

Legal Notice and Disclaimer

This Memorandum has been prepared for the purposes of providing information about the determination of the Spectrum Utilization Fees applicable to the Frequency Bands specified in the Notice dated 11 November 2011 issued by the Authority in exercise of the powers conferred by section 32I of the Ordinance, the Regulation and all other powers enabling him to specify the terms and conditions of the Auction and the payment of the Spectrum Utilization Fees. This Memorandum provides details on the method of determining the Spectrum Utilization Fees and other elements of the regulatory framework applicable to the licensing exercise for use of the Frequency Bands. Terms and expressions used in this Legal Notice and Disclaimer are as defined in the Notice and the Glossary of Terms of this Memorandum. In case of any discrepancy, the Notice shall prevail. The Notice is given in Annex B of this Memorandum, whereas the Glossary of Terms of this Memorandum is given in Annex D of this Memorandum.

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**AUCTION OF RADIO SPECTRUM
IN THE 2.3 GHz BAND
FOR THE PROVISION OF
BROADBAND WIRELESS ACCESS SERVICES**

INFORMATION MEMORANDUM

11 NOVEMBER 2011
THE OFFICE OF THE TELECOMMUNICATIONS AUTHORITY

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A. Executive Summary

A.1 Introduction

A.1.1 This Memorandum provides details about the policy background, the Licence and the Auction for determination of the Spectrum Utilization Fees applicable to the Frequency Bands specified in the Notice dated 11 November 2011 issued by the Authority in exercise of the powers conferred by section 32I of the Ordinance, the Regulation and all other powers enabling him to specify the terms and conditions of the auction and the payment of the spectrum utilization fees. The Frequency Bands are allocated and assigned for the provision of Broadband Wireless Access (“BWA”) services. Readers should note that:

- (a) A total of 90 MHz spectrum in the 2.3 GHz Band will be available for auction;
- (b) The available spectrum will be divided into Frequency Bands A1, A2 and A3, each with a bandwidth of 30 MHz;
- (c) The Auction will be conducted in a simultaneous multiple round ascending format whereby all Frequency Bands will be auctioned simultaneously over multiple rounds with the price increasing on each Frequency Band independently;
- (d) The maximum amount of spectrum among the Frequency Bands that may be assigned to each Bidder or a group of Connected Bidders in the Auction (i.e. the Spectrum Cap) is 30 MHz;
- (e) To prevent circumvention of the Spectrum Cap restriction and to ensure fairness of the bidding process, Bidders who are closely connected with each other (i.e. Connected Bidders) are required to notify the Authority of the connection and to make all necessary arrangements so as to satisfy the Authority that they cease to be Connected Bidders in relation to each other. Any Bidder failing to satisfy the Authority that it is not a Connected Bidder in relation to another Bidder will not be eligible as a Qualified Bidder;
- (f) To prevent circumvention of the Spectrum Cap restriction and to ensure fairness of the bidding process, Provisional Successful Bidders

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who are closely connected with each other (i.e. Connected Provisional Successful Bidders) are required to notify the Authority of the connection and to make all necessary arrangements so as to satisfy the Authority that they cease to be Connected Provisional Successful Bidders in relation to each other. Any Provisional Successful Bidder failing to satisfy the Authority that it is not a Connected Provisional Successful Bidder in relation to another Provisional Successful Bidder or does not take part in the Sub-Auction as required by the Authority under the rules of the Auction as set out in the Notice will be disqualified;

- (g) The use of the Frequency Bands will be subject to one-off upfront payment of the Spectrum Utilization Fees, the amount of which is to be determined by the Auction;
- (h) The minimum amount of the Spectrum Utilization Fees (i.e. the Minimum Fees) as specified by the Secretary in the Gazette notice of 11 November 2011 are HK\$150 million for each Frequency Band of A1, A2 and A3;
- (i) In making an Application to participate in the Auction, each Bidder must submit a Deposit, a duly completed Application Form and a Bidder Compliance Certificate;
- (j) If there is only one Qualified Bidder, no Bidding Stage will be conducted. That only Bidder will be the Provisional Successful Bidder for the use of the Frequency Band it selects and the Spectrum Utilization Fee payable will be the Minimum Fee;
- (k) If there is more than one Qualified Bidder, the Bidding Stage will be conducted. The Provisional Successful Bidder of a Frequency Band will be the Bidder which holds 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 will be the amount of that Standing Highest Bid;
- (l) Within 30 Business Days after publication of the Provisional Successful Bidder Notice, the Provisional Successful Bidder of each Frequency Band will be required to pay the Spectrum Utilization Fee

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and submit a Performance Bond of HK\$150 million as a guarantee for its compliance with the network and service rollout requirements;

- (m) The assignment of the Frequency Bands and the Licence will be valid for a period of 15 years;
- (n) The Licensees will be required to provide coverage of the network and the service to such areas and locations from such date as specified in the Licences;
- (o) The Licensees will be required to implement and facilitate at their own expense Operator Number Portability (“ONP”) and Mobile Number Portability (“MNP”) as directed by the Authority. The Licensees may choose to implement Fixed-Mobile Number Portability (“FMNP”) on a voluntary basis at their own costs, and they should observe the relevant guiding principles governing the provision of FMNP and submit proposals to the Authority for his prior approval before the actual implementation;
- (p) The Licensees will NOT be subject to use of any particular technical standards for provision of BWA services provided that the technical standards that they adopt conform to widely recognised international standards;
- (q) The Licensees will be allowed to provide fixed, mobile or a combination of these services using the Frequency Bands; and
- (r) The Licensees will NOT be subject to any licence obligation on Open Network Access.

A.1.2 This Memorandum provides details of the above and other issues. The rules of the Auction are summarized in Section D, but for full details interested parties should refer to the Notice, which is attached at Annex B of this Memorandum for easy reference. Terms and expressions used in this Memorandum have the meaning as in the Notice (see Annex B) and the Glossary of Terms of this Memorandum (see Annex D). In case of any discrepancy, the Notice shall prevail.

B. Policy Background

B.1 Assignment of Available Radio Spectrum in the 2.3 GHz Band

B.1.1 On 14 December 2010¹, the Authority invited expression of interest from potential bidders for 90 MHz of radio spectrum in the 2.3 GHz band (2300 MHz – 2390 MHz) for the provision of BWA services in Hong Kong. The radio spectrum was left over from a previous auction held in January 2009² (the “2009 Auction”). Through the invitation, the Authority also sought views and comments on a set of proposed auction rules and licensing arrangements for application in the event that the auction for the concerned radio spectrum was to go ahead.

B.1.2 Having considered the comments and the expressions of interest received, the Authority concluded in his statement entitled “Assignment of the Available Radio Spectrum in the 2.3 GHz Band for Provision of Broadband Wireless Access Services” published on 9 March 2011³ (the “March 2011 Statement”) that the concerned radio spectrum would be made available for bidding by interested parties. The available radio spectrum will be divided into three Frequency Bands, each with a bandwidth of 30 MHz as shown in Figure 1 below.

Figure 1: Frequency Band and Bandwidth

Frequency Band	Frequency Range (MHz)	Bandwidth (MHz)
A1	2300 – 2330	30 MHz
A2	2330 – 2360	30 MHz
A3	2360 – 2390	30 MHz

B.1.3 The Frequency Bands will be assigned through auction, subject to a qualification process for participation in the Auction and payment of the Spectrum Utilization Fees by the Provisional Successful Bidders. The assignment of frequency spectrum by way of auction is in line with the

¹ The document entitled “Invitation for Expression of Interest in Bidding for the Available Radio Spectrum in the 2.3 GHz Band” issued by the Authority on 14 December 2010 is available at <http://www.ofta.gov.hk/en/tender/p03.pdf>.

² In January 2009, the Authority made available for bidding a total of 195 MHz of radio spectrum, including 90 MHz of radio spectrum in the 2.3 GHz band and 105 MHz of radio spectrum in the 2.5/2.6 GHz bands (2500 MHz – 2690 MHz) for the provision of BWA services in Hong Kong.

³ The Authority’s statement is available at <http://www.ofta.gov.hk/en/tas/ftn/tas20110309.pdf>.

Radio Spectrum Policy Framework promulgated by the Government on 24 April 2007⁴.

B.2 Payment of Spectrum Utilization Fees

B.2.1 In the March 2011 Statement, the Authority affirmed that the use of the Frequency Bands shall be subject to payment of the Spectrum Utilization Fees⁵.

B.2.2 Pursuant to section 32I(1) of the Ordinance, the Authority had by Order⁶ designated the use of the Frequency Bands to be subject to payment of the Spectrum Utilization Fees.

B.2.3 Pursuant to section 32I(2) of the Ordinance, the Secretary had amended the Regulation⁷ prescribing the level of and the method for determining the Spectrum Utilization Fees payable for the use of the Frequency Bands.

B.2.4 Under the Regulation, the Authority is empowered to hold the Auction to determine the level of the Spectrum Utilization Fees payable for the use of the Frequency Bands. Where there is more than one Qualified Bidder, there will be an auction to determine the Spectrum Utilization Fees for the use of the Frequency Bands. The Bidder with the highest Valid Bid for a particular Frequency Band in the Auction will be the Provisional Successful Bidder of that Frequency Band and the amount of that highest Valid Bid will be the amount of Spectrum Utilization Fee payable for that Frequency Band. Where there is only one Qualified Bidder, no auction will be held. That Qualified Bidder will be the Provisional Successful Bidder of the Frequency

⁴ The framework is available at <http://www.cedb.gov.hk/ctb/eng/legco/pdf/spectrum.pdf>

⁵ In the Statement on "Providing Radio Spectrum for Broadband Wireless Access Services" published by the Authority on 3 December 2007, the Authority concluded that an auction would be used to determine the spectrum utilization fees for the BWA spectrum, including the spectrum in the 2.3 GHz band. The same conclusion was affirmed in the March 2011 Statement.

⁶ The Telecommunications (Designation of Frequency Bands Subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2008 is available at

http://www.gld.gov.hk/cgi-bin/gld/egazette/gazettefiles.cgi?lang=e&extra=&year=2008&month=05&day=09&vol=12&no=19&gn=109&header=1&part=1&df=1&nt=s2&acurrentpage=12&agree=1&newfile=1&gaz_type=ls2

⁷ The Telecommunications (Determining Spectrum Utilization Fees By Auction) Regulation is available at

http://www.gld.gov.hk/cgi-bin/gld/egazette/gazettefiles.cgi?lang=e&extra=&year=2008&month=05&day=09&vol=12&no=19&gn=108&header=1&part=1&df=1&nt=s2&acurrentpage=12&agree=1&newfile=1&gaz_type=ls2

Band it selects and the Spectrum Utilization Fee payable by the Provisional Successful Bidder will be the Minimum Fee for the selected Frequency Band.

B.3 Regulation of BWA Services in Hong Kong

B.3.1 The Authority has decided to authorise the establishment of the network and the provision of BWA services using the Frequency Bands under the Licence. Without limitation to the generality of the provisions of the Ordinance and instruments issued by the Authority including but not limited to statements and decisions of the Authority as published on the website of OFTA, the following describes the major elements of the current regulatory framework for the provision of fixed and mobile telecommunications services in Hong Kong.

B.4 Licensing Arrangement

B.4.1 The Frequency Bands assigned in this Auction will be licensed under a Unified Carrier Licence (“UCL”). The general conditions, validity period and the licence fees payable under the UCL are set out in the Telecommunications (Carrier Licences) Regulation (Cap. 106V). In issuing a UCL for different types of services, the Authority may attach additional special conditions which are not inconsistent with the Ordinance and the general conditions.

B.4.2 If a Successful Bidder of the Auction already holds a fixed carrier licence / mobile carrier licence / UCL issued by the Authority⁸, the Authority may at his discretion allow that Successful Bidder to convert and incorporate the provisions contained in the existing fixed carrier licence / mobile carrier licence / UCL of that Successful Bidder into the UCL to be granted.

⁸ The Authority no longer issues any fixed telecommunications network services (“FTNS”) / fixed carrier licence, fixed carrier (restricted) licence, mobile carrier licence and mobile carrier (restricted) licence which have been specified under the Telecommunications (Carrier Licences) Regulation. For the provision of fixed, mobile or converged services (or any combination thereof), the Authority will issue a Unified Carrier Licence (“UCL”) only. All existing fixed / mobile carrier licences issued by the Authority shall remain valid until they expire. The licence holders may apply to the Authority for a UCL to replace their existing carrier licences upon expiry. Alternatively, the licence holders may apply to the Authority for conversion of their existing licences before expiry to UCLs on a voluntary basis.

B.5 Interconnection Regime

- B.5.1 Interconnections between telecommunications networks and services are governed by sections 36A and 36B of the Ordinance and the licence conditions of the carrier licences. The Authority also issued a series of statements (No. 1 to No. 10) during the period from 28 March 1995 to 21 June 1995 on “Interconnection and Related Competition Issues”, setting out the principles for seeking and effecting interconnection. Statements No. 4, 5, 6, 7 and 8 were subsequently updated to align with the changes in the telecommunications markets in Hong Kong⁹.
- B.5.2 A carrier is required under its licence to ensure “any-to-any connectivity” (“A2A”) by interconnecting its network and service with networks and services of other interconnecting parties licensed under the Ordinance (subject to requirement of the Ordinance and the relevant licence condition). Irrespective of the types of networks and services which they provide and operate and irrespective of the underlying technologies used, carriers are obliged to interconnect with one another so that customers can enjoy seamless and transparent access to any other customers or any telecommunications services, regardless of whether the customers or services to be accessed are located on the same or a different network.
- B.5.3 Regarding carrier to carrier interconnection, the Authority has not intervened on mobile-mobile interconnection charge (“MMIC”)¹⁰. While in the past the Authority had given regulatory guidance to the industry on the payment of fixed-mobile interconnection charge (“FMIC”)¹¹ based on the Mobile Party’s Network Pays (“MPNP”) arrangement, that regulatory guidance was withdrawn on 27 April 2009 in accordance with the Authority’s decision in his Statement entitled “Deregulation for Fixed-Mobile Convergence” published on 27 April 2007¹². The Statement No. 7 on “Interconnection and Related Competition Issues” was updated on 27 April 2009 consequential to that decision¹³. That is to say, there is no regulatory guidance in force concerning MMIC and FMIC and carriers are entirely free

⁹ The Authority’s statements No. 1 to 10 are available at <http://www.ofta.gov.hk/en/tas/tas-bs-interconnection.html>.

¹⁰ MMIC refers to the interconnection charge for telephony traffic exchanged between two mobile carriers.

¹¹ FMIC is an interconnection charge for telephony traffic exchanged between fixed carrier and mobile carrier.

¹² The Authority’s statement is available at <http://www.ofta.gov.hk/en/tas/others/ta20070427.pdf>.

¹³ See updated Authority’s statement No. 7 at <http://www.ofta.gov.hk/en/tas/interconnect/ta20090403stat.pdf>.

to agree commercially FMIC and MMIC between themselves.

B.5.4 Regarding carrier to service provider interconnection, the Authority has recently revisited the regulatory arrangements for international call forwarding service (“ICFS”) charge¹⁴ and local access charges (“LAC”)¹⁵. For the ICFS charge, the Authority updated the terms and conditions of interconnection in his determination issued in May 2009¹⁶. For the LAC, the Authority issued the first consultation paper in December 2009¹⁷ and the second consultation paper in March 2011¹⁸ to solicit views from the public on the proposed new LAC regime including its detailed implementation arrangement. The Authority will promulgate shortly the new regime taking into account views received from the consultations.

B.6 Use of Numbers

B.6.1 Pursuant to section 32F of the Ordinance, the Authority has issued a “Numbering Plan for Telecommunications Services in Hong Kong” (“Hong Kong Numbering Plan”)¹⁹. A unified carrier licensee is entitled to apply for allocation of telecommunications numbers and codes in the Hong Kong Numbering Plan for provision of telecommunications service in accordance with the relevant guidelines and codes of practices issued by the Authority²⁰.

B.7 Number Portability

B.7.1 Number portability for fixed and mobile telecommunications services (i.e.

¹⁴ ICFS charge refers to the access charge or originating charge for interconnection necessary for the provision of international call forwarding service.

¹⁵ LAC refers to an interconnection charge payable by external telecommunications service (“ETS”) operators to the local network operators, including local fixed and mobile carriers, for the conveyance of ETS traffic to and from end users of the local network operators.

¹⁶ The Determination under Section 36A of the Ordinance in respect of a Variation of the Terms and Conditions of Interconnection for ICFS issued by the Authority on 19 May 2009 is available at <http://www.ofta.gov.hk/en/ta-determine/de20090519.pdf>.

¹⁷ The consultation paper on “Review of Local Access Charge” issued by the Authority on 31 December 2009 is available at <http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/20091231.pdf>.

¹⁸ The second consultation paper on “Review of Local Access Charge” issued by the Authority on 16 March 2011 is available at <http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/20110316.pdf>.

¹⁹ The numbering plan is available at <http://www.ofta.gov.hk/en/numbering/main.html>.

²⁰ The code of practice relating to the use of numbers and codes in the Hong Kong Numbering Plan is available at <http://www.ofta.gov.hk/en/code/cop20100929.pdf>.

POLICY BACKGROUND

ONP and MNP) has been implemented in Hong Kong since 1995 and 1999 respectively. Fixed numbers are portable among all the fixed carriers and services-based operator (“SBO”) licensees providing fixed voice telephony services²¹, and mobile numbers are portable among all the mobile carriers and SBO licensees providing mobile voice telephony services and mobile virtual network operator (“MVNO”) services²². In the first eight months of 2011, about 14,000 fixed numbers and 105,000 mobile numbers on average were ported among the local telecommunications operators each month.

B.7.2 ONP and MNP are implemented in Hong Kong using the distributed database approach, which requires the originating network to perform number translation. Each originating network has the responsibility of routing the calls correctly to the final recipient’s network. With the implementation of the unified carrier licensing regime in August 2008, all UCL holders (including fixed and mobile carriers), MVNOs and SBOs providing class 1 services should facilitate ONP and MNP at their own expenses²³. In line with that requirement, the Authority has issued a determination on 22 October 2010 to sunset all previous determinations relating to ONP and MNP²⁴. The obligation on number portability will be accompanied by the right to have access to the number porting database. To fulfill the licence obligations concerning the provision of ONP and MNP, the licensees may choose to set up their own systems or negotiate with other licensees to make arrangements at commercially agreed terms. If the licensees opt to set up their own number portability databases, they shall, where and as directed by the Authority, provide administration database hosting service²⁵ to other licensees at commercially agreed terms to

²¹ SBO licensees are required to support number portability for fixed numbers if they provide “Class 1” type fixed services (i.e. fixed services that have all the attributes of the conventional fixed telephone services) under their licences.

²² SBO licensees are required to support number portability for mobile numbers if they provide “Class 1” type mobile services (i.e. mobile services that have all the attributes of the conventional mobile telephone services) and MVNO services under their licences.

²³ The Authority’s statement, “Facilitating number portability under the Unified Carrier Licensing Regime”, dated 22 October 2010 is available at <http://www.ofta.gov.hk/en/tas/others/tas20101022.pdf>.

²⁴ The Authority’s determination, “Determination under Section 36A of the Telecommunications Ordinance in respect of a Variation of the Terms and Conditions concerning Interconnection relating to Operator Number Portability and Mobile Number Portability”, dated 22 October 2010, is available at <http://www.ofta.gov.hk/en/ta-determine/de20101022.pdf>.

²⁵ Administration database hosting service means a service offered by the licensee which makes available its administration database for access by another licensee, so that the latter will be able to fulfill the licence obligation under its own licence to facilitate the portability of numbers without the need of setting up its own administration database.

facilitate the portability of numbers as required under their licences.

- B.7.3 The Authority issued a statement in July 2009²⁶ announcing that operators may implement FMNP on a voluntary basis at their own costs. Interested licensees should observe the relevant guiding principles governing the provision of FMNP and submit proposals to the Authority for his prior approval before the actual implementation.

B.8 Road Opening

- B.8.1 A unified carrier licensee may, on a case by case basis, be granted with right of road opening²⁷ if it is authorised to provide fixed services under its licence and it demonstrates that it is rolling out a wireline-based infra-structure. For more details on the application for road opening authorisation and procedure for road opening works, please refer to the relevant guidelines issued by the Authority²⁸.

- B.8.2 A unified carrier licensee authorised to provide mobile service only does not have the right to lay cables along or across public streets or unleased Government land. The licensee will be required to lease circuits from licensed local fixed network operators for the connections between base stations and mobile switching equipment. Applications for the operation of radio links in place of circuits leased from fixed network operators will be considered by the Authority on a case-by-case manner due to the limitations in the availability of suitable radio spectrum for such links.

B.9 Building Access

- B.9.1 Similar to the case of road opening, a unified carrier licensee authorised to provide fixed services may be granted with rights of building access under section 14(1) of the Ordinance subject to the technology it uses for an installation in a building, whether the installation is for serving the residents and occupants of that building and whether there are difficulties to obtain building access agreements from the property management companies or

²⁶ The Authority's statement, "Fixed Mobile Number Portability", dated 10 July 2009 is available at <http://www.ofta.gov.hk/en/tas/numbering/tas20090710.pdf>.

²⁷ In the case of unleased government land, consent in writing of the Director of Lands is required.

²⁸ The guidelines are available at http://www.ofta.gov.hk/en/report-paper-guide/guidance-notes/gn_200821.pdf.

building developers. For more details on the application of building access authorisation for provision of fixed telecommunications service, please refer to the relevant guidelines issued by the Authority²⁹.

B.10 Sharing of Use of Facilities

B.10.1 The sharing of “bottleneck” facilities is governed by section 36AA of the Ordinance. The Authority encourages commercial agreements for the sharing of the “bottleneck” facilities. If commercial agreements could not be reached within a reasonable period and subject to passing the “public interest” test specified in the section, the Authority may direct sharing of the “bottleneck” facilities and determine the terms for such sharing.

B.11 Access to Hilltop Radio Sites

B.11.1 Some remote areas are under-served by fixed broadband services as the provision of wireline solution thereto is either uneconomical or technically non-feasible at this juncture. BWA services would be able to provide a viable and cost-effective alternative for broadband access to these areas. To facilitate the deployment of BWA services to the remote areas, sharing of existing hilltop radio sites for provision of such services to these areas may be allowed, subject to the availability of facilities at the sites. OFTA has issued guidelines on the use of hilltop radio site resources³⁰ to ensure that such sites and facilities thereon are used efficiently and effectively to meet the needs for telecommunications, utilities and other public services. Application for shared use of hilltop radio sites by mobile network operators will be considered on a case-by-case basis.

B.12 Construction of Radio Base Stations

B.12.1 Sites for the installation of radio base stations are usually acquired by licensees on a commercial basis through negotiations with landowners. The Authority will not intervene in this process except in circumstances set out in sections 14(1B) and 36AA of the Ordinance. It should be noted that section 14(1B) is seldom applicable to sites on roof-tops because alternative sites to serve a particular area using radio transmissions are usually

²⁹ The guidelines are available at http://www.ofta.gov.hk/en/report-paper-guide/guidance-notes/gn_200820.pdf.

³⁰ The guidelines are available at http://www.ofta.gov.hk/en/report-paper-guide/guidance-notes/gn_20050407.pdf.

available.

- B.12.2 In addition to compliance with the requirements of the Authority in respect of frequency emission and non-ionizing radiation safety, the Licensee must ensure that their installations of radio base stations comply with the requirements of the relevant Government departments including the Building Department, the Lands Department and the relevant statutory town plans of the Planning Department/Town Planning Board. To streamline the application procedure, the Authority has adopted a one-stop application arrangement under which the Licensee is required to declare the compliance status of its proposed radio base stations with the requirements of the Government departments / authorities concerned.
- B.12.3 To shorten the overall processing time of base station application, the Authority and the Lands Department have adopted parallel processing of applications in cases where a temporary waiver is required. The Licensee should submit applications to the Authority and the Lands Department (if a temporary waiver is required) in parallel. The Authority will start processing the application upon receiving the Licensee's declaration that the related waiver application has been submitted to the Lands Department. The Authority may, after having been satisfied that all requirements concerning electromagnetic compatibility and radiation safety are met, grant an approval for the installation and operation of the radio base station prior to the Lands Department's decision on the related waiver application.
- B.12.4 The Licensee should refer to the "Guidance Note for Submission of Applications by Public Telecommunications Operators for the Installation of Radio Base Stations for Public Telecommunications Services in Buildings and on Rooftops" published on OFTA's website³¹ for details of the requirements and procedures for obtaining approval from the departments / authorities concerned. The decision as to whether or not to grant such approval and the actual time taken to grant such approval remains at the discretion of the individual departments / authorities concerned.

B.13 Deployment of Femtocell

- B.13.1 In the specific environment of Hong Kong, provision of satisfactory indoor

³¹ The guidance note is available at http://www.ofta.gov.hk/en/report-paper-guide/guidance-notes/gn_201024.pdf.

service is inevitably a challenging task. In this regard, considering the benefits that may be brought about by femtocell, the Authority intends to facilitate its deployment by adopting a lighted-handed regulatory approach, as distinguished from what has hitherto been applied to conventional base station. The Authority is currently reviewing the relevant regulatory regime. Subject to his final decision, the Authority may amend the Licence, where applicable, to facilitate femtocell deployment in Hong Kong.

B.14 Type Approval of Radiocommunications Apparatus

- B.14.1 All radiocommunications apparatus, including both infrastructure equipment and customer equipment used in Hong Kong must comply with the relevant standards or specifications as may be prescribed by the Authority and meet the necessary type approval requirements under the Hong Kong Telecommunications Equipment Evaluation and Certification (HKTEC) Scheme³².
- B.14.2 The Licensee must provide services to customers by use of equipment meeting the relevant technical specifications as prescribed by the Authority on a non-discriminatory basis, irrespective of whether the equipment is acquired from the Licensee or not.

B.15 Universal Service Arrangement

- B.15.1 Under section 35B of the Ordinance, the Authority may require one or more fixed carrier licensees³³ to have a universal service obligation (“USO”) for provision of basic telephone services, including mainly fixed telephone lines and public payphones. At present, PCCW-HKT Telephone Limited and Hong Kong Telecommunications (HKT) Limited (as joint holders of the UCL no. 025) are designated as the universal service provider. A system of universal service contribution (“USC”) is implemented which requires USC contributing parties to share the costs of meeting the USO.
- B.15.2 Prior to 1 May 2009, the USC sharing was on the basis of the total amount of external telecommunications service (“ETS”) traffic minutes carried by an operator providing ETS. Since 1 May 2009, the USC sharing basis has

³² Information about HKTEC Scheme is available at <http://www.ofta.gov.hk/en/tec/information-notes/in421.pdf>.

³³ Including unified carrier licensees authorised to provide fixed telecommunications services.

been migrated from that of the ETS traffic volume to that of the number of all telephone numbers allocated to an operator. Accordingly, the USC contributing parties would be changed from providers of ETS to providers of local fixed and mobile telecommunications services including both facility-based and service-based operators using local telephone numbers³⁴.

B.16 Competition Provisions in the Ordinance

- B.16.1 Anti-competitive behaviour in Hong Kong's telecommunications sector is prohibited by the competition provisions in the Ordinance, namely section 7K on anti-competitive practices, section 7L on abuse of dominant position, section 7N on discriminatory practices, and section 7P on changes in relation to carrier licensees which substantially lessen competition in a telecommunications market. If a licensee is found to be in breach of any of these provisions, the Authority may take regulatory action against that licensee, for example by issuing a direction under section 36B of the Ordinance to require that licensee to take such action as the Authority considers necessary to comply with the provisions and / or impose a financial penalty under section 36C on that licensee.
- B.16.2 In order to assist the industry in complying with sections 7K, 7L and 7N of the Ordinance, the Authority issued a set of competition guidelines (“Competition Guidelines”) in December 2010³⁵. The Competition Guidelines explain how the Authority is likely to interpret and apply the competition provisions. The Competition Guidelines also provide an account of how the Authority is likely to exercise his related powers and functions.
- B.16.3 On the enforcement of section 7P of the Ordinance, the Authority has published the Guidelines on “Mergers and Acquisitions in Hong Kong Telecommunications Markets” (“Section 7P Guidelines”) in May 2004³⁶. The Section 7P Guidelines provide practical guidance on the analytical and procedural approach that the Authority intends to follow when administering

³⁴ Specifically, the USC Contributing Parties would include local FTNS / fixed carrier licensees, mobile carrier licensees, unified carrier licensees authorised to provide local fixed or mobile services, and SBO licensees authorised to provide Class 1 service, Class 2 service or Class 3 service (MVNO services only).

³⁵ The Competition Guidelines are available at http://www.ofta.gov.hk/en/report-paper-guide/guidance-notes/gn_201026.pdf.

³⁶ The Section 7P Guidelines are available at http://www.ofta.gov.hk/en/report-paper-guide/guidance-notes/gn_20040503.pdf.

section 7P of the Ordinance. The Section 7P Guidelines also explain how section 7P is intended to operate and in particular specify the matters that the Authority will take into account when deciding on actual cases.

B.17 Competition Bill

B.17.1 On 2 July 2010, the Competition Bill was introduced by the Government into the Legislative Council and published in the Gazette³⁷. The Competition Bill sets out the proposed general competition law that provides for general prohibitions in three types of anti-competitive conduct (described as the first conduct rule, the second conduct rule and the merger rule which are collectively referred to as the ‘competition rules’ in the Competition Bill). The first conduct rule prohibits anti-competitive agreements, decisions and concerted practices. The second conduct rule prohibits the abuse of power by an undertaking having a substantial degree of market power in a market. The merger rule prohibits anti-competitive mergers. The first and second conduct rules apply to all sectors, including the telecommunications sector, in Hong Kong. The merger rule applies only to merger activities that involve undertakings holding carrier licences issued by the Authority.

B.17.2 If the Competition Bill is enacted in its present form, the following changes will take place:

- (a) The existing competition provisions in the Ordinance i.e. sections 7K, 7L, 7N and 7P will be repealed, subject to transitional arrangements;
- (b) Related provisions (for example, provisions providing that the Authority’s decisions made under sections 7K, 7L, 7N and 7P are subject to appeal to the Telecommunications (Competition Provisions) Appeal Board (the “Appeal Board”)) will also be repealed subject to transitional arrangements;
- (c) Under the new competition law regime, the Authority will have concurrent jurisdiction with the Competition Commission, a statutory body established to enforce the new competition law, in investigation and bringing of enforcement proceedings to the Competition Tribunal,

³⁷ The Legislative Council Brief on the Competition Bill is available at:

http://www.cedb.gov.hk/citb/ehhtml/pdf/legcoBriefs/LegCo_Brief_on_Competition_Bill_with_Annex_2010_Eng.PDF

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a superior court of record within the judiciary set up under the new regime, in relation to the conduct of the telecommunications operators. As such, the adjudicative functions of the Authority in respect of competition cases under the existing telecommunications specific competition law regime will cease, i.e. under the new competition law regime, the Authority will not be the authority to decide whether there is a breach and to impose sanctions. These decision making powers will rest with the Competition Tribunal. There will thus be a change from the existing administrative model to the judicial model in the enforcement of a new set of competition provisions by the Authority;

- (d) Upon the repeal of sections 7K, 7L, 7N and 7P, a new section 7Q which prohibits exploitative conduct of a dominant licensee will be introduced to the Ordinance. The current section 7L prohibits abusive conduct of a dominant licensee in the form of exploitative conduct and exclusionary conduct. As the second conduct rule in the Competition Bill, which replaces section 7L, targets only exclusionary conduct, section 7Q is to be enacted in the Ordinance in order to preserve the existing power of the Authority to deal with exploitative conduct by a dominant licensee under section 7L. The Authority will have investigation as well as adjudication powers in enforcing section 7Q; and
- (e) Decisions made by the Authority under the proposed section 7Q will be subject to appeal to the Appeal Board.

B.18 Consumer Protection

Prohibition of Misleading and Deceptive Conduct

B.18.1 Misleading and deceptive conduct is prohibited under section 7M of the Ordinance. The Authority has issued “Guidelines on Misleading or Deceptive Conduct under Section 7M of the Telecommunications Ordinance (Cap 106)” to provide practical guidance³⁸ to the industry. Many disputes between the customers and the service providers, however, concern contractual terms or pricing that do not necessarily involve misleading or deceptive conduct of the service providers. To ensure the interests of

³⁸ The guidelines are available at http://www.ofta.gov.hk/en/report-paper-guide/guidance-notes/gn_20030521.pdf.

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consumers and users of telecommunications services are reasonably protected, the Authority may issue, pursuant to the relevant Special Conditions in the Licence³⁹, codes of practices in relation to contracting requirements including the format, terms and conditions of service contracts and submission of consumer disputes for handling under an independent resolution scheme.

- B.18.2 Assuming that the Competition Bill referred to in paragraph B.17 is enacted, section 7M and the Authority's current investigation and adjudication powers to enforce section 7M will not be affected. Decisions made by the Authority under section 7M will continue to be subject to appeal to the Appeal Board (see however the proposal to amend the Trade Descriptions Ordinance (Cap.362) ("TDO") in the following paragraph).

Trade Descriptions Ordinance

- B.18.3 In July 2010, the Government issued a public consultation document⁴⁰ on proposals to strengthen consumer protection legislation to tackle unfair trade practices. In January 2011, the Government published a report on the outcome of the public consultation⁴¹, which affirmed its proposals to extend the present prohibition of false trade descriptions of goods in the TDO to cover false trade descriptions of services, and to create new offences under the TDO to prohibit other types of unfair trade practices, namely misleading omissions, aggressive practices, bait advertising, "bait-and-switch" tactics, and the practice of accepting payments without the intention or ability to supply the goods or services contracted for. The Government's proposal is to confer upon the Authority concurrent jurisdiction under the TDO to enforce the TDO in respect of telecommunications services. Preparation of the legislative amendment is underway.

³⁹ Special Condition 1 on "Compliance with Codes of Practice" and Special Condition 36 on "Service Contracts and Dispute Resolution" of the UCL.

⁴⁰ The "Public Consultation Paper on Legislation to Enhance Protection for Consumers Against Unfair Trade Practices" is available at http://www.cedb.gov.hk/citb/doc/en/consultation/Consultation_Paper_07_15_e.pdf.

⁴¹ The "Report on Public Consultation on Legislation to Enhance Protection for Consumers Against Unfair Trade Practices" is available at [http://www.cedb.gov.hk/citb/doc/en/consultation/report-110120%20\(unfair%20trade%20practices\)%20eng%20\(Content\).pdf](http://www.cedb.gov.hk/citb/doc/en/consultation/report-110120%20(unfair%20trade%20practices)%20eng%20(Content).pdf).

Customer Complaint Settlement Scheme

B.18.4 With a view to providing a more effective means of resolving contractual disputes between operators and their customers outside the judicial system, the Authority conducted a pilot programme of the Customer Complaint Settlement Scheme (“CCSS”) which was run on a voluntary basis during the period from September 2008 to February 2010. A report summarizing the outcome of the pilot programme and the feedback of the participants is published on OFTA’s website⁴². In June 2010, the Authority conducted a consultation⁴³ to solicit the views of the public and the industry on issues relating to the implementation of the CCSS in Hong Kong on a long term and sustainable basis. The consultation was closed on 8 December 2010. Since then, the Authority has been in discussions with the industry as well as the Communications Association of Hong Kong (“CAHK”)⁴⁴ with a view to collecting further views for formulating the way forward.

Industry Code of Practice for Telecommunications Service Contracts

B.18.5 With a view to protecting consumers’ interest and addressing consumer complaints on contractual matters for communications services, the Authority issued a code of practice for communications service contracts on 2 February 2010⁴⁵ which aimed at providing guidance on what constitutes fair, balanced and reasonable service contracts for compliance by the industry on a voluntary basis.

B.18.6 CAHK made reference to the Authority’s code of practice and promulgated a self-regulatory industry Code of Practice for Telecommunications Service Contracts⁴⁶ on 21 December 2010. All major fixed and mobile network operators and one major external telecommunications services operator have implemented the code from July 2011 for all newly signed or renewed contracts. The Licensees are expected to comply with this code and follow the practices prescribed therein.

⁴² The report is available at <http://www.ofta.gov.hk/en/report-paper-guide/report/rp20100608.pdf>.

⁴³ The consultation paper on “Customer Complaint Settlement Scheme” issued by the Authority on 8 June 2010 is available at <http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/cp20100608.pdf>.

⁴⁴ CAHK is an industry association representing the telecommunications operators and other stakeholders of the telecommunications sector.

⁴⁵ The code of practice is available at <http://www.ofta.gov.hk/en/code/cop20100202.pdf>.

⁴⁶ Please refer to http://www.cahk.hk/News/310/Industry_CoP_Telecom_Service_Contract.pdf for the contents of the Industry Code.

Industry Code of Practice for Mobile Content Service

B.18.7 In response to the public concern about billing disputes between third party content service providers (“CSPs”) and mobile users in connection with chargeable mobile content services, CAHK has issued the code for the provision of chargeable mobile content services on 8 January 2010⁴⁷. Incumbent mobile network operators have undertaken to comply with this code and will enter into contracts to provide a delivering and billing service with only those CSPs which comply with this code. The Licensees are expected to comply with this code and follow the practices prescribed therein.

Code of Practice on Mobile Television

B.18.8 In accordance with the “Framework for Development of Broadcast-type Mobile TV Services in Hong Kong”⁴⁸ issued by Commerce and Economic Development Bureau (“CEDB”) in February 2010, the content of mobile television services (“MTVS”), whether of local broadcast-type or streaming-type, are subject to regulation by general laws though not the Broadcasting Ordinance (Cap. 562). To enable self-regulation, the industry will formulate a code of practice on provision of MTVS. The code would include, among others, requirements on access control with a view to protecting public morals and children. The Licensees are expected to comply with the industry code on provision of MTVS and follow the practices prescribed therein.

Code of Practice on Person-to-Person (“P2P”) Marketing Calls

B.18.9 To tackle the inconvenience caused by P2P marketing calls to the public, the Government has implemented a self regulatory scheme for P2P marketing calls. In relation to the telecommunications industry, CAHK has issued a Benchmark Code of Practice on Person-to-Person Marketing Calls⁴⁹ on 2 March 2011. All major fixed and mobile network operators have adopted

⁴⁷ The code is available at http://www.cahk.hk/News/296/Code_MCS.pdf.

⁴⁸ The document entitled “Framework for Development of Broadcast-type Mobile TV Services in Hong Kong” is available at <http://www.cedb.gov.hk/ctb/eng/legco/pdf/framework.pdf>.

⁴⁹ The code is available at http://www.cahk.hk/News/352/Benchmark_Industry_CoP_P2P_final.pdf.

the self-regulatory scheme and published their codes of practices on P2P marketing calls for self regulation. The Licensees are expected to adopt the benchmark code published by CAHK and follow the practices prescribed therein.

B.19 Future Spectrum Supply

B.19.1 As part of the implementation of the Radio Spectrum Policy Framework, the Authority has published a Spectrum Release Plan (“SRP”)⁵⁰ to inform the industry and interested parties of the potential supply of radio spectrum through an open bidding or tendering process for the coming three years. The SRP is updated annually on a rolling basis or as necessary taking into account the latest developments.

B.19.2 According to the SRP issued on 27 April 2011, the radio spectrum in the 2515 – 2540 MHz band and 2635 – 2660 MHz band are reserved. Having regard to the latest development on the use of these bands in other economies, the Authority considers that the concerned radio spectrum is suitable for assignment for the provision of public telecommunications services. The Authority will issue a consultation paper towards the turn of the year to solicit views from the industry and the interested parties on the arrangement for auction and licensing of the concerned radio spectrum for the provision of public telecommunications services.

B.20 Spectrum Utilization Fee for Spectrum Assigned Administratively

B.20.1 So far, spectrum utilization fee (“SUF”) has been imposed upon spectrum released via auction and the levels of SUF are determined by the market through the bidding process. For spectrum assigned administratively⁵¹ by the Authority which has been designated to be subject to payment of SUF, the level of SUF would be determined on a case-by-case basis⁵².

B.20.2 To encourage more efficient use of the scarce radio spectrum resources, the

⁵⁰ The SRP is available at <http://www.ofta.gov.hk/en/freq-spec/plan2011.pdf>.

⁵¹ Spectrum utilization fees for spectrum assigned administratively is the price set by the regulator, charged to spectrum licensees and is intended to reflect the opportunity cost of spectrum use (and thereby provide effective incentives for efficient use of spectrum).

⁵² For example, see the Authority Statement dated 29 November 2004 (<http://www.ofta.gov.hk/en/tas/mobile/ta20041129.pdf>) for how the level of spectrum utilization fees for second generation mobile services was determined.

Secretary and the Authority jointly issued a statement on 23 September 2011 setting out their decisions to impose SUF on spectrum that is assigned to non-Government users administratively, the spectrum and the services that will attract SUF, the level of SUF payable, and the implementation details⁵³.

B.21 Secondary Trading of Spectrum

B.21.1 Secondary trading of spectrum is a market mechanism for promoting efficient use of spectrum. According to the Radio Spectrum Policy Framework, the Government is inclined to introduce spectrum trading in Hong Kong in the long term, subject to a feasibility study and resolution of various implementation issues. The Authority has commissioned a consultant to study the feasibility of developing a spectrum trading regime in Hong Kong and will consider the way forward taking into account the results of the study.

B.22 Caveat to Bidders

B.22.1 Parties interested in the Auction should be mindful of the current regulatory arrangements and possible development given in Section B when making their business decision to participate in the Auction.

⁵³ The Authority's statement, "Spectrum Utilization Fee for Spectrum Assigned Administratively", dated 23 September 2011 is available at <http://www.ofta.gov.hk/en/tas/spectrum/ta20110923.pdf>.

C. The Licence

C.1 Terms and Conditions of the Licence

C.1.1 The Licence to be issued to each Successful Bidder will be a UCL valid for 15 years starting from the date of issue of the Licence.

C.1.2 The Licence will contain the General and Special Conditions substantially in the form set out in Appendix 1 of the Notice. The General Conditions are prescribed in the Telecommunications (Carrier Licences) Regulation (Cap. 106V) whereas the Special Conditions are specified by the Authority for the imposition of those licence conditions specific to the Licensee in the provision of BWA services.

C.2 Assignment of the Frequency Bands

C.2.1 Frequency Bands A1, A2 and A3 will be assigned for use by the Successful Bidders for a period of 15 years. This assignment of the Frequency Bands shall not prejudice the generality of the power exercisable by the Authority under the Ordinance including section 32H.

C.3 Compliance with Auction Rules

C.3.1 A Successful Bidder must comply with the terms and conditions of the Notice. If it is found, to the satisfaction of the Authority, to have been involved in an act, or omission of any act, constituting a breach of the terms and conditions of the Notice, then the Authority may cancel, withdraw or suspend the Licence or assignment of the relevant Frequency Band under the Licence.

C.4 Control of Interference

C.4.1 The Licensee is required to take all reasonable measures to install, maintain and operate the network and the service in such a manner as not to cause any harmful interference to any lawful telecommunications services. If necessary, the Authority may issue relevant directions requiring the Licensee to take the necessary measures as may be specified by the Authority to prevent interference.

- C.4.2 The Licensees of the Frequency Bands shall coordinate and agree with one another on the technical measures to be taken to minimize any mutual interference between them.
- C.4.3 The Licensees should take note of the following technical information and matters relevant to the use of the Frequency Bands:
- (a) The 2280 MHz to 2290 MHz band is presently assigned to a broadcaster for the operation of Electronic News Gathering (“ENG”) / Outside Broadcast (“OB”) link(s) in the territory. There is a 10 MHz guard band from 2290 MHz to 2300 MHz. In the use of 2300 MHz to 2305 MHz within the Frequency Band A1, the Licensee shall not cause interference to the 2280 MHz to 2290 MHz ENG / OB link(s). There may be occasions where the 2280 MHz to 2290 MHz ENG / OB link(s) may affect the Licensee’s system in the 2300 MHz to 2305 MHz band. It is the Licensee’s responsibility to take the necessary measures to ensure the proper operation of its system. To facilitate the technical evaluations by the parties interested in Frequency Band A1, the relevant technical characteristics of the concerned ENG / OB link(s) are available upon request;
 - (b) The 2400 MHz to 2483.5 MHz band is allocated for use by industrial, scientific and medical (“ISM”) equipment as well as radiocommunications apparatus exempted from licensing under Cap. 106Z⁵⁴. There is a 10 MHz guard band from 2390 MHz to 2400 MHz. The equivalent isotropically radiated power density of any emissions by the Licensee of Frequency Band A3 into the 2400 MHz to 2483.5 MHz band shall not exceed the level of +0dBm/MHz; and
 - (c) If the Licensees decide to deploy Time Division Duplex (“TDD”) technologies in their service platforms, the Licensees may be required, if directed by the Authority, to adopt necessary measures such as synchronising their networks with one another to optimize the performance and avoid mutual interference of the TDD networks that will operate in the 2.3 GHz Band.

⁵⁴ Cap 106Z Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) Order.

Bidders are reminded that the above list should not be construed as an exhaustive list of usage restrictions that may affect the use of the Frequency Bands. It only represents, to the best knowledge of the Authority at the time of the preparation of this Memorandum, the set of applicable usage restrictions. The Licensees of the Frequency Bands shall from time to time take reasonable measures to prevent mutual interference with any other services operating on the same or adjacent frequency bands.

- C.4.4 The Licensees shall at all times ensure that no harmful interference should be caused to users of the spectrum in the Mainland. The Authority will have ongoing discussions with the relevant Mainland authorities to coordinate the use of frequencies in the boundary areas between Hong Kong and the Mainland. The Licensee shall be required to comply with such requirements as may be imposed by the Authority as a result of the frequency coordination from time to time.

C.5 Permitted Service and Technical Standard to be Adopted

- C.5.1 The Licensees will be permitted to provide fixed, mobile or a combination of these services using the Frequency Bands.
- C.5.2 The Licensees will be free to adopt any widely recognised international standards for the provision of telecommunications services using the assigned Frequency Bands.
- C.5.3 Notwithstanding the technology neutrality principle, the Licensee shall comply with all the relevant technical specifications, if any, which may be issued from time to time by the Authority under section 32D of the Ordinance.

C.6 Network and Service Rollout Requirement

- C.6.1 The Licensee shall meet the following network and service rollout requirement:-
- (a) where the scope of the service authorised under the Licence includes a fixed service, coverage of the network and the service shall be

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provided within 5 years from the issue of the Licence and maintained thereafter, to a minimum of 200 commercial and/or residential buildings in Hong Kong; and

- (b) where the scope of the service authorised under the Licence includes a mobile service, coverage of the network and the service shall be provided within 5 years from the issue of the Licence and maintained thereafter, to an area where at least 50% of the population of Hong Kong live from time to time.

C.6.2 In determining the scope of the service that a Licensee is to be authorised to provide, the Authority will consider the service proposed by the Licensee. It is for the Licensee to decide whether it wishes to apply for provision of fixed and / or mobile services.

C.7 Performance Bond

C.7.1 To ensure compliance with the network and service rollout requirement, each Successful Bidder is required to lodge a Performance Bond with the Authority. Each Successful Bidder must provide the Performance Bond issued by a Qualifying Bank in an amount of HK\$150 million to the Authority before the grant of the Licence. The form of the Performance Bond is given in Schedule 9 of the Licence, which is given in Appendix 1 of the Notice.

C.7.2 The liability under the Performance Bond will cease when the Authority is satisfied that the Licensee has fully complied with the network and service rollout requirements.

C.8 Open Network Access Requirement

C.8.1 The Licensee will not be subject to any Open Network Access requirement.

C.9 Domestic Roaming Requirement

C.9.1 The Licensee will not be subject to any Domestic Roaming requirement.

C.10 Denial of Service to Suspected Stolen Handsets

C.10.1 The Authority will reserve the power to direct the Licensee not to provide services to any person who possesses or uses a radiocommunications apparatus which is stolen or suspected stolen goods.

C.11 Payment of Spectrum Utilization Fees

C.11.1 As stipulated in the relevant provisions of the Regulation and the Order, the use of the Frequency Bands is subject to the payment of Spectrum Utilization Fees. The Spectrum Utilization Fees shall be paid before the issue of the Licence.

C.12 Payment of Licence Fee

C.12.1 Unified carrier licensees are required to pay annual licence fees which are stipulated in Schedule 3 to the Telecommunications (Carrier Licences) Regulation (Cap. 106V). The licence fees are set on a cost-recovery basis to cover the administrative cost of OFTA in administering the licences. The amount of licence fees may be reviewed from time to time and adjusted to reflect more closely the prevailing administrative costs of OFTA.

C.12.2 The current annual licence fee payable on the issue and on each anniversary of the issue of a UCL in each year while the licence remains in force shall be the sum of the following items, where applicable:

Figure 2: Annual licence fee schedule

	Particulars	Annual licence fee
1.	Fixed fee	HK\$1,000,000
2.	For each 100 customer connections to the network established and maintained under the Licence	HK\$800
3.	For each subscriber number (a) allocated to the Licensee that is not (i) ported out from the Licensee's network or (ii) assigned to another licensee (who has made payment of	HK\$3 per subscriber number

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	Particulars	Annual licence fee
	the licence fee for such number); and (b) allocated to another licensee that is ported in to the Licensee's network	
4.	For the 1st to the 50th base station installed for the service offered by the Licensee	HK\$1,000 per base station
	For the 51st to the 100th base station installed for the service offered by the Licensee	HK\$500 per base station
	For the 101st base station and any additional base stations installed for the service offered by the Licensee	HK\$100 per base station
5.	For every 1 kHz or part thereof of frequency then assigned to the Licensee <ul style="list-style-type: none"> • below 1 GHz • 1 GHz to 10.999 GHz • 11 GHz to 18.999 GHz • 19 GHz and above 	HK\$50 HK\$50-4F HK\$20-F HK\$1 Where F is the frequency rounded down to the nearest GHz

For details, please refer to Schedule 3 to the Telecommunications (Carrier Licences) Regulation (Cap. 106V).

C.12.3 For the purpose of determining the licence fees payable, the quantity of customer connections, subscriber numbers, base stations and frequencies assigned shall be those authorised or in service at the time when the UCL concerned is issued or on each anniversary of the issue date.

C.13 Revocation of the Licence

C.13.1 Under section 34(4) of the Ordinance, the Authority may cancel or withdraw the Licence, or suspend the Licence for a period not exceeding 12 months, in the event of any contravention of the Licence, the Ordinance, or any condition to which the Licensee is subject. In exercising such a power, the Authority will give the Licensee a reasonable opportunity to make representations.

C.13.2 The exercise of this power must be proportionate and reasonable in relation to the contravention concerned. In addition, under the same provision of the Ordinance, the Chief Executive in Council may cancel or suspend the Licence at any time if he considers that the public interest so requires.

C.14 Transfer and Assignment of the Licence

C.14.1 The Licensee may, only with the prior written consent of the Authority, and subject to such reasonable conditions as the Authority thinks fit, transfer the Licence or any permission, right or benefit under the 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.

C.15 Change of Ownership

C.15.1 In order to safeguard effective competition and consumer interests in the telecommunications sector, section 7P of the Ordinance provides an *ex post* regulation regime governing certain merger and acquisition activities involving telecommunications carrier licensees, where the Authority is satisfied that such transactions have or are likely to have the effect of substantially lessening competition in a telecommunications market. Section 7P is only applicable where the changes in the “control” of a carrier licensee, as assessed with reference to particular shareholding thresholds, triggers its application. Certain transactions are also excluded.

C.15.2 There is no requirement for any licensees to notify the Authority of their

intentions prior to consummating any of their deals involving change of ownership. However, the Authority may investigate a merger or acquisition after it is completed and, if the Authority concludes that it has or is likely to have the effect of substantially lessening competition and does not have outweighing public benefit, the Authority can order that the merger or acquisition be reversed or that other remedies be implemented to overcome the identified competitive detriment. While it is not a requirement to notify the Authority, proponents of a merger or acquisition of a carrier licensee may on their own initiative request the Authority for formal or informal consent before proceeding.

C.16 Service Contracts and Dispute Resolution

C.16.1 The Licensees shall comply with all codes of practice issued by the Authority from time to time in respect of the requirements to apply in the contracting of telecommunications services to end users.

C.16.2 The contracting requirements referred to in paragraph C.16.1 may include the following:

- (a) the style, format and structure of service contract documentation;
- (b) the manner of entering into and terminating service contracts;
- (c) the information to be included in or in connection with service contracts and the performance of the services;
- (d) the submission of disputes between end users and the providers of telecommunications services to independent dispute resolution, pursuant to a scheme approved by the Authority; and
- (e) other terms and conditions or provisions for the protection of the interests of end users.

C.16.3 Before issuing the codes of practice, the Authority shall carry out such consultation as is reasonable in the circumstances.

D. The Auction

D.1 Introduction

D.1.1 The Government has decided that the Frequency Bands would be assigned and the Spectrum Utilization Fees payable for use of the Frequency Bands would be determined by the Auction. The Auction will be in the form of a simultaneous multiple round ascending auction. Bidding in respect of all Frequency Bands will be conducted simultaneously. The Spectrum Utilization Fee payable for the use of each Frequency Band will be determined by the highest Valid Bid for the Frequency Band in the Auction.

D.1.2 The Notice governs the rules and procedures of the Auction. This Section is intended to provide an overview of the main features of the Auction, and provides guidance on practical procedures and Applications. In the event of any discrepancy between the Notice and this Section, the Notice shall take precedence. Any person interested in participating in the Auction should familiarise himself with the Notice and should seek independent professional advice in respect of the Notice.

D.1.3 The timetable below sets out the indicative dates of major events of the Auction. Please note that the timetable is not intended to set any deadlines to which the Authority must adhere but is for reference only.

Figure 3: Indicative timetable

Activity	Date
Publication of Information Memorandum	11 November 2011 (Fri)
Deadline for submission of questions	2 December 2011 (Fri)
Application Dates	9 January 2012 & 10 January 2012 (Mon & Tue)

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Activity	Date
Publication of Bidder Notice to announce the identities of Bidders (i.e. applicants)	10 January 2012 (Tue)
Deadline for submission of Connected Bidder Statutory Declaration by Bidders	12 January 2012 (Thu)
Deadline for resolution of pre-existing bidder association by Connected Bidders	19 January 2012 (Thu)
Publication of Qualified Bidder Notice to announce the identities of Qualified Bidders	27 January 2012 (Fri)
Issue of Bidding Stage Notice to inform Qualified Bidders of the date on which Bidding Stage will commence	27 January 2012 (Fri)
Training and mock auction sessions for Qualified Bidders	1 February 2012 & 2 February 2012 (Wed & Thu)
Commencement of Bidding Stage	6 February 2012 (Mon)
Publication of Provisional Successful Bidder Notice to announce the result of Bidding Stage	Within two Business Days after the end of Bidding Stage
Deadline for submission of Connected Bidder Statutory Declaration by Provisional Successful Bidders	Within two Business Days after publication of Provisional Successful Bidder Notice
Payment of Spectrum Utilization Fees, submission of Performance Bonds and compliance of other Grant Stage procedures by	Within thirty Business Days after publication of Provisional Successful Bidder Notice

Activity	Date
Provisional Successful Bidders	
Publication of Successful Bidder Notice	After payment of Spectrum Utilization Fees, submission of Performance Bonds and compliance of other Grant Stage procedures by Provisional Successful Bidders

D.2 Frequency Bands and Minimum Fees

D.2.1 For the purpose of the Auction, the Authority will divide the available spectrum into Frequency Bands A1, A2 and A3, each with a bandwidth of 30 MHz as illustrated in Figure 1.

D.2.2 The Secretary has specified the Minimum Fees by notice in the Gazette, at HK\$150 million for each Frequency Band. The notice is given in Annex A. For easy reference, the Minimum Fee for each Frequency Band is summarised in Figure 4 below.

Figure 4: Frequency Band and Minimum Fee

Frequency Band	MHz	Bandwidth	Minimum Fee
A1	2300-2330	30 MHz	HK\$150 million
A2	2330-2360	30 MHz	HK\$150 million
A3	2360-2390	30 MHz	HK\$150 million

D.2.3 In the Bidding Stage of the Auction, the amount of a bid for each Frequency Band shall not be less than the Minimum Fee. In case there is only one Qualified Bidder, no Bidding Stage will be held and that only Bidder shall be the Provisional Successful Bidder of the Frequency Band it selects and the Spectrum Utilization Fee payable shall be the Minimum Fee for the selected Frequency Band.

D.3 Application

D.3.1 Bidders must provide:

- (a) a duly completed Application Form containing all requested information and supporting documents;
- (b) a duly completed Bidder Compliance Certificate; and
- (c) a Deposit, either in cleared funds in the Authority's Account, or by Letter of Credit. Section D.4 below provides more information on the requirement in relation to the Deposit.

Bidders must follow detailed instructions given in the Application Form (which is attached in Appendix 3 of the Notice).

D.3.2 Applications must be received by the Authority between 9:00 am and 5:30 pm on the Applications Dates on either 9 January 2012 or 10 January 2012. Applications must be delivered by hand to the Assistant Director (Regulatory) at the Authority's Office. Detailed instructions on submission of Applications are set out in Section E.

D.3.3 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, Applications must be received by the Authority between 9:00 am and 5:30 pm on the next Business Day on which none of the signals remains in force.

D.3.4 Bidders should note that:

- no person other than a company formed and registered under the Companies Ordinance may make an Application;
- a company may submit no more than one Application;
- late Applications will not be accepted;
- Applications that do not contain all the requested information may be rejected and such Bidders may not be qualified;
- once received, an Application cannot be withdrawn other than in accordance with the rules of the Auction, as set out in the Notice;

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- submission of an Application commits a Bidder and its Insiders to comply with the rules of the Auction, as set out in the Notice;
- submission of an Application commits a Bidder to bid for a Frequency Band in the first Round;
- the Authority shall disqualify and forfeit the Bidder's Deposit if the Bidder is qualified but fails to submit to the Authority a bid for a Frequency Band in the first Round; and
- in the event that there is only one Qualified Bidder, the only Qualified Bidder shall be the Provisional Successful Bidder of the Frequency Band it selects and the Spectrum Utilization Fee payable shall be the Minimum Fee for the selected Frequency Band.

D.3.5 Each Application must contain an address, telephone and fax numbers in Hong Kong to which notifications regarding the Auction process may be sent.

D.3.6 New entrants and incumbent licensees, including the successful bidders in the 2009 Auction, may participate in the Auction. They may participate on their own and/or cooperate with others in the form of a joint venture or other types of agreement (subject to the terms and conditions of the Notice in relation to Connected Bidders and anti-collusion; and the competition provisions (e.g. sections 7K, 7L and 7P) of the Ordinance).

D.3.7 There is no foreign ownership restriction on the Bidders.

D.4 Deposit

Amount of Deposit

D.4.1 On submission of an Application and as a condition of qualification, a Bidder must provide a Deposit. The Deposit shall be in an amount of HK\$150 million.

Form of Deposit

D.4.2 The Deposit can be provided:

- in cash, paid to the Authority's Account at the Deposit Bank (see paragraph E.1.6) by telegraphic transfer, with accompanying information which identifies the relevant Bidder; or
- by a Letter of Credit issued by a Qualifying Bank.

D.4.3 Bidders should note that, if the Deposit is provided in cash, funds representing the Deposit must have been cleared by 4:00 pm on the later of the Application Dates.

D.4.4 If the Deposit is provided by a Letter of Credit, the Letter of Credit must remain valid and fully effective until the Deposit is returned to the relevant Bidder in accordance with the terms and conditions of the Notice. A Bidder who fails to maintain its Letter of Credit valid and fully effective will not be qualified to participate in the Auction or will be disqualified from the Auction (as the case may be).

Penalties and Return of Deposit

D.4.5 The Deposit will be returned to a Bidder in accordance with the Notice if one of the following events occurs:

- (a) when the Bidder fails to be qualified;
- (b) when the Bidder is disqualified;
- (c) if the Bidder is qualified but has not become the Provisional Successful Bidder at the end of the Bidding Stage;
- (d) when the Bidder has become the Provisional Successful Bidder, has paid the Spectrum Utilization Fee and provided to the Authority the Performance Bond.

D.4.6 In each of the above cases, the Authority will return the Deposit to the Bidder as soon as practicable provided that:

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- (a) 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 the Notice; and
- (b) if any amounts have been forfeited or deducted by the Authority in accordance with the terms and conditions of the Notice with respect to that Bidder,
 - (i) where the Deposit is in cash, the Deposit will be returned less the aggregate amount of any Penalties and any amounts deducted by the Authority as described in paragraphs D.6.35 – 36, and
 - (ii) where the Deposit is a Letter of Credit, the Authority will make a claim under the Letter of Credit to the extent of the aggregate amount of the Penalties and any amounts deducted by the Authority as described in paragraphs D.6.35 – 36.

D.4.7 If a Bidder's Deposit is forfeited either entirely or in part by way of Penalty under the Notice, the deduction will be deemed to have occurred at the time the Bidder is notified of the Penalty by the Authority.

Interest on Cash Deposit

D.4.8 Where the Deposit is in cash, it will earn interest at the rate available to the Authority from the Deposit Bank in which the cash is deposited.

D.4.9 Interest earned on a cash Deposit will be returned to Bidders with the Deposit.

D.4.10 Bidders should note that, where a Penalty is deducted during the course of the Auction, that portion of the Deposit will not receive any interest.

D.5 Qualification and Bidder Association Rules

Spectrum Cap and Bidder Association Rules

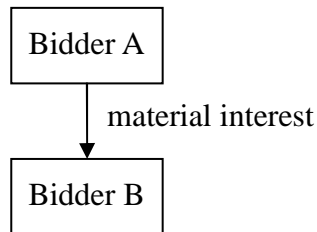
D.5.1 Each Bidder is not allowed to acquire spectrum exceeding an amount of 30 MHz, or more than one Frequency Band, (the “Spectrum Cap”) in the Auction.

D.5.2 To prevent circumvention of the Spectrum Cap restriction, Bidders who are closely connected with each other will be prohibited from participating together in the Auction. Such prohibition would also help avoiding collusion and manipulation of the Auction by Bidders.

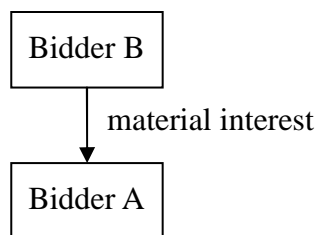
Definition of Connected Bidders

D.5.3 “Connected Bidders” are Bidders who are closely connected with each other and, for this purpose, a Bidder (Bidder A) is a Connected Bidder in relation to another Bidder (Bidder B) if:

- (a) Bidder A holds a “material interest” in Bidder B; or

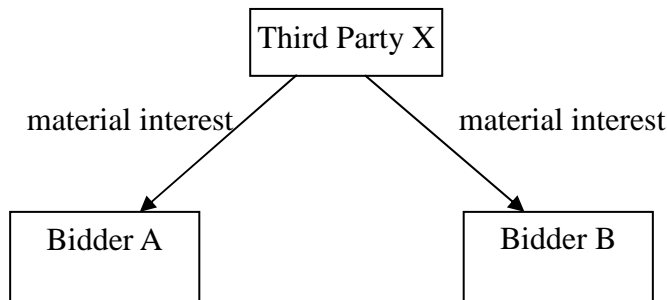


- (b) Bidder B holds a “material interest” in Bidder A; or



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- (c) Bidder A and Bidder B are under common ownership of a third party who holds a “material interest” in both Bidder A and Bidder B.



D.5.4 A “material interest” refers to a direct or indirect interest of one of the following:-

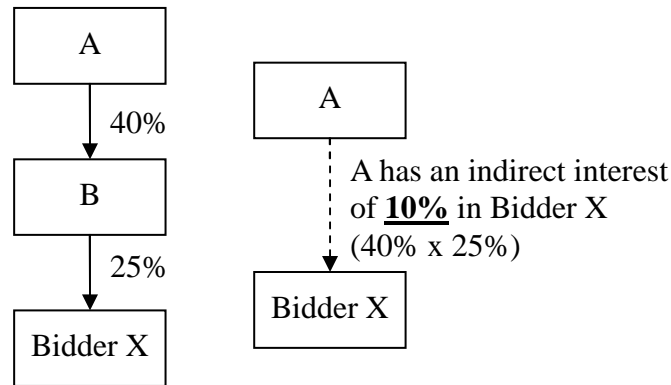
- (a) a holding of or a right to acquire or subscribe for more than 25% of the issued share capital of the body corporate;
- (b) a holding of or a right to acquire voting power in respect of more than 25% of the issued share capital of the body corporate;
- (c) control of the body corporate through holding of, a right to acquire or having voting power of 50% or more of the issued share capital of the body corporate, or through other means by which the affairs of the body corporate are conducted according to the wishes of the holding party.

D.5.5 Bidders should note that, indirect interest (e.g. interest held through nominees or custodians) and conditional entitlement (e.g. interest conditional on terms of a loan agreement) shall be taken into account. For details, please refer to paragraphs 1.5 and 1.6 of the Notice.

D.5.6 In determining whether a person has a material interest indirectly in a Bidder, the extent of the interest of the person in the Bidder will be calculated as follows:-

- (a) If there is one interposed person, the percentage is arrived at by multiplying the percentage representing the extent of the interest of the person in the interposed person by the percentage representing the extent of interest of the interposed person in the Bidder.

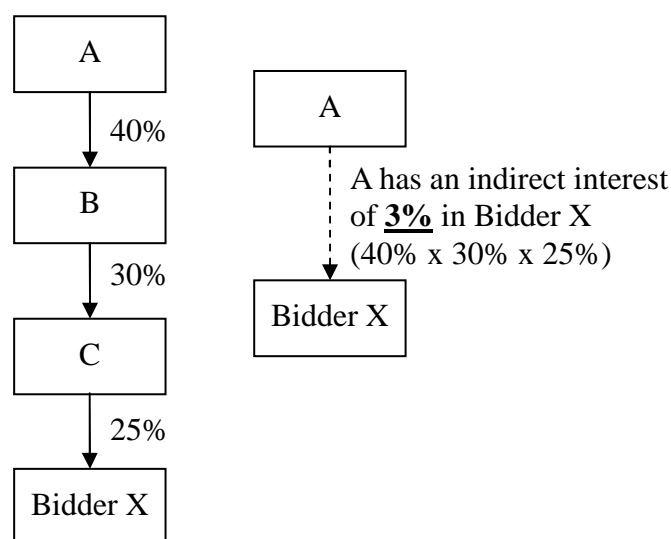
Example:



(b) If there is a series of interposed persons, the percentage is arrived at by multiplying the percentage representing the extent of the interest of the person in the first interposed person in the series by:

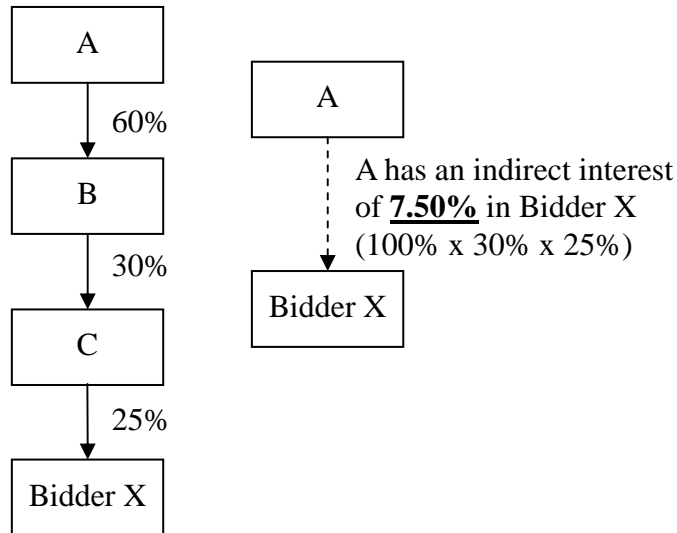
- (i) the percentage representing the extent of interest of each interposed person (other than the last interposed person) in the series in the next interposed person in the series; and
- (ii) the percentage representing the extent of the interest of the last interposed person in the series in the Bidder.

Example:



D.5.7 For any interposing interest described in D.5.6(a)-(b), where such interest exceeds 50%, it shall be deemed as 100%.

Example:



Procedures for Dealing with Pre-existing Bidder Association

D.5.8 After the Application Dates, the Authority will publish a Bidder Notice to announce the identity of each Bidder which has submitted an Application and will specify a date by which each of the Bidders must notify the Authority whether or not it is a Connected Bidder in relation to another Bidder, by submitting a Connected Bidder Statutory Declaration. Not only would the announcement of the Bidders’ identities provide important information for Bidders to make the Connected Bidder Statutory Declaration, it would also help prevent market speculation. (For the avoidance of doubt, Bidders mentioned in the Bidder Notice have not been determined as Qualified Bidders.)

D.5.9 If the Authority determines that two or more Bidders are Connected Bidders, the Authority will publish the identities of the Connected Bidders and will specify a deadline by which the Connected Bidders must (a) make all necessary arrangements so as to satisfy the Authority that they cease to be Connected Bidders in relation to each other, and (b) jointly submit to the Authority a notification with documentary proof of the arrangements that they have made. The notification should be duly signed by two Authorised Representatives of each of the Connected Bidders. Any Bidder failing to

satisfy the Authority that it is not a Connected Bidder in relation to another Bidder will not be eligible as a Qualified Bidder.

D.5.10 The arrangements that may be taken by the Connected Bidders under D.5.9 may include one or more of the following:

- (a) reorganise themselves so that they cease to be Connected Bidders;
- (b) withdraw their Applications such that only one of the Connected Bidders remains a Bidder.

D.5.11 The Authority may, taking into account all the relevant considerations set out in paragraph 1.6 of the Notice, determine that any Connections shall be disregarded. Any such determination may be revoked at any time by the Authority in the event of any change in circumstances which he considers to be material to that determination.

Qualification

D.5.12 To be eligible as a Qualified Bidder, the Bidder must satisfy the Authority all of the following:

- (a) it has duly submitted an Application (including the Application Form containing all requested information and supporting documents, Bidder Compliance Certificate and the Deposit);
- (b) it complies with or is capable of complying with all the undertakings given in the Bidder Compliance Certificate; and
- (c) it is not a Connected Bidder in relation to another Bidder.

D.5.13 The Authority will publish a Qualified Bidder Notice to announce the identities of all the Qualified Bidders.

No Bidding Stage in case of No More Than One Qualified Bidder

D.5.14 If there is no Bidder or no Qualified Bidder, the Authority will publish a notice that the Bidding Stage will not take place. The Authority will review this outcome and the accompanying circumstances to assess the way

forward.

- D.5.15 If there is only one Qualified Bidder, the Bidding Stage will not take place. The Authority will notify that Qualified Bidder accordingly and specify a date by which that Qualified Bidder must submit a Frequency Band Selection Form.
- D.5.16 In the Frequency Band Selection Form, the only Qualified Bidder is required to indicate the Frequency Band it wishes to be assigned. The Qualified Bidder must not select more than one Frequency Band. The Frequency Band Selection Form must be duly completed in accordance with the instructions contained in that Form and signed by two Authorised Representatives of the Qualified Bidder.
- D.5.17 The Frequency Band Selection Form will not be approved by the Authority if it is not completed in accordance with the specified instructions or is unclear, or it contains a selection of Frequency Bands exceeding the Spectrum Cap.
- D.5.18 Upon the Authority's approval of the Frequency Band Selection Form, the Qualified Bidder will be the Provisional Successful Bidder. The Spectrum Utilization Fee payable by the Provisional Successful Bidder will be the Minimum Fee for the selected Frequency Band. Procedures and requirements in relation to the Grant Stage as set out in Part 5 of the Notice shall then apply to the Provisional Successful Bidder.
- D.5.19 If the Frequency Band Selection Form is not completed in accordance with the specified instructions or is otherwise unclear, the Authority will ask the Qualified Bidder to make such clarifications as may reasonably be required. If the Qualified Bidder fails to select a Frequency Band as required within the specified period or fails to give such clarification as required by the Authority, the Qualified Bidder will not be entitled to the grant of a Licence and the Authority may forfeit an amount (up to the full amount of its Deposit) by way of Penalty or make a claim under the Letter of Credit to the extent of the relevant amount of the Penalty.

D.6 Bidding Procedures

Participation in the Bidding Stage

D.6.1 Where there is more than one Qualified Bidder, the Bidding Stage will be conducted to determine which of the Bidders shall become Provisional Successful Bidders and the amount of Spectrum Utilization Fee payable for each Frequency Band. Only Qualified Bidders will be eligible for participation in the Bidding Stage. From this part onwards, any reference to a Bidder shall mean a Qualified Bidder.

D.6.2 At least two Business Days before the commencement of the Bidding Stage, the Authority will, by a Bidding Stage Notice, provide to each Qualified Bidder the date on which and the time at which the Bidding Stage will commence.

Communication System

D.6.3 The Authority will use a communication system to send bidding information to Bidders and to receive submission from Bidders. The communication system will consist of:

- (a) an Internet-based software platform; and
- (b) a back-up system of telephones and facsimile machines.

D.6.4 Prior to the Bidding Stage, Bidders will be provided with:

- (a) IP addresses, passwords, digital certificates and manuals for access and use of the software platform; and
- (b) telephone numbers, facsimile numbers, passwords and forms in case of contingency where the back-up system is used.

D.6.5 The Internet-based software platform works on a wide range of operating systems and Internet browsers complemented with Java. However, Bidders are recommended to use an up-to-date operating system and browser and the latest version of Java to access and run the software platform. Bidders will be required to install the digital certificates needed for authentication and data encryption. System requirement details will be provided to Bidders in

the Bidder's manual.

- D.6.6 Bidders will be invited to attend training and mock auction sessions in order to familiarize themselves with the use of the software platform.
- D.6.7 Each Bidder should deploy its own resources to resolve the technical problems of its information technology system during the Bidding Stage. In the event that a Bidder encounters technical problems that cannot be resolved immediately, the Bidder should without delay notify the Authority of the problems. The Authority may at his discretion allow the Bidder to receive bidding information and make bidding submission via the backup system of telephones and facsimile machines.

Structure of the Bidding Procedures

- D.6.8 The Bidding Stage will take the form of a simultaneous multiple round ascending auction. Bidding in respect of all Frequency Bands will be conducted simultaneously and will consist of one or more bidding Rounds in which Bidders may submit bids for the Frequency Bands in accordance with the activity rules described below.
- D.6.9 In each Round, the Authority will specify a fixed Round Price for each Frequency Band. Bidders may choose to submit a bid or not to submit a bid at the Round Price. Bidders have no discretion to submit bids at a price higher or lower than the Round Price.
- D.6.10 At the end of each Round, the Authority will determine a Standing Highest Bidder for each Frequency Band (see paragraphs D.6.26 – 27 below for details).

Round Prices

- D.6.11 In the first Round, the Round Price for each Frequency Band will be set at the Minimum Fee as given in Figure 4 above.
- D.6.12 As the Bidding Stage proceeds from Round to Round, the Authority may adjust the Round Price as he thinks appropriate. In general, the Authority is minded to adjust the Round Price for a Frequency Band as follows:

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- If one or more Valid Bids were received for a Frequency Band in the immediately preceding Round, the Round Price for that Frequency Band will be adjusted upward.
- If no Valid Bid was received for a Frequency Band in the immediately preceding Round but there is a Standing Highest Bid for that Frequency Band, the Round Price for that Frequency Band may be kept unchanged or adjusted downward. In any event, the adjusted Round Price will not be less than the Standing Highest Bid.
- If no Valid Bid was received for a Frequency Band in the immediately preceding Round and there is no Standing Highest Bid for that Frequency Band, the Round Price may be adjusted downward. In any event, the adjusted Round Price will not be less than the Minimum Fee for that Frequency Band.

Scheduling of Rounds

D.6.13 Rounds will be scheduled by the Authority at his sole discretion. The Authority plans to schedule the Rounds between 9:00 am and 5:30 pm on Business Days. The Authority anticipates that a Round will not last for less than 10 minutes or more than 60 minutes. The Authority may re-schedule the time of a Round as he thinks fit. For example, if all Bidders have already made their submissions, the Authority may end the Round early.

D.6.14 The Authority may, at his discretion, publish details of the anticipated schedule for the following Business Day in advance. However, the Authority reserves the right to deviate from the schedule at any time. In case of variation of the start time of a Round, Bidders will be given at least 10 minutes notice before a Round commences.

D.6.15 The Authority may in exceptional circumstances cancel and re-conduct a Round / a series of Rounds (e.g. in case of adverse weather condition or in case of manifest errors).

Bidding Information for Bidders

D.6.16 Before the start of each Round, the Authority will notify each Bidder of the following information:

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- the date on and the time at which the Round will start and end;
- the Round Price for each Frequency Band;
- the number of Valid Bids (if any) received for each Frequency Band in the immediately preceding Round;
- the Frequency Band in respect of which the Bidder is the Standing Highest Bidder (if any);
- the amount of the Standing Highest Bid for each Frequency Band (if any);
- the total number of (remaining) Waivers that may be exercised by the Bidder; and
- the total number of (remaining) Withdrawals that may be exercised by the Bidder.

D.6.17 All bidding information will be sent to Bidders via the Internet-based software system. In case of contingency, the Authority will send the bidding information to Bidders by the back-up system of telephones and facsimile machines.

Submission of Valid Bids, etc.

D.6.18 In the first Round, a Bidder must submit a Valid Bid for one Frequency Band. If a Bidder fails to submit a Valid Bid in the first Round, it will be disqualified and will be liable for a Penalty (up to the full amount of that Bidder's Deposit).

D.6.19 In each subsequent Round, a Bidder may elect to submit or not to submit a Valid Bid in respect of any Frequency Band. The Bidder may also submit a Withdrawal in respect of a Frequency Band if it is a Standing Highest Bidder for that Frequency Band. For submission of a Withdrawal, conditions apply. For details, please refer to paragraphs D.6.33 – 37 below.

D.6.20 In lieu of taking any action described in paragraph D.6.19, a Bidder may submit a Waiver. If a Bidder fails to take any action described in paragraph D.6.19 and fails to submit a Waiver, a Waiver will also be deemed to have

submitted by that Bidder. For submission of Waiver and for application of deemed Waiver, conditions apply. For details, please refer to paragraphs D.6.38 – 44 below.

D.6.21 The Internet-based software platform will not display the bidding decision of each Bidder to the Authority until expiry of each Round. The Authority will keep all the bidding decisions of the Bidder confidential.

Method for Submitting Valid Bid, Withdrawal or Waiver

D.6.22 A Valid Bid, a Withdrawal or a Waiver must be submitted by using the Internet-based software platform maintained by the Authority and the bidding form generated by that software platform. To access and to use the software platform, the Bidder must identify itself by the e-certificate and the passwords supplied by the Authority.

D.6.23 In case of contingency, the Authority may at his discretion allow a Bidder to make submission via the backup system of telephones and facsimile machines. In such case, the Bidder must use the form specified by the Authority and identify itself with the password supplied by the Authority.

D.6.24 A Valid Bid, a Withdrawal or a Waiver must be received by the Authority within the specified duration of the Round. The time displayed by the software platform shall be determinative.

D.6.25 A Valid Bid, a Withdrawal or a Waiver, once submitted, shall not be amended, substituted or withdrawn.

Determination of Standing Highest Bid for each Round

D.6.26 At the end of each Round, the Authority will determine the Standing Highest Bid among the Valid Bids for each Frequency Band as follows:

- (a) If no Valid Bids are received for a Frequency Band, then there will be no Standing Highest Bid for that Frequency Band (unless there is a Standing Highest Bid in the immediately preceding Round in which case that Standing Highest Bid will remain as the Standing Highest Bid for that Frequency Band);

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- (b) If only one Valid Bid is received for a Frequency Band, then that Valid Bid will be the Standing Highest Bid for that Frequency Band; and
- (c) If two or more Valid Bids are received for a Frequency Band, then the Standing Highest Bid for that Frequency Band will be selected by the software platform by random.

D.6.27 Where a Bidder becomes a Standing Highest Bidder in respect of a Frequency Band, it should make its own commercial and strategic decision as to whether or not to submit a Valid Bid for that Frequency Band at a higher Round Price in the immediately following Round.

Activity Rules

D.6.28 As a tool to maintain the Activity Level of the Bidders and to prevent any of the Bidders from bidding more than the Spectrum Cap, there will be rules governing the activities of the Bidders during the Bidding Stage.

D.6.29 Each Frequency Band will be attributed with 1 Eligibility Point (“EP”). A Bidder must have 1 EP in order to bid for a Frequency Band.

D.6.30 For the first Round, each Bidder will be given 1 EP.

D.6.31 For each subsequent Round, the number of EPs attributed to each Bidder will be equal to the Activity Level of the Bidder in the immediately preceding Round, unless the Bidder submits or is deemed to submit a Waiver in the immediately preceding Round in which case the number of EPs attributed to the Bidder shall be determined in accordance with paragraph D.6.43. The Activity Level of a Bidder in a Round is 1 EP if the Bidder:

- (a) submits a Valid Bid for a Frequency Band; or
- (b) holds a Standing Highest Bid at the end of the immediately preceding Round (except where the Bidder submits a Valid Bid for that Frequency Band in which case 1 EP is to be attributed under subparagraph (a) above or where the Bidder submits a Withdrawal for that Frequency Band in which case the EP is to be disregarded).

The implication is that, where the number of EPs attributed to a Bidder is

reduced to zero, that Bidder will not be eligible to participate further in the Bidding Stage.

- D.6.32 For example, Bidder P submits a Valid Bid for Frequency Band A1 in Round 1. The Activity Level of Bidder P in Round 1 is 1 EP and it will be attributed with 1 EP for Round 2. Suppose at the end of Round 1 Bidder P holds a Standing Highest Bid for Frequency Band A1, and in Round 2 Bidder P does not submit a Valid Bid, then the Activity Level of Bidder P in Round 2 is still 1 EP (for holding a Standing Highest Bid on Frequency Band A1 at the end of Round 1) and its EP for Round 3 will be maintained at 1. Assume that Bidder P continues to hold a Standing Highest Bid on Frequency Band A1 at the end of Round 2 but it submits a Withdrawal on Frequency Band A1 without submitting a Valid Bid on any of the other Frequency Bands in Round 3, then the Activity Level of Bidder P in Round 3 is 0 EP. Bidder P's number of EPs will be reduced to 0 for Round 4 and it is not entitled to submit any Valid Bid from Round 4 onwards.

For more worked examples, readers may refer to Annex C.

Withdrawal of Standing Highest Bids

- D.6.33 A Standing Highest Bidder may withdraw its Standing Highest Bid. The Standing Highest Bid that is withdrawn will not count towards the Bidder's Activity Level in the Round in which the Withdrawal is made.
- D.6.34 A Bidder must not submit a Withdrawal in more than 3 Rounds.
- D.6.35 Where a Bidder makes a Withdrawal for a Frequency Band in a Round and there is no subsequent Valid Bid for the Frequency Band equal to or higher than the withdrawn Standing Highest Bid, the Bidder will be liable to pay the Government the difference between the withdrawn Standing Highest Bid and the amount of the next subsequent highest Valid Bid for the Frequency Band (irrespective of whether that next subsequent highest Valid Bid is withdrawn or whether it is determined as the Spectrum Utilization Fee). The maximum liability is 30% of the withdrawn Standing Highest Bid.
- D.6.36 If a Bidder makes a Withdrawal for a Frequency Band in a Round and the Bidding Stage ends without any other Bidders submitting a Valid Bid for that

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Frequency Band, the Bidder will be liable to pay the Government 30% of the withdrawn Standing Highest Bid although it will not be entitled to be assigned with that Frequency Band.

D.6.37 The Authority may deduct an amount from the Deposit of the Bidder or make a claim under the Letter of Credit submitted by the Bidder for payment of the liabilities for Withdrawals. Any outstanding amount of the liabilities after the deduction or the claim may also be recoverable as a civil debt due and payable to the Government.

Waiver

D.6.38 A Waiver allows a Bidder to maintain its EP even though it does not wish to take any action or fails to take any action in a Round.

D.6.39 In the first Round, each Bidder is obliged to submit a Valid Bid for one Frequency Band. Submission of a Waiver is not allowed in the first Round.

D.6.40 In any subsequent Round, a Bidder may actively submit a Waiver or may be deemed to submit a Waiver if it fails to take any action in a Round.

D.6.41 Where a Bidder is the Standing Highest Bidder of a Frequency Band at the end of the immediately preceding Round, the Activity Level of that Bidder will be equal to 1 EP even if it submits no Valid Bid in the current Round. Waiver will not be applicable.

D.6.42 Each Bidder may submit or be deemed to submit a Waiver in a maximum of two Rounds. The Authority may at his sole discretion grant additional Waivers to all Bidders in exceptional circumstances.

D.6.43 Where a Waiver is submitted or deemed to have been submitted, the number of EPs attributed to the Bidder for the immediately following Round shall be equal to 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.

D.6.44 Waivers may be used in case an individual Bidder need time to consider its bidding strategies or to resolve problems specific to it.

Conclusion of Bidding Stage

- D.6.45 The Bidding Stage will end where there is a Round in which no Valid Bid, Withdrawal or Waiver is submitted by any Bidder.
- D.6.46 The Bidder who is the Standing Highest Bidder for a Frequency Band will be the Provisional Successful Bidder for that Frequency Band and the Spectrum Utilization Fee payable for that Frequency Band shall be the amount of that Standing Highest Bid.
- D.6.47 In case the Bidding Stage continues for a protracted period of time (say, more than ten Business Days), the Authority may specify a Round to be the final Round by giving an advance notice period of six Rounds. In such specified final Round, Bidders may submit a Valid Bid for a Frequency Band at any amount at or above the Round Price. In respect of each Frequency Band, the Bidder who submits the highest Valid Bid shall be the Provisional Successful Bidder.
- D.6.48 Where there is more than one Bidder having submitted the same highest Valid Bid in respect of a Frequency Band in the specified final Round, the Authority shall determine by random which of such Bidders shall be the Provisional Successful Bidder in respect of the Frequency Band. In case no Valid Bid is received in respect of a Frequency Band in the specified final Round, the Standing Highest Bidder at the end of the immediately preceding Round (if any) shall be the Provisional Successful Bidder of the Frequency Band.

Observer

- D.6.49 The Authority, as the auctioneer, will conduct the Auction fairly and impartially. The Authority may invite an independent third party to be an observer of the Bidding Stage.

D.7 Procedures after Bidding Stage

Announcement of the Bidding Stage Result

D.7.1 Within two Business Days after the end of the Bidding Stage, the Authority will publish a Provisional Successful Bidder Notice to announce to the public the identity of the Provisional Successful Bidder for each Frequency Band and the Spectrum Utilization Fee payable for each Frequency Band.

Notification of Approval

D.7.2 In case a Bidder is subject to an Approval, a shareholder approval required by law or any regulatory authority before a Licence is granted to it, but the Bidder has not been capable of obtaining such Approval before the Application Dates, each Provisional Successful Bidder is required to notify the Authority whether it is subject to such Approval within two Business Days after the publication of the Provisional Successful Bidder Notice. If a Provisional Successful Bidder is subject to an Approval, it must obtain such Approval within ten Business Days after the publication of the Provisional Successful Bidder Notice. The Authority may disqualify the Provisional Successful Bidder and forfeit an amount by way of Penalty from its Deposit, if it fails to obtain the Approval by the deadline. The Authority may extend the deadline only in exceptional circumstances. A Provisional Successful Bidder will not be assigned with any Frequency Band or granted with a Licence unless it is not subject to an Approval.

Notification of Connection of Provisional Successful Bidders

D.7.3 Within two Business Days after the publication of the Provisional Successful Bidder Notice, each Provisional Successful Bidder is required to notify the Authority whether it is a Connected Bidder in relation to another Provisional Successful Bidder by submitting a Connected Bidder Statutory Declaration to the Authority. A Provisional Successful Bidder who fails to submit a Connected Bidder Statutory Declaration to the Authority by the deadline will be disqualified and the Authority may at his discretion forfeit an amount by way of Penalty from its Deposit.

Dealing with Connected Provisional Successful Bidders

- D.7.4 If the Authority 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, the Authority will issue a notice announcing the identities of the Connected Provisional Successful Bidders and notify the respective Connected Provisional Successful Bidders of that fact and specify a deadline by which the Connected Provisional Successful Bidders must (a) make all necessary arrangements so as to satisfy the Authority that they cease to be Connected Provisional Successful Bidders in relation to each other, and (b) jointly submit to the Authority a notification with documentary proof of the arrangements that they have made. The notification should be duly signed by two Authorised Representatives of each of the Connected Provisional Successful Bidders. Any Provisional Successful Bidder failing to satisfy the Authority that it is not a Connected Provisional Successful Bidder in relation to another Provisional Successful Bidder or does not take part in the Sub-Auction as required by the Authority under the rules of the Auction as set out in the Notice will be disqualified.
- D.7.5 The arrangements that may be made by the Connected Provisional Successful Bidders under D.7.4 may include one or more of the following:
- (a) reorganise themselves so that they cease to be Connected Bidders;
 - (b) agree among themselves as to which of their Standing Highest Bids will be withdrawn so that the total amount of spectrum assigned to them will not exceed the Spectrum Cap.
- D.7.6 If the Connected Provisional Successful Bidders fail to make any arrangement and submit a joint notification as required, the Authority will conduct a Sub-Auction among that group of Connected Provisional Successful Bidders.
- D.7.7 The Sub-Auction will start and finish on the date and at the time notified by the Authority to the relevant Connected Provisional Successful Bidders. In the Sub-Auction, each Connected Provisional Successful Bidder may offer one and only one bid of any amount, expressed in Hong Kong dollars and

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cents, at or above the Minimum Fee of HK\$0 that it is willing to pay in addition to its Standing Highest Bid at the end of the Bidding Stage.

- D.7.8 The Connected Provisional Successful Bidder, whose bid offered in the Sub-Auction plus the Standing Highest Bid offered at the end of the Bidding Stage produce the highest aggregate amount, will remain as a Provisional Successful Bidder in respect of the Frequency Band for which it is the Provisional Successful Bidder and that highest aggregate amount will be the Spectrum Utilization Fee payable by the Provisional Successful Bidder. In such case, all other Connected Provisional Successful Bidder(s) will cease to be Provisional Successful Bidder(s).
- D.7.9 In case of a tie, the Authority will determine by random which of the Connected Provisional Successful Bidders will remain as a Provisional Successful Bidder and the other Connected Provisional Successful Bidder(s) will cease to be Provisional Successful Bidder(s).
- D.7.10 Bidders should note that, under the Sub-Auction, only one of the Connected Provisional Successful Bidders will remain as a Provisional Successful Bidder and only the Frequency Band in respect of which it has been determined as the Provisional Successful Bidder in the Bidding Stage will be assigned. All other Connected Provisional Successful Bidders will not be assigned with any Frequency Band. They may also be subject to a Penalty described in paragraph D.7.12.
- D.7.11 Within two Business Days after the resolution of Connected Provisional Successful Bidders under an arrangement described in paragraph D.7.5 or the end of the Sub-Auction, the Authority will publish a Revised Provisional Successful Bidder Notice to announce to the public the following:
- (a) the arrangement made by the relevant Connected Provisional Successful Bidders, or the result of the Sub-Auction; and
 - (b) the identities of all the Provisional Successful Bidders after the arrangement or the Sub-Auction.
- D.7.12 If a Connected Provisional Successful Bidder withdraws its Standing Highest Bid or ceases to be a Provisional Successful Bidder as a result of the Sub-Auction, the Authority will forfeit up to the full amount of its Deposit

unless the Authority is satisfied that the connection which occurs after the Qualification Stage is beyond the control of the Provisional Successful Bidder and that it did not have any purpose of circumventing the terms and conditions of the Auction.

- D7.13 If a Provisional Successful Bidder fails to satisfy the Authority that it is not a Connected Bidder in relation to other Provisional Successful Bidder or does not take part in the Sub-Auction as required by the Authority under the rules of the Auction, as set out in the Notice, the Authority will disqualify it and forfeit up to the full amount of its Deposit.

D.8 Grant Stage

Payment of Spectrum Utilization Fee and Submission of Performance Bond

- D.8.1 Within thirty Business Days after publication of the Provisional Successful Bidder Notice or the Revised Provisional Successful Bidder Notice, each Provisional Successful Bidder must:

- (a) pay to the Authority the Spectrum Utilization Fee payable by it; and
- (b) provide to the Authority a Performance Bond in accordance with the form set out in Schedule 9 of the Licence given in the Notice.

If a Provisional Successful Bidder fails to pay the Spectrum Utilization Fee or submit the Performance Bond, the Authority will disqualify it and forfeit up to the full amount of its Deposit.

- D.8.2 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.

Grant of Licence

- D.8.3 After a Provisional Successful Bidder has satisfied the Authority that it is not a Connected Bidder in relation to other Provisional Successful Bidder, confirmed that it is not subject to an Approval, paid the Spectrum Utilization Fee and provided a Performance Bond, the Authority will publish a

Successful Bidder Notice to announce that the Provisional Successful Bidder becomes a Successful Bidder and will grant a Licence to the Successful Bidder.

Unassigned Spectrum

D.8.4 All Frequency Bands which are not assigned in the Auction (whether unsold or not assigned to a Provisional Successful Bidder or a Successful Bidder who was subsequently disqualified by the Authority) shall remain vested in the Authority.

D.9 Rules on Conduct of Bidders

Breach of Notice

D.9.1 Each Bidder must comply with the terms and conditions of the Notice. If a Bidder breaches one or more of the terms and conditions of the Notice, the Authority may, at his discretion:

- (a) disqualify that Bidder from the Auction; and/or
- (b) 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,

if the Authority considers that the disqualification and/or the Penalty are proportionate and reasonable in relation to the breach. For the avoidance of doubt, if any Insider of a Bidder breaches one or more of the terms and conditions of the Notice, that Bidder shall be deemed to have breached the terms and conditions of the Notice.

D.9.2 If a Bidder is disqualified during the Bidding Stage:

- (a) that Bidder will no longer be entitled to participate in the Auction;
- (b) that Bidder will cease to be a Standing Highest Bidder in respect of any Frequency Band;

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- (c) the bid submitted by that Bidder in the Round immediately preceding the disqualification will be disregarded; and
- (d) the Authority may re-determine the result of the Round immediately preceding the disqualification as he considers appropriate.

D.9.3 If a Provisional Successful Bidder or a Successful Bidder is disqualified during the Grant Stage:

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

D.9.4 If a Successful Bidder is found to have breached one or more of the terms and conditions of the Notice after it has been granted a Licence, then following paragraph C.3.1 the Authority may cancel, withdraw or suspend the Licence or assignment of the relevant Frequency Band under the Licence.

Participation in Good Faith and No False or Misleading Information

D.9.5 Bidders must participate in the Auction in good faith.

D.9.6 Bidders must not submit to the Authority any information (including, without limitation, in an Application) which is false or misleading.

Bribery, Collusion and Manipulation of the Auction

D.9.7 Bidders and their Insiders must not attempt to collude or to manipulate the course of the Auction.

D.9.8 Any contravention of the Prevention of Bribery Ordinance (Cap.201) insofar as it relates to the Auction shall be taken as a breach of the terms and conditions of the Notice. Bidders should note the provisions of sections 6, 7 and 12A of the Prevention of Bribery Ordinance:

Section 6: Bribery for procuring withdrawal of tenders

- (1) *Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, shall be guilty of an offence.*
- (2) *Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.*

Section 7: Bribery in relation to auctions

- (1) *Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.*
- (2) *Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.*

Section 12A: Conspiracy

- (1) *Any person convicted of conspiracy to commit an offence under this Part shall be dealt with and punished in like manner as if convicted of such offence and any rules of evidence which apply with respect to the proof of any such offence shall apply in like manner to the proof of conspiracy to commit such offence.*
- (2) *The powers of investigation conferred by Part III of this Ordinance shall apply with respect to a conspiracy to commit an offence under*

this Ordinance in like manner as they apply to the investigation of any such offence.

- D.9.9 If any person by any deceit (whether or not the deceit is the sole or main inducement) and with intent to defraud the Authority in the course of the Auction, for example, conspire for refraining from bidding, in addition to being disqualified from the Auction, may be subject to criminal prosecution.

Confidentiality

- D.9.10 Under the terms and conditions of the Notice, Confidential Information means any information in relation to any Bidder which is not in the public domain and the disclosure of which would be likely to affect the conduct or strategy of other Bidders in the Auction.
- D.9.11 Confidential Information includes 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.
- D.9.12 In relation to each Bidder, any person to whom Confidential Information is disclosed becomes an Insider of that Bidder. Each Bidder is required to provide a list of Insiders to the Authority in the Application Form. After submission of the Application, the Bidder must immediately notify the Authority in writing if other person becomes an Insider of the Bidder. The Authority may require the Bidder to submit a revised Application Form and / or a revised Bidder Compliance Certificate.
- D.9.13 A Bidder and its Insiders must not directly or indirectly take steps to obtain or use in any unauthorised way Confidential Information of another Bidder.
- D.9.14 A Bidder and its Insider must not directly or indirectly disclose, or cause to disclose, or enter into any agreement to disclose, its Confidential Information to any person (except to the Bidder's professional advisers, (prospective) providers of finance on a need-to-know basis, in which case these recipients shall become Insiders of the Bidder).
- D.9.15 Depending on the nature of the Confidential Information and the circumstances, breach of the terms and conditions in relation to

confidentiality by a Bidder may jeopardise the fairness of the Auction and may have serious consequences. Having regard to the gravity and the likely consequences of the breach, the Authority may disqualify the Bidder and may forfeit an amount up to the full amount of the Bidder's Deposit by way of Penalty.

Directors, employees and agents

D.9.16 If a person, who is a director, employee, agent of a Bidder or Insider of one Bidder, is also a director, employee, agent or Insider of another Bidder, he must not:

- (a) take part in preparing any of the Bidders for participation in the Auction;
- (b) pass Confidential Information of one Bidder to another Bidder;
- (c) be an Authorised Representative of any of the Bidders; and
- (d) take part or participate in the Auction.

Changes in Application and Replacement of Authorised Representatives

D.9.17 If any change occurs which affects the information submitted in a Bidder's Application Form, that Bidder must:

- (a) immediately notify the Authority of the change in writing; and
- (b) on request by the Authority and within the specified period, submit to the Authority one or more of the following documents:
 - (i) a revised Application Form;
 - (ii) a revised Bidder Compliance Certificate; and
 - (iii) a revised Connected Bidder Statutory Declaration.

D.9.18 A Bidder may substitute one or more of its Authorised Representatives by giving a notification to the Authority. The substitution shall take effect the next Business Day after the day the Authority receives such notification.

APPLICATION INSTRUCTIONS

E. Application Instructions

E.1 Application Instructions

- E.1.1 An Application must be submitted in English.
- E.1.2 An Application must be sealed in a non-transparent envelope, together with the letter of credit or a written notification setting out all details and evidence of the cash deposit made by the Bidder, and must be marked:

“For the attention of the Telecommunications Authority”

No other marking should appear on the envelope.

- E.1.3 An Application should contain all information and supporting documents requested in the Application Form instructions.
- E.1.4 An Application must be delivered in person and by hand to Assistant Director (Regulatory) of OFTA who will be available between **9:00 am and 5:30 pm on 9 January 2012** and between **9:00 am and 5:30 pm on 10 January 2012** at the following addresses:

Office of the Telecommunications Authority
29/F, Wu Chung House
213 Queen’s Road East
Wanchai
Hong Kong

Assistant Director (Regulatory) of OFTA will deposit the Application into a secure tender box. This will be witnessed by the person delivering the Application.

- E.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 9 January 2012 or 10 January 2012, Applications must reach the Authority at the above address between 9:00 am and 5:30 pm on the next Business Day on which none of the signals remains in force.

APPLICATION INSTRUCTIONS

E.1.6 By 4:00 pm on the later of the Application Dates, the Bidder must also have transferred the Deposit (if paid in cash) so as to have been received in cleared funds in either one of the following Authority's Accounts:

- a) **Bank** : Bank of China Hong Kong Branch
Ground Floor, Wu Chung House
213 Queen's Road East
Wanchai
Hong Kong
- Account Name** : Office of the Telecommunications Authority
Account No. : 012-899-1-003883-3
- b) **Bank** : The Hongkong and Shanghai Banking
Corporation Limited
Hopewell Centre Branch
Shop 2A, 2nd Floor, Hopewell Centre
183 Queen's Road East
Wanchai
Hong Kong
- Account Name** : Office of the Telecommunications Authority
Account No. : 004-048-203558-292

E.1.7 The payment should be accompanied with a unique identifier consisting of the registered name of the Bidder.

CONTACTS AND FURTHER INFORMATION

F. Contacts and Further Information

F.1 Contacts for Enquiries

F.1.1 Any enquiries relating to this Memorandum and the Auction process should be addressed in writing and sent to the Authority, who will be the central point of contact for the Government. Enquiries should be sent by post, fax or e-mail to the following contact address or number:

Office of the Telecommunications Authority
29/F, Wu Chung House
213 Queen's Road East
Wanchai
Hong Kong

Fax number: +852 2116 3334

E-mail: Auction-2300-2390MHz@ofta.gov.hk

All questions should be marked:

“2.3 GHz Spectrum Auction Question”

The person asking the question must be identified and the organization that the person represents must be stated. Contact details other than e-mail addresses (i.e. postal address, fax number, telephone number) must also be provided.

F.2 Publication of Further Information

F.2.1 From the date of issue of this Memorandum, the Authority has the discretion to publish further information and to publish questions raised and the answers provided. The Authority may, however, exercise the discretion not to publish a particular question and answer, in whole or in part and will also reserve the right not to respond to any question. The identity of the person asking the questions will not be published without his/her permission.

F.2.2 Further information will generally be made available on OFTA's website. Parties wishing to receive notifications that additional information has been

CONTACTS AND FURTHER INFORMATION

posted on the website should register with the Authority on OFTA's website. Upon posting new information regarding the Auction on the website, those parties who have registered will be notified by e-mail that such information has been made available.

**ANNEX A GAZETTE NOTICE OF THE MINIMUM FEES ISSUED BY
THE SECRETARY FOR COMMERCE AND ECONOMIC
DEVELOPMENT**

Telecommunications Ordinance (Chapter 106)
and
Telecommunications (Determining Spectrum Utilization Fees
by Auction) Regulation (Chapter 106AC)

By this Notice, I, in exercise of the powers conferred by section 32I of the Telecommunications Ordinance (Chapter 106) (the “Ordinance”) and section 10 of the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Chapter 106AC) (the “Regulation”), specify the minimum amount of the spectrum utilization fee for the purposes of sections 5, 6 and 7 of the Regulation as follows:-

(1) Section 5(3) of the Regulation

The minimum amount of the spectrum utilization fee for the purpose of section 5(3) of the Regulation shall be given in the Schedule to this Notice.

(2) Section 6(3) of the Regulation

The minimum amount of the spectrum utilization fee for the purpose of section 6(3) of the Regulation shall be given in the Schedule to this Notice.

(3) Section 7(d) of the Regulation

The minimum amount of the spectrum utilization fee for the purpose of section 7(d) of the Regulation shall be HK\$0.

In this Notice, unless the context otherwise requires, words and expressions herein shall have the meanings assigned to them in the Ordinance and in the Regulation. This Notice shall become effective from the date hereof and shall continue in force until withdrawn, modified or replaced by the Secretary.

(Mr. Gregory So)
Secretary for Commerce and
Economic Development

11 November 2011

Schedule

Frequency Band	Frequency range (MHz)	Minimum amount of the spectrum utilization fee for the purposes of section 5(3) and section 6(3) of the Regulation
A1	2300-2330	HK\$150,000,000
A2	2330-2360	HK\$150,000,000
A3	2360-2390	HK\$150,000,000

**ANNEX B GAZETTE NOTICE OF TERMS AND CONDITIONS OF
THE AUCTION (INCLUDING THE FORM OF THE
LICENCE)**

**Telecommunications Ordinance (Chapter 106)
and
Telecommunications (Determining Spectrum Utilization Fees
by Auction) Regulation (Chapter 106AC)**

By this Notice, the Telecommunications Authority, in exercise of the powers conferred by section 32I of the Telecommunications Ordinance, the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation and all other powers enabling him for this purpose, specifies the terms and conditions of the auction of the right to use the frequency bands specified in this Notice and the payment of the spectrum utilization fees. This Notice shall, where appropriate, also constitute guidelines issued under section 6D of the Telecommunications Ordinance indicating the manner in which the Telecommunications Authority 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.

Eliza LEE
Telecommunications Authority

11 November 2011

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 Fees; and
- (b) the Bidders which may be considered for the grant of a Licence.

1.3 Stages of the Auction

1.3.1 This Notice provides for four stages of the Auction:

- (a) Application Stage as specified in Part 2;
- (b) Qualification Stage as specified in Part 3;
- (c) Bidding Stage as specified in Part 4; and
- (d) Grant Stage as specified in Part 5.

1.4 Definitions

1.4.1 In this Notice, unless the context otherwise requires:

“**Activity Level**” has the meaning given in paragraph 4.8.5;

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

“**Application Dates**” means 9 January 2012 and 10 January 2012;

“**Application Form**” means the form specified in Appendix 3 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 and 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 Business Days after the date of the Provisional Successful Bidder Notice;

“**Auction**” means the procedure specified in this Notice;

“**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 submitted by the Bidder under Part 2 or in a notification under paragraph 7.7.1;

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

“**Authority’s Account**” means the designated account of the Authority at the Deposit Bank, namely the account 012-899-1-003883-3 at Bank of China or the account 004-048-203558-292 at HSBC;

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

“**Banking Ordinance**” means the Banking Ordinance (Cap.155, Laws of Hong Kong);

“**Bid**” means the amount of Spectrum Utilization Fee a Bidder wishes to offer in relation to a Frequency Band in the Auction;

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

“**Bidder Compliance Certificate**” means the certificate specified in Appendix 4 of this Notice;

“**Bidder Notice**” means the notice published by the Authority in accordance with paragraph 3.1.1;

“**Bidding Stage**” means the stage specified in Part 4;

“**Bidding Stage Notice**” means the notice published by the Authority in accordance with paragraph 4.3.1;

“**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, Laws of Hong Kong);

“**Companies Ordinance**” means the Companies Ordinance (Cap.32, Laws of Hong Kong);

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

“**Confidential Information**” has the meaning given in paragraph 6.5.5;

“**Connected Bidder**” means a Bidder that is closely connected to another Bidder and, for this purpose, a Bidder (Bidder A) is a Connected Bidder in relation to another Bidder (Bidder B) if:

- (a) Bidder A holds a material interest in Bidder B,
- (b) Bidder B holds a material interest in Bidder A, or
- (c) a person, who is not a Connected Bidder in relation to Bidder A or Bidder B, holds a material interest in both Bidder A and Bidder B;

“**Connected Bidder Statutory Declaration**” means the statutory declaration referred to in paragraph 3.1.2 and in the form specified in Appendix 6 of this Notice;

“**Connected Provisional Successful Bidders**” has the meaning given in paragraph 4.13.3;

“**Connected Provisional Successful Bidder Notice**” means the notice published by the Authority in accordance with paragraph 4.13.3;

“**Connection**” has the meaning given in paragraph 1.6.1;

“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 Shop 2A, 2nd 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;

“Eligibility Points” has the meaning given in paragraph 4.8;

“Exempt Security Interest” has the meaning given in the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong);

“Frequency Band” means a frequency band specified in Appendix 2 of the Notice;

“Frequency Band Selection Form” means the form specified in Appendix 7 of this Notice;

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

“Grant Stage” means the stage specified in Part 5;

“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 by a person:

- (a) who is an officer, employee, agent, adviser or associate of that

Bidder;

- (b) 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) who is an Insider in relation to that Bidder;

“Letter of Credit” means a letter of credit in the form specified in Appendix 5 of this Notice;

“Licence” means a unified carrier licence, incorporating the Conditions, issued by the Authority under the Ordinance for the establishment or maintenance of a telecommunications network for carrying communications to or from the public in Hong Kong and using a Frequency Band assigned by the Authority;

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

“Minimum Fee” means the minimum amount of Spectrum Utilization Fee specified by the Secretary for Commerce and Economic Development and set out in Appendix 2 of this Notice;

“Ordinance” means the Telecommunications Ordinance (Cap.106, Laws of Hong Kong);

“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 the terms and conditions of this Notice;

“Performance Bond” means a performance bond in the form determined by the Authority substantially in the form specified in Schedule 9 to Appendix 1 of this Notice and which is to be provided to the Authority in accordance with paragraph 5.2.1;

“Prevention of Bribery Ordinance” means the Prevention of Bribery Ordinance (Cap.201, Laws of Hong Kong);

“Provisional Successful Bidder” has the meaning given in paragraph 3.4.2 or in paragraph 4.12.1, as the case may be;

“Provisional Successful Bidder Notice” means the notice published by the Authority in accordance with paragraph 3.4.2 or paragraph 4.13.1, as the case may be;

“Qualification Stage” means the stage specified in Part 3;

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

“Qualified Bidder Notice” means the notice published by the Authority in accordance with paragraph 3.3.1;

“Qualifying Bank” means an institution holding a full banking licence under the Banking Ordinance which long term issuer 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 in that subparagraph;

“Regulation” means the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap.106AC, Laws of Hong Kong)

“Revised Provisional Successful Bidder Notice” means the notice published by the Authority in accordance with paragraph 4.14.8;

“Round” means a period of time specified by the Authority during which Qualified Bidders are entitled to submit a Bid, a Withdrawal or a Waiver in accordance with the procedure set out in Part 4;

“Round Price” means an amount of Spectrum Utilization Fee in Hong Kong Dollars specified by the Authority at which Qualified Bidders are invited to offer for a Frequency Band in a Round;

“**Spectrum Cap**” means a total amount of 30MHz, being the maximum amount of spectrum among the Frequency Bands that may be assigned to a Bidder or a group of Connected Bidders;

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

“**Standing Highest Bid**” means, in respect of a Frequency Band, the Valid Bid determined in accordance with paragraph 4.7.1;

“**Standing Highest Bidder**” means, in respect of a Frequency Band, the Qualified Bidder which submitted the Standing Highest Bid;

“**Sub-Auction**” means the procedures specified in paragraphs 4.14.3 to 4.14.7;

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

“**Successful Bidder Notice**” means the notice published by the Authority in accordance with paragraph 5.4.1;

“**Valid Bid**” has the meaning given in paragraph 4.6.1;

“**Waiver**” shall be construed in accordance with paragraphs 4.10.1 to 4.10.4; and

“**Withdrawal**” has the meaning given in paragraph 4.9.1.

1.5 Interpretation

1.5.1 In this Notice, unless the context otherwise requires:

- (a) subject to subparagraph (c), a person has a material interest in relation to a body corporate if the person, directly or indirectly, (alone, jointly or in concert with other person)
 - (i) holds or is beneficially entitled to or has the right to acquire or subscribe for more than 25% of the issued share capital of the body corporate; or

- (ii) possesses or has the right to acquire voting power in respect of more than 25% of the issued share capital of the body corporate; or
 - (iii) controls the body corporate;
- (b) any reference to shares shall be construed as a reference to the issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution but including such part of that capital which, in the opinion of the Authority, possesses sufficient characteristics of equity share capital as to make it nearly equivalent to equity share capital;
- (c) any reference to a person's holding of shares, or possession of voting power, in a body corporate shall be construed as to disregard that holding or possession if or to the extent that:
 - (i) he holds the shares concerned:
 - (aa) as a nominee;
 - (bb) as a custodian (whether under a trust or by a contract);
 - or
 - (cc) under an arrangement pursuant to which he has issued, or is to issue, depository receipts in respect of the shares concerned; or
 - (ii) he is not entitled to exercise, or control the exercise of, voting rights in respect of the shares concerned;
- (d) for the purpose of subparagraph (c)(i)(cc), "depository receipt" means a certificate or other record (whether or not in the form of a document):
 - (i) which is issued by or on behalf of a person who holds shares or who holds evidence of the right to receive shares, or has an interest in shares, in a particular body corporate; and
 - (ii) which evidences or acknowledges that another person is entitled to rights in relation to those shares or shares of the same kind, which shall include the right to receive those shares (or evidence of the right to receive those shares) from the person mentioned in subparagraph (d)(i);

- (e) for the purpose of subparagraph (c)(ii):
 - (i) a person is not entitled to exercise, or control the exercise of, voting rights in respect of shares if he is bound not to exercise (whether by contract or otherwise) the voting rights, or not to exercise them otherwise than in accordance with the instructions of another; and
 - (ii) voting rights which a person is entitled to exercise or voting rights of which he is entitled to control the exercise only in certain circumstances shall be taken into account only when those circumstances have arisen and for so long as those circumstances continue;

- (f) a body corporate is controlled by a person if:
 - (i) he has a controlling interest in it;
 - (ii) he has a controlling interest in any body corporate which has a controlling interest in the body corporate; or
 - (iii) although he does not have such an interest in the body corporate, or in any body corporate with a controlling interest in the body corporate, it is reasonable, having regard to all the circumstances, to expect that he will be able, by whatever means and whether directly or indirectly, to achieve the result that the affairs of the body corporate are conducted in accordance with his wishes;

and, for this purpose, a person has a controlling interest in a body corporate if he holds, or is beneficially entitled to, or has a right to acquire or subscribe for, 50 per cent or more of the share capital in the body corporate, or if he possesses, or has a right to acquire, 50 per cent or more of the voting power in it, and a person shall be deemed to control a body corporate where that person controls another person which controls that body corporate;

- (g) for the purpose of determining whether a person has a material interest indirectly in a Bidder, the extent of the interest of the person in the Bidder is:
 - (i) where there is one interposed person, the percentage arrived

at by multiplying the percentage representing the extent of the interest of the person in the interposed person (where the percentage representing the extent of the interest of the person in the interposed person referred to herein exceeds 50 per cent, such percentage shall be treated as a percentage of 100 per cent) by the percentage representing the extent of the interest of the interposed person in the Bidder;

- (ii) where there is a series of two or more interposed persons, the percentage arrived at by multiplying the percentage representing the extent of the interest of the person in the first interposed person in the series by:
 - (aa) the percentage representing the extent of the interest of each interposed person (other than the last interposed person) in the series in the next interposed person in the series (where any percentage referred to in this subparagraph (g)(ii)(aa) exceeds 50 per cent, such percentage shall, in each case, be treated as a percentage of 100 per cent); and
 - (bb) the percentage representing the extent of the interest of the last interposed person in the series in the Bidder;

- (h) for the purpose of any reference to “material interest” or “control” in this paragraph:
 - (i) a beneficial entitlement to shares, interest in shares or right to acquire or subscribe for shares or right to any voting power shall be taken into account whether or not it is a conditional entitlement, interest or right;
 - (ii) notwithstanding subparagraph (h)(i), no account shall be taken of an interest to the extent that (if it were an interest in shares) it would be an Exempt Security Interest; and
 - (iii) a conditional entitlement shall include the right of a beneficiary under a trust including, without limitation, a discretionary trust unless the relevant Bidder satisfies the Authority that none of the reasons for establishing that

discretionary trust is to avoid or circumvent any of the terms and conditions of this Notice;

- (i) for the purposes of subparagraph (h)(ii), an interest in shares shall cease to be an Exempt Security Interest and the person holding the interest in shares by way of security (the “lender”) shall be taken to have acquired that interest, when:
 - (i) the lender:
 - (aa) becomes entitled to exercise voting rights in respect of the interest in shares held as security as a result of, or following, a default by the person giving the interest in shares as security; and
 - (bb) has evidenced an intention to exercise the voting rights or control their exercise or taken any step to exercise the voting rights or control their exercise; or
 - (ii) the power of sale in respect of the interest in shares held as security becomes exercisable, and the lender or its agent offers the interest in shares held as security, or any part of that interest, for sale;
- (j) a “person” includes any individual, body corporate, unincorporated association or body (including, without limitation, a partnership, trust, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separately legal personality and includes that person’s successors in title, permitted assigns and permitted transferees;
- (k) 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 any specified 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 pm on that day;
- (l) 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;

- (m) 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;
- (n) the singular includes the plural and vice versa and words and expressions importing each gender shall include the other gender;
- (o) references to this Notice shall include references to the Schedules and the Appendices and references to any “paragraph”, “Schedule” or “Appendix” are to paragraph, Schedule or Appendix of this Notice;
- (p) expression of time shall be reference to Hong Kong time; and
- (q) the headings do not affect their interpretation.

1.6 Connection

1.6.1 Notwithstanding any other terms and conditions of this Notice, where the Authority determines that, in the context of circumstances which cause or would cause a Bidder to be a Connected Bidder in relation to another Bidder (the “Connection”), all of the following conditions are satisfied:

- (a) the Connection is, or would be, of a temporary nature;
- (b) the transaction or event or series of transactions or events which brought about the Connection, as the case may be, was or were not for the purpose of avoiding or circumventing any of the terms and conditions of this Notice relating to Connected Bidders; and
- (c) arrangements satisfactory to the Authority have been made or will be made such that:
 - (i) no Bidder is or will in practice be able to achieve the result that the affairs of another Bidder are conducted in accordance with its wishes;
 - (ii) no person is or will in practice be able to achieve the result that the affairs of two or more Bidders are conducted in

accordance with its wishes;

- (iii) there is no appreciable risk that Confidential Information relating to one Bidder has been obtained or will be obtained by another Bidder; and
- (iv) there is no appreciable risk that both Confidential Information relating to one Bidder and Confidential Information relating to another Bidder has been obtained or will be obtained by any person,

the Authority may at any time, if he thinks fit, determine that the Connection shall be disregarded for all purposes, or for the purposes as he may determine, under this Notice.

- 1.6.2 A determination by the Authority under paragraph 1.6.1 may be revoked by him at any time in event of any change of circumstances which he considers to be material to that determination and a Bidder to which that determination relates shall inform the Authority immediately after it becomes aware of any change in the circumstances to which the determination relates (without prejudice to the generality of paragraph 6.4.1).
- 1.6.3 Notice of any determination by the Authority under paragraph 1.6.1 and any revocation of a determination under paragraph 1.6.2 shall be given to all Bidders.

Part 2 – Application Stage

2.1 Application

- 2.1.1 No person other than a company formed and registered under the Companies Ordinance 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 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 paragraph 2.1.5, an Application must be received by the Authority between 9:00 am and 5:30 pm on either of the Application Dates.

2.1.5 If a tropical cyclone warning signal number 8 or above or a "black" rainstorm warning signal is in force in Hong Kong during any of the times specified in paragraph 2.1.4, Applications must be received by the Authority between 9:00 am and 5:30 pm on the immediately following 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 in an amount of HK\$150 million. The Deposit shall be payable or delivered, as the case may be, to the Authority in accordance with paragraph 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 4:00 pm 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 by telegraphic transfer to the Authority's Account at the Deposit Bank and shall be accompanied by an identifier for the Bidder which shall consist of the registered name of the Bidder;
- (b) a Letter of Credit, it shall be addressed to the Authority and be delivered to the Authority's Office.

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.

2.2.8 Subject to paragraph 2.2.9, where the Deposit is in cash and the Deposit, or part of the Deposit, is returned to a Bidder under any of the terms and conditions of this Notice, then the Deposit, or part of the Deposit, which is returned shall include all Deposit Interest as has been earned on 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 of the terms and conditions of this Notice by way of Penalty, any Deposit Interest which has been earned on 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's Account; or
- (b) where the Deposit is a Letter of Credit, that the Authority has not made a claim under the Letter of Credit for 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's Account and shall be deemed to be so re-instated from the date of notification of its re-instatement to the Bidder and any interest which has been earned on that sum shall also be deemed to be re-instated as part of the Deposit from (and including) that date; and
- (b) where the Deposit is a Letter of Credit, the sum shall be paid to the Bidder.

2.3 Withdrawal of Applications

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 the 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 or

before 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 – Qualification Stage

3.1 Procedures for dealing with Connected Bidders

- 3.1.1 Without prejudice to the determination of the Authority under paragraph 3.2, the Authority shall publish a notice (“Bidder Notice”) which shall state the identity of each Bidder which has submitted an Application and shall specify a date on or before which each Bidder must notify the Authority whether it is a Connected Bidder in relation to another Bidder. The Authority may disclose such information contained in the Applications of the Bidders as he considers necessary for each of the Bidders to assess whether it is a Connected Bidder in relation to another Bidder.
- 3.1.2 Each Bidder must notify the Authority whether it is a Connected Bidder in relation to another Bidder by completing and submitting a Connected Bidder Statutory Declaration on or before the date specified by the Authority under paragraph 3.1.1.
- 3.1.3 If the Authority determines that two or more Bidders are Connected Bidders either following a notification to him by a Bidder under paragraph 3.1.2 or as a result of his review of the Applications, the Authority shall publish the identities of the Connected Bidders. The Connected Bidders shall, on or before a date specified by the Authority, make all necessary arrangements as may be necessary, so as to satisfy the Authority that they cease to be Connected Bidders in relation to each other, and shall jointly submit to the Authority a notification with documentary proof of the arrangements that have been made duly signed by two Authorised Representatives of each of the Connected Bidders.
- 3.1.4 The arrangements that may be made by the Connected Bidders pursuant to paragraph 3.1.3 may include one or more of the following:
- (a) reorganise themselves so that they cease to be Connected Bidders;
 - (b) withdraw their Applications such that only one of the Connected Bidders remains a Bidder.

3.1.5 If the Connected Bidders elect to reorganise themselves in accordance with paragraph 3.1.4(a), each of them must, by the date specified by the Authority in accordance with that paragraph, submit to the Authority a revised Application Form and a revised Bidder Compliance Certificate.

3.1.6 If a Connected Bidder withdraws its Application in accordance with paragraph 3.1.4(b), it shall not be permitted to submit a new Application.

3.1.7 If a Bidder fails to satisfy the Authority that it is not a Connected Bidder in relation to another Bidder, the Authority shall determine that it is not eligible as a Qualified Bidder.

3.2 Determination as a Qualified Bidder

3.2.1 The Authority shall determine whether a Bidder is a Qualified Bidder in accordance with paragraph 3.2.2.

3.2.2 Subject to paragraphs 7.2.1 and 7.8.1, a Bidder shall not be determined as a Qualified Bidder:

- (a) unless the Bidder has submitted an Application in compliance with all the requirements of paragraphs 2.1.1. and 2.1.2 to the satisfaction of the Authority;
- (b) if there is reasonable ground for the Authority to believe that the Bidder does not comply with or is not capable of complying with all the undertakings given in the Bidder Compliance Certificate;
- (c) unless the Authority is satisfied that the Bidder is not a Connected Bidder in relation to another Bidder.

3.3 Notification as a Qualified Bidder

3.3.1 The Authority shall, after making his determination under paragraphs 3.2.1 and 3.2.2, publish a notice (“Qualified Bidder Notice”) which shall state the identity of each Bidder which has been determined to be a Qualified Bidder.

3.3.2 Subject to paragraph 3.3.3, on, or as soon as practicable after, the publication of the Qualified Bidder Notice, the Authority shall return, to each Bidder which has not been determined to be a Qualified Bidder and to each Bidder which has withdrawn its Application pursuant to paragraph

3.1.4(b), 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 Penalties 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.

3.3.3 Notwithstanding the return to a Bidder of its Deposit in accordance with paragraph 3.3.2, 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, including all the undertakings given in the Bidder Compliance Certificate submitted by that Bidder.

3.4 No Bidding Stage where there is no more than one Qualified Bidder

3.4.1 If at any time before the start of the Bidding Stage, there is no more than one Qualified Bidder, the Authority shall publish a notice that the Bidding Stage shall not take place.

3.4.2 Where, at any time before the start of the Bidding Stage, there is only one Qualified Bidder, the Authority shall notify that Qualified Bidder and that Qualified Bidder shall select, subject to the restriction of the Spectrum Cap, in the Frequency Band Selection Form the Frequency Band it wishes to be assigned. The Frequency Band Selection Form shall be duly completed in accordance with the instructions specified therein, signed on behalf of the Qualified Bidder by two Authorised Representatives and submitted to the Authority within the period specified by the Authority. A Frequency Band Selection Form shall not be approved by the Authority if it is not duly completed in accordance with the instructions specified therein or is otherwise unclear, or if it contains a selection of Frequency Bands exceeding the Spectrum Cap. The Authority may, at his discretion, request

the Qualified Bidder to make such clarification as may reasonably be required if the Frequency Band Selection Form is not duly completed in accordance with the instructions specified therein or is otherwise unclear. Upon approval of the Frequency Band Selection Form by the Authority, the Qualified Bidder shall be the Provisional Successful Bidder of the Frequency Band it has selected in the Frequency Band Selection Form and the Spectrum Utilization Fee payable by the Provisional Successful Bidder shall be the Minimum Fee for the Frequency Band selected by the Provisional Successful Bidder. The Authority shall publish a notice (“Provisional Successful Bidder Notice”) to announce the identity of the Provisional Successful Bidder and the Spectrum Utilization Fee payable for the relevant Frequency Band.

- 3.4.3 If the Qualified Bidder fails to select a Frequency Band by submitting a duly completed Frequency Band Selection Form within the period specified by the Authority or fails to make such clarification as required by the Authority in relation to the Frequency Band Selection Form, the Qualified Bidder shall not be entitled to the grant of a Licence and the Authority may forfeit an amount (up to the full amount of the Qualified Bidder’s Deposit) by way of Penalty from the Qualified 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.

Part 4 – Bidding Stage

4.1 Reference to a Bidder

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

4.2 Purpose and Structure of Bidding Stage

- 4.2.1 The purpose of the Bidding Stage is to provide a procedure to determine:
- (a) which of the Bidders shall become a Provisional Successful Bidder of each Frequency Band; and
 - (b) the amount of Spectrum Utilization Fee that shall be payable for each Frequency Band.
- 4.2.2 The Bidding Stage in respect of all Frequency Bands shall be conducted simultaneously and shall consist of one or more Rounds in which Bidders

may submit Bids for the Frequency Bands.

4.3 Bidding Stage Notice

4.3.1 At least two Business Days before the commencement of the Bidding Stage, the Authority shall issue to each Bidder a notice (“Bidding Stage Notice”) which shall provide details of the date on which and the time at which the Bidding Stage shall commence.

4.3.2 If the Authority is of the opinion that it is impractical for the Bidding Stage to commence on the date or at the time referred to in the Bidding Stage Notice, he may notify each Bidder of a different date or time, 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.

4.4 Information to be provided to Bidders prior to each Round

- 4.4.1 Prior to the start of each Round, the Authority shall notify each Bidder of:
- (a) the date on and the time at which the Round shall start and end,
 - (b) the Round Price for each Frequency Band,
 - (c) the number of Valid Bids, if any, received for each Frequency Band in the immediately preceding Round,
 - (d) the Frequency Band, if any, in respect of which the Bidder is the Standing Highest Bidder,
 - (e) the amount, if any, of the Standing Highest Bid for each Frequency Band,
 - (f) the total number of Waivers that may be exercised by the Bidder, and
 - (g) the total number of Withdrawals that may be exercised by the Bidder.

For the avoidance of doubt, the Authority may at any time provide additional information to the Bidders as he considers appropriate.

4.5 Submission of Valid Bids

4.5.1 In the first Round, each Bidder must submit to the Authority a Valid Bid for one Frequency Band. If a Bidder fails to submit a Valid Bid in the first Round, the Authority 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.

- 4.5.2 In each Round other than the first Round, each Bidder may:
- (a) (i) subject to paragraphs 4.6 and 4.8, elect to submit or not to submit a Valid Bid in respect of any Frequency Band;
 - (ii) subject to paragraphs 4.8 and 4.9, submit a Withdrawal in respect of a Frequency Band for which the Bidder is a Standing Highest Bidder; or
 - (b) subject to paragraphs 4.8 and 4.10, submit a Waiver.

4.5.3 For the avoidance of doubt, where a Bidder is a Standing Highest Bidder in respect of a Frequency Band in a Round, it may elect to submit or not to submit a Valid Bid for that Frequency Band in the immediately following Round.

4.6 Valid Bid

- 4.6.1 A Valid Bid, in relation to each Round, is a Bid:
- (a) subject to paragraph 4.12.1(b), equal to the Round Price specified by the Authority prior to the Round;
 - (b) submitted in accordance with the requirements given in paragraph 4.11.1; and
 - (c) that complies with the requirements given in paragraph 4.8.2.

4.7 Determination of Standing Highest Bid for each Round

- 4.7.1 At the end of each Round, the Authority shall determine the Standing Highest Bid among the Valid Bids for each Frequency Band as follows:
- (a) if no Valid Bid is received in a Round in respect of a Frequency Band,
 - (i) where there was a Standing Highest Bid in respect of that Frequency Band at the end of the immediately preceding Round, that Standing Highest Bid shall remain as the Standing Highest Bid in respect of that Frequency Band (unless that Standing Highest Bid has been subject to a Withdrawal);
 - (ii) 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 Standing Highest Bid in respect of

- that Frequency Band;
- (iii) 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 Standing Highest Bid in respect of that Frequency Band;
- (b) if only one Valid Bid is received in a Round in respect of a Frequency Band, that Valid Bid shall be the Standing Highest Bid for that Frequency Band;
- (c) if two or more Valid Bids are received in a Round in respect of a Frequency Band, the Authority shall determine by random which of them shall be the Standing Highest Bid for that Frequency Band.

4.8 Eligibility Points and Activity Level

- 4.8.1 One Eligibility Point shall be attributed to each Frequency Band.
- 4.8.2 The Activity Level of a Bidder in a Round shall not exceed the number of Eligibility Points attributed to that Bidder for that Round.
- 4.8.3 For the first Round, one Eligibility Point shall be attributed to each Bidder.
- 4.8.4 For each Round other than the first Round, the number of Eligibility Points attributed to a Bidder shall be equal to the Activity Level of the Bidder in the immediately preceding Round as determined in accordance with paragraph 4.8.5, unless the Bidder submits or is deemed to have submitted a Waiver in the immediately preceding Round in which case the number of Eligibility Points attributed to the Bidder shall be equal to 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.
- 4.8.5 The Activity Level of a Bidder in a Round shall be the aggregate of the number of Eligibility Points attributed to the Frequency Band in respect of which the Bidder:
 - (a) submits a Valid Bid in that Round; and
 - (b) was the Standing Highest Bidder at the end of the immediately preceding Round (except where the Bidder submits a Valid Bid for that Frequency Band in which case one Eligibility Point is attributed under subparagraph (a) or where the Bidder submits a Withdrawal for that Frequency Band in that Round in which case

the Eligibility Point is disregarded in accordance with paragraph 4.9.3).

4.9 Withdrawal

4.9.1 In any Round after the first Round, a Bidder may submit a withdrawal in respect of a Frequency Band (“Withdrawal”) for which the Bidder holds the Standing Highest Bid at the end of the immediately preceding Round. A Withdrawal must be submitted in accordance with the requirements given in paragraph 4.11.1.

4.9.2 In case a Bidder makes a Withdrawal in respect of a Frequency Band in accordance with paragraph 4.9.1, then:

- (a) where one or more Bidders submit Valid Bids in a subsequent Round for that Frequency Band but all the subsequent Valid Bids are lower than that Standing Highest Bid (irrespective of whether the subsequent Valid Bids are also withdrawn), that Bidder is liable to pay the Government the difference between that Standing Highest Bid and the amount of the next subsequent highest Valid Bid (which is in any case lower than that Standing Highest Bid) (irrespective of whether that next subsequent highest Valid Bid is withdrawn or whether it is determined as the Spectrum Utilization Fee), subject to a maximum amount of 30% of that Standing Highest Bid;
- (b) where no other Bidder submits a Valid Bid in any subsequent Round for that Frequency Band, that Bidder is liable to pay the Government 30% of that Standing Highest Bid.

Without prejudice to any other rights or remedies of the Authority, the Authority may deduct from the Deposit of a Bidder or make a claim 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 two Rounds; and
- (b) the Bidder is not determined as the Standing Highest Bidder of a Frequency Band at the end of the immediately preceding 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 two Rounds; and
- (b) the Bidder is not determined as the Standing Highest Bidder of a Frequency Band at the end of the immediately preceding 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.

4.11 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 paragraph 4.12.1(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 paragraph 4.12.1(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 the 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 (“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 all arrangements as may be necessary, so as to satisfy the Authority that they cease to be Connected Provisional Successful Bidders in relation to each other, and shall jointly submit to the Authority a notification with documentary proof of the arrangements that have been made duly signed by two Authorised Representatives of each of the Connected Provisional Successful Bidders.
- 4.14.2 The arrangements that may be made by the Connected Provisional Successful Bidders pursuant to paragraph 4.14.1 may include one or more of the following:
- (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 to be assigned to the Bidder which made the remaining Standing Highest Bid, as the case may be, does not exceed the Spectrum Cap.
- 4.14.3 If the Connected Provisional Successful Bidders fail to make any

arrangement or submit a joint notification as required under paragraph 4.14.1, the Authority shall conduct an auction among such Connected Provisional Successful Bidders (“Sub-Auction”).

- 4.14.4 The date, the start time, the end time and the location of the Sub-Auction shall be notified by the Authority to the relevant Connected Provisional Successful Bidders.
- 4.14.5 In the Sub-Auction, each of the relevant Connected Provisional Successful Bidders may offer one and only one Bid which shall consist of any cash amount expressed in Hong Kong dollars and cents at or above the Minimum Fee.
- 4.14.6 Subject to paragraph 4.14.7, the Connected Provisional Successful Bidder, which Bid offered in the Sub-Auction and Standing Highest Bid 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 for which it is the Provisional Successful Bidder at the end of the Bidding Stage whilst other Connected Provisional Successful Bidders shall cease to be Provisional Successful Bidders.
- 4.14.7 Where two or more Connected Provisional Successful Bidders offer the same highest aggregate amount referred to in paragraph 4.14.6, the Authority shall determine by random which of them shall remain as a Provisional Successful Bidder. In such case, other Connected Provisional Successful Bidders shall cease to be Provisional Successful Bidders.
- 4.14.8 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 4.14.3 to 4.14.7, as the case may be, the Authority shall publish a notice (“Revised Provisional Successful Bidder Notice”) to announce:
- (a) the arrangement 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 arrangement or the Sub-Auction, as the case may be.

- 4.14.9 If a Connected Provisional Successful Bidder withdraws its Standing Highest Bid in accordance with paragraph 4.14.2(b) or ceases to be a Provisional Successful Bidder as a result of the Sub-Auction conducted in accordance with paragraphs 4.14.3 to 4.14.7, 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 another Provisional Successful Bidder as a result of a change in circumstances which is beyond its control and that it did not have any purpose of circumventing the terms and conditions of this Notice.
- 4.14.10 If a Provisional Successful Bidder fails to satisfy the Authority that it is not a Connected Bidder in relation to another Provisional Successful Bidder or does not take part in the Sub-Auction conducted in accordance with paragraphs 4.14.3 to 4.14.7, as the case may be, the Authority shall disqualify that Provisional Successful 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.

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 ("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, including all the undertakings given in the Bidder Compliance Certificate submitted by that Bidder.

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, or the Revised Provisional Successful Bidder Notice, as the case may be, 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 Where the Authority is satisfied that a Provisional Successful Bidder has complied with the requirement specified in paragraph 5.2.1, the Authority shall return to that Provisional Successful Bidder its Deposit provided that:

- (a) 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;
- (b) where the Deposit is a Letter of Credit, the Authority shall make a claim under the Letter of Credit to the extent of:
 - (i) any amount forfeited by the Authority by way of Penalty under the terms and conditions of this Notice with respect to that Provisional Successful Bidder; and
 - (ii) any amount that Provisional Successful Bidder is liable under paragraph 4.9.2; and
- (c) where the Deposit is in cash, the Authority shall return the balance of the Deposit after deducting:
 - (i) any amount forfeited by the Authority by way of Penalty under the terms and conditions of this Notice with respect to that Provisional Successful Bidder;
 - (ii) any amount that Provisional Successful Bidder is liable under paragraph 4.9.2; and
 - (iii) any amount used for offsetting the Spectrum Utilization Fee payable by that Provisional Successful Bidder as permitted by the Authority under paragraph 5.2.2.

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, including all the undertakings given in the Bidder Compliance Certificate submitted by that

Provisional Successful Bidder.

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 with the terms and conditions of this Notice,
 - (i) determine and publish a notice (“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 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 or the assignment of the relevant Frequency Band under the Licence pursuant to Special Condition 35 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;

if the Authority considers that the disqualification and/or the Penalty are proportionate and reasonable in relation to the breach. For the avoidance of

doubt, if any Insider of a Bidder breaches one or more of the terms and conditions of this Notice, that Bidder shall be deemed to have breached the terms and conditions of this Notice.

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 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 the terms and conditions of this Notice as appropriate, including all the undertakings given in the Bidder Compliance Certificate submitted by that Bidder;
- (b) that Bidder shall, where applicable, 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 or a Successful Bidder is disqualified during the Grant Stage:

- (a) that 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 that disqualified 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, including all the undertakings given in the Bidder Compliance Certificate submitted by that disqualified Bidder.

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; and
- (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 directly or indirectly 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 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

6.5.6 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 an Insider in relation to another 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;

and

- (d) shall not take part or participate in the Auction.

Non-collusion

6.5.7 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;
- (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

6.5.8 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 5:30 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.

7.8.4 Without prejudice and in addition to paragraphs 7.8.1 to 7.8.3, a Bidder shall, in the manner and within the time specified by the Authority, supply such information as the Authority may reasonably require for ensuring the Bidder's compliance with the terms and conditions of this Notice or for investigating whether the Bidder is in compliance with the terms and conditions of this Notice.

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; or
- (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 licence or assign frequency

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, assign any frequency pursuant to section 32H 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 Schedule 3 to this licence and with such power and aerial characteristics as are specified in that Schedule in relation to the class and characteristics of the emission in use.
- 12.2 The apparatus comprised in each radiocommunications installation shall at all times comply with such technical standards as may be issued by the Authority.
- 12.3 The apparatus comprised in a radiocommunications installation shall be of a type approved by the Authority and shall be so designed, constructed, maintained and operated that its use shall not cause any interference to any radiocommunications.
- 12.4 A radiocommunications installation shall be operated only by the licensee or a person authorized by the licensee. The licensee shall not allow an unauthorized person to have access to the apparatus comprised in a radiocommunications installation. The licensee shall ensure that persons operating each radiocommunications installation shall at all times observe the conditions of this licence.
- 12.5 The licensee shall not make a change –
- (a) to any radiocommunications installation; or
 - (b) of the location of any radiocommunications installation,
- without the prior written approval of the Authority.
- 12.6 If any telecommunications installation (including radiocommunications installation) crosses above or may fall or be blown onto any overhead power wire (including electric lighting and tramway wires) or power apparatus it shall be guarded to the reasonable satisfaction of the owner of the power wire or power

apparatus concerned.

13. USE OF FREQUENCIES

13.1 The radiocommunications installation operated by or on behalf of the licensee shall only be operated on such frequencies as the Authority may assign.

14. SAFETY

14.1 The licensee shall take proper and adequate safety measures for the safeguarding of life and property in connection with all installations, equipment and apparatus operated or used, including safeguarding against exposure to any electrical or radiation hazard emanating from the installations, equipment or apparatus operated or used under this licence.

14.2 The licensee shall comply with the safety standards and specifications as may from time to time be prescribed by the Authority and any directions of the Authority in relation to any safety matter.

15. PROHIBITION OF CLAIMS AGAINST GOVERNMENT

15.1 The licensee shall have no claim against the Government in tort or in contract in respect of any disturbance or interruption to any part of the network due to works carried out by or on behalf of the Government which result in disturbance to the network.

16. INDEMNITY

16.1 The licensee shall indemnify the Government against any losses, claims, charges, expenses, actions, damages or demands which the Government incurs or which may be made against the Government as a result of or in relation to the activities of the licensee or any

employee, agent or contractor of the licensee in relation to the provision of the service or the installation, maintenance and operation of the network.

17. CONTRAVENTION BEYOND LICENSEE'S CONTROL

17.1 The licensee shall not be liable for any breach of this licence where it is able to demonstrate, to the reasonable satisfaction of the Authority, that the breach was caused by circumstances beyond its control and that it has taken all reasonable steps open to it to rectify that breach.

17.2 Where the circumstances referred to in General Condition 17.1 are such that there is an outage or interruption in the service affecting a significant number of the licensee's customers for a period of more than 7 days, the licensee shall provide the Authority with a full report in writing detailing the reasons for the breach and indicating when, or if, it will be able to continue to provide the service.

17.3 If the Authority is, after considering a report provided under General Condition 17.2, of the reasonable belief that the licensee would be able to provide the service within a reasonable period of time despite the circumstances outlined in that report, the Authority may direct that the licensee recommence the service within such reasonable period as the Authority may in writing direct. The licensee shall comply with such direction.

18. PUBLICATION OF LICENCE

18.1 The licensee, or the Authority, may at their discretion make the terms and conditions of this licence, including any specific conditions, publicly available in any manner they think fit.

SPECIAL CONDITIONS

1. COMPLIANCE WITH CODES OF PRACTICE

- 1.1. The licensee shall comply with such guidelines or codes of practices which may be issued by the Authority as in his opinion are suitable for the purpose of providing practical guidance on any particular aspect of any conditions of this licence.
- 1.2 Without limiting or affecting in any way the licensee's obligations under any other Condition, the licensee shall comply with any code of practice or guideline which may be issued by the Authority from time to time for the purpose of providing practical guidance to the licensee in respect of:
- (a) the provision of satisfactory service;
 - (b) the protection of customer information;
 - (c) the protection and promotion of the interests of consumers of telecommunications goods and services; and
 - (d) calling line identification and other calling line identification related services.
- 1.3 Before issuing any code of practice or guideline referred to in Special Condition 1.2, the Authority shall carry out such consultation as is reasonable in all the circumstances of the case.
- 1.4 Without limiting the generality of Special Condition 1.2(d), the code of practice or guideline issued under that Special Condition may require the licensee to validate the calling line identification against the authenticated customer in order to prevent fraud and spam.

2. PURCHASE OF ASSETS

2.1 If a licensee is (1) in a dominant position in the relevant telecommunications market within the meaning described in section 7L of the Ordinance; or (2) subject to a universal service obligation specified under the Ordinance, the Government may elect to take over the licensee's undertaking and purchase all or part of its assets if any of the following circumstances occur –

- (i) this licence expires;
- (ii) this licence is revoked;
- (iii) the licensee goes into liquidation; or
- (iv) the licensee ceases to carry on business,

provided that if the Government elects to do so, it shall give notice in writing not later than 90 days in advance of the expiry of this licence, or immediately upon revocation of this licence or within a reasonable time of the happening of the events at Special Condition 2.1(iii) or 2.1(iv).

2.2 The selling price shall be agreed between the Government and the licensee on the basis of the fair market value of those assets at the time of acquisition determined on the basis that this licence remains in force and that the network is continuing to be used for the provision of the service. If no agreement can be reached between the Government and the licensee, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 341).

2.3 For the purpose of Special Condition 2.1,

- (1) where the licensee is in a dominant position in the relevant telecommunications market, the undertaking and assets of the licensee shall be the relevant undertaking and assets of the licensee in relation to its dominant position in that relevant telecommunications market; and
- (2) where the licensee is subject to a universal service obligation, the undertaking and assets of the licensee shall be the relevant undertaking and assets of the licensee in relation to its operation

that is subject to the universal service obligation.

3. REQUIREMENTS FOR INTERCONNECTION

- 3.1 The licensee shall interconnect its service and network with the services and networks of other unified carriers, mobile carriers, fixed carriers or fixed telecommunications network services operators licensed under the Ordinance and, where directed by the Authority, interconnect its service and network with telecommunications networks and services of a type mentioned in section 36A(3D) of the Ordinance. The licensee shall interconnect its service and network with the services and networks of other interconnecting parties under this Special Condition to ensure any-to-any connectivity, i.e. any customer in any one network can have access to any other customer in any interconnecting network and, where directed by the Authority, to any service offered in any interconnecting network.
- 3.2 The licensee shall use all reasonable endeavours to ensure that interconnection is effected promptly, efficiently and on terms, conditions and at charges which are based on the licensee's reasonable relevant costs attributable to interconnection.
- 3.3 The licensee shall provide facilities and services reasonably necessary for the prompt and efficient interconnection of the service and the network with the telecommunications networks or services of the other entities referred to in Special Condition 3.1. Such facilities and services include –
- (a) carriage services for the delivery of codes, messages or signals or other communication across and between the interconnected networks;
 - (b) those necessary to establish, operate and maintain points of interconnection between the licensee's network and the networks of the other entities, including, without limitation, the provision of sufficient transmission capacity to connect between the licensee's network and networks of the other entities;

- (c) billing information reasonably required to enable the other entities to bill their customers;
- (d) facilities specified by the Authority pursuant to section 36AA of the Ordinance; and
- (e) ancillary facilities and services required to support the above types of interconnection facilities and services.

4. NUMBERING PLAN AND NUMBER PORTABILITY

- 4.1 The licensee shall comply with the numbering plan made or approved by the Authority and any directions given by the Authority in respect of the numbering plan.
- 4.2 The licensee shall at the request of the Authority or otherwise consult the Authority about the arrangements for the allocation and reallocation of numbers and codes within the numbering plan.
- 4.3 Where requested by the Authority, the licensee shall prepare and furnish to the Authority proposals for developing, adding to or replacing the numbering plan relating to the service.
- 4.4 The licensee shall, in such manner as the Authority may direct, facilitate the portability of numbers assigned to any customer of any unified carrier licensee, fixed carrier or fixed telecommunications network service licensee, mobile carrier licensee, services-based operator, mobile virtual network operator or any other licensee, as the case may be, so that any number so assigned may be used by that customer should it cease to be a customer of any such entity and become a customer of any other unified carrier licensee, fixed carrier or fixed telecommunications network service licensee, mobile carrier licensee, services-based operator, mobile virtual network operator or any other licensee, as the case may be.
- 4.5 Directions by the Authority under Special Condition 4.4 include reasonable directions concerning,

- (a) compliance with Special Condition 4.4 by the licensee at the licensee's own expenses, or by equitably sharing all relevant costs associated with providing portability of numbers as between the licensee, any other unified carrier licensee, fixed carrier or fixed telecommunications network services licensee, mobile carrier licensee, services-based operator, mobile virtual network operator or any other licensee, as the case may be; and
- (b) facilitation of portability of numbers through such technical arrangement (including but not restricted to a centralized database) as may be specified by the Authority, in co-operation with other parties sharing or maintaining the technical arrangement at such costs as may be directed under Special Condition 4.5(a).

4.6 For the purposes of this Special Condition, "portability of numbers" means the function of the network and the service which enables a customer of the service of a unified carrier licensee, fixed carrier or fixed telecommunications network services licensee, mobile carrier licensee, services-based operator or mobile virtual network operator to become a customer of another unified carrier licensee, fixed carrier or fixed telecommunications network services licensee, mobile carrier licensee, services-based operator or mobile virtual network operator or any other licensee, as the case may be, without changing the number assigned to that customer.

5. ACCOUNTING PRACTICES

5.1 Where directed by the Authority in writing, the licensee shall implement such accounting practices as specified by the Authority. Such accounting practices are to be consistent with generally accepted accounting practices, where applicable, and may include (but are not limited to) accounting practices which allow for the identification of the costs and charges for different services or types or kinds of services.

6. REQUIREMENT TO FURNISH INFORMATION TO THE AUTHORITY

- 6.1 The licensee shall furnish to the Authority, in such manner and at such times as the Authority may request in writing, such information relating to the business run by the licensee under this licence, including financial, technical, and statistical information, accounts and other records, as the Authority may reasonably require in order to perform his functions under the Ordinance and this licence. Information referred to in this condition includes but is not limited to such information as is listed in Schedule 4.
- 6.2 Subject to Special Condition 6.3 the Authority may use and disclose information to such persons as the Authority thinks fit.
- 6.3 Where the Authority proposes to disclose information obtained and the Authority considers that the disclosure would result in the release of information concerning the business or commercial or financial affairs of a licensee which disclosure would or could reasonably be expected to adversely affect the licensee's lawful business or commercial or financial affairs, the Authority will give the licensee a reasonable opportunity to make representations on the proposed disclosure before the Authority makes a final decision whether to disclose the information.

7. TARIFFS

- 7.1 The licensee shall publish and charge no more than the tariffs for the service operated under this licence. The tariffs shall include the terms, as defined under section 7F(2) of the Ordinance, for the provision of the service.
- 7.2 Publication of a tariff shall be effected by –
- (a) publication in the website of the licensee on or before the date on which the tariff becomes effective;
 - (b) the Authority receiving a copy of the tariff on or before the date

as specified by the Authority;

- (c) placing a copy of the tariff in a publicly accessible part of the principal place of business and other business premises of the licensee as specified by the Authority; and
- (d) supplying a copy of the relevant details to any person who may request it, at a charge no greater than is necessary to recover reasonable costs of making and supplying the copy.

7.3 The Authority may by direction in writing, for such period and on such conditions as the Authority may determine, direct that either one or any combination of Special Conditions 7.2(a), (b), (c), and (d), either completely or as to particular obligations imposed under them, shall not apply to the licensee.

8. NOTIFICATION OF DISCOUNTS

8.1 The licensee shall notify the Authority of any discount to its published tariffs offered for any of the services operated under this licence, other than those services listed in Schedule 6.

8.2 Notification of a discount shall be effected upon the Authority's receipt of a copy of the discount to a tariff, including such information prescribed in Schedule 5, at least one day before the discount becomes effective.

8.3 The Authority may publish any discount that the licensee notifies under Special Condition 8.1 after the discount becomes effective, if the Authority considers that it is in the public interest to do so.

8.4 For the purposes of this Special Condition, "discount" means the amount of any payment, credit, rebate, waiver, allowance, gift, or other benefit, directed to a customer, other than:

- (a) an amount in repayment of an amount overpaid to the licensee by

that customer;

- (b) an amount in settlement of a disputed amount billed to that customer by the licensee;
- (c) an amount payable pursuant to a service level or service quality obligation of the licensee to the customer; or
- (d) the amount payable by a customer upon termination of service to that customer.

9. BILLING AND METERING ACCURACY

9.1 The licensee shall take all reasonable steps to ensure that any metering equipment and billing system used in connection with the service is accurate and reliable.

9.2 At the written request of the Authority or at regular intervals to be specified by the Authority, the licensee shall conduct tests on its metering equipment and billing system to assess its accuracy, reliability and conformity to the technical standards, if any, specified by the Authority. The licensee shall submit the test result to the Authority within 14 days after the date of the relevant test or such other longer period as the Authority may determine.

9.3 The licensee shall keep such records of any metering equipment and billing system in such form as may be specified by the Authority and shall supply such records to the Authority as soon as reasonably practical following a written request from the Authority.

10. PROVISION OF SERVICE

10.1 The licensee shall, subject to Schedule 1 and any special conditions of this licence relating to the provision of the service, provide the service on its published terms and conditions and at the tariff published in accordance with Special Condition 7 (as applicable) and at the discount notified to the Authority in accordance with Special

Condition 8 (as applicable), on request of a customer whether or not the customer intends the service to be available for its own use or intends to utilize the service to provide a lawful telecommunications service to third parties.

10.2 Subject to Schedule 1 and any special conditions relating to the provision of the service, the licensee shall comply with a customer request for the service as tariffed by the licensee in accordance with Special Condition 7 where the service can reasonably be provided by the licensee to the customer utilizing the licensee's network in place at the time of the request.

10.3 The licensee shall not unreasonably delay or refuse to provide the service, or impose onerous conditions on the provision of the service, to any customer who owns or operates apparatus of a type which is approved by the Authority and conforms with the technical and performance standards specified in Schedule 3 to this licence. In particular (but without limiting the generality of the foregoing), the licensee shall not discriminate against any customer whose apparatus was acquired other than from the licensee.

11. DIRECTORY INFORMATION AND DIRECTORY INFORMATION SERVICE

11.1 For the purposes of this Special Condition –

(a) “directory information” means information obtained by the licensee in the course of the provision of services under this licence concerning or relating to all or any of the name, address, business and telephone numbers of each of its customers; and

(b) “raw directory information” means the licensee's directory information held in a basic format for the purpose of Special Conditions 11.6, 11.7 and 11.8 relating to customers other than customers who request that directory information about them not to be disclosed.

11.2 This Special Condition applies only in respect of standard printed

directories and other directory databases and services which include all of the names of a licensee's customers listed in English language in alphabetical order, or in Chinese language in order of the number of strokes, or in such other language in an appropriate order as is kept by the licensee, and does not apply to classified directories where customers are listed by business or trade category or to other business or specialised directories.

- 11.3 Subject to compliance with the Personal Data (Privacy) Ordinance (Cap. 486), General Condition 7 and any applicable law, the licensee shall –
- (a) where and as directed by the Authority, publish or arrange at least biennially for the publication of directory information in a printed or other form approved by the Authority, relating to customers, other than customers who request not to be included in a directory to be published (“the printed directory”); and
 - (b) where and as directed by the Authority, establish, maintain and operate, or arrange for the establishment, maintenance or operation of a telecommunications service whereby customers may, upon request, be provided with directory information other than that of customers who request the information relating to them not to be disclosed (“the telephonic directory service”).
- 11.4 The printed directory and the telephonic directory service provided under Special Condition 11.3 shall be made available free of charge, unless approved otherwise by the Authority, to all of the licensee's customers and shall be provided in a manner satisfactory to the Authority.
- 11.5 The licensee is permitted to make commercial arrangements with one or more of the other licensees who have the obligation to provide directory information, to co-operate in the provision jointly by them of either or both of the printed directory and the telephonic directory service which the licensee is required to provide under Special Condition 11.3.

- 11.6 The licensee’s printed directory shall be a unified printed directory and the licensee’s telephonic directory service shall be a unified telephonic directory service and shall utilize a unified directory database, containing directory information as directed by the Authority, except for those customers who request that directory information about them not to be disclosed. Subject to compliance with the Personal Data (Privacy) Ordinance (Cap. 486), General Condition 7 and any applicable law, the licensee shall, as directed by the Authority, provide, and regularly update, raw directory information, for which the licensee will be able to impose a reasonable charge, if applicable, to fairly compensate it for providing the raw directory information. The licensee shall endeavour to agree with each of the other licensees on a reasonable mode of exchange and transmission format for the raw directory information.
- 11.7 Where the licensee is unable to agree with another licensee pursuant to Special Condition 11.6 on what amounts to fair compensation for provision of, or the reasonable mode of exchange and transmission format of, raw directory information, the matter at issue may be referred by either licensee to the Authority for determination. The licensee shall pay to the Authority, as he may require, any costs or expenses incurred by the Authority, including, without limitation, staff costs and expenses, and the financing of liabilities paid out of the Telecommunications Authority Trading Fund in respect of such a determination or determination process.
- 11.8 Except with the prior written approval of the Authority, the licensee shall not make use of raw directory information provided by another licensee other than for discharging its obligations under this Special Condition.
- 11.9 This Special Condition does not apply to the services described in Schedule 7 provided that -
- (a) the licensee (and where appropriate its agents, contractors and resellers) declares such service, in all promoting, marketing or advertising materials concerning such service, as a “Class 2 service” (where the materials are in English text) (or “第二類服

務” where the materials are in Chinese text); or

- (b) the licensee complies with such conditions as may be specified by the Authority in a direction that may be issued by the Authority.

12. EMERGENCY CALL SERVICE

- 12.1 Where the licensee provides the services described in Schedule 7, the licensee shall provide a public emergency call service by means of which any member of the public may, at any time and without incurring any charge, by means of compatible apparatus connected to the network of the licensees, communicate as quickly as practicable with the Hong Kong Police Emergency Centre or other entities as directed by the Authority to report an emergency.
- 12.2 The licensee shall not charge for the use of the public emergency services described in Special Condition 12.1.
- 12.3 Unless otherwise directed by the Authority, emergency messages sent by a person using compatible apparatus connected to the network of the licensee shall be treated by the licensee on an equal basis irrespective of whether or not such apparatus has been registered as that of a customer of the licensee.
- 12.4 Where the licensee provides a public emergency call service pursuant to Special Condition 12.1 and the location of the customer making the call is potentially nomadic, the licensee shall in such manner as may be specified by the Authority maintain the most up-to-date location information of customers and provide free of charge to the Police Force, the Fire Service Department and other relevant Government agencies handling the emergency call service the relevant information relating to the location of a customer calling the emergency service described in Special Condition 12.1 for the sole purpose of responding to that call and (as appropriate) identification that the location of the customer making the call is potentially nomadic. Unless otherwise directed by the Authority, the licensee shall provide a mechanism whereby the customers can update their location information and

remind the customers to update their location information whenever they change the location from which the service is used.

13. RECORDS AND PLANS OF THE NETWORK

13.1 The Authority may disclose the network information in accordance with section 7I(3) of the Ordinance.

13.2 The licensee shall, at the reasonable request of any other licensee under the Ordinance if so authorized by the Authority, give reasonable access to its network information for the facilitation of network planning, maintenance and reconfiguration required for the purposes of Special Condition 3 and section 36AA of the Ordinance. The licensee shall be permitted to charge the requesting party so as to be fairly compensated for the reasonable relevant costs incurred in the provision of such network information.

13.3 Where the licensee and any other licensee that has requested access to the network information in accordance with Special Condition 13.2 are unable to agree what amounts to reasonable access (including confidentiality requirements and fair compensation for the reasonable relevant costs incurred) or a reasonable request, the matter at issue may be referred by either the licensee, the other licensee to the Authority for determination. The licensee shall pay to the Authority, as he may require, any costs or expenses incurred by the Authority, including, without limitation, staff costs and expenses, and the financing of liabilities paid out of the Telecommunications Authority Trading Fund in respect of such a determination or determination process.

14. NETWORK LOCATION

14.1 The licensee shall obtain the consent in writing of the Director of Lands before the commencement of any installation works for its network under, in, over or upon any unleased Government land.

14.2 The licensee shall keep accurate records of the location of the network

installed under, in, over or upon any land.

- 14.3 The licensee shall record the information referred to under Special Condition 14.2 on route plans drawn on an Ordnance Survey Map background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.
- 14.4 The licensee shall, at the request of the Director of Highways, the Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the network and who is authorized to do so by the Director of Highways, the Director of Lands or the Authority, provide free of charge information about the location of the network in diagrammatic or other form. The licensee shall make trained staff available on site to indicate the location and nature of the network to the Director of Highways, the Director of Lands, the Authority or any person authorized by the Director of Highways, the Director of Lands or the Authority.
- 14.5 The licensee shall mark or otherwise identify every wire laid or telecommunications installation installed by the licensee or any contractor on its behalf throughout the course of the wire, or at the location of the installation, so as to distinguish it from any other wire or telecommunications installation laid or installed in Hong Kong.
- 14.6 The licensee shall provide, at such intervals as the Authority may determine, distinguishable surface markers of the underground position of the network.

15. CHANGES TO THE NETWORK

- 15.1 For the purposes of this licence, a change in the network is a material change where the implementation of the change would result in the network no longer being in compliance with any relevant technical standard which the Authority has power to issue.
- 15.2 The licensee shall notify the Authority of any proposals for material changes to the network and provide him with such information as the

Authority reasonably requires.

15.3 The licensee shall not, without the prior consent in writing of the Authority, make any material changes which might reasonably be anticipated by the licensee to affect -

- (a) any telecommunications service or installation connected to the network;
- (b) a person producing or supplying telecommunications apparatus for connection to the network;
- (c) a licensee under the Ordinance;
- (d) a licensee under the Broadcasting Ordinance (Cap. 562); or
- (e) a customer or a consumer of goods and services provided by any person or entity,

if the change is in the opinion of the Authority likely to require modifications or replacements to, or cessation in the production or supply of any of the telecommunications apparatus involved, or if the proposed alteration would require substantial network reconfiguration or rerouting.

15.4 The licensee shall prepare and publish, after consultation with the Authority, its procedures for consulting with and giving notice to persons likely to be affected materially by changes to its network which are required to be notified in accordance with Special Condition 15.2 and any other changes required to be notified pursuant to any technical standard which the Authority has power to issue. Subject to approval of the Authority, the notification procedures to each of the classes of persons likely to be affected under Special Condition 15.3 may differ having regard to the practicality and costs of notifying them.

16. REQUIREMENTS FOR ROAD OPENING

16.1 The licensee shall co-ordinate and co-operate with any other unified carrier licensee, fixed carrier or fixed telecommunications network services licensee under the Ordinance and any other authorized person in respect of road openings and shall, after being consulted by the Authority, comply with any guidelines issued by the Authority.

17. REQUIREMENTS OF INSTALLATION OF LINES OR CABLES

17.1 The network, or any part of it, if installed under, in, over or upon any public street or other unleased Government land, shall be at such depth, course, route and position as may be determined by the Director of Lands or the Director of Highways.

17.2 Without prejudice and in addition to the provisions of any law or Ordinance, in the course of providing, establishing, operating, adjusting, altering, replacing, removing or maintaining the network for the purposes of this licence, or any part of it, the licensee shall –

- (a) exercise all reasonable care, and cause as little inconvenience as possible to the public and as little damage to property as possible; and
- (b) make good any physical damage caused to any person having a lawful interest in the land or being lawfully thereon and reinstate the land within a reasonable time in good and workmanlike manner. When it is not practicable to make good any damage or to reinstate the land to the condition in which it existed prior to the damage, the licensee shall pay, promptly and fully, compensation for any damage caused to any person having an interest or right in the land affected.

18. WORKS IN PUBLIC STREETS

18.1 Where in the course of installing or maintaining the network the licensee needs to open or break up any public street the licensee shall –

- (a) apply to the Director of Highways or the Director of Lands for permission to open or break up the public streets;
- (b) complete the works for which the licensee has opened or broken up the public street with all due speed and diligence, fill in the ground and remove all construction related refuse caused by its works;
- (c) maintain the site of the works in a safe manner including the fencing of the site and the installation of adequate warning lighting at night; and
- (d) reinstate the street immediately after the completion of the works to the satisfaction of the Director of Highways or the Director of Lands.

18.2 If the licensee fails, within any period specified by the Director of Highways or the Director of Lands, to observe any of the requirements of Special Condition 18.1, the Director of Highways or the Director of Lands may take action to remedy the failure. The licensee shall reimburse the Government any such sum as may be certified by the Director of Highways or the Director of Lands to be reasonable cost for executing any works under the terms of this Special Condition 18.2.

19. INTERFERENCE WITH WORKS OF OTHERS

19.1 Where in the course of installing or maintaining the network, the licensee after obtaining the approval of the Director of Highways breaks up or opens any public street it shall not remove, displace or interfere with any telecommunications line, any gas pipe or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current and ancillary installations installed by any other person without that other person's consent.

19.2 In the case where the other person holds a licence under the Land

(Miscellaneous Provisions) Ordinance (Cap. 28), any consent referred to in Special Condition 19.1 is refused, or cannot be obtained for any reason, the licensee may request the consent to proceed from the relevant authority in accordance with the terms of any licence issued to such other person under the Land (Miscellaneous Provisions) Ordinance, if any.

20. LICENSEE TO ALTER NETWORK ON NOTICE

20.1 The licensee shall, within such reasonable time and in such manner as may be directed by notice in writing by the Director of Highways or the Director of Lands, and at its own expense, alter the course, depth, position or mode of attachment of any apparatus forming part of the network.

20.2 Where the Director of Highways or the Director of Lands gives a direction under Special Condition 20.1, Special Condition 18 shall apply as if such alteration were part of the installation or maintenance of the network.

21. WITHDRAWAL AND RETURN OF FREQUENCIES

21.1 Without prejudice to the generality of section 32H of the Ordinance, the Authority may by notice in writing withdraw any frequency previously assigned to the licensee if in the opinion of the Authority the licensee is not making efficient use of that frequency or in exceptional circumstances including where the public interest or international obligations of the Government so require, there is a serious breach of spectrum assignment conditions or serious interference between legitimate spectrum users has to be resolved or minimised.

21.2 The licensee may, subject to prior consent of and conditions specified by the Authority, return any frequency previously assigned to it.

22. UNIVERSAL SERVICE CONTRIBUTION

- 22.1 Where directed by the Authority, the licensee shall pay to one or more fixed carrier licensees or unified carrier licensees or other licensees with a universal service obligation, as the case may be, its relevant share of the universal service contribution to assist those licensees to meet their universal service obligations, if any.
- 22.2 Any universal service contribution shall be subject to periodic review by the Authority as to description and quantum and the licensee shall pay its relevant share of such universal service contribution as the Authority may direct following a review. On the completion of an periodic review, the Authority may supply the licensee such information as the Authority is reasonably able to supply, and subject to any duty of confidentiality, as to the basis on which the universal service contribution is calculated.
- 22.3 For the purpose of this Special Condition 22, the following definitions shall apply –
- (a) Universal service contribution is that sum calculated in accordance with a formula adopted periodically by the Authority, to ensure that any licensee with a universal service obligation (referred to as “universal service provider” in this Special Condition), receives a fair contribution from other licensees as specified by the Authority for serving customers with basic service whom would otherwise not be served because it is not economically viable to do so but who are required to be served under the universal service obligation.
 - (b) Universal service obligation is the obligation by a licensee to provide, maintain and operate the relevant network in such manner as to ensure that a good, efficient and continuous basic service is reasonably available, subject to the Ordinance and the conditions of its licence, and to provide that basic service in such manner.

23. CIRCUMSTANCES OUTSIDE LICENSEE'S CONTROL

23.1 For the avoidance of doubt, General Condition 17.1 of this licence shall apply to these special conditions and the Authority may at his discretion, and on such conditions as he thinks fit, extend any time period within which the obligations of the licensee under these special conditions may be met.

23.2 In exercising his discretion under Special Condition 23.1 with respect to any of the special conditions of this licence, the Authority shall take into account including, without limitation, whether circumstances are such that it would be unreasonable to require compliance by the licensee with the relevant special condition.

24. INSURANCE

24.1 Throughout the currency of this licence, the licensee shall have and maintain a valid insurance policy with a reputable insurance company to cover its third party liabilities in respect of personal injury, death and damage to property, arising out of or in connection with the installation, maintenance and operation of the network or provision of the service. The amount of insurance shall be at least HK\$10,000,000 per occurrence or such sum as the Authority may notify in writing in future.

25. USE OF PUBLIC FACILITIES FOR PROVISION OF SERVICES

25.1 Without limiting or affecting in any way the licensee's obligations under any other condition of this licence, the licensee shall comply with any guidelines or codes of practice which may be issued by the Authority from time to time for the purpose of providing practical guidance to the licensee in respect of the use of Government facilities as well as facilities on Government property and unleased Government land for the provision of services under this licence.

26. LOCATION SERVICES

26.1 Without affecting the generality of General Condition 7, “information of a customer” referred to in General Condition 7.1 and “information provided by its customers or obtained in the course of provision of service to its customers” referred to in General Condition 7.2 shall include any information concerning the locations of customers obtained in the course of provision of the service.

26.2 Where the licensee provides services to customers using the information concerning the locations of the customers obtained in the course of provision of the service, the licensee shall ensure that –

- (a) no such services are provided without the prior consent of the relevant customers; and
- (b) the customers are capable of suspending the use of the information from time to time.

27. PROVISION OF SERVICE TO SUSPECTED STOLEN RADIOCOMMUNICATIONS APPARATUS

27.1 The licensee shall, where directed by the Authority, refuse to provide the service to any person who possesses or uses a radiocommunications apparatus which is stolen or suspected stolen goods.

28. BACKUP POWER SUPPLY

28.1 The licensee shall conform to any guideline or code of practice issued by the Authority in respect of the provision of backup power supply to the service.

28.2 Unless there is backup power supply available in such manner as may be specified by the Authority to maintain continuity of the service without any deterioration in quality of the service during interruption

of mains power supply on the customer's premises, to the network, or to any system or equipment delivering the service to the customer, the licensee shall not provide the service to users whose "lifeline devices" are connected to the service.

28.3 Where no backup power supply is available in such manner as described in Special Condition 28.2, the licensee is deemed to have complied with Special Condition 28.2 if –

(a) the customers have, before or upon subscription of service, confirmed that the Service will not be used by lifeline users or connected with lifeline devices; and

(b) the licensee has affixed a label to the wall socket panel or any equipment installed on the customers' premises or taken other reasonable steps to remind the customers that the service is not suitable for connection to lifeline devices.

28.4 In this Special Condition, a "lifeline device" means a medical alarm or any other device for an elderly, infirm or invalid to summon assistance in the event of an emergency without having to dial manually the telephone number of the emergency service.

29. PAYMENT OF SPECTRUM UTILIZATION FEE

29.1 On the date of issue of this licence, the licensee shall have paid the spectrum utilization fees for use of the spectrum specified in Schedule 3 as designated by the Authority to be subject to payment of the spectrum utilization fees and assigned to the licensee, at such level as determined by auction.

30. PROVISION OF INFORMATION TO CUSTOMERS

30.1 Without prejudice to the other terms and conditions of this licence, the licensee shall provide or make available the following information to the customers when the services are offered –

- (a) Name of the licensee;
- (b) Licence number of the licensee under this licence;
- (c) Customer service hotline number(s);
- (d) Where applicable, the access code(s) or number(s) (including any access password) used for obtaining the services;
- (e) Instructions on how to access the services;
- (f) The tariffs under which the services are offered; and
- (g) The duration or validity period of the services offered.

31. ROLLOUT OF NETWORK

- 31.1 Save with the prior approval of the Authority in writing, the licensee shall comply with the network and service rollout requirement described in Schedule 8.
- 31.2 The licensee shall provide such information in such manner and at such times as the Authority may require to demonstrate its compliance with Special Condition 31.1.

31A. PERFORMANCE BOND

- 31A.1 On the date of issue of this licence, the licensee shall have provided to the Authority a duly issued performance bond in Hong Kong dollars in the amount, on the Milestone and with the Deadline for Compliance stipulated in the Annexe to the performance bond appearing in Schedule 9.
- 31A.2 The performance bond to be submitted pursuant to Special Condition 31A.1 shall be in the form appearing in Schedule 9 with only such

amendments thereto as may previously have been agreed in writing by the Authority.

31A.3 The performance bond to be submitted pursuant to Special Condition 31A.1 shall be issued by a Qualifying Bank or other surety approved in writing by the Authority. If the licensee shall wish to change to a different Qualifying Bank or another surety, the licensee shall give full written details of the proposed replacement to the Authority and seek consent from the Authority 14 days prior to the actual change. The Authority shall within 14 days after receipt of the proposal notify the licensee in writing whether there is any objection to the proposed replacement. If the Authority does not object within 14 days, the Authority is presumed to have given his consent. For the purposes of this Special Condition 31A.3, “Qualifying Bank” means an institution holding a full banking licence under the Banking Ordinance (Cap. 155) whose long term issuer rating is, or is higher than:

- (a) one or more of the following:
 - (i) Moody’s A2;
 - (ii) Standard & Poor’s A; or
 - (iii) Fitch Ratings’ A
- (b) a rating of a body other than a body listed in paragraph (a) which, in the opinion of the Authority, is equivalent to one or more of the ratings listed in that paragraph.

31A.4 Notwithstanding any other conditions of this licence:

- (a) upon failure by the licensee to provide a performance bond in accordance with the foregoing provisions of this condition, the Authority may cancel or revoke this licence notwithstanding that the licensee may have embarked on its performance;
- (b) any rights of or claim by the Authority under the performance bond submitted by the licensee pursuant to this condition, including any replacement thereof, shall be without prejudice to the other rights of the Authority under this licence and of the Authority, the Chief Executive in Council and the Chief

Executive under the laws, regulations, guidelines and codes of practice affecting telecommunications in Hong Kong from time to time.

- 31A.5 The licensee shall upon demand by the Authority in writing submit proof in a form satisfactory to the Authority by a date specified by the Authority that it has complied with the Milestone by the Deadline for Compliance as specified in the Annexe to the performance bond shown in Schedule 9.

32. DISPOSAL OF ASSETS

- 32.1 If a licensee is (1) in a dominant position in the relevant telecommunications market within the meaning described in section 7L of the Ordinance; or (2) subject to a universal service obligation specified under the Ordinance; or (3) required to pay spectrum utilization fee as prescribed under the Ordinance for the provision of mobile or wireless carrier services under this licence, unless with the prior written consent of the Authority (which consent shall not be unreasonably withheld or delayed), the licensee shall not during the validity period of this licence dispose or agree to dispose of any interest (as determined in accordance with Special Condition 32.2) in the assets or undertaking of the licensee which, cumulatively with the value of any and all disposals or agreements to dispose of interests in those assets or undertaking prior to the disposal or agreement in question and after the date of issue of this licence, exceeds 15% as at the date of the disposal or agreement in question of the net asset value of the licensee (as determined in accordance with Special Condition 32.2).
- 32.2 The value of any interest or undertaking, and the net asset value, of the licensee shall be determined by a certified public accountant (practising) (being one who has the qualifications as prescribed under the Professional Accountants Ordinance (Cap. 50)) as may be nominated, or whose appointment by the licensee is agreed in writing, by the Authority.

32.3 In the event of any dispute between the Authority and the licensee as to the value of the interest, undertaking or the net asset value referred to in Special Condition 32.1, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 341).

32.4 For the purpose of Special Condition 32.1,

- (1) where the licensee is in a dominant position in the relevant telecommunications market, the interest in the assets or undertaking of the licensee shall be the relevant interest in the assets or undertaking of the licensee in relation to its dominant position in that relevant telecommunications market;
- (2) where the licensee is subject to a universal service obligation, the interest in the assets or undertaking of the licensee shall be the relevant interest in the assets or undertaking of the licensee in relation to its operation that is subject to the universal service obligation;
- (3) where the licensee is required to pay spectrum utilization fee as prescribed under the Ordinance for the provision of mobile or wireless carrier services under this licence, the interest in the assets or undertaking of the licensee shall be the relevant interest in the assets or undertaking of the licensee in relation to its operation that is subject to the payment of spectrum utilization fee for the provision of mobile or wireless carrier services under this licence.

33. ACCESS TO BUILDINGS

33.1 The licensee shall not enter into any agreement, arrangement or understanding, whether legally enforceable or not, with any person, or receive any unfair advantage from a business carried on by it or any other person (whether associated or affiliated with it or not), which, in the opinion of the Authority, has or is likely to have the purpose or effect of preventing or restricting fair and non-discriminatory access to

any buildings for the installation, operation or maintenance of any cables, equipment or network for the provision of service similar to the service by other operators licensed by the Authority.

33.2 The licensee shall comply with any guidelines or codes of practice that may from time to time be issued by the Authority for the facilitation and coordination of fair, non-discriminatory and orderly access to buildings for the installation, operation or maintenance of any cables, equipment or network for the provision of the service and other services similar to the service by other operators licensed by the Authority.

33.3 Without prejudice and in addition to section 18 of the Ordinance and General Condition 9, the licensee shall not, in providing, establishing, operating, adjusting, altering, replacing, removing or maintaining any telecommunications line or telecommunications installation in, over or upon any land for the purposes of this licence, obstruct, interfere with, or cause or permit damage to, any other telecommunications line or telecommunications installation, or means of telecommunications or telecommunications service or any gas or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current.

34. CHANNELS WITHIN IN-BUILDING COAXIAL CABLE DISTRIBUTION SYSTEMS

34.1 Subject to Special Conditions 34.2, 34.3, 34.4, 34.5, 34.6 and 34.7, the service operated over the in-building coaxial cable distribution systems (“IBCCDS”) of the network shall use only such channels as may from time to time be assigned by the Authority and for such purposes and under such conditions as may be specified by the Authority by notice in writing to the licensee.

34.2 The licensee shall accept that regulation of the use of channels within the IBCCDS of the network by the Authority is necessary because of the limitation in the number of channels available and the existence of competing demand for the channels.

- 34.3 The Authority may at any time, by giving not less than 12 months' notice in writing to the licensee, require it upon such date as may be specified in the notice to cease using any channel previously assigned to it to carry the service, if having given the licensee sufficient opportunities to make representations, the Authority forms the opinion that the licensee is not making efficient use of that channel.
- 34.4 The Authority may at any time, by giving not less than 12 months' notice in writing to the licensee, require it upon such date as may be specified in the notice to vary the purposes for which and the conditions under which the channels are to be used.
- 34.5 The Authority may at any time, by giving not less than 12 months' notice in writing to the licensee, require it upon such date as may be specified in the notice to cease using any channel previously assigned to it by the Authority to carry the service and to use such new channel at its own expenses as the Authority may assign.
- 34.6 The licensee shall comply with any notice that may from time to time be issued by the Authority under this Special Condition 34.
- 34.7 The licensee shall comply with the guidelines and codes of practice issued by the Authority from time to time on the use of the IBCCDS channels.

35. COMPLIANCE WITH AUCTION RULES

- 35.1 The licensee shall comply with all the terms and conditions of the Notice including all the undertakings given by the licensee in its Bidder Compliance Certificate submitted in the auction.
- 35.2 If the licensee is found, to the reasonable satisfaction of the Authority, to have been involved in an act, or omission of any act, constituting a breach of the terms and conditions of the Notice and the undertakings given by the licensee in its Bidder Compliance Certificate, then the Authority may cancel, withdraw or suspend this licence or the

assignment of the relevant frequency band made under this licence. For the avoidance of doubt, the Authority's power to cancel, withdraw or suspend this licence or the assignment of the relevant frequency band is without prejudice, and in addition, to any rights or remedies of the Authority under any performance bond submitted by the licensee pursuant to this licence or its replacement and any other rights or remedies of the Authority, the Chief Executive, the Chief Executive in Council under this licence, the Ordinance, any regulations made under the Ordinance or any other law.

36. SERVICE CONTRACTS AND DISPUTE RESOLUTION

36.1 The licensee shall comply with all codes of practice issued by the Authority from time to time in respect of the requirements to apply in the contracting of telecommunications services to end users.

36.2 The contracting requirements referred to in Special Condition 36.1 may include the following –

- (a) the style, format and structure of service contract documentation;
- (b) the manner of entering into and terminating service contracts;
- (c) the information to be included in or in connection with service contracts and the performance of the services;
- (d) the submission of disputes between end users and the providers of telecommunications services to independent dispute resolution, pursuant to a scheme approved by the Authority; and
- (e) other terms and conditions or provisions for the protection of the interests of end users.

36.3 Before issuing any code of practice for the purposes of Special Condition 36.1, the Authority shall carry out such consultation as is reasonable in the circumstances.

37. INTERPRETATION

37.1 For the avoidance of doubt and for the purposes of these Special Conditions–

“mobile virtual network operator” means the holder of public non-exclusive telecommunications services licence for provision of mobile virtual network operator services;

“Notice” means the Notice dated 11 November 2011 issued by the Authority in exercise of his powers conferred by section 32I of the Ordinance and the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap.106AC) and all other powers enabling him to specify the terms and conditions of the auction and the payment of the spectrum utilization fees; and

“services-based operator” means the holder of a services-based operator licence.

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

37.3 The singular includes the plural and vice versa.

SCHEDULE 1
SCOPE OF THE SERVICE

[To be determined, subject to the technical proposal submitted by the licensee]

***** End of Schedule 1 *****

SCHEDULE 2

DESCRIPTION OF NETWORK

All such telecommunications installations established, maintained, possessed or used whether owned by the licensee, leased, or otherwise acquired by the licensee for the purpose of providing the public telecommunications network services specified in Schedule 1.

*** End of Schedule 2 ***

SCHEDULE 4

**REGULATORY ACCOUNTING
AND INFORMATION PROVISION REQUIREMENTS**

1. Accounting information according to the practices as directed by the Authority under Special Condition 5 for each service provided under this licence or as specified by the Authority.

*** End of Schedule 4 ***

SCHEDULE 5

TERMS OF DISCOUNT TO PUBLISHED TARIFFS

1. Prices of service after discount.
2. Duration of discount.
3. Duration of offer.
4. General description of promotion plan including but not limited to eligible customers and tie-in period.
5. Conditions governing premature termination.
6. Others as specified by the Authority.

*** End of Schedule 5 ***

SCHEDULE 6

**EXEMPTION FROM NOTIFICATION OF DISCOUNTS UNDER
SPECIAL CONDITION 8.1**

[To be determined, subject to the technical proposal submitted by the licensee]

***** End of Schedule 6 *****

SCHEDULE 7

**DESCRIPTION OF SERVICES
REFERRED TO IN SPECIAL CONDITIONS 11 AND 12**

An internal telecommunications service

- (a) for carrying real-time voice communications (which may be integrated with other types of communications) to and from parties assigned with numbers from the numbering plan of Hong Kong as stipulated in Special Condition 4.1; and
- (b) to which customers are assigned numbers from the numbering plan of Hong Kong as stipulated in Special Condition 4.1 by the licensee.

*** End of Schedule 7 ***

SCHEDULE 8

NETWORK AND SERVICE ROLLOUT REQUIREMENT

1. The licensee shall install, maintain and use equipment for the purposes of the network and the service such that:
 - (a) where the scope of the service stipulated in Schedule 1 of this licence includes a fixed service, coverage of the network and the service shall be provided on or before [date (the expiry of 5 years from the issue of this licence)] and maintained thereafter, to a minimum of 200 commercial and/or residential buildings in Hong Kong;
AND
 - (b) where the scope of the service stipulated in Schedule 1 of this licence includes a mobile service, coverage of the network and the service shall be provided on or before [date (the expiry of 5 years from the issue of this licence)] and maintained thereafter, to an area where at least 50% of the population of Hong Kong live from time to time.

2. For the purpose of paragraph 1 of this Schedule, the following definitions shall apply:-
 - (a) a commercial building is a building consisting of at least 20 levels above street levels which is predominantly used for commercial purposes; and
 - (b) a residential building is a building consisting of at least 15 levels above street levels which is predominantly used as a dwelling place.

*** End of Schedule 8 ***

SCHEDULE 9

FORM OF PERFORMANCE BOND

THIS PERFORMANCE BOND is made on [DATE]

BY:

(1) [BANK], a banking corporation incorporated in [] [with limited liability] whose [registered office/principal place of business in Hong Kong] is at [] (the “Bank”).

IN FAVOUR OF:

(2) **THE TELECOMMUNICATIONS AUTHORITY OF HONG KONG** appointed under section 5 of the Telecommunications Ordinance whose address is at 29th Floor, Wu Chung House, 213 Queen’s Road East, Wanchai, Hong Kong (the “Authority”).

WHEREAS:

Pursuant to the terms and conditions of the Notice dated 11 November 2011 issued by the Authority in exercise of his powers conferred by section 32I of the Ordinance and the Regulation and all other powers enabling him to specify the terms and conditions of the auction in which the Licensee has participated and Special Condition 31A of the unified carrier licence to be issued to the Licensee on the date of issue (the “Licence”), the Licensee is required to provide to the Authority a performance bond issued by a Qualifying Bank, in order to secure the due performance of the Milestone set out in the Annexe by the Licensee. The Bank is a Qualifying Bank.

1. INTERPRETATION

1.1 Definitions

In this Performance Bond:

“Bonded Sum” means the amount set out in the Annexe;

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

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

“Licensee” means [] at [];

“Ordinance” means the Telecommunications Ordinance (Cap. 106, Laws of Hong Kong);

“Qualifying Bank” has the meaning given to it in Special Condition 31A.3 of the Licence; and

“Regulation” means the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap.106AC, Laws of Hong Kong).

1.2 Construction

In this Performance Bond, unless the contrary intention appears,

- (a) a provision of law is a reference to that provision as amended, extended or reenacted;
- (b) a reference to any document shall include that document as it may be amended, novated or supplemented from time to time;
- (c) a clause is a reference to a clause of this Performance Bond;
- (d) a reference to any person shall include its successors and assigns; and
- (e) headings are for convenience only and are to be ignored in construing this Performance Bond.

2. PERFORMANCE BOND

- 2.1 In the event of default by the Licensee in respect of the Deadline for Compliance with the Milestone set out in the Annexe the Bank shall upon demand made by the Authority in writing and without proof or conditions satisfy and discharge without cavil or delay the Bonded Sum provided that the aggregate liability of the Bank under this Performance Bond in respect of the Milestone shall not exceed the Bonded Sum in respect of that Milestone set out in the Annexe.
- 2.2 The obligations under this Performance Bond constitute direct primary, irrevocable and unconditional obligations of the Bank.
- 2.3 The liability of the Bank under this Performance Bond shall reduce, on each occasion on which the Bank pays any part of the Bonded Sum to the Authority, the amount of such reduction being equal to the amount paid, and the Bank shall be discharged from all further liability under this Performance Bond upon such liability being reduced to zero or the issue of the certificate of completion by the Authority of the ultimate Milestone set out in the Annexe.
- 2.4. The liability of the Bank under this Performance Bond shall cease on whichever of the following events first occurs:
- (a) payment by the Bank of all the Bonded Sum in full to the Authority; or
 - (b) issue of any certificate of completion by the Authority in respect of the Milestone set out in the Annexe.
- 2.5 This Performance Bond shall expire on [the date 120 days after the deadline for compliance specified in the Annexe]. Any claim hereunder must be received by the Bank in writing before that date.

3. MAXIMUM LIMIT

The maximum amount for which the Bank shall be liable under this

Performance Bond shall not exceed the aggregate of:

- (a) the Bonded Sum; and
- (b) the aggregate of all sums payable under clauses 4 and 7.

4. INTEREST AND COSTS

The Bank shall pay interest on the Bonded Sum from the date of demand to the date of payment in full (both dates inclusive) compounded quarterly (both before and after judgment) at 2 per cent per annum over the prime rate quoted by The Hongkong and Shanghai Banking Corporation Limited from time to time. The interest shall be payable on demand and accrue from day to day on the basis of the number of days elapsed and a 365-day year.

5. WAIVER OF DEFENCES

Subject to Clauses 2.3, 2.4 and 2.5, the liability of the Bank under this Performance Bond shall remain in full force and effect and not be prejudiced, affected, discharged, impaired or diminished by any act, omission or circumstance which, but for this clause, might prejudice, affect, discharge, impair or diminish that liability including, without limitation, and whether or not known to the Bank:

- (a) any time or waiver granted to, or release of or composition with, the Licensee or any other person;
- (b) any suspension, cancellation, revocation, withdrawal or amendment of, or variation to, the Licence (including, without limitation, extensions of time for performance) or any concession or waiver by the Authority, the Government of Hong Kong, the Chief Executive in Council, the Chief Executive or, without limitation, any other person in respect of the Licensee's obligations under the Licence;

- (c) any forbearance or waiver of any right, power or remedy the Authority, the Government of Hong Kong, the Chief Executive in Council or the Chief Executive or, without limitation any other person, may have against the Licensee;
- (d) any act or omission of the Licensee pursuant to any other arrangement with the persons referred to in (c) above or with the Bank; or
- (e) the liquidation, administration, dissolution, lack of capacity or authority, or any change in the name or constitution of the Licensee or the Bank.

6. ADDITIONAL SECURITY

This Performance Bond is in addition to and not in substitution for or prejudiced by any present and future guarantee, lien or other security held by the Authority as security for the obligations of the Licensee. The Authority's rights, powers and remedies under this Performance Bond are in addition to and not exclusive of those provided by law.

7. NO DEDUCTIONS AND TAXES

All sums payable under this Performance Bond shall be paid in full without set-off or counter-claim and free and clear of, and without deduction of or withholding for, or on account of, any present or future taxes, duties or other charges. If any payment is subject to any tax, duty or charge, or if the Bank is required by law to make any deduction or withholding, the Bank shall pay the tax, duty or charge and shall pay to the Authority any additional amounts as shall result in the Authority receiving a net amount equal to the full amount which it would have received had no payment, deduction or withholding been required.

8. PAYMENTS

All payments to be made by the Bank under this Performance Bond shall be made in immediately available funds in the currency and in the manner as the Authority may specify.

9. WARRANTY

The Bank warrants that this Performance Bond constitutes its legally binding obligations enforceable in accordance with its terms (subject to insolvency laws and creditors' rights generally and principles of equity) and does not conflict with any law, regulation or instrument binding on or relating to the Bank and that this Performance Bond is within its powers and has been duly authorized by it.

10. INFORMATION AND CONSENTS

The Bank shall:

- (a) supply the Authority with publicly available information as to itself and (if applicable) its subsidiaries as the Authority may reasonably request;
- (b) promptly obtain all official and other consents, licences and authorizations necessary or desirable for the entry into and performance of its obligations under this Performance Bond, whether or not performance has become due; and
- (c) promptly notify the Authority if the Bank ceases to be a Qualifying Bank.

The Bank warrants that all consents, licences and authorizations required or desirable under existing law in accordance with this clause have been obtained.

11. NOTICES

11.1 All documents arising out of or in connection with this Performance Bond shall be served:

(a) on the Authority, at 29th Floor, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong marked for the attention of the Authority; and

(b) on the Bank, at its address stated in this Performance Bond.

11.2 The Authority and the Bank may change their respective nominated addresses for service of documents to another address in Hong Kong by giving not less than five Business Days' prior written notice to each other. All notices, demands and communications must be in writing.

11.3 Any notice, demand or communication sent to the Authority or the Bank as provided in this clause shall be deemed to have been given, if sent by post, two Business Days after posting (and in proving delivery it shall be sufficient to provide that the notice, demand or communication was properly addressed and put in the post), if delivered by hand, at the time of delivery or, if sent by facsimile, at the time of despatch.

12. ASSIGNMENTS

The Bank shall not assign, transfer, novate or dispose of any of its rights and obligations under this Performance Bond. The Authority may assign all or any part of its rights and benefits under this Performance Bond at any time without the consent of the Licensee or the Bank.

13. REMEDIES AND WAIVERS

No delay or omission of the Authority in exercising any right, power

or remedy under this Performance Bond shall impair that right, power or remedy or constitute a waiver of it nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise of it or the exercise of any other right, power or remedy. The rights, powers and remedies provided in this Performance Bond are cumulative and not exclusive of any rights, powers or remedies which the Authority would otherwise have.

14. GOVERNING LAW AND FORUM

14.1 This Performance Bond shall be governed by laws for the time being in force in Hong Kong and the Bank agrees to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

14.2 The Bank irrevocably appoints [] of [] as its agent for service of process in connection with proceedings in the Hong Kong Courts and agrees that any process shall be sufficiently and effectively served on it if delivered to that agent at that address, or in any other manner permitted by law. Nothing in this clause is to limit the right of the Authority to take proceedings against the Bank in any other court of competent jurisdiction but this provision applies only to the extent that it does not prejudice the above agreement as to the jurisdiction of the Hong Kong Courts.

14.3 The Bank irrevocably and generally consents in respect of any legal action or proceedings anywhere (whether for an injunction, specific performance, damages or otherwise) arising out of or in connection with this Performance Bond to the giving of any relief or the issue of any process in connection with it including, without limitation, the making, enforcement or execution against any assets whatsoever (irrespective of their use or intended use) of any order (whether or not pre-judgment) or judgment which may be made or given there, and irrevocably and unconditionally waives, in any such action or proceedings anywhere, any immunity from that action or those proceedings, from attachment of its assets prior to judgment, other attachment of assets and from execution of judgment or other enforcement.

15. COUNTERPARTS

This Performance Bond may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Performance Bond.

IN WITNESS whereof this Performance Bond has been executed and delivered as a deed on the date which appears first on page 1.

THE COMMON SEAL of []
was affixed hereto
in the presence of:

Director

Director/Secretary

OR

SIGN, SEALED AND DELIVERED)
by [])
for and on behalf of and as)
lawful attorney of)
[] pursuant to a power of)
attorney dated [] given by)
[])
in the presence of:)

[Name]
[Occupation]

(Note: For verification of the above execution, where the Bank executes under its common seal, please provide a certified true copy of the Bank's Memorandum and Articles of Association containing the relevant sealing provisions; where the Bank executes under a power of attorney, please provide a certified true copy of the relevant power of attorney or the equivalent of the Bank.)

Annexe

Milestone	Deadline for Compliance	Bonded Sum Payable
<p>Where the scope of the service stipulated in Schedule 1 of the Licence includes a fixed service, coverage of the network and the service shall be provided to a minimum of 200 commercial and/or residential buildings in Hong Kong;</p> <p>AND</p> <p>where the scope of the service stipulated in Schedule 1 of the Licence includes a mobile service, coverage of the network and the service shall be provided to an area where at least 50% of the population of Hong Kong live from time to time.</p>	<p>[Date (the expiry of the 5th year from the issue of the Licence)]</p>	<p>HK\$150 million</p>

*** End of Schedule 9 ***

(Miss Eliza Lee)
Telecommunications Authority

Date: XXXX

APPENDIX 2
Frequency Bands, Eligibility Points and Minimum Fees

FREQUENCY BANDS, ELIGIBILITY POINTS AND MINIMUM FEES

Frequency Band	Frequency Range (MHz)	Bandwidth of the Frequency Band	Eligibility Point required for bidding the Frequency Band	Minimum Fee
A1	2300 – 2330	30 MHz	1	HK\$150 million
A2	2330 – 2360	30 MHz	1	HK\$150 million
A3	2360 – 2390	30 MHz	1	HK\$150 million

For the purpose of the Sub-Auction referred to in paragraphs 4.14.3 to 4.14.7 of the Notice, the Minimum Fee shall be HK\$0.

**APPENDIX 3
Application Form**

**AUCTION OF RADIO SPECTRUM
IN THE 2.3 GHz BAND
FOR PROVISION OF
BROADBAND WIRELESS ACCESS SERVICES**

APPLICATION FORM

OFFICE OF THE TELECOMMUNICATIONS AUTHORITY

A. APPLICATION FORM

A.1 The Bidder

A.1.1 Details of the Bidder

1. Registered Name of the Bidder:
2. Company Number:
3. Registered Office Address:
4. Correspondence Address:
5. Company Website:
6. Telephone No. (General):
7. Fax No. (General):

Signed:.....

Signed:.....

A.1.2 Contact details of the Bidder

Address:	
Telephone Number:	
Fax Number:	
E-mail Address:	

A.1.3 Principal contacts of the Bidder

Contact 1	
Name:	
Title and/or Position:	
Telephone Number:	
Mobile Number:	
Fax Number:	
E-mail Address:	

Signed:.....

Signed:.....

Contact 2	
Name:	
Title and/or Position:	
Telephone Number:	
Mobile Number:	
Fax Number:	
E-mail Address:	

Contact 3	
Name:	
Title and/or Position:	
Telephone Number:	
Mobile Number:	
Fax Number:	
E-mail Address:	

Signed:.....

Signed:.....

A.1.4 Bank account (for reimbursement of the Deposit)

Name of Bank:	
Account Name:	
Account Number:	

A.1.5 Directors and other key members of the management of the Bidder

Name:	Title and/or Position:

If additional space is required, please attach additional sheets labelled A.1.5(a), A.1.5(b) etc.

Signed:.....

Signed:.....

A.2 Bidder’s Authorised Representatives

1.	Name:	
	Employer (or relationship between this representative and the Bidder):	
	Title and/or Position:	
	ID Card/Passport Number:	
	Signature:	

2.	Name:	
	Employer (or relationship between this representative and the Bidder):	
	Title and/or Position:	
	ID Card/Passport Number:	
	Signature:	

3.	Name:	
	Employer (or relationship between this representative and the Bidder):	
	Title and/or Position:	
	ID Card/Passport Number:	
	Signature:	

Signed:.....

Signed:.....

4	Name:	
	Employer (or relationship between this representative and the Bidder):	
	Title and/or Position:	
	ID Card/Passport Number:	
	Signature:	

5.	Name:	
	Employer (or relationship between this representative and the Bidder):	
	Title and/or Position:	
	ID Card/Passport Number:	
	Signature:	

6.	Name:	
	Employer (or relationship between this representative and the Bidder):	
	Title and/or Position:	
	ID Card/Passport Number:	
	Signature:	

Signed:.....

Signed:.....

A.3 Insiders

Name:	Employer:	Title and/or Position:	Role:

Signed:.....

Signed:.....

A.4 Corporate and shareholding structures of the Bidder

If additional space is required, please attach additional sheets labelled A.4(a), A.4(b) etc.

Signed:.....

Signed:.....

A.5 Brief Service and Technical Proposal

A.5.1 Please briefly describe the scope of service proposed to be provided using a Frequency Band.

If additional space is required, please attach additional sheets.

Signed:.....

Signed:.....

A.5.2 Please provide a brief description of the technical configuration of the networks and systems to be deployed for the operation of the proposed service including network infrastructure and components, the technology to be employed, the likely choice of equipment and system design.

If additional space is required, please attach additional sheets.

Signed:.....

Signed:.....

A.5.3 Please provide a brief description of the technical expertise available for the operation of the proposed service.

If additional space is required, please attach additional sheets.

Signed:.....

Signed:.....

A.6 Checklist

		Please tick:
1.	Complete sections A.1, A.2, A.3, A.4 and A.5 of the Application Form.	<input type="checkbox"/>
2.	Sign each page of the Application Form by two Authorised Representatives who are directors of the Bidder.	<input type="checkbox"/>
3.	Provide a certified true copy of the Memorandum and Articles of Association of the Bidder or equivalent documents.	<input type="checkbox"/>
4.	Provide certified true copies of the Certificate of Incorporation and the Business Registration Certificate of the Bidder.	<input type="checkbox"/>
5.	Provide the signed Bidder Compliance Certificate in the format set out at Appendix 4 of the Notice.	<input type="checkbox"/>
6.	Provide the signed Declaration in section A.7.	<input type="checkbox"/>
7.	Confirm either: i) that the Deposit has been provided together with this Application Form as a Letter of Credit in the same format as set out at Appendix 5 of the Notice; or ii) that the Deposit has been provided in cash (cleared funds) to the Authority's Account by telegraphic transfer.	<input type="checkbox"/> <input type="checkbox"/>
8.	Confirm either: i) that a certified true copy of the relevant power of attorney or the equivalent of the issuing bank is submitted together with the Letter of Credit; or ii) that a pay-in slip consisting of the registered name of the Bidder which proves the payment of the Deposit in cash is submitted.	<input type="checkbox"/> <input type="checkbox"/>
9.	Provide one business card of each of the Bidder's Authorised Representatives.	<input type="checkbox"/>

Signed:.....

Signed:.....

10.	Provide one copy of the latest annual reports and accounts of the Bidder and the Listed Companies pursuant to B.4 i) of the Application Form Instructions.	<input type="checkbox"/>
11.	Provide five copies (one original and four copies) of the Application Form. All supporting documents must be included in each copy, except for the business cards provided pursuant to B.2 and the annual reports and accounts provided pursuant to B.4 i) of which only a single set is required.	<input type="checkbox"/>

Signed:.....

Signed:.....

A.7 Declaration

We, and, the undersigned, as directors and Authorised Representatives of the Bidder, confirm and acknowledge:

- (a) that this Application, once submitted to the Authority, cannot be withdrawn other than in accordance with the Notice;
- (b) that this Application commits the Bidder and its Insiders to comply with the terms and conditions of the Auction;
- (c) that this Application commits the Bidder to bid for one Frequency Band in the first Round of the Bidding Stage at the Minimum Fee;
- (d) that, in case the Bidder is the only Qualified Bidder, the Bidder may subject to the terms and conditions of the Notice become the Provisional Successful Bidder of the Frequency Band it selects and that this Application commits the Bidder to comply with all the relevant terms and conditions.

We confirm that the factual information provided in, or in support of, the Application is, to the best of the Bidder’s knowledge, information and belief, true, accurate and has no material omissions and that any opinion expressed is honestly held.

Signed:

Authorised signature
(name and position)

Authorised signature
(name and position)

Company seal affixed

Date: _____

END OF APPLICATION FORM

B. APPLICATION FORM INSTRUCTIONS

Instructions are set out below on the information required in the Application Form, and the form of its presentation. Unless otherwise stated, terms used in the Application Form and these instructions shall have the meanings given to them in the Notice.

B.1 The Bidder

B.1.1 Details of the Bidder

Please provide the registered name of the Bidder (the “Bidder”), its company number appearing on the Certificate of Incorporation issued by the Companies Registry of Hong Kong, registered office address (and principal place of business if different) and official fax and telephone numbers.

Separately, please provide certified true copies of the Certificate of Incorporation and the Business Registration Certificate of the Bidder.

B.1.2 Contact details of the Bidder

Please provide the address, telephone number and fax number within the Hong Kong Special Administrative Region at which the Bidder can be reached between 9:00 am and 6:00 pm Hong Kong time. This address will be considered as the Bidder’s official address for written correspondence for matters relating to the Auction and will generally be used for non-time critical communication.

B.1.3 Principal contacts of the Bidder

Please provide the names, titles (e.g. executive director) and/or positions (e.g. Head of Telecom) and contact details (telephone number, mobile number, fax number and e-mail address) for three persons that the Authority may contact directly for urgent or time-critical communication. These contacts must be fully authorised under law and the Bidder’s constitutional documents to represent the Bidder for all acts that may be related to the Auction and to the grant of a Licence. The contacts should be listed in the order in which the Bidder would prefer the Authority to contact them. Such persons should be aware that the Authority may contact them outside normal working hours.

B.1.4 Bank Account (for reimbursement of the Deposit)

Please provide the details of the Bidder’s bank account into which the Deposit (if provided in cash) should be returned in accordance with the provisions of the Notice.

B.1.5 Directors and other key members of the management of the Bidder

Please provide the names, titles and/or positions of all the directors and any other key members of the management of the Bidder.

B.2 Bidder's Authorised Representatives

Please provide the name, employer, title and/or position (together with one business card), ID Card number or passport number and specimen signature of each Authorised Representative who is authorised to provide confirmations, submit bids and act in any other way necessary on behalf of the Bidder during the Auction. The table in section A.2 of the Application Form will be used by the Authority to verify the signatures for matters relating to the Auction.

If any Authorised Representative is not an employee of the Bidder, please state clearly its relationship with the Bidder in the "employer" section.

If the Bidder wishes to substitute one or more of its Authorised Representatives, it shall give the Authority at least one Business Day prior written notification of the details of such change.

B.3 Insiders

Please provide the names, employer, title and/or position, and roles of all the Insiders to the Application and the Bidder's participation in the Auction. If any of the Insiders is not an employee of the Bidder, then the information provided must state clearly the relationship between this Insider and the Bidder. The description of the role must be sufficient for the Authority to determine what function that Insider has played or will play during the Auction.

B.4 Corporate and shareholding structures of the Bidder

Please provide, in the format described hereafter, the following information regarding the ownership structure of the Bidder:

- i) Please provide detailed information on corporate and shareholding structures of the Bidder including each person (which may be individual or body corporate; see the interpretation of "person" given in the Notice)
 - (aa) which has a shareholding of more than 15% in the Bidder;
 - (bb) in which the Bidder has a shareholding of more than 15%;
 - (cc) which shareholding of more than 15% is held by another person who also holds a shareholding of more than 15% in the Bidder.

Please also indicate which of the companies appeared in the corporate and shareholding structures are listed on a stock exchange (Listed Companies), the exchange on which they are listed, and the percentage of each class of their shares which form a public or free float. Please provide the latest annual reports and accounts of the Bidder and the Listed Companies.

- ii) Details of all parties who have a material interest, as defined in the Notice, in the Bidder. Bidders should note that, a material interest in the form of an indirect interest (e.g. interest held through nominees or custodians) and a conditional entitlement (e.g. interest conditional on terms of a loan agreement) must be disclosed.

The information provided should state clearly the nature of the material interest (e.g. percentage shareholding, voting control, board representation, management agreement etc). If more than one factor apply, each of such factors should be clearly stated.

- iii) Please also indicate which of the parties provided pursuant to 4 i) and ii) above are Insiders to the Bidder.

The information provided pursuant to 4 i) and ii) above will be disclosed to other Bidders to assist each of the Bidders to assess whether it is a Connected Bidder in relation to another Bidder. In disclosing such information, the relevant parts of each Application Form will simply be copied to the other Bidders. If the Bidder wishes particular ownership information that is not in the public domain to be kept confidential, that Bidder should ask the Authority to treat such information as confidential and such information should be clearly identified to the Authority on the Application Form. Any such information should also be provided on separate sheets of paper so that it can be separated from the other information to be copied to other Bidders (if this is done, the Application Form must make the Bidder’s overall ownership structure clearly and easily comprehensible). Bidders should note that the request will only be accommodated if the Authority considers that the request is reasonable in the interests of that Bidder and not disclosing such information would not unfairly prejudice other Bidders or be detrimental to the Auction.

The information required in this section of the Application Form should be provided in diagrammatic form as follows. Each shape should contain the registered name of the relevant entity.

Bidder



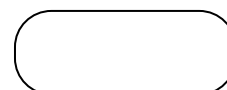
Company or other undertaking (e.g. partnership, trust).
If the entity is not a company, please provide a numbered footnote explaining the entity’s status



Individuals/family



Company(ies) controlled by private individual or family
(see illustration below)

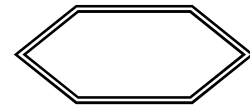


Where such entities are Insiders, the shape should be double-lined as follows:

Company or other entity which is an Insider



Individual/family that is an Insider



Company(ies) controlled by private individual or family that is an Insider



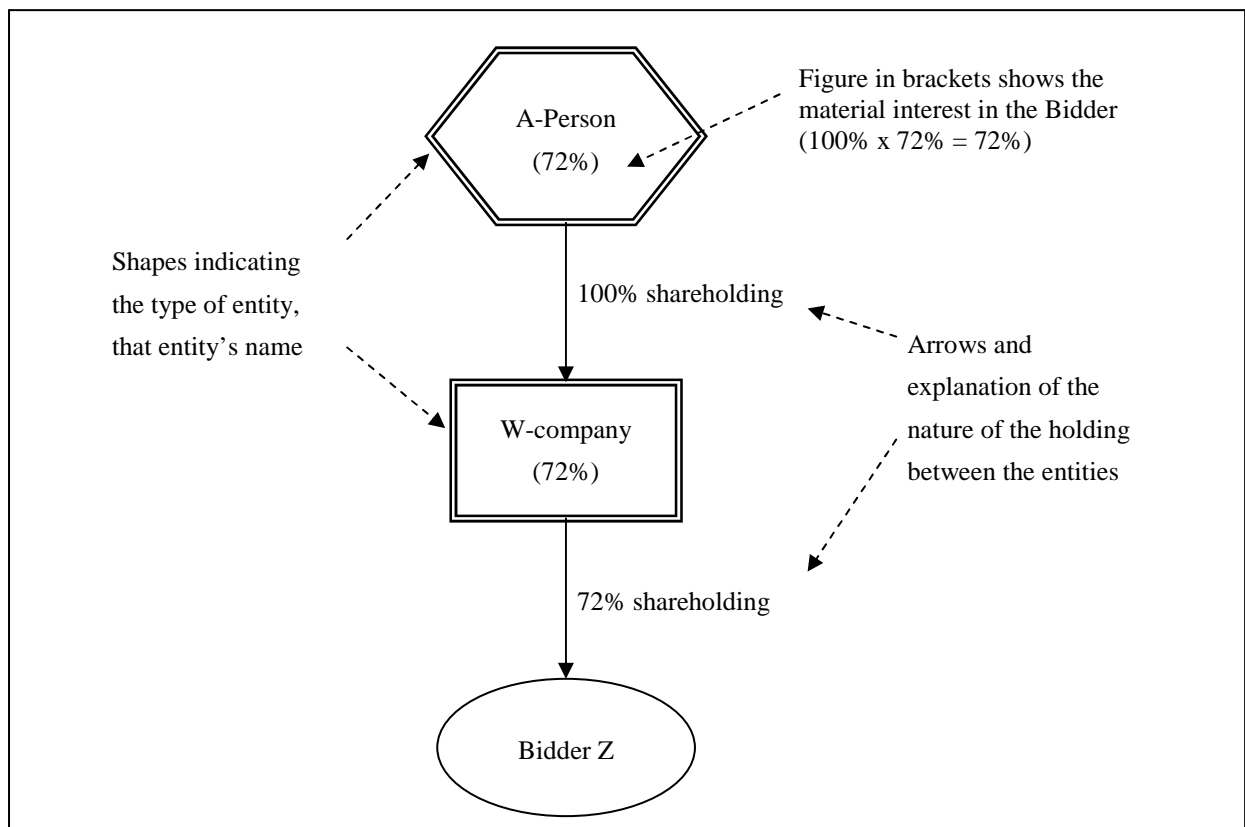
The Bidder is assumed to be an Insider, so it is not necessary to double-line the Bidder's shape.

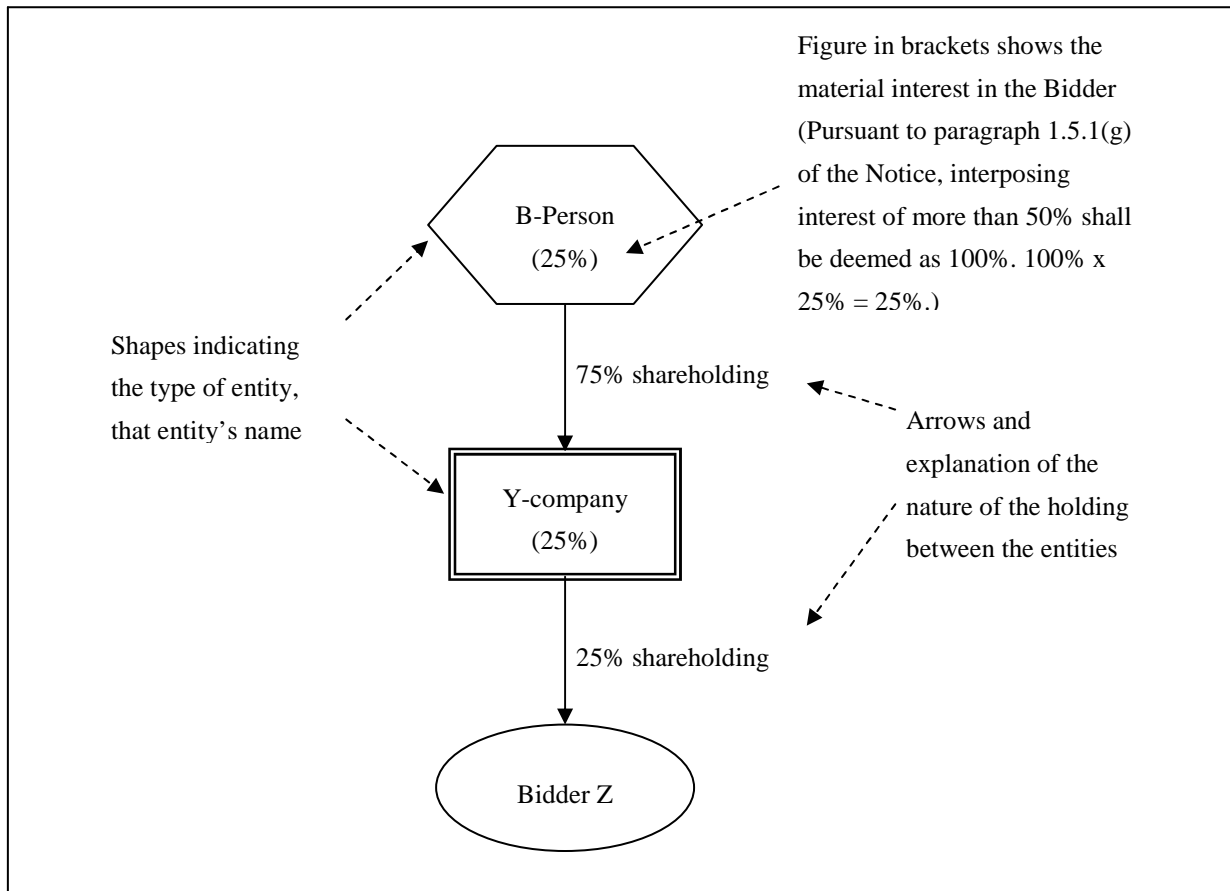
Links (whether by ownership or some other form of control or arrangement) between entities should be shown as an arrow between holder and held entities, together with a description of the amount of ownership or form of arrangement. Each entity's shape should also contain in brackets a figure (or other explanatory note) stating that entity's material interest in the Bidder itself.

For 4 ii), the Bidder is required to provide information of each person (which may be individual or body corporate; see the interpretation of "person" given in the Notice) who holds a material interest in it. For this purpose, the Bidder may provide more than one diagram. (The Bidder is not required to provide information of any other interest (e.g. shareholding of less than 25%) which does not amount to a material interest as defined in the Notice.)

Illustrative Example:

Each of Person A, Person B, Company W and Company Y has a material interest directly or indirectly in Bidder Z. Bidder Z must disclose the interest of Person A, Person B, Company W and Company Y in diagrams as follows:





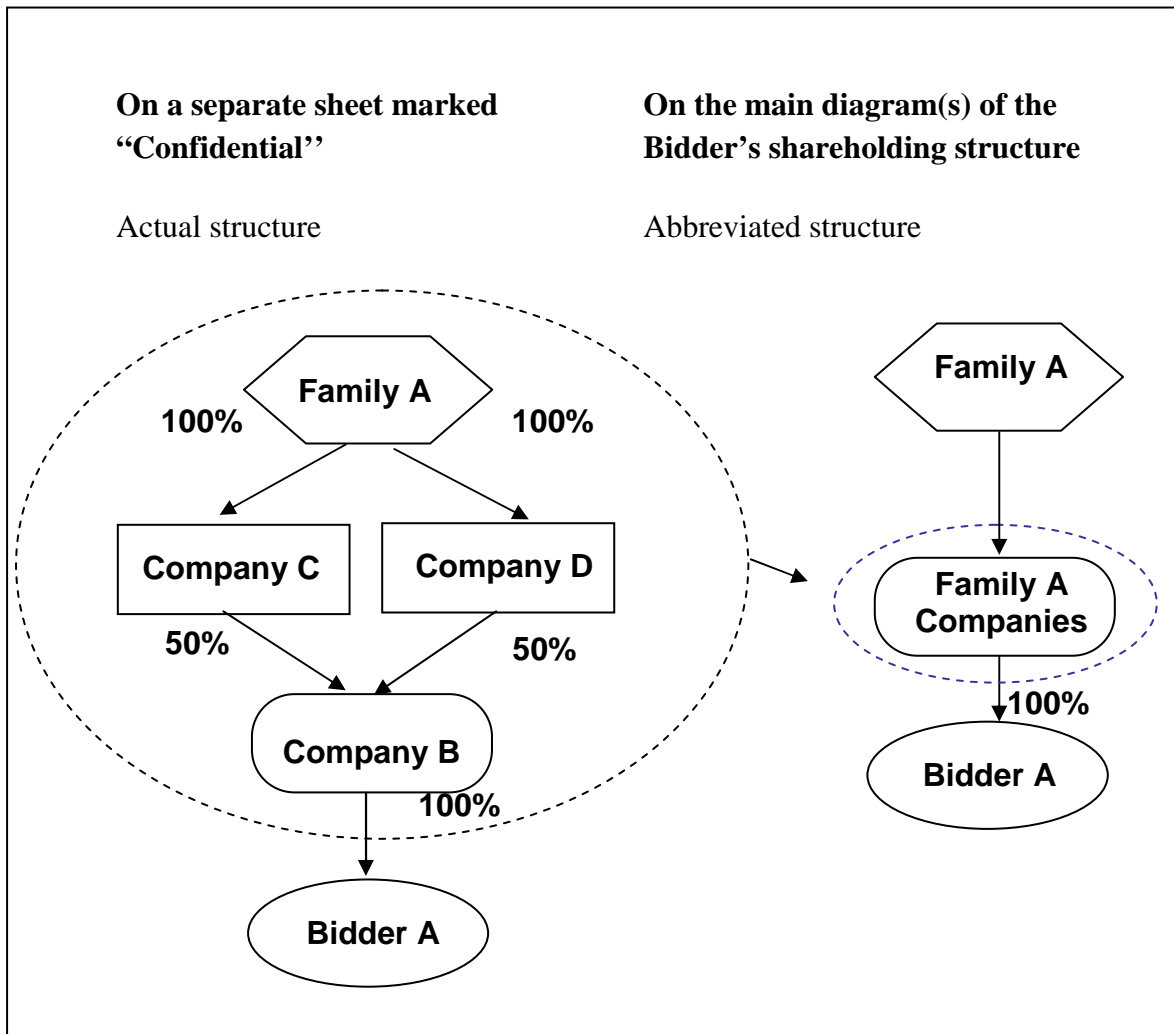
Bidder Z, however, is not required to disclose the names of other shareholders who do not hold material interest in it (e.g. Person C holding the remaining 3% shareholding interest in Bidder Z).

If the form of interest in the Bidder is not readily explainable in the format set out above, provide additional arrows together with explanatory text either in the diagram or in a footnote.

If these diagrams do not fit legibly onto a single sheet of paper, please provide additional sheets (which can be larger than A4 if necessary) to make the requested information clear.

The diagrams below illustrate how shareholding information that the Bidder wishes to keep confidential should be presented.

For example, Bidder A is 100% owned by a company (Company B) which in turn is owned by two companies (Company C and D), each holding 50% of Company B, and these two companies are 100% owned by a family (e.g. Family A). The following diagram illustrates how Bidder A is permitted to present its shareholding structure diagram:



B.5 Brief Service and Technical Proposal

Please provide a brief proposal summarizing in a concise manner the significant and salient points of the scope of service proposed to be provided using a Frequency Band, the technical details of the facilities and relevant experience of the Bidder in the Application Form.

B.6 Checklist

Please submit all the documents set out in the checklist in the Application Form and confirm by ticking the relevant check-boxes in the checklist to confirm that they have been provided by the Bidder.

B.7 Application Dates

The Application Dates shall be 9 January 2012 and 10 January 2012.

B.8 Declaration

Please read carefully and sign the declaration.

B.9 Submission instructions

The Application Form and all declarations, consents and certificates must be prepared in the English language.

Each Bidder must provide five copies (one original and four copies) of its Application Form. All supporting documents must be included in each copy, except for:

- business cards provided pursuant to B.2; and
- the annual reports and accounts provided pursuant to B.4 i);

of which only a single set is required.

Applications must be sealed in a non-transparent envelope or envelopes marked:

“For the attention of the Telecommunications Authority”

No other mark should appear on the envelope.

The Application must be delivered in person by hand to Assistant Director (Regulatory) of OFTA who will deposit the Application into the tender box in the presence of the person delivering the Application.

Further details on submission of Application may be placed on the OFTA website from time to time.

B.10 Signatures

The Application Form must be signed by two Authorised Representatives who are directors of the Bidder, and affixed with the company seal of the Bidder. Each page of the Application Form must also be signed by these two Authorised Representatives.

Please note that any additional papers provided as part of the Application Form should be signed by the two Authorised Representatives signing the main body of the Application Form. Any such additional sheets should also be numbered after the section to which they relate (e.g. A.1.5(a), A.1.5(b), etc).

APPENDIX 4
Bidder Compliance Certificate

BIDDER COMPLIANCE CERTIFICATE

TO : The Telecommunications Authority of Hong Kong (the “**Authority**”)
The Office of the Telecommunications Authority
29th Floor, Wu Chung House
213 Queen’s Road East
Wanchai
Hong Kong

FROM: [*Name and address of Bidder*] (the “**Bidder**”)

DATE : [] 2012

Dear Sirs,

We refer to the Notice (the “Notice”) dated 11 November 2011 issued by the Authority in exercise of the powers conferred by section 32I of the Ordinance and the Regulation and all other powers enabling him to specify the terms and conditions of the Auction and the payment of the Spectrum Utilization Fees.

1. The Bidder hereby certifies and undertakes to the Authority that:
 - 1.1. the representatives of the Bidder have read and understood the Licence, the Ordinance, the Regulation, the Telecommunications (Designation of Frequency Bands Subject to Payment of Spectrum Utilisation Fee) Order, the Notice and the Information Memorandum dated 11 November 2011 issued by the Authority, and that it has complied, and will comply, with the Conditions and the Notice including the Schedules and Appendices to the Notice as appropriate;
 - 1.2. it is legally capable of bidding in the Auction and has in place all necessary approvals, consents, permissions and board approvals including, without limitation, any approvals, consents, permissions and board approvals from its holding company(ies) under any law or rules and regulations issued by any governmental or regulatory or supervisory body in any competent jurisdiction other than an Approval;

- 1.3. it agrees with and accepts the Conditions and is legally and financially capable of satisfying the Conditions in accordance with their terms including, without limitation:
 - a. the obligation with respect to coverage of network and service in accordance with Special Condition 31 of the Conditions;
 - b. the obligation to provide the Performance Bond to the Authority in accordance with Special Condition 31A of the Conditions;
- 1.4. it will provide a network that is technically sound and compatible with the local environment in accordance with the Conditions;
- 1.5. it will arrange sufficient managerial and technical expertise to provide a satisfactory service under the Licence;
- 1.6. the factual information provided in, or in support of, the Application (including without limitation the list of Insiders) is, to the best of the Bidder's and its respective Insiders' knowledge, information and belief, true, accurate and has no material omissions and that any opinion expressed is honestly held;
- 1.7. it will inform the Authority immediately if it becomes aware that any change has occurred which has affected the information submitted in the Application, including without limitation the list of Insiders;
- 1.8. it will comply, and ensure, to the best of its ability, that all of its Insiders will comply, with the terms and conditions of the Notice including, without limitation, and in particular with the terms and conditions under Part 6 of the Notice relating to the confidentiality of information provided to them by the Authority during the course of the Auction;
- 1.9. it will not and none of its Insiders will co-operate, collaborate, collude or discuss with, or disclose any information to, any other Bidder or any of that other Bidder's Insiders for any purpose relating to the Auction including, without limitation, in connection with the substance of that Bidder's bidding strategy nor 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;
- 1.10. none of the Bidder nor any of its Insiders have in place any arrangements or understanding with any other Bidder or any of that other Bidder's Insiders to co-operate, collaborate, or collude or otherwise manipulate or attempt to manipulate the outcome of the Auction;

- 1.11. to the best of its knowledge, information and belief, having made all reasonable enquiries, no person who is a director, employee or agent of the Bidder or any of the Bidder's Insiders and who is also a director, employee or agent of any other Bidder or of any of that other Bidder's Insiders:
- a. has taken part, or will take part, in preparing any of the Bidders or their respective Insiders for participation in the Auction;
 - b. has passed, or will pass, Confidential Information relating to one Bidder to another Bidder or its Insiders;
 - c. has been, or will be, an Authorised Representative of any of the Bidders;
 - d. has taken part or participated, or will take part or participate in the Auction;
- 1.12. there is no petition presented against it or a proceeding commenced or an order made or an effective resolution passed for the winding-up, insolvency, administration, reorganisation, reconstruction, dissolution or bankruptcy of the Bidder or for the appointment of a liquidator, receiver, administrator, trustee or similar officer of the Bidder over all or any part of the business or assets of the Bidder and no circumstances have arisen which entitle any person to take any action, commence any proceeding, obtain any order or appoint any person of the type specified in this paragraph;
- 1.13. none of its directors nor its principal officers, none of its Insiders and none of any persons who have the power, by shareholding or under any power conferred by the memorandum or articles of association or any other instrument regulating the Bidder, to ensure that the affairs of the Bidder are conducted in accordance with the wishes of that person, has a petition presented against it or a proceeding commenced or an order made or an effective resolution passed for its winding-up, insolvency, administration, reorganisation, reconstruction, dissolution or bankruptcy or for the appointment of a liquidator, receiver, administrator, trustee or similar officer over all or any part of the business or assets of the Bidder and no circumstances have arisen which entitle any person to take any action, commence any proceeding, obtain any order or appoint any person of the type specified in this paragraph, which may be expected to have a material adverse impact on the Bidder's ability to participate in the Auction or to satisfy the Conditions of any Licence granted to the Bidder;
- 1.14. none of the Bidder nor its Insiders, and none of their respective directors, officers or representatives, are the subject of criminal investigations or proceedings in Hong Kong or in any other jurisdiction which might reasonably be expected to

adversely affect their business or materially affect the Bidder's ability to participate in the Auction or to satisfy the Conditions of any Licence granted to the Bidder, and that there is no reason to believe that any investigations or proceedings might occur during the Auction;

- 1.15. none of the Bidder nor its Insiders have had any telecommunications or radiocommunications licence, consent, authority, permission, concession agreement, or other document or allocation of radio spectrum in Hong Kong withdrawn, cancelled or suspended owing to the default or breach by the Bidder or its Insiders of the conditions of that licence, consent, authority, permission, concession agreement, or other document for allocation of radio spectrum in Hong Kong;
 - 1.16. none of the Bidder nor its Insiders is a party to any civil litigation or proceedings which may be expected to have a material adverse impact on the Bidder's ability to participate in the Auction or to satisfy the Conditions of any Licence granted to the Bidder; and
 - 1.17. it has not submitted more than one Application to the Authority.
2. Words and expressions used in this certificate have the same meaning as given in the Notice, unless the context otherwise requires.

Yours faithfully,

Signed:

Authorised signature

(name and title)

Authorised signature

(name and title)

Company seal affixed:

(Note: This certificate must be signed by two Authorised Representatives who are directors of the Bidder, and affixed with the company seal of the Bidder.)

APPENDIX 5
Letter of Credit

LETTER OF CREDIT

TO : The Telecommunications Authority of Hong Kong (the “**Beneficiary**”)
The Office of the Telecommunications Authority
29th Floor, Wu Chung House
213 Queen’s Road East
Wanchai
Hong Kong

FROM : [*Name and address of issuing bank*] (the “**Issuing Bank**”)

DATE : [2012]

The Issuing Bank issues this irrevocable standby letter of credit in the favour of the Beneficiary on the following terms on the application and request of [*Name of the Bidder*](the “**Bidder**”) pursuant to the Notice (the “**Notice**”) dated 11 November 2011 issued by the Telecommunications Authority in exercise of the powers conferred by section 32I of the Telecommunications Ordinance (Cap. 106), Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106AC) and all other powers enabling him to specify the terms and conditions of the auction and payment of the spectrum utilization fees.

IRREVOCABLE STANDBY LETTER OF CERDIT NO []

DATED [] 2012

BENFICIARY The Telecommunications Authority of Hong Kong.

EXPIRY DATE 10 July 2012

AMOUNT OF STANDBY LETTER OF CREDIT Up to a maximum amount of HK\$150 million.

AVAILABLE Subject to the Additional Conditions below, within three (3) Business Days (as defined in the Notice) of receipt by the Issuing Bank of the Beneficiary's certificate in the form set out below.

BY Payment into the account specified by the Beneficiary.

BENEFICIARY'S CERTIFICATE

TO : [] (the "Issuing Bank")

FROM : The Telecommunications Authority of Hong Kong
(the "Beneficiary")

The Office of the Telecommunications Authority
29th Floor, Wu Chung House
213 Queen's Road East
Wanchai
Hong Kong

DATE : []

Irrevocable Standby Letter of Credit No. [] dated []
(the "Standby Letter of Credit")

1. We claim HK\$ [] under the Standby Letter of Credit.
2. This amount has become due and payable to us by the operation of the terms and conditions of the Notice.
3. We request payment from the Issuing Bank of the amount specified in paragraph 1 within three (3) Business Days (as defined in the Notice) after the date of this

certificate to [*details of the Beneficiary's account*] in our favour.

SIGNED BY

.....

(name and title)

for the Telecommunications Authority of Hong Kong

ADDITIONAL CONDITIONS

1. The Beneficiary may make any number of demands for payment up to the Amount of this Standby Letter of Credit as reduced from time to time by the payments made by the Issuing Bank before the Expiry Date.
2. The Issuing Bank shall not be required to investigate the authenticity of any certificate presented by the Beneficiary or the Beneficiary's capacity or entitlement to make any certificate and each certificate issued by the Beneficiary of sums due shall be conclusive, save for manifest error.
3. All payments under this Standby Letter of Credit shall be made in full to the Beneficiary without any deduction or withholding (whether in respect of set off, counterclaim, duties, present or future taxes, charges or otherwise) and shall not be withheld for whatever reason. Nothing in any agreement between the Issuing Bank and any third party shall prejudice the operation of this Standby Letter of Credit.
4. The Issuing Bank may not assign or transfer all or any of its rights and obligations under this Standby Letter of Credit to another person without the prior written consent of the Beneficiary.
5. This Standby Letter of Credit is subject to the International Standby Practices 1998 (to the extent not inconsistent with the terms of this Standby Letter of

Credit) and is governed by, and shall be construed in accordance with, Hong Kong law.

SIGNED BY:

.....

(Insert name and title of first representative of the Issuing Bank)

For *(name of the Issuing Bank)*

SIGNED BY:

.....

(Insert name and title of second representative of the Issuing Bank)

For *(name of the Issuing Bank)*

COMPANY SEAL / CHOP OF ISSUING BANK AFFIXED:

(Note: For verification of the above execution, please provide a certified true copy of the relevant power of attorney or the equivalent of the Issuing Bank.)

APPENDIX 6
Connected Bidder Statutory Declaration

CONNECTED BIDDER STATUTORY DECLARATION

(Note 1: This Connected Bidder Statutory Declaration is to be completed by the Bidder after the Authority publishes a Bidder Notice pursuant to paragraph 3.1.1 of the Notice.)

Note 2: After the end of the Bidding Stage, the Authority will publish a Provisional Successful Bidder Notice. Within two Business Days after publication of the Provisional Successful Bidder Notice, each Provisional Successful Bidder must complete and submit to the Authority this Connected Bidder Statutory Declaration under paragraph 4.13.2 of the Notice.)

I, [] of []
being [] of [] (the
"Bidder") refer to the Notice (the "Notice") dated 11 November 2011 issued by the Authority in exercise of the powers conferred by section 32I of the Ordinance and the Regulation and all other powers enabling him to specify the terms and conditions of the Auction and the payment of the Spectrum Utilization Fees.

I do solemnly and sincerely declare that, to the best of my knowledge, information and belief, having made all due enquiries of any person:

- (a) who holds a material interest in the Bidder,
- (b) whom the Bidder holds a material interest, and
- (c) whom another person who has a material interest in the Bidder also holds a material interest;

and having informed them of the relevant provisions of the Regulation, the Notice and the Information Memorandum dated 11 November 2011, **there is no other Bidder/Provisional Successful Bidder* which is a Connected Bidder in relation to the Bidder other than as set out below nor has the Bidder nor any of the persons specified in (a) to (c) above taken any steps deliberately to arrange for or assist in arranging, any other Bidder/Provisional Successful Bidder* to be a Connected Bidder in relation to the Bidder.**

(* Please delete as appropriate.)

Connected Bidder

Name : []

Address / Registered Office : []

Unless otherwise stated or the context otherwise requires, words and expressions used in this statutory declaration have the same meaning as that given to them in the Notice.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Ordinance (Cap. 11).

DECLARED at

Dated 2012

Before me

(Signature and designation

i.e. Justice of the Peace / Notary Public /

Commissioner of Oaths / Solicitor)

APPENDIX 7
Frequency Band Selection Form

FREQUENCY BAND SELECTION FORM

(Note: This Frequency Band Selection Form is to be completed by the Qualified Bidder who receives a notification from the Authority under paragraph 3.4.2.)

1. Instructions to Bidder

Please provide the details required in section 2 below and indicate clearly in section 3 below the Frequency Band the Bidder wishes to be assigned by the Authority. The selection of Frequency Band by the Bidder in section 3 must not exceed the Spectrum Cap. This form must be signed by two Authorised Representatives who are directors of the Bidder, and affixed with the company seal of the Bidder. Each page of this form must also be signed by these two Authorised Representatives.

Unless otherwise stated or the context otherwise requires, words and expressions used in this form have the same meaning as that given to them in the Notice.

2. Details of the Bidder

Registered name of the Bidder:

Registered office:

Principal place of business (if different from the registered office):

Telephone number:

Fax number:

Email address:

Signed: _____

Signed: _____

3. Selection of Frequency Band

Frequency Band	Frequency range (MHz)	Bandwidth of the Frequency Band	Minimum Fee	Frequency Band selected by the Bidder (Please indicate with a cross ("X") the Frequency Band the Bidder wishes to select. Please select one Frequency Band only in order not to exceed the Spectrum Cap.)
A1	2300 – 2330	30 MHz	HK\$150 million	
A2	2330 – 2360	30 MHz	HK\$150 million	
A3	2360 – 2390	30 MHz	HK\$150 million	

Signed:

Signed:

Authorised Representative

Authorised Representative

(name and title)

(name and title)

Company seal affixed:

Date:

ANNEX C AUCTION WORKED EXAMPLES

AUCTION WORKED EXAMPLES

Introduction

This annex sets out some illustrative and non-exhaustive examples of the bidding scenarios that may occur during the bidding process.

The worked examples are intended to provide step-by-step illustration of the Bidding Stage and the application of the auction rules set out in the Notice and explained in Section D of the Memorandum. For this purpose, the worked examples are simplified and are not intended to predict or reflect the actual behaviour of Bidders and the actual situation of the Auction.

The worked examples are for reference only. Readers should not construe the worked examples as any projections, estimates or expectations of the Government. The worked examples shall not prejudice the operation of the auction rules set out in the Notice and the exercise by the Authority of any power thereunder.

Assumptions of the Worked Examples

The worked examples are based on the following assumptions:

- (i) There are 3 frequency bands (D1, D2 and D3) available for auction. Each frequency band has a bandwidth of 30 MHz and is attributed with one Eligibility Point (“EP”). The minimum fee (i.e. the reserve price) is set at HK\$150 million for each frequency band.
- (ii) There are 5 Qualified Bidders (M, N, O, P and Q) to participate in the auction. Each Bidder is given one EP as the spectrum cap is set at 30 MHz.

- (iii) Before the start of each Round, the Authority will notify each Bidder of the following information:
- the date on and the time at which the Round shall start and end;
 - the Round Price for each frequency band;
 - the number of Valid Bids received for each frequency band in the immediately preceding Round (if any);
 - the frequency band in respect of which the Bidder is the Standing Highest Bidder (if any);
 - the amount of the Standing Highest Bid for each frequency band (if any);
 - the total number of (remaining) Waivers that may be exercised by the Bidder; and
 - the total number of (remaining) Withdrawals that may be exercised by the Bidder.

ROUND 1**Bidders' Starting EP:**

Bidders	M	N	O	P	Q
EP	1	1	1	1	1

Round Details and Bidders' Actions:

Frequency Bands	D1	D2	D3
Round Price	\$150M	\$150M	\$150M
Bidders' actions			
M	Bid	No Bid	No Bid
N	Bid	No Bid	No Bid
O	Bid	No Bid	No Bid
P	No Bid	No Bid	Bid
Q	No Bid	No Bid	Bid

Round Results:

Bidder	Frequency Band in respect of which Bidder holds a Standing Highest Bid (Amount of Standing Highest Bid)	Activity Level in terms of EP	EP to be attributed to the Bidder in the immediately following Round, if any	Waiver exercised by the Bidder in this Round (Remaining number of Rounds Bidder may exercise Waiver)	Withdrawal exercised by the Bidder in this Round (Remaining number of Rounds Bidder may exercise Withdrawal)
M	D1 (\$150M)	1	1	0(2)	0(3)
N	-	1	1	0(2)	0(3)
O	-	1	1	0(2)	0(3)
P	D3 (\$150M)	1	1	0(2)	0(3)
Q	-	1	1	0(2)	0(3)

Round Price

- In Round 1, the Authority sets Round Price at the level of the minimum fee.

Determination of Standing Highest Bid

- For Frequency Band D1, bids are received from Bidder M, Bidder N and Bidder O. By random, Bidder M is selected as the Standing Highest Bidder.
- For Frequency Band D2, no bid is received from any Bidder. There will be no Standing Highest Bidder.
- For Frequency Band D3, bids are received from Bidder P and Bidder Q. By random, Bidder P is selected as the Standing Highest Bidder.

Activity Level of each Bidder

- For Bidder M, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D1). 1 EP will be attributed to Bidder M in the immediately following Round.
- For Bidder N, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D1). 1 EP will be attributed to Bidder N in the immediately following Round.
- For Bidder O, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D1). 1 EP will be attributed to Bidder O in the immediately following Round.
- For Bidder P, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D3). 1 EP will be attributed to Bidder P in the immediately following Round.
- For Bidder Q, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D3). 1 EP will be attributed to Bidder Q in the immediately following Round.

Note

- Each Bidder must bid for one frequency band in Round 1. If a Bidder fails to do so, that Bidder will be disqualified and its Deposit will be forfeited by way of Penalty (up to the full amount of that Bidder's Deposit).
- Waiver is not applicable in Round 1.
- At the beginning of Round 1, there is no Standing Highest Bid for all Frequency Bands. Withdrawal is not applicable.

ROUND 2**Bidders' Starting EP:**

Bidders	M	N	O	P	Q
EP	1	1	1	1	1

Round Details and Bidders' Actions:

Frequency Bands	D1	D2	D3
Round Price	\$162M	\$150M	\$162M
Bidders' actions			
M	Bid ^{SHB}	No Bid	No Bid
N	No Bid	No Bid	Bid
O	Bid	No Bid	No Bid
P	No Bid	No Bid	No Bid ^{SHB}
Q	No Bid	No Bid	Bid

* ^{SHB} shown in superscript denotes that the Bidder holds the Standing Highest Bid of the frequency band at the end of the immediately preceding Round. See the explanation in Round 1 above.

Round Results:

Bidder	Frequency Band in respect of which Bidder holds a Standing Highest Bid (Amount of Standing Highest Bid)	Activity Level in terms of EP	EP to be attributed to the Bidder in the immediately following Round, if any	Waiver exercised by the Bidder in this Round (Remaining number of Rounds Bidder may exercise Waiver)	Withdrawal exercised by the Bidder in this Round (Remaining number of Rounds Bidder may exercise Withdrawal)
M	D1 (\$162M)	1	1	0(2)	0(3)
N	-	1	1	0(2)	0(3)
O	-	1	1	0(2)	0(3)
P	-	1	1	0(2)	0(3)
Q	D3 (\$162M)	1	1	0(2)	0(3)

Round Price

- The Authority increases the Round Prices for Frequency Bands D1 and D3 since at least one bid is received for each of these frequency bands in Round 1.
- The Authority maintains the Round Price for Frequency Band D2 since no bid is received for the frequency band in Round 1.

Determination of Standing Highest Bid

- For Frequency Band D1, bids are received from Bidder M and Bidder O. By random, Bidder M is selected as the Standing Highest Bidder.
- For Frequency Band D2, no bid is received from any Bidder. There will be no Standing Highest Bidder.
- For Frequency Band D3, bids are received from Bidder N and Bidder Q. By random, Bidder Q is selected as the Standing Highest Bidder.

Activity Level of each Bidder

- For Bidder M, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D1 + 0 EP attributed to its SHB at the end of the immediately preceding Round (since it has submitted a bid on Frequency Band D1 despite its SHB status)). 1 EP will be attributed to Bidder M in the immediately following Round.
- For Bidder N, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D3). 1 EP will be attributed to Bidder N in the immediately following Round.
- For Bidder O, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D1). 1 EP will be attributed to Bidder O in the immediately following Round.
- For Bidder P, the activity level in this Round is 1 EP (1 EP attributed to its SHB for Frequency Band D3 at the end of the immediately preceding Round (for which it does not submit a higher bid in this Round or submit a Withdrawal)). 1 EP will be attributed to Bidder P in the immediately following Round.
- For Bidder Q, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D3). 1 EP will be attributed to Bidder Q in the immediately following Round.

Note

- From Round 2 onwards, Bidders may submit a Waiver in lieu of taking any action to maintain their EP. Each Bidder may submit or be deemed to submit a Waiver in a maximum of 2 Rounds.
- Where a Bidder is the Standing Highest Bidder at the end of the immediately preceding Round (i.e. Bidder M and Bidder P), Waiver will not be applicable.
- From Round 2 onwards, Bidders may submit a Withdrawal for their Standing Highest Bid (if any). Each Bidder may exercise a Withdrawal in a maximum of 3 Rounds.
- Bidders are free to submit a bid for a frequency band of their choice from round to round. For example, Bidder N bids for Frequency Band D1 in Round 1 but bids for Frequency Band D3 in Round 2.
- Where a Bidder holds a Standing Highest Bid in respect of a frequency band at the end of the immediately preceding Round, it may decide whether or not to submit a bid for that frequency band in this Round. The Bidder may make its own commercial and strategic decision. For example, Bidder M elects to submit a bid for Frequency Band D1 in this Round although it is holding a Standing Highest Bid for that frequency band. However, Bidder P elects not to submit a bid for Frequency Band D3 and rely on its Standing Highest Bid in the immediately preceding Round.

ROUND 3**Bidders' Starting EP:**

Bidders	M	N	O	P	Q
EP	1	1	1	1	1

Round Details and Bidders' Actions:

Frequency Bands	D1	D2	D3
Round Price	\$174M	\$150M	\$174M
Bidders' actions			
M	Withdrawal ^{SHB}	Bid	No Bid
N	Waiver	Waiver	Waiver
O	No Bid	Bid	No Bid
P	Deemed Waiver	Deemed Waiver	Deemed Waiver
Q	No Bid	No Bid	No Bid ^{SHB}

* ^{SHB} shown in superscript denotes that the Bidder holds the Standing Highest Bid of the frequency band at the end of the immediately preceding Round. See the explanation in Round 2 above.

Round Results:

Bidder	Frequency Band in respect of which Bidder holds a Standing Highest Bid (Amount of Standing Highest Bid)	Activity Level in terms of EP	EP to be attributed to the Bidder in the immediately following Round, if any	Waiver exercised by the Bidder in this Round (Remaining number of Rounds Bidder may exercise Waiver)	Withdrawal exercised by the Bidder in this Round (Remaining number of Rounds Bidder may exercise Withdrawal)
M	-	1	1	0(2)	1(2)
N	-	0	1	1(1)	0(3)
O	D2 (\$150M)	1	1	0(2)	0(3)
P	-	0	1	1(1)	0(3)
Q	D3 (\$162M)	1	1	0(2)	0(3)

Round Price

- The Authority increases the Round Prices for Frequency Bands D1 and D3 since at least one bid is received for each of these frequency bands in Round 2.
- The Authority maintains the Round Price for Frequency Band D2 since no bid is received for the frequency band in Round 2.

Determination of Standing Highest Bid

- For Frequency Band D1, no bid is received from any Bidder. In addition, since the Standing Highest Bid for Frequency Band D1 at the end of the immediately preceding Round is subject to Withdrawal, there is no Standing Highest Bid for the frequency band.
- For Frequency Band D2, bids are received from Bidder M and Bidder O. By random, Bidder O is selected as the Standing Highest Bidder.
- For Frequency Band D3, no bid is received from any Bidder. The Standing Highest Bidder in the immediately preceding Round (i.e. Bidder Q) will remain as the Standing Highest Bidder of the frequency band.

Activity Level of each Bidder

- For Bidder M, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D2). 1 EP will be attributed to Bidder M in the immediately following Round.
- For Bidder N, a Waiver is submitted. 1 EP will be attributed to Bidder N in the immediately following Round based on its activity level in Round 2, the most immediately preceding Round in which Bidder N did not submit or was not deemed to have submitted a Waiver.
- For Bidder O, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D2). 1 EP will be attributed to Bidder O in the immediately following Round.
- For Bidder P, it has taken no action and is deemed to have submitted a Waiver. 1 EP will be attributed to Bidder P in the immediately following Round based on its activity level in Round 2, the most immediately preceding Round in which Bidder P did not submit or was not deemed to have submitted a Waiver.
- For Bidder Q, the activity level in this Round is 1 EP (1 EP attributed to its SHB for Frequency Band D3 at the end of the immediately preceding Round (for which it does not submit a higher bid in this Round or submit a Withdrawal)). 1 EP will be attributed to Bidder Q in the immediately following Round.

Note

- At the end of Round 2, Bidder M holds the Standing Highest Bid for Frequency Band D1. In Round 3, Bidder M submits a Withdrawal for Frequency Band D1.
- In submitting a Withdrawal, Bidder M may be subject to a liability if there is no subsequent bid for the frequency band equal to or higher than its withdrawn Standing Highest Bid. (See the calculation of liabilities for Withdrawals at the end of the worked examples.)
- Further, the withdrawn Standing Highest Bid is not counted towards Bidder M's activity level.
- As Bidder M submits bid for Frequency Band D2, its activity level remains 1 EP.
- On one hand, a Bidder may actively submit a Waiver. On the other hand, if a Bidder fails to take any action, it will be deemed to have submitted a Waiver (provided that its entitlement to Waiver is not yet exhausted). Under both situations, the EP of the Bidder is maintained.
- For example, Bidder N actively submits a Waiver in this Round whereas Bidder P takes no action and is deemed to have submitted a Waiver.

ROUND 4**Bidders' Starting EP:**

Bidders	M	N	O	P	Q
EP	1	1	1	1	1

Round Details and Bidders' Actions:

Frequency Bands	D1	D2	D3
Round Price	\$162M	\$162M	\$168M
Bidders' actions			
M	No Bid	Bid	No Bid
N	No Bid	Bid	No Bid
O	No Bid	Bid ^{SHB}	No Bid
P	No Bid	No Bid	Bid
Q	No Bid	No Bid	No Bid ^{SHB}

* ^{SHB} shown in superscript denotes that the Bidder holds the Standing Highest Bid of the frequency band at the end of the immediately preceding Round. See the explanation in Round 3 above.

Round Results:

Bidder	Frequency Band in respect of which Bidder holds a Standing Highest Bid (Amount of Standing Highest Bid)	Activity Level in terms of EP	EP to be attributed to the Bidder in the immediately following Round, if any	Waiver exercised by the Bidder in this Round (Remaining number of Rounds Bidder may exercise Waiver)	Withdrawal exercised by the Bidder in this Round (Remaining number of Rounds Bidder may exercise Withdrawal)
M	-	1	1	0(2)	0(2)
N	-	1	1	0(1)	0(3)
O	D2 (\$162M)	1	1	0(2)	0(3)
P	D3 (\$168M)	1	1	0(1)	0(3)
Q	-	1	1	0(2)	0(3)

Round Price

- The Authority reduces the Round Price for Frequency Band D1, having taking into account that no bid is received for the frequency band in Round 3 and there is no Standing Highest Bid for the frequency band because of Withdrawal.
- The Authority increases the Round Price Frequency Band for D2, since at least one bid is received for the frequency band in Round 3.
- The Authority reduces the Round Price for Frequency Band D3, since no bid is received for the frequency band in Round 3.

Determination of Standing Highest Bid

- For Frequency Band D1, no bid is received from any Bidder. There will be no Standing Highest Bidder.
- For Frequency Band D2, bids are received from Bidder M, Bidder N and Bidder O. By random, Bidder O is selected as the Standing Highest Bidder.
- For Frequency Band D3, only one bid is received from Bidder P and that bid is thus the Standing Highest Bid.

Activity Level of each Bidder

- For Bidder M, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D2). 1 EP will be attributed to Bidder M in the immediately following Round.
- For Bidder N, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D2). 1 EP will be attributed to Bidder N in the immediately following Round.
- For Bidder O, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D2 + 0 EP attributed to its SHB at the end of the immediately preceding Round (since it has submitted a bid on Frequency Band D2 despite its SHB status)). 1 EP will be attributed to Bidder O in the immediately following Round.
- For Bidder P, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D3). 1 EP will be attributed to Bidder P in the immediately following Round.
- For Bidder Q, the activity level in this Round is 1 EP (1 EP attributed to its SHB for Frequency Band D3 at the end of the immediately preceding Round (for which it does not submit a higher bid in this Round or submit a Withdrawal)). 1 EP will be attributed to Bidder Q in the immediately following Round.

ROUND 5**Bidders' Starting EP:**

Bidders	M	N	O	P	Q
EP	1	1	1	1	1

Round Details and Bidders' Actions:

Frequency Bands	D1	D2	D3
Round Price	\$156M	\$174M	\$171M
Bidders' actions			
M	No Bid	No Bid	No Bid
N	Bid	No Bid	No Bid
O	Bid	Withdrawal ^{SHB}	No Bid
P	Bid	No Bid	Withdrawal ^{SHB}
Q	No Bid	No Bid	Bid

* ^{SHB} shown in superscript denotes that the Bidder holds the Standing Highest Bid of the frequency band at the end of the immediately preceding Round. See the explanation in Round 4 above.

Round Results:

Bidder	Frequency Band in respect of which Bidder holds a Standing Highest Bid (Amount of Standing Highest Bid)	Activity Level in terms of EP	EP to be attributed to the Bidder in the immediately following Round, if any	Waiver exercised by the Bidder in this Round (Remaining number of Rounds Bidder may exercise Waiver)	Withdrawal exercised by the Bidder in this Round (Remaining number of Rounds Bidder may exercise Withdrawal)
M	-	0	0	0(2)	0(2)
N	D1 (\$156M)	1	1	0(1)	0(3)
O	-	1	1	0(2)	1(2)
P	-	1	1	0(1)	1(2)
Q	D3 (\$171M)	1	1	0(2)	0(3)

Round Price

- The Authority reduces the Round Price for Frequency Band D1, having taken into account that no bid is received for the frequency band in Round 4.
- The Authority increases the Round Prices for Frequency Bands D2 and D3, since at least one bid is received for each of these frequency bands in Round 4.

Determination of Standing Highest Bid

- For Frequency Band D1, bids are received from Bidder N, Bidder O and Bidder P. By random, Bidder N is selected as the Standing Highest Bidder.
- For Frequency Band D2, no bid is received from any Bidder. In addition, since the Standing Highest Bid for Frequency Band D2 at the end of the immediately preceding Round is subject to Withdrawal, there is no Standing Highest Bid for the frequency band.
- For Frequency Band D3, only one bid is received from Bidder Q and that bid is thus the Standing Highest Bid.

Activity Level of each Bidder

- For Bidder M, the activity level in this Round is 0 EP. 0 EP will be attributed to Bidder M in the immediately following Round.
- For Bidder N, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D1). 1 EP will be attributed to Bidder N in the immediately following Round.
- For Bidder O, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D1). 1 EP will be attributed to Bidder O in the immediately following Round.
- For Bidder P, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D1). 1 EP will be attributed to Bidder P in the immediately following Round.
- For Bidder Q, the activity level in this Round is 1 EP (1 EP for bidding Frequency Band D3). 1 EP will be attributed to Bidder Q in the immediately following Round.

Note

- A Bidder who reduces its activity level in a Round will have fewer EP in the immediately following Round.
- Where a Bidder is attributed with 0 EP, it will not be allowed to participate in the subsequent Rounds.
- For example, Bidder M does not hold any Standing Highest Bid at the end of Round 4. In Round 5, Bidder M elects positively not to submit any bid in this Round (without exercising a Waiver), its activity level in this Round is 0 EP. 0 EP will be attributed to Bidder M in the immediately following Round. It will not be eligible to participate in the subsequent Rounds. Bidder M's positive act to elect not to submit any bid is different from that of Bidder P in Round 3 where it took no action at all whereupon it was deemed to have submitted a Waiver for that round.
- At the end of Round 4, Bidder O holds the Standing Highest Bid for Frequency Band D2 and Bidder P holds the Standing Highest Bid for Frequency Band D3. In Round 5, Bidder O submits a Withdrawal for Frequency Band D2 and Bidder P submits a Withdrawal for Frequency Band D3.
- In submitting a Withdrawal, Bidder O and Bidder P may be subject to a liability if there is no subsequent bid for the frequency band concerned equal to or higher than the withdrawn Standing Highest Bid. (See the calculation of liabilities for Withdrawals at the end of the worked examples.)
- Further, the withdrawn Standing Highest Bid is not counted towards Bidder O's or Bidder P's activity level.
- As Bidder O and Bidder P each submit bid for Frequency Band D1, their activity level remains 1 EP respectively.

ROUND 6 (Final Round)**Bidders' Starting EP:**

Bidders	M	N	O	P	Q
EP	0	1	1	1	1

Round Details and Bidders' Actions:

Frequency Bands	D1	D2	D3
Round Price	\$162M	\$162M	\$174M
Bidders' actions			
M	-	-	-
N	No Bid ^{SHB}	No Bid	No Bid
O	No Bid	No Bid	No Bid
P	No Bid	No Bid	No Bid
Q	No Bid	No Bid	No Bid ^{SHB}

* ^{SHB} shown in superscript denotes that the Bidder holds the Standing Highest Bid of the frequency band at the end of the immediately preceding Round. See the explanation in Round 5 above.

Round Results:

Bidder	Frequency Band in respect of which Bidder holds a Standing Highest Bid (Amount of Standing Highest Bid)	Activity Level in terms of EP	EP to be attributed to the Bidder in the immediately following Round, if any	Waiver exercised by the Bidder in this Round (Remaining number of Rounds Bidder may exercise Waiver)	Withdrawal exercised by the Bidder in this Round (Remaining number of Rounds Bidder may exercise Withdrawal)
M	-	-	-	-	-
N	D1 (\$156M)	1	1	0(1)	0(3)
O	-	0	0	0(2)	0(2)
P	-	0	0	0(1)	0(2)
Q	D3 (\$171M)	1	1	0(2)	0(3)

Round Price

- The Authority increases the Round Prices for Frequency Band D1 and D3, since at least one bid is received for each of these frequency bands in Round 5.
- The Authority reduces the Round Price for Frequency Band D2, having taking into account that no bid is received for the frequency band in Round 5 and there is no Standing Highest Bid for the frequency band because of Withdrawal.

Conclusion of Bidding Stage and Determination of Provisional Successful Bidder

- In this Round, no bids, no Withdrawals and no Waivers are submitted by any of the Bidders. The Bidding Stage ends.
- For Frequency Band D1, Bidder N is the Standing Highest Bidder and thus becomes the Provisional Successful Bidder of the frequency band. The Spectrum Utilization Fee is the Standing Highest Bid of HK\$156M.
- For Frequency Band D2, there is no Standing Highest Bidder and thus no Provisional Successful Bidder.
- For Frequency Band D3, Bidder Q is the Standing Highest Bidder and thus becomes the Provisional Successful Bidder of the frequency band. The Spectrum Utilization Fee is the Standing Highest Bid of HK\$171M.

Calculation of Liabilities for Withdrawal

- Where a Bidder submits a Withdrawal of its Standing Highest Bid and all the subsequent bids are lower than the Bidder's withdrawn Standing Highest Bid, the Bidder will be liable to pay the Government the difference between its withdrawn Standing Highest Bid and the amount of the next subsequent highest Valid Bid (irrespective of whether the next subsequent highest Valid Bid is withdrawn or whether it is determined as the Spectrum Utilization Fee), subject to a maximum amount of 30% of the withdrawn Standing Highest Bid.
- In Round 3, Bidder M submits a Withdrawal for its Standing Highest Bid for Frequency Band D1 at HK\$162M. The next subsequent highest Valid Bid for Frequency Band D1 is HK\$156M submitted by Bidder N in Round 5. Bidder M is liable for the difference between the withdrawn Standing Highest Bid and the next subsequent highest Valid Bid. The liability is HK\$6M (HK\$162M – HK\$156M). The maximum liability at 30% of the withdrawn Standing Highest Bid (HK\$162M x 30% = HK\$48.6M) does not apply.

ANNEX C

- In Round 5, Bidder O submits a Withdrawal for its Standing Highest Bid for Frequency Band D2 at HK\$162M. There is no subsequent bid for Frequency Band D2. Bidder O is liable for 30% of the withdrawn Standing Highest Bid (HK\$162M x 30% = HK\$48.6M).
- In Round 5, Bidder P submits a Withdrawal for its Standing Highest Bid for Frequency Band D3 at HK\$168M. The next subsequent highest bid for Frequency Band D3 is HK\$171M submitted by Bidder Q in the same Round. Bidder P is not subject to any liability because the amount of the next subsequent highest bid is higher than its withdrawn Standing Highest Bid.

ANNEX D GLOSSARY OF TERMS

GLOSSARY OF TERMS

For the purpose of this Memorandum, terms and expressions used therein are as defined in the Notice (Annex B of this Memorandum) and in this Annex, unless the context otherwise requires. In case of any discrepancy, the Notice shall prevail over this Annex.

Activity Level	The activity level defined in paragraph 4.8.5 of the Notice;
Application	An application submitted by a Bidder to the Authority in writing in accordance with Part 2 of the Notice;
Application Dates	9 January 2012 and 10 January 2012;
Application Form	The form specified in Appendix 3 of the Notice;
Application Stage	The stage specified in Part 2 of the Notice;
Approval	Any shareholder approval which is required by law or any regulatory authority before a Licence is granted to a Bidder and 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 of the Notice;
Approval Date	Ten Business Days after the date of the Provisional Successful Bidder Notice;
Auction	The procedure specified in the Notice;
Authorised Representative	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 submitted by the Bidder under Part 2 of the Notice or in a notification under paragraph 7.7.1 of the Notice;
Authority	The Telecommunications Authority appointed under the

Ordinance;

Authority's Account	The designated account of the Authority at the Deposit Bank, namely the account 012-899-1-003883-3 at Bank of China or the account 004-048-203558-292 at HSBC;
Authority's Office	Office of the Telecommunications Authority, 29 th Floor, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong;
Banking Ordinance	The Banking Ordinance (Cap.155, Laws of Hong Kong);
Bid	The amount of Spectrum Utilization Fee a Bidder wishes to offer in relation to a Frequency Band in the Auction;
Bidder	A body corporate which submits or has submitted an Application;
Bidder Compliance Certificate	The certificate specified in Appendix 4 of the Notice;
Bidder Notice	The notice published by the Authority in accordance with paragraph 3.1.1 of the Notice;
Bidding Stage	The stage specified in Part 4 of the Notice;
Bidding Stage Notice	The notice published by the Authority in accordance with paragraph 4.3.1 of the Notice;
Business Day	A full day other than a Saturday or a Sunday on which banks in Hong Kong are open for general business;
Commission	The Securities and Futures Commission established under the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong);
Companies Ordinance	The Companies Ordinance (Cap.32, Laws of Hong Kong);

Competition Bill	The Government's proposed general competition law that applies to all sectors, including the telecommunications sector, in Hong Kong;
Conditions	The General Conditions and Special Conditions to which the Licence is subject, substantially in the form set out in Appendix 1 of the Notice;
Confidential Information	The information defined in paragraph 6.5.5 of the Notice;
Connected Bidder	A Bidder that is closely connected to another Bidder and, for this purpose, a Bidder (Bidder A) is a Connected Bidder in relation to another Bidder (Bidder B) if: (a) Bidder A holds a material interest in Bidder B, (b) Bidder B holds a material interest in Bidder A, or (c) a person who is not a Connected Bidder in relation to Bidder A or Bidder B holds a material interest in both Bidder A and Bidder B;
Connected Bidder Statutory Declaration	The statutory declaration referred to in paragraph 3.1.2 of the Notice and in the form specified in Appendix 6 of the Notice;
Connected Provisional Successful Bidders	The Bidders defined in paragraph 4.13.3 of the Notice;
Connected Provisional Successful Bidder Notice	The notice published by the Authority in accordance with paragraph 4.13.3 of the Notice;
Connection	The connection defined in paragraph 1.6.1 of the Notice;
Customer Complaint Settlement Scheme / CCSS	A scheme that aims to resolve contractual disputes between telecommunications service providers and their customers;

Deposit	A sum in cash or by a Letter of Credit from a Qualifying Bank;
Deposit Bank	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 Shop 2A, 2 nd Floor, Hopewell Centre, 183 Queen's Road East, Wanchai, Hong Kong ("HSBC");
Deposit Interest	Interest (if any) earned in respect of a Bidder's Deposit in accordance with paragraphs 2.2.7 to 2.2.9 of the Notice;
Domestic Roaming	Refers to the roaming of domestic subscribers between mobile networks in Hong Kong;
Eligibility Points / EPs	A number of points defined in paragraph 4.8 of the Notice;
Electronic News Gathering / ENG	The use of portable and nomadic microwave equipment operating in appropriate fixed and mobile service bands for point-to-point transmissions of signal from a remote location to the central studio for news gathering purposes;
Exempt Security Interest	Security interest defined in the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong);
Fixed Mobile Convergence	The phenomenon under which the distinctions between fixed and mobile networks and services are becoming increasingly blurred with dynamic and continuous market and technological developments;
Fixed-Mobile Number Portability / FMNP	The capability of telecommunications networks enabling a customer to retain his/her assigned or allocated number(s) / access code(s) when changing the subscription from a fixed network operator to a mobile

network operator, or vice versa;

Frequency Band	A frequency band specified in Appendix 2 of the Notice;
Frequency Band Selection Form	The form specified in Appendix 7 of the Notice;
Gazette	Refers to the print medium where Government decisions are announced;
Government	The Government of the Hong Kong Special Administrative Region of the People's Republic of China;
Grant Stage	The stage specified in Part 5 of the Notice;
Hong Kong	The Hong Kong Special Administrative Region of the People's Republic of China;
Hong Kong Dollars / HK\$	The valid currency for the time being of Hong Kong;
Insider	<p>Any person, in relation to a Bidder, to whom Confidential Information is disclosed directly or indirectly by a person:</p> <ul style="list-style-type: none">(a) who is an officer, employee, agent, adviser or associate of that Bidder;(b) 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) who is an Insider in relation to that Bidder;
Letter of Credit	A letter of credit in the form specified in Appendix 5 of the Notice;
Licence	A unified carrier licence, incorporating the Conditions, issued by the Authority under the Ordinance for the

establishment or maintenance of a telecommunications network for carrying communications to or from the public in Hong Kong and using in a Frequency Band assigned by the Authority;

Licensee	A holder of a Licence;
Losing Bidder	A Bidder defined in paragraph 4.15.1 of the Notice;
Memorandum	This Information Memorandum and its annexes as supplemented, amended, updated or replaced from time to time by the Authority;
Minimum Fee	The minimum amount of Spectrum Utilization Fee specified by the Secretary and set out in Appendix 2 of the Notice;
Mobile Number Portability / MNP	The capability of mobile telecommunications networks enabling a customer to retain his/her assigned or allocated number(s) / access code(s) when changing the subscription from one mobile network operator to another mobile network operator;
Mobile Party's Network Pays / MPNP	The charging arrangement under which the mobile network carrier pays the interconnection charge to the fixed network counterpart when an access customer of a mobile network receives a call from, or send a call to, a fixed network;
Notice	The terms and conditions of the Auction given in Annex B of this Memorandum;
OFTA	Office of the Telecommunications Authority;
OFTA's website	http://www.ofta.gov.hk ;
Open Network Access	Refers to the opening up of a certain percentage of the Licensee's network capacity for access by non-affiliated

licensees;

Operator Number Portability / ONP	The capability of fixed telecommunications networks enabling a customer to retain his/her assigned or allocated number(s) / access code(s) when changing the subscription from one fixed network operator to another fixed network operator;
Order	Telecommunications (Designation of Frequency Bands Subject to Payment of Spectrum Utilization Fee) Order (Cap. 106Y, Laws of Hong Kong);
Ordinance	The Telecommunications Ordinance (Cap.106, Laws of Hong Kong);
Outside Broadcast / OB	The production of television or radio programmes from a mobile studio, such as an outside broadcasting van or production truck;
Penalty	A sum representing the whole or part of a Bidder's Deposit which may be forfeited by the Authority from that Deposit under the terms and conditions of the Notice;
Performance Bond	A performance bond in the form determined by the Authority substantially in the form specified in Schedule 9 to Appendix 1 of the Notice and which is to be provided to the Authority in accordance with paragraph 5.2.1 of the Notice;
Prevention of Bribery Ordinance	The Prevention of Bribery Ordinance (Cap.201, Laws of Hong Kong);
Provisional Successful Bidder	The Bidder determined as such in accordance with paragraph 3.4.2 or in paragraph 4.12.1 of the Notice, as the case may be;
Provisional Successful	The notice published by the Authority in accordance

Bidder Notice	with paragraph 3.4.2 or paragraph 4.13.1 of the Notice, as the case may be;
Qualification Stage	The stage specified in Part 3 of the Notice;
Qualified Bidder	A Bidder determined as such in accordance with Part 3 of the Notice;
Qualified Bidder Notice	The notice published by the Authority in accordance with paragraph 3.3.1 of the Notice;
Qualifying Bank	<p>An institution holding a full banking licence under the Banking Ordinance which long term issuer rating is, or is higher than:</p> <p>(a) one or more of the following:</p> <ul style="list-style-type: none">(i) Moody's A2;(ii) Standard & Poor's A;(iii) Fitch Ratings' A; or <p>(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 in that subparagraph;</p>
Regulation	The Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap.106AC, Laws of Hong Kong);
Revised Provisional Successful Bidder Notice	The notice published by the Authority in accordance with paragraph 4.14.8 of the Notice;
Round	A period of time specified by the Authority during which Qualified Bidders are entitled to submit a Bid, a Withdrawal or a Waiver in accordance with the procedure set out in Part 4 of the Notice;
Round Price	An amount of Spectrum Utilization Fee in Hong Kong Dollars specified by the Authority at which Qualified Bidders are invited to offer for a Frequency Band in a

	Round;
Secretary	The Secretary for Commerce and Economic Development;
Section 7P Guidelines	Guidelines concerning mergers and acquisitions in Hong Kong telecommunications markets issued by the Authority on 3 May 2004;
Spectrum Cap	A total amount of 30 MHz, being the maximum amount of spectrum among the Frequency Bands that may be assigned to a Bidder or a group of Connected Bidders;
Spectrum Release Plan / SRP	A plan published by the Authority showing the potential supply of spectrum through an open, competitive bidding or tendering process in a rolling three-year period;
Spectrum Utilization Fee	The sum payable in respect of the use of a Frequency Band as determined in accordance with the Notice;
Standing Highest Bid	The Bid in respect of a Frequency Band determined in accordance with paragraph 4.7.1 of the Notice;
Standing Highest Bidder	The Qualified Bidder which submitted the Standing Highest Bid in respect of a Frequency Band;
Sub-Auction	The procedures specified in paragraphs 4.14.3 to 4.14.7 of the Notice;
Successful Bidder	The Bidder determined as such in accordance with paragraph 5.4.1 of the Notice;
Successful Bidder Notice	The notice published by the Authority in accordance with paragraph 5.4.1 of the Notice;
Trade Descriptions Ordinance / TDO	The Trade Descriptions Ordinance (Cap.362, Laws of Hong Kong);

Unified Carrier Licence / UCL	A carrier licence issued on or after the commencement of the Telecommunications (Carrier Licences) (Amendment) Regulation 2008 and pursuant to that Regulation, but does not include a space station carrier licence;
Valid Bid	A Bid defined in paragraph 4.6.1 of the Notice;
Waiver	A waiver construed in accordance with paragraphs 4.10.1 to 4.10.4 of the Notice;
Withdrawal	A withdrawal defined in paragraph 4.9.1 of the Notice.