

G.N. 5596

**Telecommunications Ordinance (Cap.106) and
Telecommunications (Method for Determining Spectrum Utilization
Fee)
(Code Division Multiple Access Mobile Telecommunications Service)
Regulation (Cap.106AB)**

By this Notice the Telecommunications Authority, in exercise of the powers conferred by section 32I of the Telecommunications Ordinance, the Telecommunications (Method for Determining Spectrum Utilization Fee) (Code Division Multiple Access Mobile Telecommunications Service) Regulation and all other powers enabling him for this purpose, specifies the terms and conditions of the auction and the payment of the spectrum utilization fee. This Notice shall, where appropriate, also constitute guidelines of the Telecommunications Authority indicating the manner in which he proposes to perform his function of determining applications for licences which may be issued by him pursuant to section 7 of the Telecommunications Ordinance including the licensing criteria and other relevant matters he proposes to consider in accordance with section 6D of the Telecommunications Ordinance.

Marion LAI CHAN Chi-Kuen
Telecommunications Authority

31 August 2007

Part 1 -- Introduction

1.1 Commencement

1.1.1 This Notice shall come into effect on the date of issue.

1.2 Purpose of notice

1.2.1 The purpose of this Notice is to specify:

- (a) the terms and conditions of the Auction and the payment of Spectrum Utilization Fee; and
- (b) the Bidder which may be considered for the grant of a Licence.

1.3 Stages of auction

1.3.1 This Notice provides for four stages of the Auction:

- (a) Application Stage as specified in Part 2;
- (b) Pre-qualification Stage as specified in Part 3;
- (c) Auction Stage as specified in Part 4; and
- (d) Post-Auction Stage as specified in Part 5.

1.4 Definitions

1.4.1 In this Notice, unless the context otherwise requires:

"Activity Rules" means the obligations imposed on Bidders as set out in Part 6;

"Application" means an application submitted by a Bidder to the Authority in writing in accordance with Part 2;

"Application Dates" means 11 October 2007 and 12 October 2007;

"Application Form" means the form specified in Appendix 2 of this Notice;

“Application Stage” means the stage specified in Part 2;

“Approval” means any shareholder approval which is required by law or any regulatory authority before a Licence is granted to a Bidder which is not capable of being reasonably obtained prior to the date on which the Application by that Bidder is submitted in accordance with Part 2;

“Approval Date” means ten (10) Business Days after the date of the Auction Result Notice;

“Auction” means the procedure specified in this Notice;

“Auction Location” means one or more locations in Hong Kong to be specified by the Authority for the purposes of the Auction Stage;

“Auction Result Notice” has the meaning given in paragraph 4.14.1;

“Auction Stage” means the stage specified in Part 4;

“Authorised Representative” means the person authorised by a Bidder to submit a Bid in the Auction whose name and signature have been provided to the Authority in the Application Form submitted by the Bidder under paragraph 2.1.2 or in a notification under paragraph 7.6.1;

“Authority” means the Telecommunications Authority appointed under the Ordinance;

“Authority Account” means the designated account of the Authority at a Deposit Bank, namely the account 012-899-1-003883-3 at Bank of China or the account 004-048-3-037990 at the HSBC;

“Authority’s Office” means Office of the Telecommunications Authority, 26th Floor / 29th Floor / 36th Floor, Wu Chung House, 213 Queen’s Road East, Wanchai, Hong Kong;

“Banking Ordinance” means the Banking Ordinance (Cap. 155);

“Bid” means the amount of Spectrum Utilization Fee a Bidder wishes to offer in a Bidding Round;

“Bidder” means a body corporate which has submitted an Application;

“Bidder Compliance Certificate” means the certificate specified in Appendix 3 of this Notice;

“Bidder Notice” means the notice issued to Bidders by the Authority in accordance with paragraph 3.2.1;

“Bidder Participation Notice” means the notice specified in paragraph 4.2.1;

“Bidding Form” means the bidding form specified by the Authority for submission of a Bid and a No Bid Notification by a Bidder;

“Bidding Room” has the meaning given in paragraph 4.13.1;

“Bidding Round” means a period of time specified by the Authority in which a Bid may be submitted to the Authority;

“Business Day” means a full day other than a Saturday or a Sunday on which banks in Hong Kong are open for general business;

“Commission” means the Securities and Futures Commission established under the Securities and Futures Ordinance (Cap.571);

“Conditions” means the General and Special Conditions to which the Licence is subject, substantially in the form set out in Appendix 1 of this Notice;

“Deposit” means a sum in cash or by a Letter of Credit from a Qualifying Bank;

“Deposit Bank” means Bank of China Hong Kong Branch at Ground Floor, Wu Chung House, 213 Queen’s Road East, Wanchai, Hong Kong (“Bank of China”); or The Hongkong and Shanghai Banking Corporation Limited Hopewell Centre Branch at Ground Floor, Hopewell Centre, 183 Queen’s Road East, Wanchai, Hong Kong (“HSBC”);

“Deposit Interest” means interest (if any) earned in respect of a Bidder’s Deposit in accordance with paragraphs 2.2.7 to 2.2.9;

“Extraordinary Bidding Round” is a Bidding Round which:

- (a) Minimum Bid Specification is at an amount of Hong Kong Dollars which does not exceed the aggregate of the highest Valid Bid of the preceding Bidding Round plus HK\$100,000; and
- (b) is deemed to have never been conducted by the operation of paragraph 4.9.2;

“Final Bidding Round” has the meaning given in paragraph 4.10.1;

“Final Offer” means the Valid Bid submitted by a Bidder in the Final Bidding Round or in the Bidding Round immediately before that Bidder is deemed to have withdrawn from the Auction.

“Frequencies” means 825-832.5 MHz and 870-877.5 MHz;

“Government’s Adviser” means Spectrum Strategy Consultants Ltd who has been retained by the Government to provide it with advice regarding the Auction;

“Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China;

“Hong Kong Dollars” and “HK\$” means the valid currency for the time being of Hong Kong;

“Insider” means, in relation to a Bidder, any person to whom Confidential Information is disclosed directly or indirectly:

- (a) by any person who is an officer, employee, agent, adviser or associate of that Bidder; or
- (b) by any person who controls, or is controlled by, or is under common control with, that Bidder, or the officer, employee, agent, adviser or associate, partner or co-partner of that person; or
- (c) by any person who is an Insider in relation to that Bidder;

“Letter of Credit” means a letter of credit in the form specified in Appendix 4 of this Notice;

“Licence” means a mobile carrier licence issued by the Authority under section 7 of the Ordinance for the establishment or maintenance of a telecommunications network for carrying communications to or from the public between moving locations or between fixed locations and moving locations situated within Hong Kong and operating in the Frequencies;

“Losing Bidder” has the meaning given in paragraph 4.15.1;

“Minimum Fee” means HK\$76 million;

“No Bid Notification” has the meaning given in paragraph 4.6.1 ;

“Ordinance” means the Telecommunications Ordinance (Cap.106);

“Penalty” means a sum representing the whole or part of a Bidder’s Deposit which may be forfeited by the Authority from that Deposit under any provision of this Notice;

“Performance Bond” means a performance bond in the form determined by the Authority substantially in the form specified in Schedule 5 to Appendix 1 of this Notice and which is to be provided to the Authority in accordance with paragraph 5.2.1;

“Pre-qualification Stage” means the stage specified in Part 3;

“Post-Auction Stage” means the stage specified in Part 5;

“Provisional Successful Bidder” has the meaning given in paragraph 3.3.1 or in paragraph 4.10.1, as the case may be;

“Qualified Bidder” means a Bidder determined as such in accordance with Part 3;

“Qualifying Bank” means an institution holding a full banking licence under the Banking Ordinance whose long term debt rating is, or is higher than:

(a) one or more of the following

- (i) Moody’s A2;
- (ii) Standard & Poor’s A;
- (iii) Fitch Ratings’ A; or

(b) a rating of a body other than a body listed in subparagraph (a) which, in the opinion of the Authority, is equivalent to one or more of the ratings listed in that paragraph;

“Regulation” means the Telecommunications (Method for Determining Spectrum Utilization Fee) (Code Division Multiple Access Mobile Telecommunications Service) Regulation (Cap. 106AB);

“Reference Bidding Round” has the meaning given in paragraph 4.11.2;

“Reference Bidding Round Tied Bidder” has the meaning given in paragraph 4.11.3;

“Spectrum Utilization Fee” means the sum payable in respect of the use of the Frequencies as determined in accordance with this Notice;

“Specified Closing Round” means the Bidding Round that may be specified by the Authority at any time after the tenth (10th) Bidding Round to be the Final Bidding Round by giving the Bidders prior notice of three (3) Bidding Rounds.

“Successful Bidder” has the meaning given in paragraph 5.4.1;

“Successful Bidder Notice” has the meaning given in paragraph 5.4.1;

“Tied Bidders” has the meaning given in paragraph 4.11.1;

“Tied Bids” has the meaning given in paragraph 4.11.1;

“Valid Bid” has the meaning given in paragraph 4.4.1 or in paragraph 4.4.2, as the case may be;

1.5 Interpretation

1.5.1 In this Notice unless the context otherwise requires:

(a) a "person" includes any individual, body corporate, unincorporated association or body, government, state, agency, organisation or other entity whether or not having separate legal personality and includes its successors in title, permitted assigns and permitted transferees;

(b) any reference to a "random method" shall refer to a method chosen by the Authority at his absolute discretion by which the Provisional Successful Bidder is selected by random;

(c) any reference in this Notice to a period to be determined in terms of a number of Business Days shall be calculated from midnight on the

Business Day of notification or expiry of another time period, as the case may be, and expire at midnight on the last of the relevant number of Business Days and any reference to “midnight” in relation to a particular day shall be read as 11.59 p.m. on that day;

(d) any reference to an ordinance, whether the word is used by itself or as part of any title to an ordinance, shall mean that ordinance for the time being in force as well as any modification or substitution of that ordinance, in whole or in part, and all subsidiary legislation, regulations, directions, codes of practice and instruments made under that ordinance and for the time being in force;

(e) where any word or expression is defined in this Notice, that definition shall extend to the grammatical variations and cognate expressions of that word or expression;

(f) the singular includes the plural and vice versa and words and expressions importing each gender shall include the others;

(g) references to this Notice shall include references to the Schedules and the Appendices and references to any "paragraph", "Schedule" or "Appendix" are to a paragraph, Schedule or Appendix of this Notice;

(h) expressions of time shall be references to Hong Kong time; and

(i) the headings do not affect its interpretation.

Part 2 -- Application Stage

2.1 Application

2.1.1 No person other than a company formed and registered under the Companies Ordinance (Cap. 32) may make an Application. A company may make no more than one Application.

2.1.2 An Application must consist of the following documents duly completed in the English language and in accordance with such

instructions and accompanied by such documentary proof as may be required or specified therein:

- (a) An Application Form;
- (b) A Bidder Compliance Certificate; and
- (c) A Deposit.

2.1.3 An Application must be

- (a) addressed, sealed and enclosed in the manner as may be specified by the Authority; and
- (b) delivered by hand to Assistant Director (Regulatory) at the Authority's Office.

2.1.4 Subject to paragraphs 2.1.5, an Application must be received by the Authority at the Authority's Office between 9.00am and 5.00pm on the Application Dates.

2.1.5 If a tropical cyclone warning signal no. 8 or above or a "black" rainstorm warning signal is in force in Hong Kong on the Application Dates, Application Forms must be received by the Authority at the Authority's Office between 9.00am and 5.00pm on the next Business Day on which none of the signals remains in force.

2.1.6 A Bidder shall be subject to, and obliged to comply with the terms and conditions of this Notice from the time its Application is received by the Authority.

2.2 Deposit

Reference to Deposit

2.2.1 Any reference in this Notice to the Deposit shall, unless otherwise stated, be construed as referring to:

- (a) the Deposit which has been paid or delivered, as the case may be, to the Authority by the Bidder; and
- (b) any Deposit Interest that has been credited to a Bidder in accordance with paragraphs 2.2.7 to 2.2.9.

2.2.2 Any reference in this Notice to the Deposit shall be construed so as not to include any amount which has been forfeited by way of Penalty.

Deposit

2.2.3 The Deposit shall be an amount equal to HK\$76 million and shall be payable or delivered, as the case may be, to the Authority in accordance with paragraphs 2.2.6.

2.2.4 Where a Bidder provides its Deposit in cash, the Authority may notify that Bidder that its Application is invalid if funds representing that Bidder's Deposit are not cleared by 4pm on the later of the Application Dates.

2.2.5 Where a Bidder provides its Deposit by a Letter of Credit, the Bidder shall ensure that the Letter of Credit remains valid and fully effective until the Deposit is returned to that Bidder in accordance with the terms and conditions of this Notice.

Method of payment or delivery of Deposit

2.2.6 Where the Deposit is:

- (a) in cash, it shall be payable to the Authority to the Authority Account at the Deposit Bank;
- (b) a Letter of Credit, it shall be addressed to the Authority and be delivered to the Authority's Office together with the other Application documents set out in paragraph 2.1.2.

Deposit interest

2.2.7 Where the Deposit is in cash, it shall earn interest at the rate available to the Authority from the Deposit Bank in which the cash is deposited, taking into account the need of the Authority to return the Deposit in accordance with the terms and conditions of this Notice to the relevant Bidder without undue delay.

2.2.8 Where the Deposit is in cash, subject to paragraph 2.2.9, where it, or part of it, is returned to a Bidder under any of the terms and conditions of

this Notice, the Deposit, or part of it, which is returned shall include all Deposit Interest as has been earned in respect of that Deposit, or part of that Deposit, from (and including) the date on which it was received by the Authority up to (but excluding) the date on which it is returned.

2.2.9 Where the Deposit or part of the Deposit is forfeited under any provision of this Notice by way of Penalty, any Deposit Interest which has been earned in respect of the forfeited part of the Deposit shall form part of the total amount which is forfeited.

Penalties

2.2.10 If a Bidder is notified under any of the terms and conditions of this Notice that all or part of its Deposit is forfeited by way of Penalty, the deduction from that Bidder's Deposit shall be deemed to have occurred at the time of that notification by the Authority notwithstanding:

- (a) where the Deposit is in cash, that the sums specified in the notification, and any interest earned or to be earned on the Deposit, remain for a further period of time in the Authority Account; or
- (b) where the Deposit is a Letter of Credit, that the Authority has not made a claim under the Letter of Credit in respect of the sums specified in the notification.

2.2.11 If a sum which has been forfeited by way of Penalty is re-instated as all or part of the Bidder's Deposit:

- (a) where the Deposit is in cash, the sum (including Deposit Interest on that sum) shall be paid into the relevant Authority Account and shall be deemed to be so re-instated from the time of notification of its re-instatement to the Bidder and any interest which has been earned in respect of that sum shall also be deemed to be re-instated as part of the Deposit from that date; and
- (b) where the Deposit is a Letter of Credit, the sum shall be paid to the Bidder.

2.3 Withdrawal

2.3.1 A Bidder which has submitted an Application shall not be entitled to withdraw its Application or from the Auction other than in accordance with terms and conditions of this Notice.

2.4 Acceptance of terms and conditions and Conditions

2.4.1 A Bidder which has submitted an Application shall be deemed to have agreed with, and accepted, the terms and conditions of this Notice and any amendment made to any of the terms and conditions of this Notice.

2.4.2 A Bidder which has submitted an Application shall be deemed to have agreed with, and accepted, the Conditions and any amendment made to any of the Conditions by the Authority prior to the grant of a Licence to that Bidder provided that the amendment is made:

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

Part 3 – Pre-qualification Stage

3.1 Determination as a Qualified Bidder

3.1.1 In accordance with paragraph 3.1.2, the Authority shall determine whether a Bidder is a Qualified Bidder.

3.1.2 Subject to paragraph 7.2.1, the Authority shall determine that a Bidder is a Qualified Bidder if, in the Authority's opinion, it has submitted an Application which complies with all of the requirements of paragraph 2.1.2

3.2 Notification as a Qualified Bidder

3.2.1 The Authority shall, after making his determination under paragraphs 3.1.1 and 3.1.2, issue to each of the Bidders a notice (a "Bidder Notice") which shall state whether that Bidder has been determined to be a Qualified Bidder.

3.2.2 Subject to paragraph 3.2.3, on, or as soon as practicable after, the issue of a Bidder Notice to a Bidder who has not been determined to be a Qualified Bidder, the Authority shall return that Bidder's Deposit provided:

- (a) that there is no outstanding investigation being carried out by the Authority against that Bidder in respect of any suspected contravention of the terms and conditions of this Notice and
- (b) that, if any amounts have been forfeited by way of Penalty by the Authority in accordance with the terms and conditions of this Notice with respect to that Bidder,
 - (i) where the Deposit is in cash, the Deposit shall be returned less the aggregate amount of those Penalties; 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.

3.2.3 Notwithstanding the return to a Bidder of its Deposit in accordance with paragraph 3.2.2, that 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 Bidder shall be required to comply with all of the terms and conditions of this Notice as appropriate.

3.3 No Auction Stage where there is only one Qualified Bidder

3.3.1 If either:

- (a) the Authority determines in accordance with this Part that there is only one Qualified Bidder, or
- (b) at any time before the start of the Auction, the number of Qualified Bidders is one;

the Authority shall notify the only Qualified Bidder that the Auction shall not take place. The Qualified Bidder so notified shall be the Provisional

Successful Bidder and the Spectrum Utilization Fee payable by the Provisional Successful Bidder shall be the Minimum Fee.

Part 4 – Auction Stage

4.1 Reference to a Bidder

4.1.1 Any reference to a Bidder in this Part shall be to a Qualified Bidder.

4.2 Bidder Participation Notice

4.2.1 Following the issue of a Bidder Notice, the Authority shall, subject to paragraph 3.3.1, issue to each Bidder a notice (“Bidder Participation Notice”) which will provide details of the Auction Location, the date on which, and the time at which the Auction shall start.

4.2.2 If the Authority is of the opinion that it is impractical for the Auction to commence on the date or at the time or place referred to in the Bidder Participation Notice, he may notify each Bidder of a different date, time or place, as the case may be. If a different date or time is to be notified, the date or time shall not be earlier than that originally notified as the relevant date or time.

4.3 Procedures of the Auction

4.3.1 The Auction shall consist of one or more Bidding Rounds.

4.4 Valid Bid

4.4.1 A Valid Bid in relation to the first Bidding Round must be a Bid:

- (a) rounded to the nearest amount of Hong Kong Dollars specified by the Authority immediately before the first Bidding Round;
- (b) equal to or higher than the Minimum Fee; and
- (c) submitted in accordance with the requirements given in paragraph 4.7.1.

4.4.2 A Valid Bid in relation to any Bidding Round subsequent to the first Bidding Round must be a Bid:

- (a) rounded to the nearest amount of Hong Kong Dollars specified by the Authority immediately before the Bidding Round;
- (b) equal to or higher than the amount of Hong Kong Dollars specified by the Authority immediately before the Bidding Round (the “Minimum Bid Specification”); and
- (c) submitted in accordance with the requirements given in paragraph 4.7.1.

4.4.3 The Authority may determine the Minimum Bid Specification applicable to a Bidding Round at any amount of Hong Kong Dollars which is at least HK\$100,000 higher than the highest Valid Bid of the immediately preceding Bidding Round.

4.5 First Bidding Round

4.5.1 For the first Bidding Round, each Bidder must submit to the Authority a Valid Bid.

4.6 Subsequent Bidding Rounds

4.6.1 For each Bidding Round after the first Bidding Round, each Bidder must submit to the Authority:

- (a) a Valid Bid; or
- (b) a No Bid Notification by which the Bidder notifies the Authority that it does not wish to submit a Bid equal to or higher than the Minimum Bid Specification applicable to that Bidding Round.

4.6.2 Any Valid Bid submitted by a Bidder shall constitute a legally binding offer and shall remain open for acceptance by the Authority until being replaced by a higher Valid Bid of that Bidder or until the Final Offer of another Bidder is accepted by the Authority.

4.7 Submission of Valid Bids and No Bid Notifications

4.7.1 For the purposes of paragraphs 4.5.1 and 4.6.1, a Valid Bid or a No Bid Notification must be submitted:

- (a) by using the Bidding Form specified by the Authority;

- (b) duly signed by two (2) of the Authorised Representatives of the Bidder;
- (c) by handing to the representative of the Authority at the Auction Location; and
- (d) to the Authority within the time limit of the Bidding Round accompanied by the password assigned to the Bidder by the Authority and using a communication method specified by the Authority which shall be in the following order of priority:
 - (i) sending a copy of the Bidding Form containing a Valid Bid or a No Bid Notification to the Authority by facsimile process;
 - (ii) informing the Authority of the content of the Bidding Form which may contain a Valid Bid or a No Bid Notification by telephone call by fixed line;
 - (iii) informing the Authority of the content of the Bidding Form which may contain a Valid Bid or a No Bid Notification by telephone call by mobile phone;
 - (iv) any other method as the Authority may specify.

4.8 Absence from Auction or Failure to Submit a Valid Bid or a No Bid Notification

4.8.1 If any Bidder is absent from the Auction Location on the Auction Date at the time specified in the Bidder Participation Notice, the Authority shall disqualify that Bidder from the Auction and forfeit an amount (up to the full amount of a 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.

4.8.2 In the first Bidding Round, if a Bidder is present at the Auction Location and does not submit to the Authority a Valid Bid in accordance with paragraphs 4.4.1 and 4.7.1, the Authority may, at his absolute discretion, specify a further period of time during which that Bidder may be given a further opportunity to make a submission. If that Bidder, having been given that further opportunity, does not make a submission to the Authority, the Authority shall disqualify that Bidder from the Auction and forfeit an amount (up to the full amount of a 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.

4.8.3 In any Bidding Round subsequent to the first Bidding Round, if a Bidder is present at the Auction Location and does not submit to the Authority a Valid Bid in accordance with paragraphs 4.4.2 and 4.7.1 or a No Bid Notification in accordance with paragraph 4.7.1, the Authority may, at his absolute discretion, specify a further period of time during which that Bidder may be given a further opportunity to make a submission. If that Bidder, having been given that further opportunity, does not make a submission to the Authority, that Bidder shall be deemed to have submitted a No Bid Notification to the Authority with respect to that Bidding Round.

4.9 No Bid Notification

4.9.1 A Bidder who has submitted or is deemed to have submitted a No Bid Notification in a Bidding Round shall be deemed to have withdrawn from the Auction where one or more other Bidders have submitted a Valid Bid in that Bidding Round and shall no longer be entitled to participate in subsequent Bidding Rounds.

4.9.2 Where all Bidders submit No Bid Notifications in a Bidding Round,

- (a) that Bidding Round shall be deemed to have never been conducted;
- (b) no Bidders in that Bidding Round shall be deemed to have withdrawn from the Auction;
- (c) the Authority may revise the Minimum Bid Specification applicable to that Bidding Round; and
- (d) the Authority may re-conduct that Bidding Round.

4.10 Final Bidding Round

4.10.1 The final Bidding Round (the "Final Bidding Round") shall be:

- (a) the Bidding Round in which only one Bidder has submitted to the Authority a Valid Bid; or

(b) the Bidding Round immediately preceding the Extraordinary Bidding Round; or
(c) the Specified Closing Round:
whichever first occurs.

In case of subparagraph (a), the Bidder who has submitted the only Valid Bid in the Final Bidding Round shall be the Provisional Successful Bidder.

In case of subparagraph (b), subject to paragraphs 4.11.1, 4.11.2, 4.11.3 and 4.11.4, the Bidder who has submitted the highest Valid Bid in the Final Bidding Round shall be the Provisional Successful Bidder.

In case of subparagraph (c), subject to paragraph 4.11.1, 4.11.2, 4.11.3 and 4.11.4, the Bidder who has submitted the highest Valid Bid in the Final Bidding Round shall be the Provisional Successful Bidder.

4.11 Tied Bids

4.11.1 Tied Bids arise where, in case of subparagraph (b) or subparagraph (c) of paragraph 4.10.1, there is more than one Bidder having submitted the same highest Valid Bid in the Final Bidding Round (the “Tied Bidders”).

4.11.2 Where Tied Bids arise, subject to paragraphs 4.11.3 and 4.11.4, the Tied Bidder, who has submitted the highest Valid Bid among all the Tied Bidders in the Bidding Round immediately preceding the Final Bidding Round (the “Reference Bidding Round”), shall be the Provisional Successful Bidder;

4.11.3 Where there is more than one Tied Bidder having submitted the same highest Valid Bid among all the Tied Bidders in the Reference Bidding Round (the “Reference Bidding Round Tied Bidder”), the Bidding Round immediately preceding the Reference Bidding Round shall then be deemed to be the Reference Bidding Round and, subject to paragraph 4.11.4, the Reference Bidding Round Tied Bidder, who has

submitted the highest Valid Bid among all the Reference Bidding Round Tied Bidders in the then Reference Bidding Round, shall be the Provisional Successful Bidder. The aforesaid process shall continue until there is only one Reference Bidding Round Tied Bidder having submitted the highest Valid Bid in the Reference Bidding Round.

4.11.4 If the first Bidding Round becomes the Reference Bidding Round by virtue of the operation of paragraph 4.11.3 and there is more than one Reference Bidding Round Tied Bidder having submitted the same highest Valid Bid among all the Reference Bidding Round Tied Bidders in the first Bidding Round, the Authority shall employ a random method to determine which of the Reference Bidding Round Tied Bidders shall be the Provisional Successful Bidder.

4.12 Spectrum Utilization Fee payable by the Provisional Successful Bidder

4.12.1 The amount of Spectrum Utilization Fee payable by the Provisional Successful Bidder shall be the Final Offer submitted by the Provisional Successful Bidder in the Final Bidding Round.

4.13 Penalties

4.13.1 Each Bidder and person (if any) acting or purporting to act on behalf of that Bidder shall:

(a) be present by not more than three (3) Authorised Representatives at the Auction Location in accordance with the Bidder Participation Notice and remain at the Auction Location in the room specified by the Authority (the "Bidding Room") until the time specified by the Authority and not leave the Bidding Room without the prior consent of the representative of the Authority present at the Bidding Room;

(b) ensure that it is able to be contacted at all times for the purposes of the Auction;

(c) not communicate or attempt to communicate or make any arrangements to communicate with any person, other than the Authority or any person (including the representative of the Authority) present in the Bidding Room;

(d) not bring into the Bidding Room any communication device including, without limitation, mobile phones and pagers;

- (e) not send any form of communication to the Authority during the Auction which is, in the opinion of the Authority, vexatious;
- (f) not submit a Bidding Form which is illegible or which is otherwise unclear;
- (g) not submit more than one Bidding Form in a Bidding Round;
- (h) not notify the Authority using a method or format in contravention of paragraph 4.7.1 or other communications method specified by the Authority, as the case may be;
- (i) not destroy or use improperly any of the equipment supplied by the Authority for the Auction; or
- (j) not act, without reasonable excuse, in a manner which disrupts the procedure specified in this Part, and which does not otherwise fall within subparagraphs (a) to (j) above.

4.13.2 Without prejudice to the provisions of any law or ordinance and paragraphs 4.8 and 6.1.1, the Authority may, in his discretion, deduct a sum by way of Penalty from a Bidder's Deposit each time a Bidder or any person acting or purporting to act on behalf of that Bidder contravenes any provisions of paragraph 4.13.1.

4.14 Auction Result Notice

4.14.1 Within two (2) Business Days after the end of the Final Bidding Round, the Authority shall publish a notice (an "Auction Result Notice") to announce:

- (a) the identities of all Qualified Bidders who have participated in the Auction Stage if the Auction Stage has been conducted;
- (b) the identity of the Provisional Successful Bidder; and
- (c) the Spectrum Utilization Fee applicable to the use of the Frequencies;
- (d) such information as is contained in the Application of the Provisional Successful Bidder, together with any information obtained by the Authority pursuant to paragraph 7.7, which the Authority determines should be provided to the public.

4.15 Return of Deposits to the Losing Bidders

4.15.1 After the publication of the Auction Result Notice in accordance with paragraph 4.14.1, the Authority shall return to a Bidder which is not 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 by way of Penalty 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 those Penalties; 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.

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 of the terms and conditions of this Notice as appropriate.

Part 5 – Post-Auction Stage

5.1 Notification of any Approval

5.1.1 Within two (2) Business Days after publication of the Auction Result Notice by the Authority, the 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 the Provisional Successful Bidder notifies the Authority that it is not subject to any approval, it may be entitled to be granted the Licence.

5.1.3 Where the Provisional Successful Bidder notifies the Authority that it is subject to an Approval, it may not be entitled to a grant of the Licence until the time that 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 satisfied.

5.1.5 If the Provisional Successful Bidder does not notify the Authority in accordance with paragraph 5.1.1, the Authority may, in his discretion and without prejudice to the provisions of any law or ordinance and paragraph 6.1.1, forfeit an amount by way of Penalty from its Deposit.

5.1.6 If the Provisional Successful Bidder does not obtain an Approval by the Approval Date, it shall not be entitled to the grant of a Licence and all of its Deposit shall be forfeited as a Penalty unless that Bidder is able to demonstrate to the satisfaction of the Authority that it has used its best endeavours to obtain a waiver of that Approval within the period specified in the definition of "Approval Date" contained in paragraph 1.4.1 of this Notice. The Authority may, if he is satisfied in accordance with this paragraph, extend that period up to a period of thirty (30) Business Days after the date of the Auction Result Notice.

5.2 Duties of Provisional Successful Bidder after Publication of the Auction Result Notice by the Authority

5.2.1 Within thirty (30) Business Days after the date of the Auction Result Notice, the Provisional Successful Bidder shall:

- (a) pay to the Government of Hong Kong the Spectrum Utilization Fee; and
- (b) provide to the Authority a Performance Bond in accordance with the Conditions.

5.2.2 The Authority shall not grant a Licence or return any Deposit to the Provisional Successful Bidder unless the Provisional Successful Bidder has complied with the requirements specified in paragraph 5.2.1.

5.3 Return of Deposit to the Provisional Successful Bidder

5.3.1 Where the Authority is satisfied that the Provisional Successful Bidder has complied with the requirements specified in paragraph 5.2.1, the Authority shall return to the Provisional Successful Bidder its Deposit provided:

- (a) that there is no outstanding investigation being carried out by the Authority against that 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 by way of Penalty 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 those Penalties; 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.

5.3.2 Notwithstanding the return to the Provisional Successful Bidder of its Deposit in accordance with paragraph 5.3.1, the 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 of the terms and conditions of this Notice as appropriate.

5.4 Successful Bidder Notice and Grant of Licence

5.4.1 Within fourteen (14) Business Days after the later of:

- (a) the date on which the 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, subject to the compliance by that Bidder of the terms and

conditions of this Notice, publish a notice (the “Successful Bidder Notice”) to announce that:

- (i) that Bidder is the successful bidder (the “Successful Bidder”) and
- (ii) the Licence will be issued to the Successful Bidder on 20 November 2008.

5.4.2 Subject to the compliance by that Bidder of the terms and conditions of this Notice, the Authority shall issue to the Successful Bidder the Licence on 20 November 2008.

5.5 Cancellation, withdrawal or suspension

5.5.1 The Authority may cancel, withdraw or suspend a Licence pursuant to Special Condition 19 of the Conditions.

Part 6 – Activity Rules

6.1 General

Breach of Notice

6.1.1 Each Bidder shall comply with 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, all the bids submitted by that Bidder shall be disregarded for the purpose of the Auction and 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 of the terms and conditions of this Notice as appropriate.

Return of Deposit

6.1.3 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 by way of Penalty 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 those Penalties; 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.

6.1.4 Notwithstanding the return to a disqualified Bidder of its Deposit in accordance with paragraph 6.1.3, 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.

Disqualification of Provisional Successful Bidder

6.1.5 If, before the Licence for the use of the Frequencies is granted to the Provisional Successful Bidder, the Provisional Successful Bidder is disqualified for contravention of the terms and conditions of this Notice, the auction shall be taken to have never been held:

(a) to determine the Provisional Successful Bidder; and

(b) to determine the amount of the Spectrum Utilization Fee.

6.1.6 For the avoidance of doubt, the operation of paragraph 6.1.5 shall not affect any rights and remedies the Authority may have against any Bidder in respect of that Bidder's contravention of the terms and conditions of this Notice.

6.2 Participation in Auction

6.2.1 Each Qualified 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.

6.3 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 and which has been provided negligently by the Bidder.

6.4 Changes in Application

Changes to Bidder's Application

6.4.1 Subject to paragraph 6.4.2, no change shall occur in the contents of a Bidder's Application Form except as a result of:

- (a) a person ceasing to be a shareholder, directly or indirectly, of that Bidder; or
- (b) merger or acquisition activity of, or affecting, a Bidder or any of its direct or indirect shareholders (which shall be deemed to include the establishment of a new body corporate) provided that such Bidder has demonstrated to the reasonable satisfaction of the Authority that none of the purposes of that activity is related to the Auction.

Duty to notify the Authority

6.4.2 If any change shall occur with regard to a Bidder which affects the information submitted in that Bidder's Application Form whether or not that change is, or would otherwise be but for paragraphs 6.4.1(a) and (b), a breach of the Activity Rules, that Bidder shall immediately notify the Authority and, within two (2) Business Days after that change, submit to the Authority:

- (a) a revised Application Form; and
- (b) a Bidder Compliance Certificate.

6.5 Confidentiality and non-collusion

Confidential Information

6.5.1 None of a Bidder nor its Insiders shall take steps to obtain or use in any unauthorized way Confidential Information other than information which is publicly available or made available by the Authority to the Bidders during the process of the Auction.

6.5.2 None of a Bidder nor its Insiders shall convey, or attempt to convey, or cause or permit any person to convey, any Confidential Information, whether directly or indirectly, to any other person or enter into or attempt to enter into any arrangement, agreement or understanding for any of those purposes, without the prior written consent of the Authority.

6.5.3 Subject to paragraph 6.5.4 and 6.5.5, a Bidder shall not publish any Confidential Information nor disclose or disseminate any Confidential Information to any person other than to the Bidder's senior executives and those of the Bidder's professional advisers who, in each case, need to know the Confidential Information for the purpose of evaluating, negotiating or advising in connection with the Auction.

6.5.4 The Bidder shall procure that each person to whom disclosure of Confidential Information is made as permitted under paragraphs 6.5.3 and 6.5.5 is made aware (in advance of the relevant disclosure) of the provisions of paragraphs 6.5.1, 6.5.2 and 6.5.3 and this paragraph and the Bidder shall use its best endeavours to procure that each of those persons adheres to those provisions.

6.5.5 Subject to paragraph 6.5.4, 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 whose rules and regulations (not having the force of law) the Bidder is subject provided that 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 provisions of this Notice or otherwise.

6.5.6 None of a Bidder nor its Insiders shall 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.

6.5.7 Confidential Information means:

(a) information which has not been made public by the Authority of whatever nature directly or indirectly relating to any proposed Final Offer or bid of a Bidder (the "First Bidder"), whether in writing or oral, which if it were made public, or made known to any other Bidder (the "Second Bidder") or its Insiders, would be reasonably expected to have an effect on the Final Offer or any bid which the Second Bidder proposes to make, including, without limitation, the First Bidder's interest or participation in the Auction, business case, auction strategy, the highest Final Offer and any bid that the First Bidder is willing to make and the respective business cases (if any) of the First Bidder's Insiders relating to its proposed Final Offer and any bid that it is willing to make; and

(b) any information relating to the Auction which has been provided by or to the Authority or otherwise including, without limitation, the details of the Final Offer of any Bidder,

but excluding:

(i) information which is in, or which comes into, the public domain other than as a breach by any Bidder or its Insider, of the Activity Rules;

(ii) information received by a director or employee of a person which holds shares in a Bidder (the "First Bidder") prior to the later of the Application Dates which relates to another Bidder (the "Second Bidder") of which he is also a director or employee for the purpose of considering whether the First Bidder should participate in the Auction with the Second Bidder; and

(iii) information provided prior to the Application Dates by a Bidder (the "First Bidder") or its Insiders to another Bidder (the "Second Bidder") or its Insiders for the purpose of enabling the Second Bidder to decide whether to participate in the Auction with the First Bidder.

Directors, employees and agents

6.5.8 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 that 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 participation in the Auction; and/or
- (b) does not pass Confidential Information relating to one Bidder to another Bidder or its Insiders; and/or
- (c) shall not be an Authorised Representative of any of the Bidders.

Non-collusion

6.5.9 A Bidder or its Insiders shall not:

- (a) co-operate, collaborate, collude or discuss with, or disclose to, any other Bidder or any of its Insiders for any purpose relating to the Auction including, without limitation, in connection with the substance of that Bidder's Final Offer or bidding strategy; 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

6.5.10 The Authority reserves the right, in 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 (Cap. 201) 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 provision

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 can suspend or cancel the Auction at any time by notification to all Bidders or Qualified Bidders, as the case may be.

7.2 General power of disqualification

7.2.1 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 Means of notification by the Authority

7.3.1 If, in accordance with any provision 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.

7.4 Means of notification to the Authority prior to or after Auction Stage

7.4.1 If in accordance with any provision of this Notice a Bidder is required, or wishes, to notify the Authority of any fact or circumstance prior to or after the Auction Stage, it shall do so by either:

- (a) written notification marked for the attention of the Authority and sent to Authority's Office; or
- (b) fax to one of the numbers notified to the Bidder for this purpose by the Authority.

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

7.4.2 If a Bidder sends any notification to the Authority and notification is received after 5 p.m. on a Business Day, it shall be deemed to have been received by the Authority at 9 a.m. on the next Business Day. If a tropical cyclone warning No. 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 been received by the Authority, it shall be

deemed to have been received by the Authority on the next Business Day on which none of the signals remains in force.

7.5 Publication and disclosure of information

7.5.1 Subject to paragraph 7.5.2, the Authority may publish or disclose any information arising out of or in relation to the Auction, whether or not that information is originated from the Bidder(s), in such manner as he thinks fit.

7.5.2 Subject to any other provision 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.

7.6 Change of authorised personnel

7.6.1 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 not later than one (1) Business Day before the Auction Stage on notification of the details of that change to the Authority in accordance with paragraph 6.4.2. A substitution made in accordance with this paragraph shall take effect on receipt by the Authority of the revised Application Form and Bidder Compliance Certificate submitted in accordance with paragraph 6.4.2. No change or substitution of Authorised Representative shall take place during the Auction Stage.

7.7 Additional information

7.7.1 The Authority may notify any Bidder of a reasonable request for additional information or documents relating to its Application with a reasonable time limit for the Bidder to submit that information or those documents to the Authority.

7.7.2 On receipt of a request made pursuant to paragraph 7.7.1 , a Bidder shall use its best endeavours to provide the information or documents within the time limit specified.

7.7.3 If a Bidder fails to comply with paragraph 7.7.2 , the Authority may refuse to determine that Bidder as a Qualified Bidder in accordance with section 2 of Part 3.

7.8 Interpretation

7.8.1 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.

7.9 Modifications to Notice

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

- (a) to correct any manifest error;
- (b) to correct any inconsistency; or
- (c) to address circumstances not contemplated by the Authority on 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.

7.10 Bidding Forms

7.10.1 Any documents submitted by a Bidder to the Authority in accordance with this Notice including without limitation each Bidding Form 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.

7.11 Powers of Authority to issue Licences

7.11.1 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.

7.12 Waiver

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

7.13 Governing Law and Justification

7.13.1 These Rules and the relationship between the Authority and each of the Bidders shall be governed by, and interpreted in accordance with, Hong Kong law.

7.13.2 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