

under the Letter of Credit submitted by a Bidder, the amount that Bidder is liable under this paragraph.

4.9.3 Where, in a Round, a Bidder makes a Withdrawal in respect of a Frequency Band in accordance with paragraph 4.9.1, the Standing Highest Bid which is the subject of the Withdrawal shall be disregarded for the purposes of determining the Bidder's Activity Level for that Round.

4.9.4 The number of Rounds in which each Bidder may make a Withdrawal or Withdrawals is limited to three.

4.10 Waiver

4.10.1 In any Round other than the first Round, a Bidder may submit a Waiver in lieu of taking any action under paragraph 4.5.2(a) provided:

- (a) Waivers were submitted under this paragraph or were deemed to have been submitted by that Bidder in previous Rounds under paragraph 4.10.2 in less than three Rounds; and
- (b) the number of Eligibility Points attributed to all Standing Highest Bids of the Bidder at the end of the immediately preceding Round is less than the number of Eligibility Points attributed to the Bidder in the Round.

A Waiver must be submitted in accordance with the requirements given in paragraph 4.11.1.

4.10.2 In any Round other than the first Round, where a Bidder fails to take any action under paragraph 4.5.2(a) or submit a Waiver under paragraph 4.10.1, the Bidder is deemed to have submitted a Waiver provided:

- (a) Waivers were submitted under paragraph 4.10.1 or were deemed to have been submitted by that Bidder in previous Rounds under this paragraph in less than three Rounds; and
- (b) the number of Eligibility Points attributed to all Standing Highest Bids of the Bidder at the end of the immediately preceding Round is less than the number of Eligibility Points attributed to the Bidder in the Round.

4.10.3 Where, in a Round, a Bidder submits a Waiver in accordance with paragraph 4.10.1 or is deemed to have submitted a Waiver in accordance with paragraph 4.10.2, the number of Eligibility Points attributed to that

Bidder for the immediately following Round shall be the same as the Activity Level of the Bidder in the most immediately preceding Round in which the Bidder did not submit or was not deemed to have submitted a Waiver.

4.10.4 At any time during the Bidding Stage, the Authority may, at his sole discretion, increase the number of Waivers that all Bidders may exercise.

Method for submitting Valid Bid, Withdrawal or Waiver

4.11.1 A Valid Bid, a Withdrawal or a Waiver must be:

- (a) submitted by using the communication method specified by the Authority which may be one or more of the following:
 - (i) an Internet-based software platform,
 - (ii) an Intranet-based software platform,
 - (iii) facsimile transmission,
 - (iv) telephone call,
 - (v) any other method as the Authority may specify;
- (b) submitted by using the form specified by the Authority for the relevant method of communication;
- (c) accompanied by the password or other form of authentication for identifying the Bidder in respect of the submission of a Valid Bid, a Withdrawal or a Waiver (such password or form of authentication shall be provided by the Authority prior to the Bidding Stage); and
- (d) received by the Authority within the duration of the Round as specified by the Authority prior to the Round.

4.11.2 A Valid Bid, a Withdrawal or a Waiver, once submitted to the Authority, shall not be amended, substituted or withdrawn, other than in accordance with terms and conditions of this Notice.

4.12 Conclusion of Bidding Stage

4.12.1 The Bidding Stage shall end upon either:

- (a) the completion of a Round in which:
 - (i) no Valid Bid is submitted for any Frequency Band,
 - (ii) no Withdrawal is submitted for any Frequency Band, and
 - (iii) no Waiver is submitted or is deemed to be submitted by any Bidder; or
- (b) the completion of a Round which the Authority has specified to be

the final Round and has permitted the Bidders to submit Valid Bids for the Frequency Bands at any amount at or above the Round Prices;

whichever first occurs.

In case of subparagraph (a), the Provisional Successful Bidder of a Frequency Band shall be the Bidder which has submitted the Standing Highest Bid in respect of that Frequency Band at the end of the Bidding Stage and the amount of the Spectrum Utilization Fee payable for that Frequency Band shall be the amount of that Standing Highest Bid.

In case of subparagraph (b), the Provisional Successful Bidder of a Frequency Band shall, subject to paragraphs 4.12.2 and 4.12.3, be the Bidder which has submitted the highest Valid Bid in respect of that Frequency Band and the amount of Spectrum Utilization Fee payable for that Frequency Band shall be the amount of that highest Valid Bid.

4.12.2 Where there is more than one Bidder having submitted the same highest Valid Bid in respect of a Frequency Band in the Round described in paragraph 4.12.1(b), the Authority shall determine by random which of such Bidders shall be the Provisional Successful Bidder in respect of that Frequency Band.

4.12.3 In case no Valid Bid is received in respect of a Frequency Band in the Round described in paragraph 4.12.1(b):

- (a) where there was a Standing Highest Bid in respect of that Frequency Band at the end of the immediately preceding Round, that Standing Highest Bidder shall be the Provisional Successful Bidder in respect of that Frequency Band (unless that Standing Highest Bid has been subject to a Withdrawal);
- (b) where there was no Standing Highest Bid in respect of that Frequency Band at the end of the immediately preceding Round, there shall be no Provisional Successful Bidder in respect of that Frequency Band;
- (c) where the Standing Highest Bid in respect of that Frequency Band at the end of the immediately preceding Round has been subject to a Withdrawal, there shall be no Provisional Successful Bidder in respect of that Frequency Band.

4.13 Provisional Successful Bidder Notice

4.13.1 Within two Business Days after the end of the Bidding Stage, the Authority shall publish a notice (a “Provisional Successful Bidder Notice”) to announce:

- (a) the identity of the Provisional Successful Bidder of each of the Frequency Bands;
- (b) the Spectrum Utilization Fee payable for each of the Frequency Bands.

4.13.2 Within two Business Days after publication of the Provisional Successful Bidder Notice, each Provisional Successful Bidder shall notify the Authority whether it is a Connected Bidder in relation to another Provisional Successful Bidder by completing and submitting the Connected Bidder Statutory Declaration. If a Provisional Successful Bidder fails to submit such notification to the Authority, it shall be disqualified and the Authority may at his discretion forfeit an amount (up to the full amount of that Bidder’s Deposit) by way of Penalty from its Deposit.

4.13.3 Within fourteen Business Days after publication of the Provisional Successful Bidder Notice, the Authority shall publish a notice (“Connected Provisional Successful Bidder Notice”) if he determines, either following a notification to him by a Provisional Successful Bidder under paragraph 4.13.2 or as a result of his review of any information available to him, determines that two or more Provisional Successful Bidders are Connected Bidders (“Connected Provisional Successful Bidders”) and the total amount of spectrum for which they are Provisional Successful Bidders exceeds the Spectrum Cap.

4.14 Dealing with Connected Bidders after Bidding Stage

4.14.1 Within five Business Days after publication of the Connected Provisional Successful Bidder Notice, the relevant Connected Provisional Successful Bidders shall make one or more of the following arrangements:

- (a) reorganise themselves so that they cease to be Connected Bidders;
- (b) reach an agreement as to which of their Standing Highest Bids shall be withdrawn so that the total amount of spectrum assigned to

the Bidder or Bidders which made the remaining Standing Highest Bids, as the case may be, does not exceed the Spectrum Cap; and the Connected Provisional Successful Bidders shall jointly submit to the Authority a notification of the reorganisation or the agreement (as the case may be) duly signed by two Authorised Representatives of each of the Connected Provisional Successful Bidders.

- 4.14.2 If the Connected Provisional Successful Bidders fail to reorganise themselves or reach an agreement as required under paragraph 4.14.1, the Authority shall conduct an auction among such Connected Provisional Successful Bidders (a “Sub-Auction”).
- 4.14.3 The Sub-Auction shall start on the date, at the time and at the location notified by the Authority to the relevant Connected Provisional Successful Bidders.
- 4.14.4 The Sub-Auction shall consist of a period of time specified by the Authority within which each of the relevant Connected Provisional Successful Bidders may offer a Bid which shall consist of any cash amount expressed in Hong Kong dollars and cents at or above the Minimum Fee.
- 4.14.5 Subject to paragraph 4.14.6, the Connected Provisional Successful Bidder, which Bid offered in the Sub-Auction and Standing Highest Bid or Standing Highest Bids offered at the end of the Bidding Stage produce the highest aggregate amount, shall remain as a Provisional Successful Bidder in respect of the Frequency Band or Frequency Bands for which it is the Provisional Successful Bidder at the end of the Bidding Stage whilst other Connected Provisional Successful Bidder or Connected Provisional Successful Bidders shall cease to be a Provisional Successful Bidder or Provisional Successful Bidders.
- 4.14.6 Where two or more Connected Provisional Successful Bidders offer the same highest aggregate amount referred to in paragraph 4.14.5, the Authority shall determine by random which of them shall remain as a Provisional Successful Bidder. In such case, other Connected Provisional Successful Bidder or Connected Provisional Successful Bidders shall cease to be a Provisional Successful Bidder or Provisional Successful Bidders.

- 4.14.7 Within two Business Days after receipt of a notification submitted by the Connected Provisional Successful Bidders under paragraph 4.14.1 or the Sub-Auction conducted in accordance with paragraphs 4.14.2 to 4.14.6, as the case may be, the Authority shall publish a notice (a “Revised Provisional Successful Bidder Notice”) to announce:
- (a) the reorganisation or the agreement made by the relevant Connected Provisional Successful Bidders, or the result of the Sub-Auction conducted among the relevant Connected Provisional Successful Bidders; and
 - (b) the identities of all Provisional Successful Bidders after the reorganisation, the agreement or the Sub-Auction, as the case may be.
- 4.14.8 If a Connected Provisional Successful Bidder withdraws its Standing Highest Bid or Standing Highest Bids in accordance with paragraph 4.14.1(b) or ceases to be a Provisional Successful Bidder as a result of the Sub-Auction conducted in accordance with paragraphs 4.14.2 to 4.14.6, the Authority may at his discretion forfeit an amount (up to the full amount of that Bidder’s Deposit) by way of Penalty from its Deposit unless that Connected Provisional Successful Bidder is able to demonstrate to the satisfaction of the Authority that it has become a Connected Bidder in relation to other Provisional Successful Bidder as a result of a change in circumstances which is beyond its control and does not have any purpose of circumventing the terms and conditions of this Notice.

4.15 Return of Deposits to the Losing Bidders

- 4.15.1 After publication of the Provisional Successful Bidder Notice or the Revised Provisional Successful Bidder Notice, as the case may be, the Authority shall return to a Bidder which is not a Provisional Successful Bidder or ceases to be a Provisional Successful Bidder (a “Losing Bidder”) that Losing Bidder’s Deposit provided:
- (a) that there is no outstanding investigation being carried out by the Authority against that Losing Bidder in respect of any suspected contravention of the terms and conditions of this Notice; and
 - (b) that, if any amounts have been forfeited or deducted by the Authority in accordance with the terms and conditions of this Notice with respect to that Losing Bidder,

- (i) where the Deposit is in cash, the Deposit shall be returned less the aggregate amount of the Penalties and the amount deducted by the Authority under paragraph 4.9.2; and
- (ii) where the Deposit is a Letter of Credit, the Authority shall make a claim under the Letter of Credit to the extent of the aggregate amount of the Penalties and the amount the Losing Bidder is liable under paragraph 4.9.2.

4.15.2 Notwithstanding the return to a Losing Bidder of its Deposit in accordance with paragraph 4.15.1, that Losing Bidder shall continue to comply with those terms and conditions of this Notice as are specified by the Authority. If the Authority does not specify any terms and conditions in accordance with this paragraph, the Losing Bidder shall be required to comply with all the terms and conditions of this Notice as appropriate.

Part 5 – Grant Stage

5.1 Notification of any Approval

- 5.1.1 Within two Business Days after publication of the Provisional Successful Bidder Notice, each Provisional Successful Bidder shall notify the Authority whether it is subject to an Approval, and if so, the details of that Approval.
- 5.1.2 Where a Provisional Successful Bidder notifies the Authority that it is not subject to any Approval, it may be entitled to be granted a Licence.
- 5.1.3 Where a Provisional Successful Bidder notifies the Authority that it is subject to an Approval, it may not be entitled to a grant of a Licence until it notifies the Authority that it is no longer subject to an Approval.
- 5.1.4 On notifying the Authority in accordance with paragraph 5.1.3, the Provisional Successful Bidder shall provide written evidence to the Authority that the Approval notified by the Provisional Successful Bidder under paragraph 5.1.1 has been obtained.
- 5.1.5 If a Provisional Successful Bidder does not notify the Authority in accordance with paragraph 5.1.1, the Authority may, at his discretion and without prejudice to the provisions of any law or ordinance and paragraph 6.1.1, forfeit an amount (up to the full amount of that Bidder's Deposit) by

way of Penalty from that Bidder's Deposit where the Deposit is in cash or make a claim under the Letter of Credit to the extent of the relevant amount where the Deposit is a Letter of Credit.

5.1.6 If a Provisional Successful Bidder that is subject to an Approval fails to obtain that Approval by the Approval Date, the Authority may, if that Provisional Successful Bidder is able to demonstrate to the satisfaction of the Authority that it has used its best endeavours to obtain that Approval or a waiver of that Approval, specify a date by which that Provisional Successful Bidder shall obtain the Approval.

5.1.7 If a Provisional Successful Bidder fails to obtain an Approval by the Approval Date or the date specified by the Authority under paragraph 5.1.6, the Authority shall not grant a Licence to that Provisional Successful Bidder and shall disqualify that Bidder from the Auction and forfeit an amount (up to the full amount of that Bidder's Deposit) by way of Penalty from that Bidder's Deposit where the Deposit is in cash or make a claim under the Letter of Credit to the extent of the relevant amount where the Deposit is a Letter of Credit.

5.2 Duties of Provisional Successful Bidder

5.2.1 Within thirty Business Days after publication of the Provisional Successful Bidder Notice, each Provisional Successful Bidder shall:

- (a) pay to the Authority in cash the Spectrum Utilization Fee payable by it; and
- (b) provide to the Authority a Performance Bond in accordance with the Conditions.

5.2.2 Where the Deposit of a Provisional Successful Bidder is in cash, the Authority may at his discretion permit the Provisional Successful Bidder to offset all or part of the Spectrum Utilization Fee by the Deposit or the balance of the Deposit, as the case may be.

5.2.3 Where a Provisional Successful Bidder fails to comply with the requirements specified in paragraph 5.2.1, the Authority shall not grant a Licence to that Provisional Successful Bidder and shall disqualify that Bidder from the Auction and forfeit an amount (up to the full amount of that Bidder's Deposit) by way of Penalty from that Bidder's Deposit where

the Deposit is in cash or make a claim under the Letter of Credit to the extent of the relevant amount where the Deposit is a Letter of Credit.

5.3 Return of Deposit to Provisional Successful Bidder

5.3.1 If the Deposit of a Provisional Successful Bidder is greater than the Spectrum Utilization Fee payable by the Provisional Successful Bidder, the Authority shall return to the Provisional Successful Bidder the balance of the Deposit where the Authority is satisfied that the Provisional Successful Bidder has complied with the requirements specified in paragraph 5.2.1 provided:

- (a) that there is no outstanding investigation being carried out by the Authority against the Provisional Successful Bidder in respect of any suspected contravention of the terms and conditions of this Notice; and
- (b) that, if any amounts have been forfeited or deducted by the Authority in accordance with the terms and conditions of this Notice with respect to that Provisional Successful Bidder,
 - (i) where the Deposit is in cash, the Deposit shall be returned less the aggregate amount of the Penalties and the amount deducted by the Authority under paragraph 4.9.2; and
 - (ii) where the Deposit is a Letter of Credit, the Authority shall make a claim under the Letter of Credit to the extent of the aggregate amount of those Penalties and the amount the Provisional Successful Bidder is liable under paragraph 4.9.2.

5.3.2 Notwithstanding the return to a Provisional Successful Bidder of its Deposit in accordance with paragraph 5.3.1, that Provisional Successful Bidder shall continue to comply with those terms and conditions of this Notice as are specified by the Authority. If the Authority does not specify any terms and conditions in accordance with this paragraph, the Provisional Successful Bidder shall be required to comply with all the terms and conditions of this Notice as appropriate.

5.4 Successful Bidder Notice and grant of Licence

5.4.1 After the later of:

- (a) the date on which a Provisional Successful Bidder has complied with the requirements specified in paragraph 5.2.1 and
- (b) the date on which the Authority receives notification from the

Provisional Successful Bidder that it is not subject to an Approval in accordance with paragraph 5.1.1 or that it is no longer subject to an Approval in accordance with paragraph 5.1.3, the Authority shall, subject to the compliance by the Provisional Successful Bidder of the terms and conditions of this Notice,

- (i) determine and publish a notice (a “Successful Bidder Notice”) that the Provisional Successful Bidder shall become a Successful Bidder; and
- (ii) grant a Licence to the Successful Bidder under which the Frequency Band or Frequency Bands for which that Bidder is the Successful Bidder shall be assigned.

5.5 Cancellation, withdrawal or suspension of Licence

5.5.1 The Authority may cancel, withdraw or suspend a Licence pursuant to Special Condition 37 of the Conditions.

Part 6 – Rules on conduct of Bidders

6.1 Breach of Notice

6.1.1 Each Bidder shall comply with all of the terms and conditions of this Notice. Without prejudice to any other rights or remedies of the Authority, if a Bidder breaches one or more of the terms and conditions of this Notice, the Authority may, at his discretion:

- (a) disqualify that Bidder from the Auction by notice to that Bidder; and/or
- (b) forfeit an amount (up to the full amount of a Bidder’s Deposit) by way of Penalty from a Bidder’s Deposit where the Deposit is in cash or make a claim under the Letter of Credit to the extent of the relevant amount where the Deposit is a Letter of Credit.

6.1.2 If a Bidder is disqualified during the Bidding Stage:

- (a) that Bidder shall no longer be entitled to participate in the Auction but shall continue to comply with those terms and conditions of this Notice as specified by the Authority. If the Authority does not specify any terms and conditions in accordance with this paragraph, the Bidder shall be required to comply with all the terms and conditions of this Notice as appropriate;
- (b) that Bidder shall cease to be a Standing Highest Bidder in respect

- of any Frequency Band;
- (c) the Bid or the Bids submitted by that Bidder in the Round immediately preceding the disqualification shall be deemed invalid and disregarded; and
- (d) the Authority may re-determine the result of the Round immediately preceding the disqualification as he considers appropriate.

6.1.3 If a Provisional Successful Bidder is disqualified during the Grant Stage:

- (a) that Provisional Successful Bidder shall not be granted a Licence or assigned with a Frequency Band; and
- (b) the position of any other Bidder shall not be affected.

Return of Deposit to disqualified Bidder

6.1.4 If a Bidder is disqualified, the Authority shall return that disqualified Bidder's Deposit provided:

- (a) that there is no outstanding investigation being carried out by the Authority against that disqualified Bidder in respect of any suspected contravention of the terms and conditions of this Notice; and
- (b) that if any amounts have been forfeited or deducted by the Authority in accordance with the terms and conditions of this Notice with respect to that disqualified Bidder:
 - (i) where the Deposit is in cash, the Deposit shall be returned less the aggregate amount of the Penalties and the amount deducted by the Authority under paragraph 4.9.2; and
 - (ii) where the Deposit is a Letter of Credit, the Authority shall make a claim under the Letter of Credit to the extent of the aggregate amount of the Penalties and the amount the Losing Bidder is liable under paragraph 4.9.2.

6.1.5 Notwithstanding the return to a disqualified Bidder of its Deposit in accordance with paragraph 6.1.4, that disqualified Bidder shall continue to comply with those terms and conditions of this Notice as are specified by the Authority. If the Authority does not specify any terms and conditions in accordance with this paragraph, the disqualified Bidder shall be required to comply with all the terms and conditions of this Notice as appropriate.

6.2 Participation in Auction

6.2.1 Each Bidder shall participate in the Auction in good faith in accordance with the terms and conditions of this Notice including, without limitation, complying with the detailed provisions relating to bidding in the Auction.

6.2.2 Each Bidder shall

- (a) ensure that its Authorised Representatives are contactable by the Authority at all times for the purposes of the Auction;
- (b) not send any form of communication to the Authority during the Auction which is, in the opinion of the Authority, vexatious;
- (c) not submit more than one form for the purpose of submitting a Bid, a Waiver or a Withdrawal in a Round;
- (d) not submit a Bid, a Waiver or a Withdrawal using a communication method other than that specified by the Authority in accordance with paragraph 4.11.1;
- (e) not destroy or use improperly any equipment or device provided by the Authority for the Auction;
- (f) not act, without reasonable excuse, in a manner which disrupts the procedure specified in this Notice.

6.3 Submission of false or misleading information

6.3.1 No Bidder shall submit to the Authority any information (including, without limitation, in an Application) in connection with the Auction which that Bidder either knows to be false or misleading or which is false or misleading.

6.4 Changes and notification to Authority

6.4.1 Subject to paragraph 7.7.1, if any change occurs which affects the information submitted in a Bidder's Application, that Bidder shall immediately notify the Authority in writing; and shall on request by the Authority submit within a period specified by the Authority one or more of the following documents:

- (a) a revised Application Form;
- (b) a revised Bidder Compliance Certificate; and
- (c) a revised Connected Bidder Statutory Declaration.

6.5 Confidentiality and non-collusion

Confidential Information

- 6.5.1 A Bidder and its Insiders shall not take steps to obtain or use in any unauthorised way Confidential Information of another Bidder.
- 6.5.2 Subject to paragraph 6.5.3, A Bidder and its Insiders shall not directly or indirectly disclose, or cause or permit to disclose, or enter into or attempt to enter into any arrangement, agreement or understanding to disclose, any Confidential Information to any person other than to the Bidder's professional advisers, providers of finance or prospective providers of finance who, in each case, need to know the Confidential Information for the purpose of evaluating, negotiating, advising the Bidder or considering provision of finance to the Bidder in connection with the Auction and shall become an Insider of the Bidder.
- 6.5.3 The Bidder shall procure that each person to whom disclosure of Confidential Information is made as permitted under paragraphs 6.5.2 and 6.5.4 is made aware (in advance of the relevant disclosure) of the provisions of paragraphs 6.5.1 and 6.5.2 and this paragraph and the Bidder shall use its best endeavours to procure that each of those persons adheres to those provisions.
- 6.5.4 Subject to paragraph 6.5.3, a Bidder is not prevented from using or disclosing Confidential Information:
- (a) if the Bidder is required to do so by the law of Hong Kong;
 - (b) if the Bidder is required to do so by the law of any place outside Hong Kong, the Stock Exchange of Hong Kong Limited, the Commission or other governmental or regulatory or supervisory body of competent jurisdiction to which rules and regulations (not having the force of law) the Bidder is subject provided the relevant Bidder has received the prior written consent of the Authority; or
 - (c) if it is required to be disclosed to the Authority in accordance with the terms and conditions of this Notice or otherwise.
- 6.5.5 A Bidder and its Insiders shall not receive or attempt to receive advice regarding the Auction from the Government's Adviser, including without limitation, any person retained by the Government's Adviser.

- 6.5.6 Confidential Information means, in relation to any Bidder, any information relating to the Auction which has not been made public by the Authority and which, if it were made public or made known to any other Bidder, would be reasonably expected to have an effect on the conduct or strategy of other Bidder or Bidders in the Auction, including without limitation, a Bidder's interest or participation in the Auction, business case, auction strategy and any Bid or offer that the Bidder is willing to make, but excluding:
- (a) information which is in, or which comes into the public domain other than as a breach of any Bidder or its Insider, of the terms and conditions of this Notice; and
 - (b) information provided prior to the later of the Application Dates by a Bidder or its Insiders to another Bidder or its Insiders for the purpose of enabling the latter to decide whether to participate in the Auction with the Bidder.

Directors, employees and agents

- 6.5.7 If any person who is a director, employee or agent of a Bidder or any person who is an Insider in relation to that Bidder, is also a director, employee or agent of another Bidder or any person who is an Insider in relation to the other Bidder, the first-mentioned Bidder shall ensure that the person:
- (a) does not take part in preparing any of the Bidders or their respective Insiders for participating in the Auction;
 - (b) does not pass Confidential Information relating to one Bidder to another Bidder or its Insiders;
 - (c) shall not be an Authorised Representative of any of the Bidders;
 - (d) shall not take part or participate in the Auction.

Non-collusion

- 6.5.8 A Bidder and its Insiders shall not:
- (a) co-operate, collaborate, collude or discuss with, or disclose any information to, any other Bidder or any of its Insiders for any purpose relating to the Auction, including without limitation, in connection with the Bidder's bidding strategy or with any Bid or offer that the Bidder is willing to make in the Auction; or
 - (b) manipulate or attempt to manipulate or make any arrangements to

manipulate the Auction in any way with a view to achieving a particular result or outcome of the Auction.

Return of information to the Authority

6.5.9 The Authority reserves the right, at his absolute discretion, to require that all written information provided to the Bidders be returned to the Authority.

6.6 Prevention of bribery

6.6.1 If any Bidder or any of its Insiders acts in contravention of the Prevention of Bribery Ordinance insofar as that ordinance applies to the Auction including, without limitation, sections 6, 7 and 12A, that Bidder shall be deemed to be in breach of the terms and conditions of this Notice.

6.7 Duty to abide by undertakings

6.7.1 Where a Bidder has given any certificate, undertaking, representation, warranty or declaration in accordance with any of the terms and conditions of this Notice, it shall comply with that certificate, undertaking and declaration and ensure that each certificate, declaration, representation and warranty remains true and accurate.

Part 7 – Miscellaneous

7.1 Suspension and cancellation

7.1.1 The Authority may, at any time, by notification to all Bidders, as the case may be,

- (a) amend the date on and the time at which a Round shall start or end;
- (b) cancel a Round or a series of Rounds in which case the Authority may disregard all the Bids received in the Round or the series of Rounds and re-conduct the Round or the series of Rounds;
- (c) suspend the Auction;
- (d) cancel the Auction, in which case the Authority may disregard all the Bids received in the Auction;
- (e) re-conduct the Auction.

7.2 General power of disqualification

7.2.1 Without prejudice to and in addition to any of the terms and conditions of this Notice, the Authority may at any time disqualify any Bidder from the Auction if, in his opinion, that Bidder is not a fit and proper person to hold

a Licence.

7.3 Civil debt

7.3.1 Without prejudice to and in addition to any of the terms and conditions of this Notice, any liability arising from the operation of the terms and conditions of this Notice may be recoverable as a civil debt due and payable to the Government.

7.4 Means of notification by Authority

7.4.1 If, in accordance with any of the terms and conditions of this Notice, the Authority is required, or wishes to notify a Bidder of any fact or circumstance, he may do so, unless otherwise specified in this Notice, by any means.

7.5 Means of notification to Authority prior to or after Bidding Stage

7.5.1 If, in accordance with any of the terms and conditions of this Notice, a Bidder is required, or wishes, to notify the Authority of any fact or circumstance prior to or after the Bidding Stage, such notification shall be in writing and shall be sent to the Authority by:

- (a) post to the Authority's Office (marked for attention of the Authority); or
- (b) fax to the fax number notified to the Bidders for this purpose by the Authority.

Any notification to the Authority shall be in the English language.

7.5.2 If a Bidder sends any notification to the Authority and the notification is received after 5.00 pm on a Business Day, it shall be deemed to have been received by the Authority at 9.00 am on the immediately following Business Day. If a tropical cyclone warning number 8 or above or a "black" rainstorm warning is in force in Hong Kong on any Business Day on which a Bidder sends a notification to the Authority or on any Business Day on which a notification is deemed to have received by the Authority, it shall be deemed to have been received by the Authority on the immediately following Business Day on which none of the signals remains in force.

7.6 Publication and disclosure of information

7.6.1 Subject to paragraph 7.6.2, the Authority may publish or disclose any

information arising out of or in relation to the Auction, whether or not that information originates from a Bidder, in any manner as he thinks fit.

7.6.2 Subject to any other terms and conditions of this Notice, the Authority shall not publish or disclose any information which is provided to him by a Bidder which that Bidder has asked him in writing to treat as confidential, if the Authority is of the opinion that the request is reasonable in the interests of the Bidder and not publishing the information would not unfairly prejudice other Bidders or be detrimental to the Auction.

7.7 Change of Authorised Representatives

7.7.1 If a Bidder wishes to substitute one or more of its Authorised Representatives notified to the Authority in its Application Form required to be submitted under paragraph 2.1.2, it may do so at any time on notification of the details of that change to the Authority in accordance with paragraph 6.4.1. A substitution made in accordance with this paragraph shall take effect on the immediately following Business Day after the day on which the Authority receives such notification. That Bidder shall on request by the Authority submit within a period specified by the Authority a revised Application Form.

7.8 Additional information

7.8.1 The Authority may request any Bidder for such additional information or document as may reasonably be required for his determination as to whether the Bidder shall be a Qualified Bidder or as to whether the Bidder is a Connected Bidder in relation to another Bidder.

7.8.2 On receipt of a request made pursuant to paragraph 7.8.1, a Bidder shall use its best endeavours to provide the information or documents within the time limit specified by the Authority.

7.8.3 If a Bidder fails to comply with paragraph 7.8.2, the Authority may refuse to determine that Bidder as a Qualified Bidder in accordance with paragraphs 3.2.1 to 3.2.2.

7.9 Interpretation

7.9.1 The Authority shall be entitled to interpret conclusively the terms and conditions of this Notice and the validity of any act made pursuant to them

in the event of any question, difference of opinion or dispute over these terms and conditions.

7.10 Modifications to Notice

7.10.1 The Authority may make modifications to the terms and conditions of this Notice:

- (a) to correct any manifest error;
- (b) to correct any inconsistency;
- (c) to address circumstances not contemplated by the Authority on or before the date of this Notice but which are nevertheless within the overall purpose of the Ordinance, the Regulation and the terms and conditions of this Notice.

7.11 Documents submitted to the Authority

7.11.1 Any document submitted by a Bidder to the Authority in accordance with this Notice is and shall remain the property of the Authority and the Authority may use the information contained therein in whatever manner and for whatever purpose the Authority deems fit.

7.12 Powers of Authority to issue Licences

7.12.1 Nothing in this Notice shall limit the power of the Authority to issue any licence pursuant to section 7 of the Ordinance or otherwise fetter his powers under the Ordinance.

7.13 Waiver

7.13.1 Any delay by the Authority in exercising or enforcing any of his powers under this Notice shall not constitute a waiver of those powers.

7.14 Governing law and jurisdiction

7.14.1 The terms and conditions of this Notice and the relationship between the Authority and each of the Bidders shall be governed by, and interpreted in accordance with Hong Kong law.

7.14.2 The courts of Hong Kong are to have exclusive jurisdiction to settle any disputes which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by or otherwise arising in connection with the terms and conditions of this Notice. The submission of an Application shall be deemed to constitute an

irrevocable submission to the jurisdiction of the courts of Hong Kong.

APPENDIX 1
Licence

**TELECOMMUNICATIONS ORDINANCE
(Chapter 106)**

UNIFIED CARRIER LICENCE

DATE OF ISSUE: []

..... [Company Name]

of [Address]

.....

(the “licensee”) is licensed, subject to the following conditions set out in this licence-

- (a) to provide a public telecommunications network service (the “service”), the scope of which is described in Schedule 1;
- (b) to establish and maintain a telecommunications network (the “network”) described in Schedule 2 to provide the service;
- (c) to possess and use the radiocommunications installations described in Schedule 3 to provide the service; and
- (d) to deal in, import and demonstrate, with a view to sale in the course of trade or business, such apparatus or material for radiocommunications as may be necessary to supply customers of the service.

GENERAL CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this licence, except as hereinafter provided or unless the context otherwise requires, words or expressions shall have the meanings assigned to them in the Telecommunications Ordinance (Cap. 106) (the “Ordinance”) and, as the case may be, the Interpretation and General Clauses Ordinance (Cap. 1). For the purposes of interpreting this licence, headings and titles shall be disregarded.
- 1.2 This licence shall not be construed as granting an exclusive right to the licensee to provide the service.
- 1.3 This licence replaces any licence or any exemption from licensing, however described, which the Authority may have granted to the licensee for providing the service.
- 1.4 The grant of this licence does not authorize the licensee to do anything which infringes any exclusive licence granted under the Ordinance or any exclusive right to operate and provide telecommunications networks, systems, installations or services granted under any other Ordinance.

2. TRANSFER

- 2.1 The licensee may, only with the prior written consent of the Authority and subject to such reasonable conditions as the Authority thinks fit, transfer this licence or any permission, right or benefit under this licence. In giving his consent the Authority will have regard to such matters as he thinks fit including but not limited to the effect which the transfer will have on market structure and the financial and technical competence and viability of the transferee.

3. INTERNATIONAL CONVENTIONS

- 3.1 The licensee shall at all times perform and observe the requirements of

the Constitution and Convention of the International Telecommunication Union and the regulations and recommendations annexed to it, as are stated to be applicable to Hong Kong, and any other international convention, agreement, protocol, understanding or the like to the extent that the instruments described in this General Condition 3.1 impose obligations on Hong Kong of which the Authority gives notice to the licensee, except to the extent that the Authority may in writing exempt the licensee from such compliance.

- 3.2 Where the Government has been consulted about or is involved in the preparation or negotiation of an international convention, agreement, protocol or understanding or the like or amendments thereto which are on the subject-matter of telecommunications or which relate to another subject-matter but which the Government anticipates could have a material impact on the provision of the service under this licence, the Government will, where practicable, provide the licensee with a reasonable opportunity to make a submission stating its views on the matter.

4. COMPLIANCE GENERALLY

- 4.1 The licensee shall comply with the Ordinance, regulations made under the Ordinance, licence conditions or any other instruments which may be issued by the Authority under the Ordinance.

5. PROVISION OF SERVICE

- 5.1 The licensee shall, subject to Schedule 1 to this licence and any special conditions of this licence relating to the provision of the service, at all times during the validity period of this licence operate, maintain and provide a good, efficient and continuous service in a manner satisfactory to the Authority. The Authority may, on application in writing by the licensee, exempt a part or parts of the service from the requirement of continuous provision.

6. CUSTOMER CHARTER

- 6.1 Unless a waiver in writing is granted by the Authority, the licensee

shall prepare a customer charter which sets out the minimum standards of service to the licensee's customers and gives guidance to the employees of the licensee in their relations and dealings with customers.

7. CONFIDENTIALITY OF CUSTOMER INFORMATION

- 7.1 The licensee shall not disclose information of a customer except with the consent of the customer, which form of consent shall be approved by the Authority, except for the prevention or detection of crime or the apprehension or prosecution of offenders or except as may be authorized by or under any law.
- 7.2 The licensee shall not use information provided by its customers or obtained in the course of provision of service to its customers other than for and in relation to the provision by the licensee of the service.

8. RECORDS AND PLANS OF NETWORK

- 8.1 The licensee shall keep records and plans (including overall network plans and cable route maps) of the telecommunications installation (including radiocommunications installation) and telecommunications nodes and exchanges, if any, provided under this licence and any other details concerning the network as may be reasonably required by the Authority, including but not limited to information from operational support systems, traffic flow information, and database information relating to the manner in which the network treats any communication ("network information").
- 8.2 As required by the Authority, the licensee shall make the network information available, within reasonable time, to the Authority or to a person authorized in writing by the Authority for inspection for the Authority's own purposes.

9. CONTROL OF INTERFERENCE AND OBSTRUCTION

- 9.1 The licensee shall take reasonable measures to install, maintain and operate the service and the network in such a manner as not to cause

any harmful interference or physical obstruction to any lawful telecommunications service, or cause any physical obstruction to the installation, maintenance, operation, adjustment, repair, alteration, removal or replacement of the facilities of any lawful telecommunications or utility service provider.

9.2 The licensee shall take reasonable measures to ensure that the customers of the service do not cause harmful interference to lawful telecommunications services or utility services through use of the service.

9.3 The Authority may give such reasonable directions as he thinks fit to avoid harmful interference or physical obstruction referred to in General Condition 9.1. The licensee shall comply with the directions.

10. RESTRICTIONS ON ATTACHMENT TO PUBLIC BUILDINGS AND TREES

10.1 No part of the network shall be attached to any Government building except with the prior written consent of the Government Property Administrator, or to any tree on any Government land except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, or the Director of Leisure and Cultural Services.

11. COMPLIANCE

11.1 If the licensee employs any person under contract for the purpose of the service, or for the installation, maintenance or operation of the network (a “contractor”), the licensee shall continue to be responsible for compliance with the conditions of this licence, and the performance thereof, by any contractor.

12. REQUIREMENTS OF RADIOCOMMUNICATIONS INSTALLATION

12.1 Each radiocommunications installation operated by or on behalf of the licensee shall be used only at the location and with emissions and at the frequencies and of the classes and characteristics specified in