server as appropriate.
- 9.2 The Registrar shall notify the Registrant and seek consent (where necessary) from the Registrant for HKIRC to receive and use Registrant Data, including for the purpose of administering domain names and the provision or publication of Registrant Data to third parties who have legitimate interests. The Registrar shall not use the Registrant Data held in relation to a Registrant or other person other than in accordance with this Agreement, the Related Documents and all applicable law or as the Registrant has specifically consented to.
- 9.3 Without prejudice to the generality of the foregoing, the Registrar shall:
- (a) maintain a privacy policy compliant with the Applicable Data Protection Law;
  - (b) notify and assist HKIRC with requests from Registrants and other persons exercising their rights (including the right to request access to and correction of information, right to erasure, right to object to processing, right to request restriction of processing and right to request transfer of personal data, if any) prescribed under the Applicable Data Protection Law;
  - (c) record all details relating to its processing of Registrant Data including the use and transfer (if applicable) of Registrant Data and data security measures implemented in compliance with the Applicable Data Protection Law;
  - (d) comply with the directions of HKIRC from time to time in relation to the retention and erasure of Registrant Data;
  - (e) disclose to HKIRC all necessary information for the purpose of complying with the Applicable Data Protection Law; and
  - (f) restrict its employees, agents or contractors (including Resellers) access to Registrant Data on a need to know basis solely for the provision of the Registrar Services and performance of the Registration Agreement.
- 9.4 Without prejudice to the foregoing, the Registrar, whether directly or indirectly, and whether on its own behalf or in conjunction with or through any person or as principal, agent, consultant, contractor, investor or shareholder or in any other manner whatsoever, undertakes not to at any time grant access to, sell or offer to sell or transfer any Registrant Data to any person, or engage in bulk access to, warehousing or accumulation of, or speculation in Registrant Data, other than in order to comply with its obligations under this Agreement, the Related Documents, or any applicable legislation. The Registrar shall ensure that all such personnel entrusted with Registrant Data have undertaken to ensure secrecy and protection of such data in accordance with this Agreement, the Personal Data (Privacy) Ordinance, and other applicable laws.
- 9.5 Both Parties acknowledge and agree that neither Party is entitled to claim any Intellectual Property Rights in the Registrant Data, and that Registrant Data is not proprietary information, but is held by HKIRC for the benefit of the members of public in HKSAR.

## **10 TRANSFER OR CHANGE OF REGISTRAR**

- 10.1 The Registrar shall ensure that its Registrants are able to easily transfer Domain Name registrations to other registrars, in accordance with the Registration Policies and the Acceptable Use Policy.
- 10.2 The parties acknowledge that the Registration Policies and the Acceptable Use Policy will include, without limitation, such matters as shall be relevant to the transfer or change of registrar, including:
- (a) The manner and procedures for such change and transfer;
  - (b) the conditions pursuant to which the Registrar must make the transfer; and
  - (c) the conditions pursuant to which the Registrar does not have to transfer.

## **11 NON-SOLICITATION OF REGISTRANTS**

- 11.1 The Registrar must not use information obtained from the Registry Server or HKIRC's WHOIS Service to solicit business from, or to otherwise make contact with, any Registrant, unless:
- (a) the Registrar is the existing registrar of one of more of the Domain Names held by the Registrant, as identified by the WHOIS Service or the Registry Server; or
  - (b) the Registrant has previously contacted the Registrar in respect of the registration of a Domain Name and consented to further contact by the Registrar; or
  - (c) the Registrant is otherwise a customer of the Registrar and has authorised the Registrar to use information obtained from the Registrant to solicit business from or make contact with the Registrant; or
  - (d) both the Registrant and the Registrant's registrar (as identified by the WHOIS Service or Registry Server) have consented in writing to such use of the information.
- 11.2 The Registrar shall not perform any Registrar Services for a Registrant unless it is authorized to do so.

## **12 REGISTRAR'S OTHER OBLIGATIONS**

### **Positive Covenants**

- 12.1 The Registrar shall:
- (a) act in good faith in its dealings with HKIRC, Registrants, other HKIRC-Accredited registrars or international registrars;
  - (b) do all things necessary to ensure that it continues to meet the Accreditation Criteria;

- (c) immediately give HKIRC notice of any security breaches including Data Breach or malfunctions which will seriously affect the Registrar or any part of its systems, or its performance of this Agreement;
- (d) in the event of a Data Breach, assist HKIRC with all actions that HKIRC may consider desirable to address or remedy the Data Breach, including but not limited to data breach notifications and data protection impact assessments;
- (e) give notice to HKIRC as soon as the Registrar becomes aware of or has cause to believe that a Registrant is no longer entitled to a Domain Name registration or a particular Registrant is in breach of, or a particular Domain Name breaches, any of the Related Documents or the Registration Agreement;
- (f) upon reasonable request of HKIRC, timely provide to HKIRC all information relating to each approved Domain Name registration, including information relating to Domain Name Services;
- (g) use best endeavour to keep HKIRC promptly informed of any changes in the information supplied to HKIRC, including but not limited to information supplied on behalf of Registrants and all changes of the Registrar's personal or company details such as its contact person(s), to ensure that all announcements and updates from HKIRC could be received by the intended recipient in a timely manner;
- (h) provide to HKIRC from time to time, upon HKIRC's reasonable request, all information in relation to the Registrar and the operation of the Registrar's business;
- (i) within two (2) Business Days, give notice to HKIRC of any impending or threatened cause of action, demands, claims, litigation, proceedings or material disputes against the Registrar by any person or authority relating directly or indirectly to its provision of the Registrar Services, including arbitration and administrative or governmental investigation, request for production of documents or information obtained from or supplied to Registry Server;
- (j) during the term of this Agreement and for three (3) years after termination or expiration of the Agreement maintain records relating to its activity as a registrar of Domain Names and the performance of its obligations under this Agreement for inspection and copying by HKIRC upon reasonable notice, and such information shall include all written communications between Registrants and the Registrar relating to the Registrar Services in whatever form or stored in whatever media, including records of the accounts of all Registrants with the Registrar, together with dates and amounts of all payments and refunds; and
- (k) continue to provide the Registrar Services during the Term of this Agreement, unless otherwise requested by HKIRC, and not to suspend any of the Registrar Services without the written consent of HKIRC, which shall be given at the sole and absolute discretion of HKIRC. In making a request for consent of HKIRC for such suspension, Registrar shall provide reasons for that suspension and such other materials as HKIRC requests.

## **Negative Covenants**

12.2 The Registrar shall not:

- (a) do, cause anything to be done or omit to do anything which will be harmful to HKIRC, its related companies, businesses or its reputation or goodwill or which will put the Registrar in a position of conflict, whether against HKIRC or other registrars. The Registrar shall forthwith declare or give notice to HKIRC on situations of conflict or occurrence of any of such events with such details as HKIRC shall require to enable HKIRC to formulate plan and strategy to resolve the issue;
- (b) be involved in any activity in any way which may directly or indirectly bring the HKIRC or the domain name registration industry into disrepute;
- (c) use any information belonging to or regarding HKIRC other than in accordance with this Agreement; or
- (d) accumulate or warehouse Domain Name registrations with which the Registrar has no reasonable connection, for the purpose of removing them from availability for others (including others registrars), transferring them for immediate or deferred direct or indirect gain or profit or for any other reason whatsoever, nor shall it knowingly participate in any such undertaking.

12.3 The Registrar acknowledges that the covenants in this clause 12 are fair and reasonable having regard to the intention of HKIRC to introduce competition into the sale and registration of .hk and .香港 ccTLDs, and are reasonably required by HKIRC to regulate the Registrar Services.

### **13 CONTROL OF RESELLERS**

13.1 The Registrar may appoint Resellers and shall notify HKIRC in writing of the appointment or termination of a Reseller within seven (7) days of the appointment or termination, each time a Reseller is appointed or terminated.

13.2 All acts and omissions of a Reseller in respect of services provided by the Reseller under a Reseller Agreement may be regarded by HKIRC as the act of the Registrar, as if they were the acts and omissions of the Registrar under this Agreement. The appointment of Resellers shall not in any way relieve the Registrar of its obligations pursuant to this Agreement, nor require HKIRC to join any such Reseller in any proceedings relating to or arising in connection with this Agreement. The Registrar shall guarantee, procure and ensure each Reseller's due and timely compliance with all of the related Documents and the Registration Agreement and to not act or omit to act in any manner inconsistent with this Agreement. The Registrar shall indemnify HKIRC and hold HKIRC harmless from all liabilities, losses, damages, costs, legal expenses, professional and other expenses of any nature howsoever sustained, incurred, paid or suffered by HKIRC which are directly or indirectly related to any claim, action, or demand arising out of or related to any acts or omission of its Reseller.

13.3 Any contract, arrangement or understanding between the Registrar and the Reseller under a Reseller Agreement shall contain a provision which requires the Reseller to comply with the Related Documents and the Registration Agreement, and requires that any agreement between a Reseller and the Registrant must contain the mandatory provisions of the Registration Agreement stipulated in this Agreement.

13.4 The Registrar accepts and acknowledges that HKIRC is entitled to, on occasions where it considers the Reseller breaches any provisions of any of the Related Documents and/or the Registration Agreement, direct the Registrar in writing, and by providing reasons to cease using or accepting any services from a particular Reseller, and that the Registrar shall comply with such direction of HKIRC.

#### **14 COMPLIANCE WITH APPLICABLE LAWS**

14.1 The Registrar shall comply with all applicable laws and regulations, including without limitation, the Applicable Data Protection Law and the Electronic Transactions Ordinance.

14.2 In particular, the Registrar shall comply with the provisions of the Electronic Transactions Ordinance relating to the retention, attribution and presentation of electronic records.

14.3 Where required by law to retain information in its original form and that information is in electronic form, the Registrar shall:

(a) take steps to ensure the integrity of the electronic record, including without limitation, preserving the record in a complete and unaltered form; and

(b) ensure that the information is capable of being displayed in a legible form.

14.4 Where required by law to retain information and that information is in electronic form, the Registrar shall:

(a) ensure that the information contained in the electronic record remains accessible;

(b) ensure that the electronic record is retained in its original format, or a format which accurately represents the information; and

(c) retain information identifying the origin and destination of the electronic record as well as the date and time that the electronic record was sent or received.

14.5 The Registrar shall properly attribute the sending and receiving of electronic records.

#### **15 PROBITY**

##### **Prevention of Bribery**

15.1 The Registrar shall not, and shall procure that its directors, employees, agents and sub-contractors who are involved in this Registrar Agreement shall not solicit or accept any advantage as defined in the Prevention of Bribery Ordinance (Cap 201) in relation to this Registrar Agreement. The Registrar shall also caution its directors, employees, agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducements which would impair their impartiality in relation to the Registrar Agreement. The Registrar shall take all necessary measures (including by way of internal guidelines or contractual provisions where appropriate) to ensure that its directors, employees, agents

and subcontractors are aware of the aforesaid prohibition and will not solicit or accept any advantage, excessive hospitality, etc. in relation to the business of HKIRC.

- 15.2 The Registrar shall not, and shall procure that its directors, employees, agents and sub-contractors who are involved in this Registrar Agreement shall not, offer any advantage to any Board member or staff in relation to the business of HKIRC.

#### **Declaration of Interest**

- 15.3 The Registrar shall require its directors and employees to declare in writing to the Registrar any conflict or potential conflict between their personal/financial interests and their duties in connection with this Registrar Agreement. In the event that such conflict or potential conflict is disclosed in a declaration, the Registrar shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed. The Registrar shall require its agents and sub-contractors to impose similar restriction on their directors and employees by way of a contractual provision.
- 15.4 The Registrar shall prohibit its directors and employees who are involved in this Registrar Agreement from engaging in any work or employment other than in the performance of this Registrar Agreement, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Registrar Agreement. The Registrar shall require its agents and sub-contractors to impose similar restriction on their directors and employees by way of contractual provision.
- 15.5 The Registrar shall take all necessary measures (including by way of internal guidelines or contractual provisions where appropriate) to ensure that its directors, employees agents and sub-contractors who are involved in this Registrar Agreement are aware of the provisions under the aforesaid clauses 15.3 and 15.4.

#### **16 CONFIDENTIALITY**

- 16.1 The Registrar shall at all times:
- (a) keep confidential; and
  - (b) take reasonable steps to ensure that disclosure is made to the Registrar's employees, agents or sub-contractors on a need-to-know basis and that employees, agents and subcontractors are subject to restriction not to disclose to third party; and
  - (c) maintain proper and secure custody of; and
  - (d) not use or reproduce in any form for any purpose outside the scope of this Agreement,
- any Confidential Information belonging to HKIRC, and all Registrant Data.
- 16.2 Save as otherwise provided in clause 12.1(j), the Registrar shall on termination of this Agreement:

- (a) deliver all Confidential Information belonging to HKIRC and all changes to, reproductions of, extracts from and notes and copies thereof regarding that Confidential Information, in any form; or
  - (b) destroy the Confidential Information and, if it is stored in other media, erase it from the media on which it is stored so that the Confidential Information is incapable of being retrieved.
- 16.3 The Registrar shall, within fourteen (14) Business Days of termination of this Agreement, by a director or officer, provide a statutory declaration to HKIRC that all Confidential Information has been delivered or destroyed in accordance with clause 16.2.
- 16.4 Nothing in this clause 16 shall prevent disclosure by the Registrar of any such information in compliance with a legal requirement or otherwise where disclosure is required by law, but only to the extent necessary to comply with such requirement. The Registrar, on receiving such notice of compulsion, shall within seven (7) days of receipt of the notice provide HKIRC with such information relating to the request and cooperate with HKIRC to defend or resist such request, as necessary.

## **17 LIMITATIONS OF LIABILITY**

- 17.1 HKIRC does not make and expressly disclaims any representation, warranty or condition, whether oral or written, express or implied, statutory or otherwise, including, without limitation, any warranty or condition of quality or fitness for a particular purpose or non-infringement, or that the Registry Server or WHOIS Service will be available at all times during the term of this Agreement or in respect of the functionality, freedom from bugs or viruses, compatibility or interoperability of the Registry Server or the systems accessed by the Registrar and/or Registrants or with respect to the security issues relating to the Registry Server or any systems accessed by the Registrar and/or Registrants, including without limitation, those provided by third party software, hardware, Internet and/or telecommunications or other service providers, partners or otherwise with respect to the services provided hereunder including without limitation those services relating to the Registry Server and its operation.
- 17.2 Any representation, warranty, condition or undertaking which (but for this clause 17) would be implied in this Agreement by law, is excluded to the fullest extent permitted by law.
- 17.3 Save only in respect of liability for death or personal injury arising on account of negligence on the part of HKIRC, HKIRC's aggregate liability to the Registrar in connection with this Agreement, whether liability in contract, tort or otherwise, shall be limited to the amount of accreditation fees paid by the Registrar to HKIRC. Under no circumstances, whether as a result of breach of contract, tortious liability (including negligence) or otherwise, shall HKIRC or its directors, officers, employees, agents and representatives be liable to Registrar for any special, indirect, incidental, exemplary, punitive or consequential damages or for loss or damage resulting from loss of use, lost business revenue, lost profits or third party damages arising out of and in connection with this Agreement howsoever arising.
- 17.4 The Registrar agrees to indemnify and keep indemnified HKIRC, its past and present contractors, agents, employees, officers, directors, members, affiliates and assigns of and hold each of them harmless from and against any and all damages, liabilities, obligations, losses, claims, demands, actions, causes of action, lawsuits, penalties, costs and

expenses (including, without limitation, reasonable legal and other related costs), of whatsoever nature, whether present or future, actual or contingent, arising out of or in connection with this Agreement howsoever arising including without limitation arising out of or in connection with Registration Agreement and/or Reseller Agreement.

## **18 DEFAULT AND TERMINATION**

18.1 Either Party may terminate this Agreement by giving seven (7) days' notice to the other Party on the occurrence of the following events:

- (a) either Party commits a Material Breach of this Agreement; or
- (b) the Party commits a breach of this Agreement or the Related Documents and fails to rectify that breach within fourteen (14) days (or such longer period as may be consented to by the non-defaulting Party) after receipt of a written notice from the non-defaulting Party specifying the breach and requiring rectification; or
- (c) if there is a change in Control of the Registrar which in the sole and absolute discretion of HKIRC will seriously impact on the quality and ability of the Registrar in performing the Registrar Services and this Agreement, or result in a substantial lessening of competition in the provision of Domain Name Services in Hong Kong.

18.2 HKIRC may, by giving seven (7) days notice to the Registrar, terminate this Agreement or suspend the Registrar's accreditation in respect of any and all of the Designated Domain Name Categories for such period as it deems fit, if the Registrar:

- (a) ceases to or does not continue to meet the Accreditation Criteria; or
- (b) repeatedly fails to pay any of the Fees to HKIRC and on a timely basis when due or fails to maintain the prevailing Minimum Balance in its Registrar Account or provide a performance bond as requested; or
- (c) commits a Material Breach of this Agreement; or
- (d) fails to meet the Performance Objectives within the periods specified therefor; or
- (e) any partner, director, officer or controlling shareholder of the Registrar, engages in any conduct or practice that in the reasonable opinion of HKIRC is detrimental or harmful to the good name, goodwill, reputation or trade marks of HKIRC or the Registry Server, and Registrar continues, repeats or fails to cease and desist from, such conduct to HKIRC's satisfaction within seven (7) days after HKIRC gives written notice of such conduct to Registrar or such additional period as may be stated in such notice; or
- (f) requests any transaction with respect to a Domain Name registration which has not been authorized by the Registrant of the Domain Name; or
- (g) disrupts or abuses the Registry Server, as determined by HKIRC in its sole and absolute discretion including, without limitation, engaging in advertising or makes representations to the public or other behaviour which HKIRC determines are false, misleading or detrimental to HKIRC, the Registry Server, or any Registrant, registrar or third party; or

- (h) purports to assign or transfer any part of this Agreement without the prior consent of HKIRC; or
- (i) fails to commence offering the Registrar Services as set out in this Agreement; or
- (j) fails to avoid the registration of Domain Names for malicious and "spam" advertising purpose;

or if:

- (k) HKIRC is no longer the authority which exclusively handles operation relating to the .hk and .香港 ccTLDs.

- 18.3 The Registrar may, by written notice to HKIRC within fourteen (14) days of receipt of notice from HKIRC of imposing new types of Fees in its Published Policies pursuant to clause 6.1, raise objection and terminate this Agreement without any liabilities arising from or in connection with such new types of Fees as imposed by HKIRC.
- 18.4 Either Party may terminate this Agreement at any time by giving three (3) months' prior written notice to the other Party, or any other period as agreed between the Parties in writing.
- 18.5 This Agreement will automatically terminate three (3) months from the date on which the Registrar notifies HKIRC in writing that it does not or will not accept any amendments to this Agreement made by HKIRC pursuant to this Agreement.

## **19 CONSEQUENCES OF TERMINATION**

- 19.1 The Registrar's accreditation is automatically terminated on the termination of this Agreement.
- 19.2 Upon the expiry or termination of this Agreement:
- (a) the Registrar shall immediately cease to use of the Web Registrar Logo and all other Intellectual Property Rights of HKIRC and shall remove all references to itself as a HKIRC-Accredited Registrar and to HKIRC;
  - (b) the Registrar shall cease to hold itself out as a registrar of HKIRC;
  - (c) HKIRC shall post notice of such termination on its web site and may, if it deems appropriate, give notice to the Registrants for whom the Registrar maintains any Domain Name registration of such suspension, termination or expiry, as the case may be;
  - (d) the Registrar shall immediately give notice to Registrants for whom the Registrar maintains any Domain Name registration of such expiration or termination, as the case may be;
  - (e) the Registrar shall take all actions necessary to preserve the rights of its Registrants;
  - (f) the Registrar shall expeditiously and in any case, prior to the effective date of termination unless HKIRC consents otherwise, provide all information and

assistance necessary to ensure a timely transfer of each of its Registrant's Domain Names to another HKIRC-Accredited registrar, and comply in all respects with the procedure prescribed in the Registration Policies and the Acceptable Use Policy for such transfers. The Registrar shall bear any and all costs relating to such transfers or the compliance with such directions of HKIRC;

- (g) the Registrar shall forthwith pay any outstanding amounts accrued and due to HKIRC under this Agreement;
- (h) HKIRC retains the rights it had against the Registrar in respect of any past breach or accrued right prior to the termination or expiration of this Agreement;
- (i) HKIRC shall be entitled to retain all Fees paid by the Registrar to HKIRC pursuant to this Agreement;
- (j) the Registrar shall at the Registrar's own cost and expense, forthwith deliver to HKIRC everything in the Registrar's possession or control, including, without limitation, all stationery and other materials referring in any way to its status as a registrar of HKIRC or related to HKIRC;
- (k) the Registrar shall relinquish possession of and deliver to HKIRC all copies of all material of every nature and character which has been received by the Registrar from HKIRC, including in compliance with clause 16.2 and the documents and forms received for the registration of Domain Names; and
- (l) the Registrar shall do all such acts and things and execute such documents as HKIRC shall require in connection with the Registrar's cessation of use of the Web Registrar Logo or any translation, adaptation, modification or transliteration thereof or other Intellectual Property Rights, protected materials, or access to Registry Server, data, information or documents of HKIRC.

- 19.3 Upon the expiry or termination of this Agreement for any reason whatsoever, HKIRC may disable any passwords or other security measures that permit the Registrar to establish a connection to its Registry Server or system; cease to accept from the Registrar or process any transaction requested by the Registrar, including any applications for registration of a Domain Name or any of the Registrar Services, and/or may, in emergency situations, and at the Registrar's cost, take over the Registrar's administration thereof.
- 19.4 Termination of this Agreement shall be without prejudice to the rights and remedies already accrued to the Parties under this Agreement.
- 19.5 Clauses 14, 15, 16, 17, 19, 30, 31, 32 and 33 shall survive termination of this Agreement.

## **20 EFFECT OF SUSPENSION**

20.1 Upon the suspension by HKIRC of the Registrar:

- (a) The Registrar shall give immediate notice to Registrants for whom the Registrar maintains any Domain Name registration of such suspension and HKIRC may if it deems fit, give notice to the Registrants affected by such suspension and publish a notice on its web site notifying the general public of the Registrar's suspension.

- (b) The Registrar shall cease to provide the Registrar Services to Registrants until the suspension has been lifted by HKIRC and notified to the Registrar in writing.

20.2 During such period of suspension:

- (a) HKIRC may refuse or cease processing all transactions requested by the Registrar, including any applications for a Domain Name registration or any of the Registrar Services and may in circumstances which in HKIRC's sole and absolute opinion is necessary and at the Registrar's cost take over the Registrar's administration thereof;
- (b) the Registrar shall preserve the integrity of its system and database relating to the Domain Names registered through it, not make any changes thereto, and further comply with all of HKIRC's directions in connection with the Domain Names registered through it;
- (c) HKIRC may take over any or all transactions relating to any or all Domain Names of which the Registrar is the registrar of record;
- (d) the Registrar shall upon request by HKIRC cease to use, directly or indirectly, in advertising or in any other manner whatsoever, the Web Registrar Logo hereunder or any similar marks or names, and shall cease and remove all references to itself as an "HKIRC-Accredited Registrar"; and
- (e) as and when required by HKIRC, the Registrar shall provide all information and assistance necessary to enable a timely transfer of each of its Registrant's Domain Names to another HKIRC-Accredited registrar.

20.3 For the avoidance of doubt, the suspension of the Registrar shall not affect or prejudice any of HKIRC's rights to terminate this Agreement (whether in accordance with the terms hereof or at law), and whether on account of the same or different grounds upon which the Registrar was suspended, nor shall such suspension affect or prejudice the remedies of HKIRC against the Registrar to any extent.

## **21 ASSIGNMENT**

- 21.1 The Registrar shall not sell, transfer, delegate, assign, mortgage, charge or otherwise encumber any right under this Agreement, and save as set out under clause 13 above, delegate or license to any person to assume any obligation under this Agreement without the prior written consent of HKIRC.
- 21.2 HKIRC is entitled to transfer or assign all or any part of its rights and obligations under this Agreement to any person upon giving one (1) months' notice to the Registrar.
- 21.3 The Registrar shall obtain written consent from HKIRC for assigning or transferring its accreditation to a new or different entity. If the assigned entity is not already HKIRC-Accredited, the assigned entity shall immediately apply to HKIRC for accreditation before such assignment or transfer takes effect.
- 21.4 Subject to the other terms of this Agreement, this Agreement and the Related Documents will inure to the benefit of and be binding on, the Parties, their respective successors and assigns, administrators and executors.

## **22 AMENDMENT**

- 22.1 The Registrar acknowledges and agrees that this Agreement and/or the Related Documents may be amended, in whole or in part, or new Published Policies may be introduced from time to time by HKIRC at its sole and absolute discretion. Any such amendment or introduction shall be binding and effective on the Registrar fourteen (14) days after HKIRC gives written notice to the Registrar of such amendment or HKIRC posts the amendment on its web site, whichever is earlier.

## **23 ENTIRE UNDERSTANDING.**

- 23.1 This Agreement, together with the Related Documents, constitutes the entire understanding between the Parties as to the subject matter and supersedes all previous agreements, representations, warranties, explanations and commitments, expressed or implied, written or oral between the parties affecting this subject matter. The Registrar acknowledges that in entering into this Agreement it has not relied on any representation, promise or undertaking (whether oral or in writing) except such as are expressly incorporated into this Agreement.

## **24 FURTHER ASSURANCE**

- 24.1 Each Party agrees to cooperate and promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions and matters contemplated by this Agreement and the Related Documents.

## **25 WAIVER**

- 25.1 No waiver will be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-observance under this Agreement will not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance, whether of the same or any other nature.
- 25.2 No Party will be liable for any loss or expenses incurred by another Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

## **26 TIME OF THE ESSENCE**

- 26.1 Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

## **27 SEVERABILITY**

- 27.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision shall be severed from the remaining Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. A provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability only.

## **28 COUNTERPARTS**

- 28.1 This Agreement may be executed in any number of counterparts each of which be deemed to be an original and all of which taken together shall constitute one instrument.

## **29 INDEPENDENT CONTRACTORS**

- 29.1 The legal relationship between HKIRC and the Registrar is that of independent contractors, save as for the limited purpose in clause 8.4. Under no circumstances shall this Agreement be construed to create a partnership, agency or joint venture between HKIRC and the Registrar. The Registrar agrees and acknowledges that HKIRC has no obligation to, and will not, provide significant assistance to the Registrar in its performance of this Agreement or the Registrar Services.
- 29.2 Neither Party shall be liable for any delay in performing any of its obligations under this Agreement if such delay is caused by an event of Force Majeure and such Party shall be entitled (subject to giving the other Party full particulars of the circumstances in question and to using all reasonable endeavours to resume full performance without avoidance delay) to a reasonable extension of time for the performance of such obligations.

## **30 REMEDIES**

- 30.1 The rights and remedies of HKIRC under this Agreement are cumulative and no exercise or enforcement by HKIRC of any right or remedy hereunder shall preclude the exercise or enforcement by HKIRC of any other right or remedy hereunder or to which it is otherwise entitled by law to enforce.
- 30.2 Nothing in this Agreement shall preclude either Party from seeking interim relief or specific performance of any provision in this Agreement, provided that the Party seeking such interim relief or specific performance is not in material breach of its obligations under this Agreement.

## **31 NOTICES**

- 31.1 All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, facsimile transmission, registered mail, courier service and/or where possible, by electronic mail. Notices shall be deemed given on:

- (a) personal delivery; or
  - (b) two (2) Business Days after the date of postage or dispatch if by post or courier service; or
  - (c) the date of confirmation of transmission if by facsimile transmission; or
  - (d) the date that the communication was transmitted (provided that the date of transmission is verifiable) if by electronic mail.
- 31.2 Service of notices shall be given and made at such Party's address set forth in this Agreement or such other address as may be communicated in writing to the other Party from time to time. Any Party who changes its address for service shall give no less than one (1) month's notice to the other Party. Where a Party is a registered company in Hong Kong, a notice may also be served on it at its registered office.
- 31.3 The Parties acknowledge and that HKIRC may in relation to any amendments to the Related Documents give notice to the Registrar by posting a notice to such effect on its web site and such notice shall be deemed to have been duly given or made as of the date on which the notice has been posted on HKIRC's web site.

## **32 DISPUTES, GOVERNING LAW AND JURISDICTION**

- 32.1 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong. Subject to clause 32.2 and 32.3, the Parties submit to the exclusive jurisdiction of the courts of Hong Kong.
- 32.2 In the event that, in the opinion of a Party, a dispute has arisen between the Parties, the Party of the view that a dispute has arisen must give written notice to the other Party, specifying the nature of the dispute, and the Parties shall engage in good faith discussions for at least thirty (30) days from the date of the dispute.
- 32.3 In the event that the Parties are unable to amicably resolve any dispute arising between them within thirty (30) days of the dispute, any dispute or claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force when the notice of arbitration is submitted. The number of arbitrator shall be one and the appointing authority shall be Hong Kong International Arbitration Centre. The place of arbitration shall be in Hong Kong at Hong Kong International Arbitration Centre (HKIAC) and the language of the proceedings shall be English.

## **33 DEFINITIONS**

- 33.1 In this Agreement, including in the Background section hereto but except for Schedule 8, the following words and expressions shall bear the following meanings:

<b>Term</b>	<b>Definition</b>
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<b>Applicable Data Protection Law</b>	means the Personal Data (Privacy) Ordinance (Cap 486) and other applicable laws and regulations in relation to personal information or personal data (including, for instance, the European Union 2016/679 General Data Protection Regulation),
<b>Acceptable Use Policy</b>	means the domain name registration acceptable use policy of HKIRC (as may be modified from time to time)
<b>Accreditation Certificate</b>	means a certificate issued by HKIRC certifying that the Registrar: <ul style="list-style-type: none"> <li>(a) meets the Accreditation Criteria; and</li> <li>(b) has passed the Technical Testing Procedures</li> </ul> in respect of the Designated Domain Name Categories.
<b>Accreditation Criteria</b>	means the requirements specified by HKIRC in this Agreement or otherwise set out in Published Policies from time to time issued by HKIRC, the current version being set forth in Schedule 2 of this Agreement.
<b>Business Day</b>	means a normal working day in Hong Kong excluding weekends and bank and public holidays and days during which a black rainstorm warning or Typhoon signal number 8 or above is hoisted or remains hoisted anytime between 9:00 a.m. and 6:00 p.m.
<b>ccTLD</b>	means the country code top-level domain in the domain name hierarchy.
<b>Code of Practice</b>	means the Code of Practice of HKIRC for the purpose of regulating the performance and practice of the Registrar Services by the Registrar and Resellers issued by HKIRC and published on the web site of HKIRC from time to time, together with the Published Policies, the current version of which is set out in Schedule 8.
<b>Commencement Date</b>	means the date that this Agreement is signed by the Parties.

**Confidential Information**

means, without limitation:

(i) all information and materials about HKIRC, including Registrant Data;

(ii) all information marked or otherwise identified as confidential or proprietary;

(iii) all information relating to any transmission, security or protocols in connection with the operation, server, system and technical information, business plans and partners etc. including Registry Server, in any form, which comes into the Registrar's possession pursuant to, or as a result of or in performance of this Agreement or from HKIRC, excluding information:

(a) which at the time of its first disclosure under this Agreement was in the public domain; or

(b) which, after disclosure by HKIRC comes into the public domain otherwise than by disclosure in breach of this Agreement; or

(c) which is received by the Registrar from a third party who has the right to provide the information and which is not itself subject to confidentiality obligations; or

(d) which was already in the Registrar's possession or knowledge without restriction prior to its disclosure; or

(e) which the Registrar is required by law or any order of a court or tribunal to disclose.

**Control**

means, in the event that the Registrar is a registered company, control of the composition of the Board of Directors, control of more than half of the voting power of the Board of Directors, or the holding of more than half of the issued share capital of a company (excluding any part of it which carries no right to participate beyond a specified amount in a distribution of either profits or capital).

**Data Breach**

means breach of security leading to an actual or suspected accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access to Registrant Data transmitted, stored or otherwise processed.

<b>Designation Agreement</b>	means the agreement signed between HKIRC and the Government of the HKSAR for management and administration of the Internet Domain Names in Hong Kong on 17 March 2010 and includes any amendments, supplements or subsequent versions.
<b>Designated Domain Name Categories</b>	means the domain name categories set out in Schedule 1.
<b>DNDRP</b>	means the HKIRC Domain Name Dispute Resolution Policy and its Rules of Procedures, and includes any amendments, supplements or subsequent versions.
<b>Domain Name</b>	means a domain name in the Designated Domain Name Categories.
<b>Domain Name Application</b>	means an application by a Registrant for a Domain Name registration, or the renewal of an existing Domain Name registration.
<b>Domain Name Services</b>	means services provided in relation to Domain Names, including (but not limited to) application, renewal, transfer, modification, and deletion.
<b>Expiry Date</b>	means the end date on which the Agreement is in effect.
<b>Fees</b>	means the fees payable by the Registrar to HKIRC set out in Schedule 4.
<b>Force Majeure</b>	means any act, event, omission or accident beyond the reasonable control of the Party seeking to rely on such Force Majeure, including, without limitation, any strike, lock-out, labour dispute, act of God, inability to obtain labour, utilities or services, acts of any government authority, enemy or hostile actions, sabotage, war, blockades, insurrections, riots, epidemics, washouts, nuclear and radiation activity or fallout, civil disturbances, explosions, fire, unanticipated loads or transactions in the Registry Server, breaches of security, computer viruses, faults or defects in third party software, equipment and degradation or failure of telecommunications services; provided that if any such event is reasonably foreseeable by the Party seeking to take advantage of such Force Majeure, that Party shall take all reasonable steps within its control to avoid the occurrence or minimise the impact of such Force Majeure.

**HKIRC-Accredited** means a registrar accredited by HKIRC as having fulfilled its Accreditation Criteria and issued with an Accreditation Certificate.

**Intellectual Property Rights** means any and all intellectual property rights now in force or that come into force in the future, and includes, without limitation, patents, trade marks, service marks, trade names, domain names, registered designs, unregistered design rights, copyrights, know-how, trade secrets and rights in confidential information, know-how, system, database and all and any other intellectual property rights, including all applications and rights to apply for registration (and renewals and extensions of any registration) of such rights, as well as all rights of action and remedies in relation to past infringements.

**Material Breach** means a breach that is not capable of being remedied and which shall include without limitation a breach of any of the following clauses:

- (a) Clause 2.3;
- (b) Clause 2.5;
- (c) Clause 3.2;
- (d) Clause 3.5;
- (e) Clause 3.7;
- (f) Clause 3.10;
- (g) Clause 3.11;
- (h) Clause 3.13;
- (i) Clause 3.17;
- (j) Clause 6.1;
- (k) Clause 7.3;
- (l) Clause 8.2;
- (m) Clause 9;
- (n) Clause 12.1; and
- (o) Clause 12.2.

<b>MOU</b>	means the Memorandum of Understanding signed between HKIRC and the Government of the HKSAR for management and administration for the Internet domain name in Hong Kong on 17 March 2010 including its further amendments, supplements or its subsequent version.
<b>Performance Objectives</b>	means the performance objectives set out in Schedule 6 and as updated by HKIRC from time to time.
<b>Published Policies</b>	means those policies, guidelines, rules, notices or procedures issued and published by HKIRC from time to time for the administration of the .hk and .香港 ccTLDs.
<b>Registrant</b>	means a holder of, or an applicant for, a Domain Name registration.
<b>Registration Agreement</b>	means the agreement to be entered into or renewed between the Registrar and a Registrant in relation to provision of all or any of the Registrar Services for a Domain Name registration.
<b>Registrant Data</b>	means the personal information, data and details submitted by a Registrant or collected by the Registrar in connection with the Domain Names or the Registrar Services, or such mandatory information required by HKIRC in processing, approving or registering a Domain Name or any other data relating to a Registrant submitted by the Registrar to HKIRC including but not limited to: <ul style="list-style-type: none"> <li>(a) the Registrant's name and contact information;</li> <li>(b) technical, billing and administrative contact information;</li> <li>(c) all other data submitted by the Registrar in electronic form; and</li> <li>(d) other data concerning particular registrations or name servers maintained in electronic form in the Registry Server.</li> </ul>
<b>Registrar</b>	when appearing in this Agreement with an initial small letter, means a person that provides services for domain names in general by contracting with Registrants, and who collects and submits registration information for entry in the Registry Server including for the purposes of performing Domain Name Services.

<b>Registrar Account</b>	has the meaning given to it in clause 6.4.
<b>Registrar Services</b>	means the provision of the services by a registrar in respect of Designated Domain Name Categories, including, without limitation, the services of registering, maintaining, transferring, modifying, renewing and cancelling a Domain Name registrations with HKIRC in accordance with the Agreement and the Related Documents.
<b>Registration Policies</b>	means the Registration Policies, Procedures and Guidelines and such rules, policies, regulations and procedures applicable to registrars and Registrants as issued and amended by HKIRC from time to time.
<b>Registry Server</b>	means a server or database consisting of primary and secondary name servers and WHOIS servers, containing the Registrant Data and other data or information, together with the mechanism for accessing that data, in relation to the Designated Domain Name Categories.
<b>Related Documents</b>	means the HKIRC's Registration Policies, Acceptable Use Policy, Code of Practice, HKIRC's DNDRP and all other Published Policies of HKIRC, all of which are expressly incorporated and form part of this Agreement.
<b>Reseller</b>	means a person appointed by the Registrar to represent registrants as an agent for applying Domain Name Services and providing customer services to Registrants on behalf of the Registrar in accordance with this Agreement.
<b>Reseller Agreement</b>	means any contract, arrangement or understanding between the Registrar and a Reseller in relation to Domain Name Services.
<b>Technical Procedures</b>	<b>Testing</b>
	means the technical, system, interface and other tests prescribed by HKIRC for the purpose of verifying that the Registrar's operational and technical systems can properly interface with the HKIRC's systems in relation to the Domain Names and performance of the Registrar Services, procedures of which are set out in Schedule 3.
<b>Term</b>	means the period beginning on the Commencement Date and continuing to the earlier of (a) the Expiry Date, or (b) termination of this Agreement.

**Web Registrar Logo** means the logo of HKIRC indicating a registrar being HKIRC-Accredited registrar, as set out in Schedule 7 of this Agreement.

**WHOIS** means the protocol used to provide a searchable public information service in relation to data maintained in a registry.

33.2 In this Agreement, except where the context requires or unless otherwise specified, a reference to:

- (a) the singular includes the plural and vice versa;
- (b) the masculine gender includes the feminine gender, and vice versa;
- (c) schedules, recitals, clauses and sub-clauses are to schedules, recitals, clauses and sub-clauses to this Agreement;
- (d) a statutory provision or any rule or regulation (whether or not having the force of law) shall be construed as a reference to the same as amended, varied, modified, consolidated or re-enacted from time to time and to any subordinate legislation made under such statutory provisions;
- (e) a "Party" includes a reference to that Party's successors and permitted assigns;
- (f) a "person" includes natural persons, companies, corporations, firms, associations and organisations;
- (g) reference to "writing" includes fax, e-mail and similar means of communication;

33.3 A reference to an interest of two or more persons confers that interest jointly and severally and a reference to an obligation imposed on any two or more persons imposes that obligation jointly and severally.

33.4 Headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement.

33.5 In the event of any inconsistencies between English and Chinese versions of this Agreement, the English version shall prevail.

33.6 In the event of any inconsistencies between the provisions of this Agreement and the provisions in the Published Policies and Code of Practice, the provisions of the Published Policies and Code of Practice shall prevail.

**EXECUTED** by the parties as an agreement

For and on behalf of

**InterNetX GmbH**

For and on behalf of

**Hong Kong Internet Registration  
Corporation Limited**

Company chop



Company chop



Signature :

\_\_\_\_\_

Name : \_\_\_\_\_

Title: \_\_\_\_\_

Date : \_\_\_\_\_

Signature :

\_\_\_\_\_

Name : \_\_\_\_\_

Title: \_\_\_\_\_

Date : \_\_\_\_\_

## **Schedule 1**

### **DESIGNATED DOMAIN NAME CATEGORIES**

The Registrar shall be accredited during the Term of this Agreement in respect of the following domain name categories, subject to the change as HKIRC may from time to time prescribe in writing:

**.com.hk**

**.org.hk**

**.net.hk**

**.idv.hk**

**.hk**

.公司.香港

.組織.香港

.網絡.香港

.個人.香港

.香港

## Schedule 2

### ACCREDITATION CRITERIA

#### ACCREDITATION CRITERIA

The Accreditation Criteria are the minimum requirements to be met by the Registrar in order to be HKIRC-Accredited and are as set forth below. These requirements may be subject to modifications and amendments by HKIRC from time to time in writing, and shall be read together with this Agreement:

- (1) The Registrar, if a corporate, shall at all times remain a valid, registered, solvent company, whether registered in Hong Kong or elsewhere.
  
- (2) The Registrar must have the technical capability and necessary hardware and software to carry out all of its functions as a Registrar, including but not limited to:
  - i. conduct of the Registrar Services;
  
  - ii. ensuring the confidentiality and security of Registrant Data and Confidential Information;
  
  - iii. performing customer-related functions such as billing; and
  
  - iv. maintaining reliable data backup systems,

and shall, prior to launch of its services, pass the Technical Testing Procedure of the HKIRC and successfully complete a test run without any errors.

- (3) The Registrar must demonstrate its ability to provide prompt service to Registrants for their registration needs, including the setting up of complaints handling procedures and customer service, as well as performing its other registration obligations in a timely manner and in accordance with the provisions of the Related Documents as amended by HKIRC from time to time.

- (4) The Registrar shall pay the required fee as stated in Schedule 4.
  
- (5) The Registrar shall meet the Performance Objectives prescribed by HKIRC and as may be amended from time to time.

**Schedule 3**

**TECHNICAL TESTING PROCEDURES**

**Technical Testing Procedure** can be downloaded at

[https://www.hkirc.hk/upload/download/7/download\\_1/5e01835331a09.pdf](https://www.hkirc.hk/upload/download/7/download_1/5e01835331a09.pdf)

## Schedule 4

### FEES

1 HKIRC is entitled to change the Fees set out in this Schedule from time to time by giving the Registrar at least fourteen (14) days' notice.

2. The Fees comprise of:

**(a) Fees for Accreditation**

**(i) Application Fee**

The Application Fee is HK\$10,000 which shall be a one-off, non-refundable payment.

**(ii) Accreditation Fee**

The Accreditation Fee is HK\$10,000 per annum, payable on the Commencement Date of the Registrar Agreement, and then on each anniversary date of the Commencement Date of the Registrar Agreement. The Accreditation Fee is non-refundable.

**(b) Fees for Domain Name service**

The Registrar shall pay HKIRC on every registration, renewal, reinstatement and/or other Domain Name services the amount specified by HKIRC as per the below fee schedule. The fee schedule is subject to change and the Registrar shall comply with the most updated version of the fee schedule. HKIRC shall notify the Registrar of any change to the Fee Schedule by giving the Registrar fourteen (14) days notice of such change.

**Registrar Price for Domain Name Registration and Other Service Fee (effective 22 Jan 2020)**

	Per Bundle (HK\$)		
	2 <sup>nd</sup> level .hk - .香港	3 <sup>rd</sup> level .hk - . 香港  (except .idv.hk - 個人. 香港 .gov.hk - 政府.	3 <sup>rd</sup> level .hk - . 香港  (.gov.hk - 政府. 香港)

		香港)		
New registration (first year)	80	80	80	60
New registration (second or subsequent year ) or renewal (per year)	125	125	125	75
Reinstatement of “black-out” domain	125	125	125	75
Transfer to another registrant	0	0	0	0
Modification of name server (MNS) for “old contract” domain	N/A	125	125	N/A
Other special services	Quote on request	Quote on request	Quote on request	Quote on request

**(c) Minimum Balance requirements**

(i) The Registrar shall at all times and pursuant to clause 6.4 of the Registrar Agreement maintain a Minimum Balance of HK\$15 per domain name up to a total of HK\$15,000.

(ii) HKIRC may change the amount prescribed from time to time. HKIRC shall notify the Registrar of any change to the Minimum Balance by giving the Registrar fourteen (14) days’ notice of such change.

## Schedule 5

### REGISTRATION AGREEMENT - MANDATORY PROVISIONS

**Important Note:** This document sets out the **minimum** terms and conditions to be contained in a Registration Agreement between the Registrar and a Registrant. It does not purport to be, and is not, a comprehensive Registration Agreement.

The Registration Agreement must contain the following **minimum** terms and conditions:

#### **1 DOMAIN NAME SERVICES**

- 1.1 The Registrant shall at all times comply with all prevailing requirements prescribed by HKIRC in connection with any of the .hk or 香港 domain name (the “**Domain Name**”), and shall only request the Registrar Services in the form and manner prescribed by HKIRC from time to time.
- 1.2 In registering a Domain Name, the Registrant acknowledges and agrees that neither HKIRC nor InterNetX GmbH (the “**Registrar**”) has made any determination with respect to the legality of the Domain Name registration or its use.
- 1.3 The Registrant acknowledges and agrees that the Registrar shall monitor the status of Domain Names registered through the Registrar and shall, at its own initiative or on receipt of complaint, conduct checks to verify whether a Domain Name is being used in connection with phishing or "spam" advertising. The Registrar shall delete or suspend a Domain Name if so directed by HKIRC. HKIRC may issue such a direction on receipt of any notice from any government or law enforcement authority (including without limitation the Hong Kong Police Force or the Office of Telecommunications Authority) that the use of the Domain Name is in breach of any laws, directives, guidelines, codes of practice or regulations issued by such local authorities, or if, in HKIRC's reasonable belief, the continuation of registration of the Domain Name or the operation of web site referenced by the Domain Name is likely to damage or adversely affect the goodwill, reputation and operation of HKIRC or the domain name industry in Hong Kong, or may expose HKIRC to risks of third party claims or civil or criminal prosecution.

#### **2 PUBLICATION OF REGISTRANT PERSONAL DATA**

- 2.1 The Registrant acknowledges, agrees and has granted consent to HKIRC that HKIRC is entitled to publicly disclose to third parties all personal data and information relating to the registered Domain Name in order to enable HKIRC to maintain a public WHOIS service, provided that such disclosure is consistent with:

- (a) the Applicable Data Protection Law ;
  - (b) the Published Policies; and
  - (c) this Registration Agreement.
- 2.2 The Registrant grants to the Registrar the right to disclose to the HKIRC all information which is reasonably required by HKIRC in order to enter the Domain Name into the Registry Server.

### 3 CHANGE OF REGISTRARS

- 3.1 The Registrar shall not prevent a Registrant from changing the registrar of record, except in accordance with the Registration Policies.
- 3.2 The Registrar shall ensure that the Registrant can easily transfer registered Domain Names to another registrar in accordance with the Published Policies.
- 3.3 In the event that:
- 3.3.1 the Registrar is no longer a registrar; or
  - 3.3.2 the Registrar's HKIRC Accreditation is suspended or terminated; or
  - 3.3.3 the Registrar Agreement is terminated by HKIRC,
- the Registrar shall immediately give notice to its Registrants, and advise the Registrants that they should transfer the registered Domain Name to a new registrar.
- 3.4 In the event that the Registrar Agreement between HKIRC and the Registrar is terminated due to default or breach of the Registrar, the Registrar must not charge the Registrant any fee for the transfer of the registered Domain Name to another registrar. The Registrar shall take all necessary actions to preserve the rights of its Registrants.
- 3.5 If the Registrant of a Domain Name registered under Hong Kong Network Information Centre ("HKNIC") Registration Agreement Version 1.x or 2.xx elects to change the Registrar from Hong Kong Domain Name Registration Company Limited ("HKDNR") to another Registrar ("New Registrar"), the Registrant shall acknowledge and accept that the Domain Name registration will be subject to the terms and conditions of the then current registration agreement of the new Registrar. For the avoidance of doubt, if the Domain Name registration is under one of the above-mentioned agreements, the Contract Version field of the WHOIS result display for that Domain Name will display the word "Old".
- 3.6 The Registrant shall provide an authorization code ("**Authorization Information**") to a new registrar in order to initiate the change of registrar. The Registrar can request that HKIRC provide this Authorization Information by sending it to the Registrant's email address. The Registrar shall not, if requested to do so by a Registrant, refuse to make such a request of HKIRC.

- 3.7 In the event that the Registrar is no longer an HKIRC-Accredited registrar, the Domain Name held by a Registrant shall be transferred to another HKIRC-Accredited registrar within a specified period of time. If the Registrant fails to elect a registrar and effect the transfer, HKIRC shall be entitled to transfer the Domain Name to registration with HKDNR, together with any personal data held by the Registrar in relation to that Registrant.

#### **4 REGISTRANT'S OTHER OBLIGATIONS**

- 4.1 Throughout the Term of the Registration Agreement, the Registrant must:
- 4.1.1 comply with the Published Policies (including but not limited to the Registration Policies, Procedures and Guidelines, Acceptable Use Policy, Domain Name Dispute Resolution Policy and Rules of Procedure and the Registration Agreement. The Published Policies can be found on the web site of HKIRC, [www.hkirc.hk](http://www.hkirc.hk);
  - 4.1.2 give notice to HKIRC, through the Registrar, of any change to any information in the Registrant Data as soon as possible.
- 4.2 The Registrant shall not, directly or indirectly, through registration or use of its Domain Name or otherwise:
- 4.2.1 infringe or violate the legal rights of any third party; or
  - 4.2.2 violate any applicable laws and regulations.
- 4.3 The Registrant acknowledges and agrees that HKIRC may collect Registrant information for the purpose of HKIRC membership.

#### **5 DISPUTE RESOLUTION**

- 5.1 For any Domain Name registered with the Registrant that is challenged by a third party, the dispute will be handled according to the provisions of the Domain Name Dispute Resolution Policy for .hk and .香港 Domain Names.
- 5.2 Any decision made by an arbitration panel duly appointed by a dispute resolution service provider shall be final and binding on the Registrant and the Registrant shall abide by such decision.

#### **6 REGISTRANT WARRANTIES**

- 6.1 The Registrant warrants that it meets, and continues to meet, the eligibility criteria prescribed in HKIRC's Published Policies and this Registration Agreement for registering a Domain Name. In the event that the Registrant ceases to meet such eligibility criteria, the Domain Name registration may be terminated by either the Registrar or HKIRC.

6.2 By making an application for a Domain Name, the Registrant represents and warrants that:

- (a) to the best of its knowledge and belief, the Domain Name that the Registrant is applying for will not infringe or otherwise violate the legal rights of any third party;
- (b) the Registrant intends to use the Domain Name;
- (c) the Registrant's use of the Domain Name shall be bona fide for the Registrant's own benefit and shall be for lawful purposes;
- (d) the Registrant will not knowingly use the Domain Name in violation of any applicable laws and regulations;
- (e) all information the Registrant provides to the Registrar, including further additions or alterations to such information, is true, complete and accurate;
- (f) in the event that the Registrant receives notification of any claim, action or demand arising out of or related to the registration or use of the Domain Name, the Registrant will immediately send the Registrar a written notice notifying the Registrar of such claim, action or demand.

The Registrant acknowledges that the Registrar and HKIRC rely on all representations made and warranties given by the Registrant in determining if the application for a Domain Name should be approved.

## **7. HKIRC Contact Registrants**

7.1 The Registrant acknowledges that HKIRC may contact the Registrant in a number of situations including, but not limited to, inviting the Registrant to join HKIRC as a member; where there has been, or will be, a change in registrar, whether voluntarily or involuntarily on the part of the Registrant, due to termination of the Registrar; for the matters in relation to the administration and service of Domain Names; inviting the Registrant to take part in a customer satisfaction survey or other survey, and introducing seminars, conferences, training, and other news related to the Internet industry. If the Registrant does not want to receive unsolicited marketing or promotional emails, the Registrant can request that HKIRC remove the Registrant from the marketing or promotional email subscription list.

## **8. LIABILITIES**

8.1 The Registrant shall indemnify and hold harmless HKIRC as the registry from all liabilities, losses, damages, costs, legal expenses, professional and other expenses of any nature howsoever sustained, incurred, paid by or suffered by HKIRC which are directly or

indirectly related to any claim, action, or demand arising out of or related to the registration or use of the Domain Name brought by the Registrant.

- 8.2 Notwithstanding any other provision of this document and to the fullest extent permitted by law, HKIRC will not be liable to the Registrant for consequential, indirect or special losses or damages of any kind (including, without limitation, loss of profit, loss or corruption of data, business interruption or indirect costs) suffered by the Registrant as a result of any act or omission whatsoever of HKIRC and the Registrar, its employees, agents or sub-contractors (other than liability for death or personal injury arising on account of negligence on HKIRC's part).
- 8.3 Save only in respect of liability for death or personal injury arising on account of negligence on HKIRC's part, in no event shall HKIRC's maximum liability under these Registration Policies exceed 125% of the registration fees paid by the Registrar to HKIRC for the Registrant's Domain Name in respect of its period of registration.

## Schedule 6

### PERFORMANCE OBJECTIVES

1. The Performance Objectives to be met by the Registrar shall be as set forth below. The Performance Objectives may be subject to modifications and amendments by HKIRC from time to time in writing.
2. The Registrar shall register not less than 500 Domain Name Bundles\*\* (acquired by new application) in total at the end of the first year.

*\*\* For more information about Bundled Domain Names, please refer to Section 6 (and in particular Section 6.6 for the Bundled Domain Names) of the HKIRC Domain Name Registration Policies, Procedures and Guidelines for .hk and .香港 domain name. For those Domain Names categories without an equivalent Domain Name, it will be counted on domain name basis without a bundle.*

3. When calculating the total number of Domain Names:
  - (a) Domain Names in pair (e.g. 域名.hk and 域名.香港) shall be counted as one Domain Name.
  - (b) Domain Name variants, i.e. Chinese Domain Names in traditional form, together with the equivalent simplified form, partially traditional and partially simplified form, and with or without character variant form, shall be counted as one Domain Name only.

**Schedule 7**

**WEB REGISTRAR LOGO**



## **Schedule 8**

### **Hong Kong Internet Registration Corporation Limited**

#### **Code of Practice for Registrars and Resellers**

**[Effective 28 January 2021]**

#### **1. Purpose**

- 1.1 The Code of Practice for Registrars and Resellers (the “**Code of Practice**”) has been adopted by the Hong Kong Internet Registration Corporation Limited (“**HKIRC**”) and forms part of the Registrar Agreement. The Registrar shall ensure that any Reseller associated with the Registrar has read and accepted this Code of Practice.
- 1.2 The purpose of this Code of Practice is to promote and protect the interests of the domain name registration industry, Registrars and Resellers (“**Suppliers**”) and Customers and Registrants, and is intended to support and promote competition in the industry. This Code of Practice intends to encourage best practices in the industry by :
- i. establishing minimum standards for dealings between Suppliers and Customers and Registrants;
  - ii. preventing practices that undermine the reputation of the industry and the interests of Customers and Registrants;
  - iii. establishing basic principles in relation to Complaint handling by Suppliers; and
  - iv. regulating advertising activities of Suppliers and their provision of information relating to domain name registration and related services to Registrants.
- 1.3 All capitalized terms in this Code of Practice have defined meanings which are set out in section 11 of this Code of Practice.

#### **2. Compliance And Enforcement of this Code of Practice**

- 2.1 Compliance with this Code of Practice is mandatory for all Suppliers.
- 2.2 The Registrar is responsible for enforcing this Code of Practice with its Resellers.
- 2.3 All Suppliers must provide proper customer service and shall respond to and handle any Complaints in a prompt and efficient manner in accordance with the Complaint Handling Principles.

- 2.4 Suppliers shall develop, maintain and adopt a system in accordance with the Complaint Handling Principles within their respective organizations.
- 2.5 Suppliers shall, upon request of HKIRC and within the requested time, provide to HKIRC or its authorised representatives information about their compliance systems associated with this Code of Practice.
- 2.6 Nothing in this Code of Practice is intended to derogate from any rights or causes of action a person may have under any law of any jurisdiction.
- 2.7 A breach of this Code is a breach under the Registrar Agreement and may result in the suspension or termination of a Supplier's accreditation or the termination of the Registrar Agreement.

### **3. Market Conduct**

- 3.1 In handling a request from a Registrant for registration or renewal of a Domain Name, Suppliers must ensure Registrant satisfies or continue to satisfy the registration eligibility requirements of HKIRC in respect of the Domain Name as set out in the Registration Policies and the Acceptable Use Policy.
- 3.2 Suppliers shall only register or renew a Domain Name in accordance with the Registration Policies and the Acceptable Use Policy, and shall be responsible to ensure that the necessary fees are paid by Registrants. Suppliers shall inform Registrants applying for Domain Name renewal before the relevant Domain Name expires that non-payment of renewal fees will lead to a black-out period and subsequent cancellation of a Domain Name registration.
- 3.3 Suppliers shall not register or renew Domain Names without a request from a Registrant and for the purpose of preventing a competitor of the Supplier from registering the Domain Name on behalf of the Registrant, or for the purpose of later offering this Domain Name to potential Customers and Registrants.
- 3.4 Suppliers shall not register Domain Names on their own behalf for the purpose of preventing any other Domain Name registration. A Supplier may however register Domain Names on its own behalf for its own genuine commercial and business use.
- 3.5 Suppliers shall only register or renew a Domain Name for a period not more than the maximum term allowed by HKIRC.
- 3.6 Suppliers shall be capable of promptly and accurately entering into its own records all relevant information regarding its Registrants and communicating all information to HKIRC as required.
- 3.7 Suppliers shall not be dishonest or act in bad faith towards Customers and Registrants or to potential Customers and Registrants.

#### **4. Customer and Registrant Contact**

- 4.1 The Registrar on record of a Domain Name shall maintain records of a Registrant's current Supplier and shall provide such records to HKIRC upon the registration of the Domain Name, together with any updates of such information.
- 4.2 A Supplier shall not send a renewal notice to a Registrant, or issue any other communication that might reasonably be construed by a Registrant to be a renewal notice, for a Domain Name unless the Registrar is the registrar on record for that Domain Name or the Reseller is the Reseller of the Domain Name.
- 4.3 A Supplier shall send a renewal notice to a Registrant reminding them of the need to renew a Domain Name not less than thirty (30) days, but not more than one hundred and twenty (120) days, prior to the date of expiration of a Domain Name.
- 4.4 A Supplier shall advise the Registrant of any change of its status, including any change of association of a Reseller with a different registrar.
- 4.5 A Supplier must fully disclose to the Registrant or Customer the following minimum information:
- (a) details of the Supplier including:
    - (i) its company and business registration name under which the Supplier's business is conducted;
    - (ii) address of the registered office or principal place of business of the Supplier; and
    - (iii) email address and other means of contact and web site URL of the Supplier;
  - (b) the identity of the registrar being used by the Supplier (if the Supplier is not a registrar) including the trading name shown in the HKIRC list of registrars;
  - (c) the terms and conditions of registration between the Registrant and the Registrar (which must include the mandatory provisions requested under the Registrar Agreement);
  - (d) a copy of the Registration Policies, Acceptable Use Policy, Domain Name Dispute Resolution Policy and Rules of Procedure, Published Policies or the URL link to it;
  - (e) the service standards and complaints handling procedures of the Supplier; and
  - (f) customer service support and contact information.
- 4.6 If the Registrar receives a Complaint about the accuracy of WHOIS data, the Registrar or its responsible Reseller shall on receiving, or receiving notice of, the Complaint shall make reasonable efforts to contact the Registrant to arrange for the information to be corrected.
- 4.7 Suppliers shall maintain information provided by Registrants as true and updated.

- 4.8 The Registrar and Suppliers shall process Registrant or Customer data in accordance with the Registrar Agreement or any relevant agreement entered into between HKIRC and the Supplier, and the Applicable Data Protection Law.

## **5. Service and Marketing efforts**

- 5.1 All advertising by a Supplier about its Domain Name Services must comply with all applicable legislations and published standards.
- 5.2 Suppliers shall provide Customers with information about themselves and their services or advertising or promotional materials that is:
- (i) clear;
  - (ii) accurate; and
  - (iii) not confusing, misleading or deceptive.
- 5.3 Suppliers must publish information about changes to any policy that may materially affect a Registrant's Domain Name and the related services provided by the Suppliers.

## **6. Restrictions**

- 6.1 Suppliers shall not solicit or represent to any person that Suppliers enjoy access to services of HKIRC that are superior to that of any other Suppliers.
- 6.2 Suppliers shall not do, cause or omit to do anything which may harm the reputation, goodwill or business of HKIRC and/or the domain name registration industry.

## **7. Conduct of Employees, Agents, Contractors and Resellers**

- 7.1 The appointment or engagement of Resellers by a Registrar shall not to any extent negate or minimise the responsibilities of a Registrar to comply with this Code of Practice. All Registrars shall remain responsible and liable for the acts or omissions of the Resellers and shall be liable to HKIRC for any breach or threatened breach of this Code of Practice by its Resellers.
- 7.2 Each Supplier must use reasonable efforts to ensure its employees, agents and contractors are bound by and comply with this Code of Practice.
- 7.3 If a Supplier becomes aware of any actual or potential or threatened breach of this Code of Practice by its employees in the course of their employment or by its agents or contractors (including Resellers) in the course of performing their functions as agents or contractors, the Supplier must take such action as may be reasonably available to it to prevent or discourage the continuation of the breach of this Code of Practice. In the event of a serious breach or material default, the Supplier shall also immediately inform HKIRC of such breach and shall take such steps as HKIRC shall require to stop or prevent the continuation and/or recurrence of such an event.

## **8. Customer Service**

8.1 Suppliers shall provide high quality customer service to all Customers and Registrants.

8.2 Suppliers shall:

- i. publish on their web site a written Complaints handling process which is to be available to all Customers at no charge;
- ii. provide a link on their web site to all Published Policies and any customer service related information;
- iii. promptly inform the Registrants before changing the terms and conditions of an existing Domain Name registration, renewal or maintenance;
- iv. provide up-to-date service information and charges of Suppliers;
- v. detail the method, availability and cost of customer service provided;
- vi. proceed with the domain name application, transfer, modification or cancellation within one working day after receiving a Registrant's request or receiving the required documents from customers;
- vii. respond to Customer enquiries within one working day.

8.3 Suppliers shall at all times comply with all applicable local and international laws, regulations, guidelines, code of conduct, industry practices, including but not limited to the Applicable Data Protection Law and the Unsolicited Electronic Messages Ordinance (Cap 593) or equivalent applicable laws in other jurisdictions. Any breach of such applicable laws shall constitute a breach of the Registrar Agreement.

8.4 Suppliers must publish on their web site, and include in their terms and conditions, a clear policy for Registrants to cancel Domain Name registrations and/or terminate their relationship with the Suppliers.

## **9. Complaints Handling Principles**

9.1 Suppliers shall:

- i. provide an efficient, fair and accessible mechanism for handling Complaints;
- ii. publish on their web site a Complaint handling procedures;
- iii. demonstrate a commitment to the right of Customers and Registrants to complain;

- iv. at all times treat a Complainant with courtesy; and
- v. ensure any Complaints are handled without prejudice.

- 9.2 Suppliers shall provide adequate resources for Complaint handling with sufficient delegated levels of authority, and shall be determined to implement remedies and methods to reach a solution.
- 9.3 Complaints must be dealt with efficiently and, if possible, within ten (10) days from receipt of a Complaint. If more time is required for investigation, Suppliers shall let the Complainant know the expected time by which a response will be given.
- 9.4 Suppliers must advise Complainants of the outcome of the investigation of their Complaint, whether orally or in writing, if so requested by the Complainant.
- 9.5 HKIRC reserves the right to enquire or investigate into the service level and commitment of Suppliers. Suppliers shall fully cooperate with HKIRC to provide all relevant information including details of any Complaint, whether or not the Complaint is already known to HKIRC, or already resolved.
- 9.6 Suppliers must implement processes and procedures and must deal with Complainants in accordance with the Complaints Handling Principles set out in this Code of Practice.
- 9.7 Suppliers must provide easily accessible and comprehensible information on how, when and where to make a Complaint.
- 9.8 Suppliers must promptly update its web site with any information regarding their Complaint handling process to reflect any variations to the process.

## **10. Complaints to HKIRC**

- 10.1 Suppliers must at any appropriate time advise Complainants of their avenues of recourse, including the option to complain to HKIRC where the Complainant remains dissatisfied with the outcome of a Complaint.
- 10.2 Suppliers must have in place appropriate systems to record Complaints and their outcomes, and shall keep HKIRC informed on monthly basis of the statistics, details and outcomes of the investigations.

## **11. Definitions**

<b>Term</b>	<b>Definition</b>
Applicable Data Protection Law	means the Personal Data (Privacy) Ordinance (Cap 486) and other applicable laws and regulations in relation to personal information or personal data (including, for instance, the European Union 2016/679 General Data Protection Regulation).
Complainant	means a person making a Complaint.
Complaint	means any expression of dissatisfaction or grievance made to a Supplier or HKIRC by a Customer or member of the public (including another Supplier) in relation to any act or omission of a Supplier related in any way to Domain Names.
Complaint Handling Principles	means the principles set out in section 9 of this Code of Practice.
Customer	means a person or entity who: <ul style="list-style-type: none"> <li>a) has a contract with a Supplier for the supply of a Domain Name and/or related services;</li> <li>b) is or may be eligible under the criteria set by a Supplier to enter into a contract for the supply of the Domain Name and/or related services;</li> <li>c) is or may be eligible to obtain a Domain Name under the eligibility criteria set by HKIRC from time to time;</li> <li>d) is a Registrant; or</li> <li>e) is a potential Registrant.</li> </ul>
Domain Name	means a domain name in any Domain Name Category.
Domain Name Categories	means a designated '.hk' or '.香港' ccTLD domain name category, as set out in the Registrar Agreement from time to time.
HKIRC	means Hong Kong Internet Registration Corporation Limited, a non-statutory corporation responsible for the administration of Internet domain names under '.hk' and '.香港' country-code top level domains.

Published Policies	means those policies or notices established and published by HKIRC from time to time. It includes but not limited to Registration Policies, Procedures and Guidelines, Acceptable Use Policy, Domain Name Dispute Resolution Policy and Rules of Procedure.
Registrant	means an entity or individual that holds a Domain Name.
Registrar	means an entity that registers Domain Names for Customers and who is accredited by HKIRC in accordance with accreditation practices and procedures of HKIRC.
Registrar Agreement	means the agreement entered into between a Registrar and HKIRC in accordance with HKIRC accreditation practices and procedures.
Registration Policies	means the Registration Policies, Procedure and Guideline of HKIRC in respect of a Domain Name including all of the subsequent versions, amendments and supplements.
Reseller	means a person appointed by a Registrar to represent registrants as an agent for applying Domain Names or related services and to provide Customer services to Registrants on behalf of the Registrar or an agent of such person.
Reseller Agreement	means an agreement to be entered into between a Registrar and its Reseller.
Supplier	means a Registrar and/or Reseller.
WHOIS data	means the data relating to a Domain Name or its Registrant as shall be available on a WHOIS service provided by HKIRC.