

**Telecommunications Ordinance (Cap.106) and
Telecommunications (Method for Determining Spectrum
Utilization Fees) (Third Generation Mobile Services) Regulation**

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

Telecommunications Authority
18th July 2001

PART 1 - INTRODUCTION

Section 1 - Commencement, Purpose and Stages

Commencement

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

Purpose of Notice

1.1.2 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.

Stages of the Auction

1.1.3 This Notice provides for a four stages as follows:

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

Section 2 - Definitions

1.2.1 In this Notice, unless the context otherwise requires:

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

"Applicable Royalty Percentage" means the royalty percentage bid offered by all the successful Bidders in the Auction determined in accordance with paragraph 4.5.2;

"Application" means an application submitted by a Bidder to the Authority in writing in accordance with section 1 of Part 2;

"Application Dates" shall be determined in accordance with paragraph 2.1.6;

"Application Form" means the form specified in Appendix 1;

"Application Location" means one or more locations in Hong Kong to be specified by the Authority for the purposes of receiving Applications;

"Application Stage" means the stage specified in Part 2;

"Approval" means any shareholder approval which is required by law or any regulatory authority before a Licence is granted to a Bidder which is not capable of

being reasonably obtained prior to the date on which the Application by that Bidder is submitted in accordance with section 1 of Part 2;

"Approval Date" means ten Business Days after the date of the Third Phase Notice;

"Auction" means the procedure specified in this Notice;

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

"Auction Stage" means the stage specified in Part 4;

"Authority" means the Telecommunications Authority appointed under the Ordinance;

"Authority Account" means the designated account of the Authority at a Deposit Bank;

"Authority's Website" means www.ofta.gov.hk;

"Banking Ordinance" means the Banking Ordinance (Cap. 155);

"Bidder" means a body corporate which has submitted an Application;

"Bidder Compliance Certificate" means the certificate specified in Appendix 2;

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

"Bidder Participation Notice" means the notice specified in paragraph 4.2.1;

"2G Bidding Group" means a group where there is at least:

- (a) two 2G Operators which each have a Bidding Interest in the same Bidder;
- (b) a person which is not a Bidder nor a 2G Operator (a "Third Party") which has a Bidding Interest in any Bidder and a 2G Interest in any 2G Operator and another Third Party which has a Bidding Interest in the same Bidder and a 2G Interest in a different 2G Operator;
- (c) a 2G Operator and a Third Party which each has a Bidding Interest in the same Bidder and that Third Party has a 2G Interest in another 2G Operator;
- (d) a 2G Operator which has a Bidding Interest in any Bidder which has a 2G Interest in another 2G Operator;
- (e) a Third Party which has a Bidding Interest in any Bidder and a 2G Interest in any 2G Operator where that Bidder has a 2G Interest in another 2G Operator;
- (f) a 2G Operator which has a Bidding Interest and a 2G Interest in any Bidder which is also a 2G Operator;

- (g) a Third Party which has a Bidding Interest and a 2G Interest in any Bidder which is also a 2G Operator and a 2G Interest in another 2G Operator;
- (h) a Bidder which has a 2G Interest in two or more 2G Operators;
- (i) a Third Party which has a 2G Interest in two 2G Operators and a Bidding Interest in any Bidder;
- (j) a Bidder which has a 2G Interest in any 2G Operator which has a 2G Interest in another 2G Operator; or
- (k) a Bidder and two or more 2G Operators which may also include one or more Third Parties where there exists more than one (i) Bidding Interest in relation to that Bidder or (ii) 2G Interest in relation to any or all of the 2G Operators;

"Bidding Form" means the bidding form or script referred to in paragraph 4.3.4(c) and in the form specified in Appendix 9;

"Bidding Interest" means a Participation or Indirect Interest in, or control of, a Bidder;

"Bidding Notification" has the meaning given in paragraph 7.1.6;

"Bidding Round" has the meaning given in paragraph 4.3.2;

"Bidding Schedules" means the list of Royalty Percentages and corresponding minimum fees gazetted in a Notice dated 18th July, 2001 by the Secretary for Information Technology and Broadcasting;

"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 Commission Ordinance (Cap. 24);

"Conditions" means together the General and Special Conditions to which the Licence is subject, substantially in the form set out in Schedule 2;

"Confidential Information" has the meaning given in paragraph 6.5.6;

"Connected Bidder" means a Bidder that is closely connected to another Bidder and, for these purposes, a Bidder (Bidder A) is a Connected Bidder in relation to another Bidder (Bidder B) only if:

- (a) it holds a Bidding Interest in Bidder B;
- (b) a person who is not a Connected Bidder in relation to Bidder A or Bidder B holds a Bidding Interest in Bidder A and Bidder B; or
- (c) Bidder A, or a person with a Bidding Interest in Bidder A, and Bidder B, or a person with a Bidding Interest in Bidder B, both have a 2G Interest in the same 2G Operator;

"Connected Bidder Group" means a group comprising, in relation to a Connected Bidder:

- (a) that Bidder;
- (b) any Bidder which is a Connected Bidder in relation to that Bidder; and
- (c) any other Bidder which is a Connected Bidder in relation to a Bidder falling within subparagraph (b);

"Connected Bidder Statutory Declaration" means the statutory declaration referred to in paragraph 2.1.2(d) and in the form specified in Appendix 3;

"Connection" has the meaning given in paragraph 1.4.1;

"Corporate Group" means, in relation to a Bidder, that Bidder, the ultimate holding company of the Bidder and any subsidiary (direct or indirect) of that ultimate holding company;

"CSP" has the meaning given to it in the Conditions;

"Deposit" means a sum in cash or a Letter of Credit from a Qualifying Bank;

"Deposit Bank" means one or more Qualifying Banks specified by the Authority;

"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;

"Exempt Security Interest" has the meaning given in the Securities and Futures Bill gazetted on 24th November, 2000;

"Final Bidding Round" has the meaning given in paragraph 4.3.3;

"Final Offer" has the meaning given in paragraph 4.3.3;

"First Phase" means the phase of the Auction specified in section 3 of Part 4;

"First Phase Reserve Price" means, in relation to the First Phase, the Royalty Percentage specified in Schedule 1;

"First Phase Tied Bidders" has the meaning given in paragraph 4.5.3;

"Frequency Bands" means the frequency bands specified in Schedule 3;

"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;

"HK\$" means the valid currency for the time being of Hong Kong;

"Indirect Interest" means an indirect interest whether legal or equitable held by a person (the "first person"), through one or more bodies corporate, in the shares of

another body corporate (the "second person"), such that the percentage interest attributable to the first person in the shares of the second person is equal to 15% or more and, for this purpose the first person, and every body corporate controlled by the first person, shall be treated as one person;

"Insider" means, in relation to a Bidder, any person to whom Confidential Information is disclosed, directly or indirectly, by that Bidder or, directly or indirectly, by any person who is an Insider in relation to that Bidder and includes:

- (a) in the case of a body corporate, any person who controls, who is controlled by, or under common control with, that person; and
- (b) in the case of a partnership, any partners and co-partners;

"2G Interest" means a Participation or Indirect Interest in, or control of, a 2G Operator;

"Irrevocable Undertaking" means the undertaking in the form specified in Appendix 6;

"Letter of Credit" means a letter of credit in the form specified in Appendix 7;

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

"2G Licence" means a public radiocommunications service licence for personal communications service, a public radiocommunications service licence for public mobile radio telephone service or a mobile carrier licence issued by the Authority under section 7 of the Ordinance for the establishment or maintenance of a telecommunications network for carrying communications to or from the public between moving locations or between fixed locations and moving locations situated within Hong Kong and operating in all or any of the frequency bands 825-960 MHz, 1710-1785 MHz and 1805-1880 MHz;

"MVNO" has the meaning given in the Conditions;

"MVNO Statutory Declaration" means the statutory declaration referred to in paragraph 2.1.2(e) and in the form specified in Appendix 4;

"Network Turnover" means, in relation to calculating the Spectrum Utilization Fee, the revenue arising from or attributable to the provision of any telecommunications services over any telecommunications network using the Frequency Bands to which that fee relates;

"2G Operator" means a person which holds a 2G Licence at the Application Date;

"Ordinance" means the Telecommunications Ordinance (Cap. 106);

"Participation" means, in relation to a body corporate, a holding or a beneficial entitlement to shares in that body corporate, a right to acquire or subscribe for shares

in that body corporate, the possession of voting power in that body corporate, or the right to acquire voting power in that body corporate other than:

- (a) a holding or beneficial entitlement which is less than 15% of the issued share capital of that body corporate;
- (b) a right to acquire or subscribe for those shares which, together with any existing holding or beneficial entitlement, represents or would represent less than 15% of the issued share capital of that body corporate;
- (c) the possession of voting power in respect of less than 15% of the issued share capital of that body corporate; and
- (d) a right to acquire that voting power which, together with any existing voting power, represents less than 15% of the issued share capital of that body corporate;

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

"Performance Bond" means a performance bond in the form determined by the Authority substantially in the form specified in Appendix 5 and which is to be provided to the Authority in accordance with paragraph 5.2.3(b);

"Pre-Qualification Stage" means the stage specified in Part 3;

"Provisional Successful Bidder" has the meaning given in paragraph 4.5.1;

"Provisional Successful Bidder Notice" has the meaning given in paragraph 4.5.8;

"Qualified Bidder" means a Bidder determined as such in accordance with section 1 of Part 3;

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

- (a) one or more of the following
 - (i) Moody's A2;
 - (ii) Standard & Poor's A;
 - (iii) Duff & Phelps Credit Reference Agency's A; or
 - (iv) Fitch - IBCA's A; or
- (b) a rating of a body other than a body listed in subparagraph (a) which, in the opinion of the Authority, is equivalent to one or more of the ratings listed in that paragraph;

"Regulation" means the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation;

"Requisite Number" has the meaning given in paragraph 4.5.1(b);

"Revised Provisional Successful Bidder Notice" has the meaning given in paragraph 4.6.18;

"Revised Provisional Successful Bidders" has the meaning given in paragraph 4.6.18;

"Roaming Consent Letter" means the letter relating to the consent referred to in paragraph 3.1.2(d) and in the form specified in Appendix 8;

"Roaming Special Condition" means the special condition referred to in paragraph 3.1.2(d), substantially in the form set out in Schedule 4;

"Royalty Percentage" means the percentage of Network Turnover in respect of each Royalty Year which shall comprise part of the Spectrum Utilization Fee;

"Royalty Year" means each period of 12 months in the 15 year period starting on the date on which the Licence authorising the use of the relevant Frequency Band is granted;

"Second Phase" means the phase of the Auction specified in section 6 of Part 4;

"Second Phase Notice" has the meaning given in paragraph 4.6.1;

"Second Phase Reserve Price" means, in relation to the Second Phase, the amount specified in Schedule 1;

"Spectrum Utilization Fees" means the sums payable in respect of each set of Frequency Bands as determined in accordance with this Notice;

"Sub-Auction" has the meaning given in paragraph 4.6.7;

"Successful First Phase Tied Bidder" has the meaning given in paragraph 4.5.5;

"Third Phase" means the phase of the Auction specified in section 7 of Part 4;

"Third Phase Bidder" has the meaning given in paragraph 4.7.1(a);

"Third Phase Notice" has the meaning given in paragraph 4.7.1;

"Third Phase Reserve Price" means, in relation to the Third Phase, the amount specified in Schedule 1; and

"Tied Bidding Round" has the meaning given in paragraph 4.5.3.

Section 3 - Interpretation

1.3.1 In this Notice unless the context otherwise requires:

- (a) any reference to a person having a Participation (as defined in paragraph 1.2.1) in a body corporate shall be construed as a reference to:
 - (i) a holding of, or a beneficial entitlement to, the shares in that body corporate;
 - (ii) a right to acquire, or subscribe for, shares in that body corporate together with any existing shareholding or beneficial entitlement held by that person; or
 - (iii) the possession of voting power, or the right to acquire voting power, in that body corporate,

and, for this purpose, a person and every body corporate controlled by him shall be treated as one person;

- (b) any reference to shares shall be construed as a reference to issued share capital excluding any part of that capital which, neither as respects dividends nor 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 of the characteristics of equity share capital so as to make it nearly equivalent to equity share capital;
- (c) subject to subparagraph (d), any reference to:
 - (i) a holding of, or beneficial entitlement to, or having the right to acquire, or subscribe for, shares or any amount of the shares in a body corporate; or
 - (ii) the possession of voting power, the right to acquire voting power or any amount of the voting power, in a body corporate,

shall be construed as a reference to that holding, entitlement, right or possession being held, whether alone or jointly with one or more other persons and whether directly or through one or more nominees;

- (d) a reference to a person's holding of shares, or possession of voting power, in a body corporate shall be construed so as to disregard that holding or possession if or to the extent that:
 - (i) he holds the shares concerned:
 - (aa) as a nominee; or
 - (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;
- (e) for the purpose of subparagraph (d)(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 (i);
- (f) for the purposes of subparagraph (d)(ii):
 - (i) a person is not entitled to exercise, or control the exercise of, voting rights in respect of shares if he is bound (whether by contract or otherwise) not to exercise 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 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 they continue;
- (g) a body corporate is controlled by a person if:
 - (i) he has a controlling interest in it;
 - (ii) he has a controlling interest in a 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 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;
- (h) for the purpose of the definition of "Indirect Interest" in paragraph 1.2.1, the percentage interest attributable to the first person in the shares of the second person shall be calculated by multiplying together the respective percentage interests of the first person, and of each body corporate in the chain of

ownership which gives the first person an Indirect Interest in the shares of the second person, in the shares of the second person or of another body corporate in that chain of ownership (as the case may be);

- (i) the percentage interests referred to in subparagraph (h) shall, in each case, be calculated in the same manner as is prescribed for calculating the percentage interest of a Participation in the shares of a body corporate in paragraph 1.3.1(a), save that a percentage interest or other arrangement which gives a person control in a body corporate shall for this purpose be treated as a percentage interest of 100%;
- (j) for the purpose of the definitions of “Indirect Interest” and “Participation” in paragraph 1.2.1 and “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, except that:
 - (A) any such entitlement, interest or right resulting from a transaction constituting or forming part of merger or acquisition activity in the circumstances described in subparagraph (aa) or (bb) shall be deemed not to arise until:
 - (aa) (where the transaction is conditional on a merger or acquisition proposal or transaction which is subject to a condition that clearance, with or without conditions, is received from any relevant regulatory authority and subparagraph (bb) does not apply) that condition of the transaction has been satisfied or waived; or
 - (bb) (where the transaction is, or forms part of, a merger or acquisition proposal or transaction which is opposed by the directors of any relevant party) the transaction becomes unconditional in all respects or (if earlier) takes place;
 - (B) any conditional entitlement, interest or right created on or before 20th March, 2000 shall be disregarded;
 - (ii) a person shall be deemed to have control of, or hold a Participation or an Indirect Interest in, a body corporate, as the case may be, where that person, acting in concert with another person, together hold the relevant percentage for the purposes of control, a Participation or an Indirect Interest;
 - (iii) references to two or more bodies corporate being under common control mean that they are controlled by the same person or group of persons acting in concert;

- (iv) notwithstanding subparagraph (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
- (v) 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 was to avoid or circumvent any of the terms and conditions of this Notice;
- (k) for the purposes of subparagraph (j)(iv), an interest in shares shall cease to be an Exempt Security Interest and the person holding the interest in the shares by way of security (the "lender") shall be taken to have acquired that interest, when:
 - (i) the lender:
 - (A) becomes entitled to exercise voting rights in respect of the interest in the shares held as security as a result of, or following, a default by the person giving the interest in the shares as security; and
 - (B) 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 the shares held as security becomes exercisable, and the lender or its agent offers the interest in the shares held as security, or any part of that interest, for sale;
- (l) persons "acting in concert" comprise persons who, pursuant to an agreement or understanding, actively co-operate to obtain or consolidate (i) control of a body corporate or (ii) the relevant percentage in a body corporate for the purposes of control, a Participation or an Indirect Interest;
- (m) 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 separate legal personality and includes its successors in title, permitted assigns and permitted transferees;
- (n) any reference to a "random method" shall refer to a method by which the relevant Bidder is selected by random;
- (o) "holding company" and "subsidiary" have the meanings given to them in section 2 of the Companies Ordinance (Cap. 32);
- (p) any reference in this Notice to a period to be determined in terms of a number of Business Days shall be calculated from midnight on the Business Day of notification or expiry of another time period, as the case may be, and expire at midnight on the last of the relevant number of Business Days and

any reference to “midnight” in relation to a particular day shall be read as 11.59 p.m. on that day;

- (q) 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;
- (r) 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;
- (s) the singular includes the plural and vice versa and words and expressions importing each gender shall include the others;
- (t) references to this Notice shall include references to the Schedules and the Appendices and references to any "paragraph", "Schedule" or "Appendix" are to a paragraph, Schedule or Appendix of this Notice;
- (u) expressions of time shall be references to Hong Kong time; and
- (v) the headings do not affect its interpretation.

Section 4 - Connections

1.4.1 Notwithstanding any other provision of this Notice, where the Authority determines that, in relation to 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 Connected Bidder satisfies the Authority that no purpose of the transaction or event or series of transactions or events which brought about the Connection was to bring about the Connection;
- (c) the transaction or event or series of transactions or events which brought about the Connection was or were, as the case may be, bona fide commercial transactions not designed for the purpose of avoiding or circumventing any of the terms and conditions of this Notice relating to Connected Bidders; and
- (d) arrangements satisfactory to the Authority have been made or will be made such that:
 - (aa) neither of the Bidders (“Bidder A” and “Bidder B” respectively) is or will in practice be able to achieve the result that the affairs of one such Bidder are conducted in accordance with the other’s wishes;
 - (bb) no person is or will in practice be able to achieve the result that the affairs of both Bidder A and Bidder B are conducted in accordance with its wishes;

- (cc) there is no appreciable risk that Confidential Information relating to Bidder A has been obtained or will be obtained by Bidder B, or vice versa; and
- (dd) there is no appreciable risk that both Confidential Information relating to Bidder A and Confidential Information relating to Bidder B 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.

- 1.4.2 A determination by the Authority under paragraph 1.4.1 may be revoked by him at any time in the event of any change of circumstances which he considers to be material to that determination and any 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 6.4.2).
- 1.4.3 Notice of any determination by the Authority under paragraph 1.4.1 and any revocation of a determination under paragraph 1.4.2 shall be given to all Bidders.

PART 2 - APPLICATION STAGE

Section 1 - Application

- 2.1.1 No person other than a body corporate formed and registered under the Companies Ordinance (Cap. 32) may make an Application in accordance with this Part.
- 2.1.2 An Application must be completed in the English language and consist of the following:
 - (a) an Application Form;
 - (b) a Bidder Compliance Certificate;
 - (c) a Deposit;
 - (d) a Connected Bidder Statutory Declaration;
 - (e) an MVNO Statutory Declaration;
 - (f) a Roaming Consent Letter (if appropriate); and
 - (g) the consent of the Authority in accordance with paragraph 3.1.3 (if appropriate) together with written evidence that any conditions to which that consent is subject which are required to be satisfied by the later of the Application Dates have been satisfied.

Manner of Application

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 to the Application Location.

Date for receipt of Applications

2.1.4 Subject to paragraphs 2.1.5 and 2.1.7, Applications must be received by the Authority at the Application Location between 9.00 a.m. and 5.00 p.m. on either of the Application Dates. 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.

2.1.5 If a tropical cyclone warning signal no. 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 at the Application Location between 9.00 a.m. and 5.00 p.m. on the next Business Day on which none of the signals remains in force.

Application Dates

2.1.6 The Application Dates shall be either:

- (a) 17th September, 2001 and 18th September, 2001; or
- (b) any later dates as the Authority notifies on the Authority's Website, provided that any notification shall not be made later than two Business Days before the earlier date specified in subparagraph (a).

2.1.7 If, in exceptional circumstances which are beyond the control of the Authority or any body corporate which proposes to make an Application, it is not physically possible to receive or deliver, as the case may be, the Application in accordance with paragraphs 2.1.4 and 2.1.6, the Authority may, in his absolute discretion, specify any or a combination of the following:

- (a) receipt of the Application at a location other than the Application Location, the address of which he shall notify on the Authority's Website;
- (b) receipt of the Application on a date later than the later of the Application Dates, the details of which he shall notify on the Authority's Website; and
- (c) receipt of the Application at times different from those specified in paragraph 2.1.4.

2.1.8 If an Application is received in accordance with paragraph 2.1.7, it shall, without prejudice to any provision of this Notice regarding the veracity of the information contained in the Application, be deemed for all other purposes of this Notice to have been received on one of the Application Dates.

Additional information

- 2.1.9 Any person who is considering submitting an Application in accordance with the requirements of this Part may, before the earlier of the Application Dates, submit to the Authority one or more questions in writing relating to the submission of an Application.
- 2.1.10 If the Authority responds to a question submitted under paragraph 2.1.9, he may place a copy of the question and of any response, in whole or in part, on the Authority's Website but, in doing so, shall not, without the consent of that person, identify the person who has submitted the question.

Section 2 - Deposits

References to Deposit

- 2.2.1 Any reference in this Notice to the Deposit shall, unless otherwise indicated, be construed as referring to:
- (a) the Deposit which has been paid or delivered, as the case may be, to the Authority by a Bidder; and
 - (b) any Deposit Interest which 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 a Penalty.

Deposit

- 2.2.3 The Deposit shall be an amount equal to HK\$250 million and 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 p.m. on the later of the Application Dates.
- 2.2.5 Where a Bidder provides its Deposit as a Letter of Credit, it 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:
- (a) is in cash, it shall be payable to the Authority by telegraphic transfer to the Authority 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; or
 - (b) is a Letter of Credit, it shall be addressed to the Authority and delivered to the Application Location (together with the other documents set out in paragraph 2.1.2) pursuant to paragraphs 2.1.2 to 2.1.5 and 2.1.7 and 2.1.8.

Deposit interest

- 2.2.7 Where the Deposit is in cash, it shall earn interest at the rate available to the Authority from the Deposit Bank in which the cash is deposited, taking into account the need of the Authority to return the Deposit in accordance with the terms and conditions of this Notice to the relevant Bidder without undue delay.
- 2.2.8 Where the Deposit is in cash, subject to paragraph 2.2.9, where it, or part of it, is returned to a Bidder under any of the terms and conditions of this Notice, the Deposit, or part of it, which is returned shall include all Deposit Interest as has been earned in respect of that Deposit, or part of that Deposit, from (and including) the date on which it was received by the Authority up to (but excluding) the date on which it is returned.
- 2.2.9 Where the Deposit or part of the Deposit is forfeit under any provision of this Notice by way of Penalty, any Deposit Interest which has been earned in respect of the forfeited part of the Deposit shall form part of the total amount which is forfeit.

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 forfeit by way of Penalty, the deduction from that Bidder's Deposit shall be deemed to have occurred at the time of that notification by the Authority notwithstanding:
- (a) where the Deposit is in cash, that the sums specified in the notification, and any interest earned or to be earned on the Deposit, remain for a further period of time in the Authority Account; or
 - (b) where the Deposit is a Letter of Credit, that the Authority has not made a claim under the Letter of Credit in respect of the sums specified in the notification.
- 2.2.11 If a sum which has been forfeited by way of Penalty is re-instated as all or part of the Bidder's Deposit:
- (a) where the Deposit is in cash, the sum (including Deposit Interest on that sum) shall be paid into the relevant Authority Account and shall be deemed to be so re-instated from the time of notification of its re-instatement to the Bidder and any interest which has been earned in respect of that sum shall also be deemed to be re-instated as part of the Deposit from that date; and
 - (b) where the Deposit is a Letter of Credit, the sum shall be paid to the Bidder.

Section 3 - Withdrawal

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

Section 4 - Acceptance of Conditions

- 2.4.1 A Bidder which has submitted an Application in accordance with this Part 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 was made:
- (a) to correct any manifest error;
 - (b) to correct any inconsistency; or
 - (c) to address circumstances not contemplated by the Authority on the date of this Notice but which are nevertheless within the overall purpose of the Conditions, the Ordinance, the Regulation and this Notice.

PART 3 - PRE-QUALIFICATION STAGE

Section 1 - Determination as a Qualified Bidder

- 3.1.1 In accordance with paragraph 3.1.2, the Authority shall determine whether a Bidder is a Qualified Bidder.
- 3.1.2 Subject to paragraphs 3.1.3 and 7.1.12, the Authority shall determine that a Bidder is a Qualified Bidder if:
- (a) in the Authority's opinion, it has submitted an Application which complies with all of the requirements of paragraph 2.1.2;
 - (b) in the Authority's opinion, it does not control, is not controlled by, nor is under common control with any other Bidder;
 - (c) in the case of a Bidder which is in a 2G Bidding Group, it has the consent referred to in paragraph 3.1.3 and has satisfied all conditions (if any) to which that consent is subject which are required to be satisfied by the later of the Application Dates; and
 - (d) in relation to a Bidder which:
 - (i) is a 2G Operator; or
 - (ii) has a 2G Operator within its Group (as defined in the Roaming Special Condition),

it, or the relevant 2G Operator, as the case may be, has agreed by signing the Roaming Consent Letter, if that Bidder becomes a Third Phase Bidder in accordance with Part 4, to the amendment of its 2G Licence or Licences to incorporate the Roaming Special Condition in accordance with regulation 8(3) of the Telecommunications Regulations (Cap. 106 sub.leg.A).
- 3.1.3 Any Bidder which is in a 2G Bidding Group shall not be a Qualified Bidder for the purposes of paragraph 3.1.2 unless the Authority has granted consent to it being in that 2G Bidding Group prior to the Application Date. Any consent given by the Authority pursuant to this paragraph may be subject to conditions which the Bidder must satisfy by the relevant time specified in the consent.

Section 2 - Notification of status as a Qualified Bidder

- 3.2.1 The Authority shall, after making his determination under section 2, issue to each of the Bidders a notice (a "Bidder Notice") which shall state whether that Bidder has been determined to be a Qualified Bidder.
- 3.2.2 Subject to paragraph 3.2.4, on, or as soon as practicable after, the issue of a Bidder Notice to a Bidder who has not been determined to be a Qualified Bidder, the Authority shall return that Bidder's Deposit provided that if any amounts have been forfeited by way of Penalty by the Authority in accordance with the terms and conditions of this Notice with respect to that Bidder:
- (a) where the Deposit is in cash, the Deposit shall be returned less the aggregate amount of those Penalties; and
 - (b) where the Deposit is a Letter of Credit, the Authority shall, subject to paragraph 3.2.3, make a claim under the Letter of Credit to the extent of the aggregate amount of those Penalties.
- 3.2.3 The Authority shall not make a claim under a Letter of Credit pursuant to paragraph 3.2.2 to the extent that a Bidder pays to the Authority by the date specified by the Authority a sum in cash which is equal to the aggregate amount of the sums which have been forfeited by way of Penalty by the Authority with respect to that Bidder.
- 3.2.4 Notwithstanding the return to a Bidder of its Deposit in accordance with paragraph 3.2.2, that Bidder shall continue to comply with those terms and conditions of this Notice as are specified by the Authority. If the Authority does not specify any terms and conditions in accordance with this paragraph, the Bidder shall be required to comply with all of the terms and conditions of this Notice as appropriate.

Section 3 - Numbers of Qualified Bidders

- 3.3.1 If either:
- (a) the Authority determines in accordance with section 2 of this Part that there are four or less than four Qualified Bidders; or
 - (b) at any time before the start of the First Phase as set out in the Bidder Participation Notice, the number of Qualified Bidders is four or less than four,

the Authority may, in his discretion, notify each of the Qualified Bidders that the First Phase shall not take place and the Auction shall consist only of the Second Phase (if any) and the Third Phase. The Qualified Bidders so notified shall be the Provisional Successful Bidders for the purposes of paragraph 4.5.1 and the Applicable Royalty Percentage shall be determined in accordance with paragraph 4.5.2.

PART 4 - AUCTION STAGE

Section 1 - Preliminary

Commencement

4.1.1 The Auction Stage may consist of the following phases:

- (a) a First Phase as specified in section 3 of this Part;
- (b) a Second Phase as specified in section 6 of this Part; and
- (c) a Third Phase as specified in section 7 of this Part.

Section 2 - Preparation for the Auction

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

Bidder Participation Notice

- 4.2.1 Following the issue of a Bidder Notice, the Authority shall issue to each Bidder a notice (a "Bidder Participation Notice") which, if the Auction is to include a First Phase, shall provide details of the Auction Location for the First Phase and the date on which, and the time at which, the First Phase shall start.
- 4.2.2 If the Auction is not to include a First Phase, the Authority shall issue a Second Phase Notice in accordance with paragraph 4.6.1.
- 4.2.3 If the Auction is not to include a First Phase nor a Second Phase, the Authority shall issue a Third Phase Notice in accordance with paragraph 4.7.1.
- 4.2.4 If there is a First Phase, the appropriate Bidding Schedules shall be provided to each Bidder at the Auction Location.
- 4.2.5 If the Authority is of the opinion that it is impractical for the First Phase to commence on the date or at the time or place referred to in the Bidder Participation Notice, he may notify each Bidder of a different date, time or place, as the case may be. If a different date or time is to be notified, the date or time shall not be earlier than that originally notified as the relevant date or time.

Section 3 - First Phase

Purpose

- 4.3.1 The purpose of the First Phase is to provide a procedure to determine the Applicable Royalty Percentage.

Structure of the First Phase

- 4.3.2 The First Phase shall consist of one or more intervals of time (a "Bidding Round") to which a corresponding series of Royalty Percentages payable in respect of the Spectrum Utilization Fee for each Frequency Band shall apply together with any Tied Bidding Rounds. The Royalty Percentages shall be set out in the appropriate Bidding Schedules.
- 4.3.3 For each Bidding Round, each Bidder shall notify the Authority that it wishes either to:

- (a) remain in that Bidding Round; or
- (b) withdraw from that Bidding Round,

and, in the case of subparagraph (b), the Bidder shall notify the precise Royalty Percentage which it wishes to offer (a "Final Offer") and the Royalty Percentage at which it wishes to withdraw (which shall be 0.01% above its Final Offer). Each Bidder which notifies or is deemed to notify a Final Offer is deemed to do so with respect to any of the Frequency Bands. The Final Offer of a Bidder shall remain valid until, and that Bidder may be required to re-enter the Auction pursuant to paragraphs 4.6.12 or 6.1.5 at any time before, the date of the Third Phase Bidder Notice. The final Bidding Round (the "Final Bidding Round") shall be the Bidding Round in which four or less Bidders have notified, or are deemed to have notified, the Authority that they wish to remain pursuant to subparagraph (a). The Authority shall notify each Bidder that a Bidding Round is the Final Bidding Round at the end of that Bidding Round.

4.3.4 For the purposes of paragraph 4.3.3, "notifications" shall be made:

- (a) from the Auction Location specified by the Authority;
- (b) using the communications method specified by the Authority which shall be in the following order of priority:
 - (i) facsimile process;
 - (ii) telephone call by fixed line;
 - (iii) telephone call by mobile phone; or
 - (iv) any other method as the Authority may specify; and
- (c) using the Bidding Form specified by the Authority for the relevant method of communication,

and be accompanied by a password and identifying signatures or oral confirmations by representatives authorised to make notifications to the Authority under the terms and conditions of this Notice, as notified to the Authority by the Bidder in its Application Form.

4.3.5 If a Bidder is present at the Auction Location and does not notify the Authority in accordance with paragraphs 4.3.3 and 4.3.4 with respect to a Bidding Round, the Authority may specify a further period of time during which that Bidder may be given a further opportunity to notify the Authority in accordance with paragraphs 4.3.3 and 4.3.4 with respect to that Bidding Round. If that Bidder, having been given that further opportunity, does not notify the Authority in accordance with paragraphs 4.3.3 and 4.3.4 and this paragraph, it shall be deemed to have made a notification to the Authority in accordance with paragraph 4.3.3(a) with respect to that Bidding Round.

4.3.6 On receipt by the Authority of a notification from a Bidder pursuant to paragraph 4.3.3(b), subject to paragraphs 4.3.7, 4.5.3, 4.6.12 and 6.1.5, that Bidder shall no longer be entitled to participate in the First Phase.

- 4.3.7 A Bidder which withdraws from the First Phase pursuant to paragraph 4.3.3(b) shall be required to re-enter the Auction in accordance with paragraphs 4.6.12 and 6.1.5 (if applicable).
- 4.3.8 If any Bidder (a "Deemed First Phase Reserve Price Bidder") is not present at the Auction Location on the Auction Date for the First Phase at the time specified in the Bidder Participation Notice (the "Requisite Time"), it shall be deemed to have notified the Authority of a Final Offer pursuant to paragraph 4.3.3(b) equal to the First Phase Reserve Price. In relation to any Bidder (a "Participating Bidder") which:
- (a) is present at the Requisite Time; and
 - (b) actually notifies the Authority of a Final Offer (pursuant to paragraph 4.3.3(b)) equal to the First Phase Reserve Price,
- and, which accordingly, is a First Phase Tied Bidder with the Deemed First Phase Reserve Price Bidder, the Deemed First Phase Reserve Price Bidder shall be deemed to have made a lower Revised Final Offer pursuant to paragraph 4.5.4 provided that this deemed determination is necessary to obtain the Requisite Number of Provisional Successful Bidders.
- 4.3.9 The First Phase shall end when the Authority has determined that there is the Requisite Number of Provisional Successful Bidders or, where it is not possible to obtain the Requisite Number of Bidders, the number of Provisional Successful Bidders as determined by the Authority.

Section 4 - Penalties

- 4.4.1 Each Bidder and person (if any) acting or purporting to act on behalf of that Bidder shall:
- (a) be present at the Auction Location in accordance with the Bidder Participation Notice and remain at the Auction Location in the room specified by the Authority (the "Bidding Room") until the time specified by the Authority and not leave the Bidding Room without the Authority's prior written consent;
 - (b) ensure that it is able to be contacted at all times for the purposes of the Auction;
 - (c) not communicate or attempt to communicate or make any arrangements to communicate with any person other than the Authority or any person present in the Bidding Room;
 - (d) not bring into the Bidding Room any communication device including, without limitation, mobile phones and pagers;
 - (e) not send any form of communication to the Authority during the Auction which is, in the opinion of the Authority, vexatious;
 - (f) make all Bidding Notifications to the Authority in accordance with the relevant terms and conditions of this Notice;

- (g) submit a Bidding Form which is illegible or which is otherwise unclear;
- (h) not notify the Authority using a method or format in contravention of paragraph 4.3.4 or other communications method specified by the Authority, as the case may be;
- (i) not destroy or use improperly any of the equipment supplied by the Authority for the Auction; or
- (j) not act, without reasonable excuse, in a manner which disrupts the procedure specified in this Part, and which does not otherwise fall within subparagraphs (a) to (i).

4.4.2 Without prejudice to the provisions of any law or ordinance and paragraph 6.1.1, the Authority may, in his discretion, deduct a sum by way of Penalty from a Bidder's Deposit each time a Bidder or any person acting or purporting to act on behalf of that Bidder contravenes any provisions of paragraph 4.4.1.

Section 5 - Procedure after First Phase

Provisional Successful Bidders

4.5.1. A Provisional Successful Bidder means:

- (a) a Bidder that has notified, or has been deemed to have notified, the Authority that it wishes to remain in the Auction at the end of the Final Bidding Round pursuant to paragraph 4.3.3(a) or 4.3.5, as the case may be; or
- (b) where three or less Bidders or no Bidder falls within subparagraph (a), the Bidder or Bidders which made the highest Final Offer or Final Offers during the Final Bidding Round up to the number of Bidders (if any) necessary to make the aggregate number of Bidders in subparagraph (a) and this subparagraph equal to four (the "Requisite Number").

4.5.2 Subject to paragraphs 4.5.5, 4.6.12, 4.6.15, 6.1.5 and 6.1.8, the Royalty Percentage applicable to each Frequency Band in respect of each Royalty Year for the purposes of calculating the Spectrum Utilization Fee shall be the aggregate of:

- (a) the highest Final Offer (or deemed Final Offer) of all of the Bidders which participated in any Bidding Round up to and including the Final Bidding Round other than those Bidders falling within paragraph 4.5.1; and
- (b) a percentage equal to 0.01 per cent.

(the "Applicable Royalty Percentage").

If:

- (i) paragraph 3.3.1 applies and there is no First Phase; or
- (ii) no Bidder is present at the Auction Location on the Auction Date for the First Phase,

the Applicable Royalty Percentage shall be equal to the First Phase Reserve Price.

Tied Bidders

- 4.5.3 If there would be more than the Requisite Number of Provisional Successful Bidders in paragraph 4.5.1 as a result of two or more Bidders having made the same Final Offer ("First Phase Tied Bidders"), the Authority shall, by notice to the First Phase Tied Bidders, conduct a further Bidding Round after the Final Bidding Round (a "Tied Bidding Round") for the First Phase Tied Bidders (the "First Phase Tied Bidder Procedure") in accordance with paragraph 4.5.4 provided that the First Phase Tied Bidder Procedure is necessary to determine which of the First Phase Tied Bidders shall be the Successful First Phase Tied Bidders to obtain the Requisite Number of Provisional Successful Bidders.
- 4.5.4 In the Tied Bidding Round, each of the First Phase Tied Bidders shall notify the Authority (using a duly completed Bidding Form and the communications method specified by the Authority) of a further Final Offer (a "Revised Final Offer") between (and including) its Final Offer up to and including:
- (a) if, at the start of the Tied Bidding Round, there is no Provisional Successful Bidder which has made a Final Offer, the lowest Royalty Percentage of the Bidding Round immediately following the Final Bidding Round as set out in the Bidding Schedule; and
 - (b) if, at the start of the Tied Bidding Round, there is one or more Provisional Successful Bidders which have made a Final Offer, the Final Offer, or the lowest Final Offer, of such Provisional Successful Bidder or Bidders, as the case may be.
- 4.5.5 The First Phase Tied Bidder which notifies the Authority of the highest Revised Final Offer pursuant to paragraph 4.5.4 shall be the Bidder for the purposes of paragraph 4.5.1(b) (the "Successful First Phase Tied Bidder") or, if more than one Successful First Phase Tied Bidder is required to obtain the Requisite Number of Provisional Successful Bidders for the purposes of paragraph 4.5.1(b), the relevant number of First Phase Tied Bidders which notified the Authority of the highest Revised Final Offers to obtain the Requisite Number of Provisional Successful Bidders shall be the Successful First Phase Tied Bidders. The Applicable Royalty Percentage for the purposes of paragraph 4.5.2 shall, in these circumstances, be the aggregate of:
- (i) the highest Revised Final Offer of all of the First Phase Tied Bidders other than the Successful First Phase Tied Bidder or Bidders; and
 - (ii) a percentage equal to 0.01 per cent.
- 4.5.6 If a First Phase Tied Bidder does not notify the Authority in accordance with the First Phase Tied Bidder Procedure, it shall be deemed to have notified the Authority of a Revised Final Offer equal to its Final Offer.
- 4.5.7 The Successful First Phase Tied Bidder or Bidders shall, subject to the procedures in the Second Phase which apply to Connected Bidders, participate in the Third Phase. If two or more of the First Phase Tied Bidders make, pursuant to paragraph 4.5.4, or

are deemed to have made, pursuant to paragraph 4.5.6, the same Revised Final Offer ("Further First Phase Tied Bidders"), the Authority shall employ a random method to determine which of the Further First Phase Tied Bidder or Bidders shall, subject to the procedures in the Second Phase which apply to Connected Bidders, participate in the Third Phase provided that the employment of a random method is necessary to determine which of the Further First Phase Tied Bidders shall be the Successful First Phase Tied Bidder or Bidders to obtain the Requisite Number of Provisional Successful Bidders. The Applicable Royalty Percentage for the purposes of paragraph 4.5.2 shall, in these circumstances, be the Revised Final Offer of the Further First Phase Tied Bidders.

Provisional Successful Bidder Notice

4.5.8 After the end of the Final Bidding Round, the Authority shall issue to each Provisional Successful Bidder a notice (a "Provisional Successful Bidder Notice") which shall notify that Bidder of:

- (a) the Applicable Royalty Percentage applicable to each Frequency Band for the purposes of paragraph 4.5.2;
- (b) the identity of all other Provisional Successful Bidders; and
- (c) such information as is contained in section 4 of the Application Form of each of the Provisional Successful Bidders, together with any information obtained by the Authority pursuant to paragraph 7.1.12, which the Authority determines should be provided.

Section 6 - Second Phase

Second Phase

4.6.1 This section shall be subject to paragraph 1.4.1 of Part 1. Within three Business Days after the date of the Provisional Successful Bidder Notice, each Provisional Successful Bidder shall confirm in writing to the Authority that the declaration made in the Connected Bidder Statutory Declaration comprised in its Application remains true and accurate in all respects or, if it is not able to give that confirmation, it shall provide details of where the declaration is not true and accurate. Following receipt of those confirmations and details, as the case may be, the Authority shall determine whether any of the Provisional Successful Bidders is a Connected Bidder in relation to any other Provisional Successful Bidder. If the Authority determines that there are Connected Bidders amongst the Provisional Successful Bidders, it shall notify all Provisional Successful Bidders (the "Second Phase Notice") that the Auction shall proceed to the Second Phase in accordance with this section. If there are no Connected Bidders amongst the Provisional Successful Bidders, the Authority shall notify all Provisional Successful Bidders that the Auction shall proceed to the Third Phase.

Preparations for Second Phase

4.6.2 The Second Phase Notice shall provide details of:

- (a) the Auction Location for the Second Phase;

- (b) the date on which, and the time at which, the Second Phase shall start; and
- (c) the period of time for the Second Phase.

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

Purpose

4.6.4 The purpose of the Second Phase is to provide a procedure to determine:

- (a) which of the Connected Bidders shall participate in the Third Phase; and
- (b) the cash amount (if any) which shall form part of the Spectrum Utilization Fee payable in respect of the relevant Frequency Bands.

Structure of the Second Phase

4.6.5 The Second Phase shall consist of:

- (a) the provision to the Authority by a Connected Bidder within a Connected Bidder Group of an Irrevocable Undertaking with respect to that Connected Bidder in accordance with paragraph 4.6.11; or
- (b) if a Connected Bidder does not provide an Irrevocable Undertaking with respect to that Connected Bidder in accordance with paragraph 4.6.11, a Sub-Auction with respect to the Connected Bidder Group in which that Connected Bidder is comprised.

4.6.6 Subject to paragraph 4.6.3, the Sub-Auction shall start on the date, at the time and at the Auction Location notified to the relevant Connected Bidders in the Second Phase Notice.

4.6.7 The Sub-Auction shall consist of the period of time notified in the Second Phase Notice during which each Connected Bidder within the relevant Connected Bidder Group shall notify the Authority (using a duly completed Bidding Form and the communications method specified by the Authority) of a valid bid subject to the Second Phase Reserve Price. A valid bid shall consist of any cash amount expressed in Hong Kong dollars and whole cents and, for the avoidance of doubt, can be at the Second Phase Reserve Price.

4.6.8 Following a Sub-Auction, the Connected Bidders who shall participate in the Third Phase, subject to paragraph 4.6.10, shall be considered in the following order:

- (a) first, the Connected Bidder which notified the Authority of the highest bid pursuant to paragraph 4.6.7 (the "Highest Connected Bidder"); and
- (b) secondly, the Connected Bidders (if any) who, considered by the Authority in the order of the highest to the lowest bids made in the Sub-Auction, (and,

where two or more Connected Bidders notify the Authority of the same bid pursuant to paragraph 4.6.7, in the order as determined by the Authority) are:

- (i) not Connected Bidders in relation to the Highest Connected Bidder; and
- (ii) not Connected Bidders in relation to any Bidder previously determined as falling within subparagraph (b)(i).

Consequences of failure to notify

4.6.9 If a Connected Bidder does not notify the Authority in accordance with paragraph 4.6.7, it shall be deemed to have notified the Authority of the lowest bid which is equal to the Second Phase Reserve Price with respect to all of the Connected Bidders within the relevant Connected Bidder Group. If one or more Connected Bidders in that Connected Bidder Group are deemed to have made the lowest bid, the Authority shall employ a random method to determine the order in which those Connected Bidders shall be considered for the purposes of paragraph 4.6.8 and shall notify the relevant Connected Bidders of that order.

Tied bids

4.6.10 If the Authority is not able to establish the order in which Connected Bidders shall be considered for participation in the Third Phase pursuant to paragraph 4.6.8 as a result of two or more Connected Bidders in a Connected Bidder Group notifying the Authority of the same bid ("Second Phase Tied Bidders"), the Authority shall, by notice to the Second Phase Tied Bidders, conduct an auction in the form of a further Sub-Auction in accordance with paragraphs 4.6.6 to 4.6.9 to determine the order (as between the Second Phase Tied Bidders) in which those Second Phase Tied Bidders shall be considered for the purposes of paragraph 4.6.8 so that references to:

- (a) Connected Bidder shall be to Second Phase Tied Bidder; and
- (b) Second Phase Notice shall be to a notice of the Authority sent to the Second Phase Tied Bidders pursuant to this paragraph.

Any cash amount which is bid by a Second Phase Tied Bidder pursuant to this paragraph shall be in addition to any cash amount bid by that Second Phase Tied Bidder pursuant to paragraph 4.6.7. If two or more Second Phase Tied Bidders bid the same bid pursuant to this paragraph, the Authority shall employ a random method to determine the order in which those Second Phase Tied Bidders shall be considered for the purposes of paragraph 4.6.8.

Irrevocable Undertakings

4.6.11 Following the receipt of the Second Phase Notice, a Connected Bidder in a Connected Bidder Group shall be entitled within two Business Days after the date of the Second Phase Notice (or any longer period with respect to a Connected Bidder as the Authority may specify) to provide to the Authority an Irrevocable Undertaking:

- (a) in the case of subparagraphs (a) and (b) of the definition of "Connected Bidder", by the person which holds the relevant Bidding Interest in that Connected Bidder and any person or persons whose consent or agreement is

required to enable the first mentioned person to perform all of its obligations under the Irrevocable Undertaking; and

- (b) in the case of subparagraph (c) of the definition of "Connected Bidder", by one or more of the persons who holds the relevant 2G Interest and any person or persons whose consent or agreement is required to enable the first mentioned person or persons to perform all of its obligations under the Irrevocable Undertaking,

in each case with the effect that, immediately following the fulfilment of the obligations contained in that Irrevocable Undertaking, that Connected Bidder would no longer be a Connected Bidder in relation to any other Provisional Successful Bidder or Revised Provisional Successful Bidder, as the case may be, for the purposes of the Second Phase and the Third Phase. If the Authority does not receive an Irrevocable Undertaking with respect to that Connected Bidder having the effect set out in this paragraph, the Second Phase shall consist of a Sub-Auction with respect to the Connected Bidder Group in which that Connected Bidder is comprised in accordance with paragraph 4.6.5(b). If the Authority does receive an Irrevocable Undertaking with respect to that Connected Bidder having the effect set out in this paragraph, that Connected Bidder shall no longer be a Connected Bidder for the purposes of this Notice and shall participate in the Third Phase.

Consequences of Sub-Auction

4.6.12 If, as a result of a Sub-Auction, there are fewer than the Requisite Number of Provisional Successful Bidders which shall participate in the Third Phase, subject to paragraph 4.6.20, such number of Qualified Bidders which are neither Provisional Successful Bidders nor Revised Provisional Successful Bidders (the "Withdrawn Bidders") (if any) shall re-enter the Auction so that the number of Provisional Successful Bidders is equal to the Requisite Number or, where there are insufficient Withdrawn Bidders to re-enter the Auction pursuant to this paragraph to obtain the Requisite Number of Provisional Successful Bidders, all the Withdrawn Bidders shall re-enter the Auction pursuant to this paragraph. The Withdrawn Bidders shall re-enter the Auction according to the amount of their respective Final Offers (including, without limitation, any Final Offers which are deemed under the terms and conditions of this Notice) so that the Bidder with the highest Final Offer shall re-enter the Auction first. The Applicable Royalty Percentage for the purposes of paragraph 4.5.2 shall, in these circumstances, be the aggregate of:

- (a) the highest Final Offer of all of the Withdrawn Bidders other than the Withdrawn Bidders which re-enter the Auction pursuant to this paragraph (the "Relevant Withdrawn Bidder"); and
- (b) a percentage equal to 0.01 per cent.

If there is no Relevant Withdrawn Bidder, the Applicable Royalty Percentage shall be the First Phase Reserve Price.

4.6.13 If there would be more than the required number of Withdrawn Bidders to obtain the Requisite Number of Provisional Successful Bidders as a result of two or more Withdrawn Bidders having made the same Final Offer ("Tied Withdrawn Bidders"), the Authority shall, by notice to the Tied Withdrawn Bidders, conduct a Tied Bidding Round for the Tied Withdrawn Bidders (the "Tied Withdrawn Bidder Procedure") in

accordance with paragraph 4.6.14 provided that the Tied Withdrawn Bidder Procedure is necessary to determine which of the Tied Withdrawn Bidders shall re-enter the Auction to obtain the Requisite Number of Provisional Successful Bidders.

4.6.14 In the Tied Bidding Round, each of the Tied Withdrawn Bidders shall notify the Authority (using a duly completed Bidding Form and the communications method specified by the Authority) of a further Final Offer (a "Revised Final Offer") between (and including) its Final Offer up to and including:

- (a) if, at the start of the Tied Bidding Round, there is no Provisional Successful Bidder or Revised Provisional Successful Bidder which has made a Final Offer, the lowest Royalty Percentage of the Bidding Round immediately following the Final Bidding Round as set out in the Bidding Schedule; and
- (b) if, at the start of the Tied Bidding Round, there is one or more Provisional Successful Bidders or Revised Provisional Successful Bidders which have made a Final Offer, the Final Offer, or lowest Final Offer, of such Provisional Successful Bidder or Bidders or Revised Provisional Successful Bidder or Bidders, as the case may be.

4.6.15 The Tied Withdrawn Bidder which notifies the Authority of the highest Revised Final Offer pursuant to paragraph 4.6.14 shall re-enter the Auction (the "Successful Tied Withdrawn Bidder") or, if more than one Successful Tied Withdrawn Bidder is required to re-enter the Auction pursuant to paragraph 4.6.12 to obtain the Requisite Number of Provisional Successful Bidders for the purposes of paragraph 4.5.1(b), the relevant number of Tied Withdrawn Bidders which notified the Authority of the highest Revised Final Offers to obtain the Requisite Number of Provisional Successful Bidders shall be the Successful Tied Withdrawn Bidders. The Applicable Royalty Percentage for the purposes of paragraph 4.5.2 shall, in these circumstances, be the aggregate of:

- (i) the highest Revised Final Offer of all of the Tied Withdrawn Bidders other than the Successful Tied Withdrawn Bidder or Bidders; and
- (ii) the percentage equal to 0.01 per cent.

4.6.16 If a Tied Withdrawn Bidder does not notify the Authority in accordance with the Tied Withdrawn Bidder Procedure, it shall be deemed to have notified the Authority of a Revised Final Offer equal to its Final Offer.

4.6.17 The Successful Tied Withdrawn Bidder or Bidders shall, subject to the procedures in the Second Phase which apply to Connected Bidders, participate in the Third Phase. If two or more of the Tied Withdrawn Bidders make, pursuant to paragraph 4.6.14, or are deemed to have made, pursuant to paragraph 4.6.16, the same Revised Final Offer ("Further Tied Withdrawn Bidders"), the Authority shall employ a random method to determine which of the Further Tied Withdrawn Bidder or Bidders shall, subject to the procedures in the Second Phase which apply to Connected Bidders, participate in the Third Phase provided that the employment of a random method is necessary to determine which of the Further Tied Withdrawn Bidders shall be the Successful Tied Withdrawn Bidder or Bidders to obtain the Requisite Number of Provisional Successful Bidders. The Applicable Royalty Percentage for the purposes of paragraph 4.5.2 shall, in these circumstances, be the Revised Final Offer of the Further Tied Withdrawn Bidders.

4.6.18 The Authority shall issue to each Bidder which re-enters the Auction pursuant to paragraph 4.6.12 or 6.1.5 and each remaining Provisional Successful Bidder (together the "Revised Provisional Successful Bidders") a notice (the "Revised Provisional Successful Bidder Notice") which shall notify that Bidder of:

- (a) the Applicable Royalty Percentage applicable to each Frequency Band for the purposes of paragraph 4.5.2;
- (b) the identity of all other Revised Provisional Successful Bidders; and
- (c) such information as is contained in section 4 of the Application Form of each of the Revised Provisional Successful Bidders, together with any information obtained by the Authority pursuant to paragraph 7.1.12, which the Authority determines should be provided.

4.6.19 Following the issue of a Revised Provisional Successful Bidder Notice pursuant to paragraph 4.6.18, any Provisional Successful Bidder Notice or prior Revised Provisional Successful Bidder Notice shall be disregarded.

4.6.20 Immediately following the issue of a Revised Provisional Successful Bidder Notice pursuant to paragraph 4.6.18, the procedures in this Part shall apply except that all references to:

- (a) Provisional Successful Bidder Notices shall be to Revised Provisional Successful Bidder Notices; and
- (b) Provisional Successful Bidders shall be to Revised Provisional Successful Bidders,

except that any Withdrawn Bidder (a "Connected Withdrawn Bidder") which:

- (i) but for this paragraph could, re-enter the Auction pursuant to paragraph 4.6.12, or 6.1.5; and
- (ii) is a Connected Bidder in relation to a remaining Provisional Successful Bidder or Revised Provisional Successful Bidder (which either is a Provisional Successful Bidder which falls within paragraph 4.5.1 or a Withdrawn Bidder which has re-entered the Auction before the Connected Withdrawn Bidder has done),

shall not be entitled to participate in any Sub-Auction nor re-enter the Auction unless it submits to the Authority an Irrevocable Undertaking in accordance with paragraph 4.6.11.

Section 7 - Third Phase

Preparation for the Third Phase

- 4.7.1 Following the First Phase, or, if there has been a Second Phase, following the Second Phase, the Authority shall notify all Provisional Successful Bidders or, Revised Provisional Successful Bidders, as the case may be, (the "Third Phase Notice") of:
- (a) the identity of all Bidders who have the right to participate in the Third Phase (a "Third Phase Bidder");
 - (b) the Auction Location for the Third Phase;
 - (c) the date on which, and the time at which, the Third Phase shall start; and
 - (d) the period of time for the Third Phase.
- 4.7.2 If the Authority is of the opinion that it is impractical for the Third Phase to commence on the date or at the time or place referred to in the Third Phase Notice, he may notify each Third Phase Bidder of a different date, time or place, as the case may be. If a different date or time is to be notified, the date or time shall not be earlier than that originally notified as the relevant date or time.
- 4.7.3 After the issue of the Third Phase Notice in accordance with paragraph 4.7.1, the Authority shall return to a Bidder which is not a Third Phase Bidder (a "Losing Bidder") that Losing Bidder's Deposit provided that if any amounts have been forfeited by way of Penalty by the Authority in accordance with the terms and conditions of this Notice with respect to that Losing Bidder:
- (a) where the Deposit is in cash, the Deposit shall be returned less the aggregate amount of those Penalties; and
 - (b) where the Deposit is a Letter of Credit, the Authority shall, subject to paragraph 4.7.4, make a claim under the Letter of Credit to the extent of the aggregate amount of those Penalties.
- 4.7.4 The Authority shall not make a claim under a Letter of Credit pursuant to paragraph 4.7.3 to the extent that a Losing Bidder pays to the Authority by the date specified by the Authority a sum in cash which is equal to the aggregate amount of the sums which have been forfeited by way of Penalty by the Authority with respect to that Losing Bidder.
- 4.7.5 Notwithstanding the return to a Losing Bidder of its Deposit in accordance with paragraph 4.7.3, that Losing Bidder shall continue to comply with those terms and conditions of this Notice as are specified by the Authority. If the Authority does not specify any terms and conditions in accordance with this paragraph, the Losing Bidder shall be required to comply with all of the terms and conditions of this Notice as appropriate.

Purpose

4.7.6 The purpose of the Third Phase is to provide a procedure to determine:

- (a) the respective priority rights of each Third Phase Bidder in relation to the allocation of Frequency Bands; and
- (b) the bid which shall form part of the Spectrum Utilization Fee payable by each Third Phase Bidder.

Structure of the Third Phase

4.7.7 Subject to paragraph 4.7.2, the Third Phase shall start on the date, at the time and at the Auction Location notified to the Third Phase Bidders in the Third Phase Notice.

4.7.8 the Third Phase shall consist of the period of time notified in the Third Phase Notice during which each Third Phase Bidder shall notify the Authority (using a duly completed Bidding Form and the communications method specified by the Authority) of a valid bid for a Frequency Band subject to the Third Phase Reserve Price. A valid bid shall consist of any cash amount expressed in Hong Kong dollars and whole cents and, for the avoidance of doubt, can be at the Third Phase Reserve Price.

4.7.9 Following the submission of the bids pursuant to paragraph 4.7.8, the Third Phase Bidders shall be entitled to select (by notifying the Authority using a duly completed Bidding Form and the communications method specified by the Authority) a Frequency Band according to the value of their respective bids such that the Third Phase Bidder which made the highest value bid shall be entitled to make its selection first. The Authority shall notify each Third Phase Bidder of the order in which it is entitled to make its selection in accordance with this paragraph after the submission of bids pursuant to paragraph 4.7.8 (the "Selection Notice"). If two or more Third Phase Bidders bid the same bid ("Third Phase Tied Bidders"), the Authority shall, by notice to the Third Phase Tied Bidders, conduct an auction in the form of a Sub-Auction in accordance with paragraphs 4.6.6 to 4.6.9 to determine the order (as between the Third Phase Tied Bidders) in which those Third Phase Tied Bidders may make their respective selections in accordance with this paragraph so that references to:

- (a) Connected Bidder shall be to Third Phase Tied Bidder;
- (b) Second Phase Notice shall be to a notice of the Authority sent to the Third Phase Tied Bidders pursuant to this paragraph; and
- (c) participation in the Third Phase shall be to the determination of the order in which the Frequency Bands are selected.

Consequences of failure to notify

- 4.7.10 If a Third Phase Bidder does not notify the Authority in accordance with paragraph 4.7.8, it shall be deemed to have notified the Authority of the lowest bid which is equal to the Third Phase Reserve Price with respect to all of the Third Phase Bidders. If one or more Third Phase Bidders are deemed to have made the lowest bid, the Authority shall employ a random method to determine the order in which those Third Phase Bidders shall be entitled to select a Frequency Band in accordance with paragraph 4.7.9 and shall notify the relevant Third Phase Bidders of that order.

Selection of Frequency Bands and consequences of failure to make a selection

- 4.7.11 Each Third Phase Bidder shall be entitled to a period of time specified by the Authority to make its selection in accordance with paragraph 4.7.9. If a Third Phase Bidder fails to make a selection in accordance with paragraph 4.7.9, the Third Phase Bidder entitled to make its selection immediately after that Third Phase Bidder shall make its selection following which the selection process shall revert to the order established pursuant to paragraph 4.7.9. If a Third Phase Bidder does not make a selection pursuant to this paragraph, the Authority shall employ a random method to determine which Frequency Band is allocated to each Third Phase Bidder, after having allocated a Frequency Band to each Third Phase Bidder which has made a selection in accordance with paragraph 4.7.9.

PART 5 - GRANT STAGE

Section 1 - Preliminary

Notification of any Approval

- 5.1.1 Within two Business Days after receipt of a Provisional Successful Bidder Notice or Revised Successful Bidder Notice, as the case may be, each Third Phase Bidder shall notify the Authority whether it is subject to an Approval and, if so, the details of that Approval.
- 5.1.2 A Third Phase Bidder who notifies the Authority under paragraph 5.1.1 that it is not subject to an Approval may be entitled to a grant of the relevant Licence in accordance with paragraph 5.2.1.
- 5.1.3 A Third Phase Bidder who notifies the Authority under paragraph 5.1.1 that it is subject to an Approval may not be entitled to a grant of the relevant Licence unless and until the time that it notifies the Authority that it is no longer subject to an Approval.
- 5.1.4 On notifying the Authority in accordance with paragraph 5.1.3, the Third Phase Bidder shall provide written evidence that the Approval notified by that Third Phase Bidder under paragraph 5.1.1 has been satisfied.
- 5.1.5 If a Third Phase Bidder does not notify the Authority in accordance with paragraph 5.1.2, the Authority may, in his discretion and without prejudice to the provisions of any law or ordinance and paragraph 6.1.1, forfeit an amount by way of Penalty from that Third Phase Bidder's Deposit.

- 5.1.6 A Third Phase Bidder who does not obtain an Approval by the Approval Date shall not be entitled to the grant of a Licence and all of that Third Phase Bidder's Deposit shall be forfeit as a Penalty unless that Bidder is able to demonstrate to the satisfaction of the Authority that it has used its best endeavours to obtain a waiver of that Approval within the time period specified in the definition of "Approval Date" contained in paragraph 1.2.1 of this Notice. The Authority may, if he is satisfied in accordance with this paragraph, extend that time period up to a period of six months after the date of the Third Phase Notice.

Section 2 - Grant of licences

Grant of Licence to Bidders

- 5.2.1 After the later of the date on which:

- (a) the last of the set of Frequency Bands is selected under paragraph 4.7.9; and
- (b) the date on which the Authority receives notification from a Third Phase Bidder
 - (i) in accordance with paragraph 5.1.1, that it is no longer subject to an Approval; or
 - (ii) in accordance with paragraph 5.1.3, that it is not subject to an Approval,

the Authority may, subject to the compliance (if applicable) by that Bidder of the terms and conditions of this Notice, grant that Third Phase Bidder the Licence which relates to the Frequency Band selected by, or allocated to, that Third Phase Bidder in accordance with paragraph 4.7.9.

- 5.2.2 The Authority shall give a Third Phase Bidder at least three Business Days prior notice of the date on which he intends to grant the Third Phase Bidder a Licence.

Duties of Bidders on grant

- 5.2.3 Subject to paragraphs 5.2.4 and 5.2.5, on the grant of a Licence to a Third Phase Bidder that Third Phase Bidder shall:

- (a) pay to the Authority in cash a sum which shall be equal to the aggregate of those parts of the Spectrum Utilization Fee referred to in the Conditions (together the "Cash Sums") less, where the Deposit is in cash either:
 - (i) the Deposit; or
 - (ii) if amounts have been forfeited from the Deposit, a sum representing the balance of the Deposit, if any;
- (b) provide to the Authority a Performance Bond in accordance with the Conditions; and
- (c) provide to the Authority the relevant 2G Licence which is the subject of the Roaming Consent Letter (if any) which it provided to the Authority in

accordance with paragraph 2.1.2 so that the Authority can amend the 2G Licence by an appropriate endorsement.

- 5.2.4 Where the Deposit is in cash, if the Deposit referred to in paragraph 5.2.3 (a)(i), or the sum calculated in accordance with paragraph 5.2.3(a)(ii), as the case may be, is greater than the Cash Sums, the Authority shall deduct an amount equal to the Cash Sums and shall pay to the Third Phase Bidder an amount equal to the Deposit or the balance of the Deposit, as the case may be, less the Cash Sums.
- 5.2.5 Where the Deposit is a Letter of Credit, the Authority shall return the Letter of Credit to the relevant Third Phase Bidder provided that, if the Third Phase Bidder does not comply with paragraph 5.2.3(a), the Authority shall make a claim under the Letter of Credit to the extent of an amount equal to the Cash Sums.
- 5.2.6 The Authority shall not grant a Licence to a Third Phase Bidder nor pay the sum referred to in paragraph 5.2.4 unless the Bidder has provided a Performance Bond in accordance with paragraph 5.2.3(b) and the relevant 2G Licence in accordance with paragraph 5.2.3(c).

Cancellation, withdrawal or suspension

- 5.2.7 The Authority may cancel, withdraw or suspend a Licence pursuant to Special Condition 20, 21 and 22 of the Conditions.

PART 6 - ACTIVITY RULES

Section 1 - General

Breach of Notice

- 6.1.1 Each Bidder shall comply with the terms and conditions of this Notice. Without prejudice to any other rights or remedies of the Authority under this Notice or otherwise, if a Bidder or any of its Insiders, breaches one or more of the provisions of this Notice, the Authority may, in his discretion:
 - (a) disqualify that Bidder from the Auction by notice to that Bidder; 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,or both.
- 6.1.2 If a Bidder is disqualified, that Bidder shall no longer be entitled to participate in the Auction but shall continue to comply with those terms and conditions of this Notice as specified by the Authority. If the Authority does not specify any terms and conditions in accordance with this paragraph, the Bidder shall be required to comply with all of the terms and conditions of this Notice as appropriate.

Return of Deposit

6.1.3 If a Bidder is disqualified, the Authority shall return that disqualified Bidder's Deposit provided that if any amounts have been forfeited by way of Penalty by the Authority in accordance with the terms and conditions of this Notice with respect to that disqualified Bidder:

- (a) where the Deposit is in cash, the Deposit shall be returned less the aggregate amount of those Penalties; and
- (b) 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.

Notwithstanding the return to a disqualified Bidder of its Deposit in accordance with this paragraph, 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 of the terms and conditions of this Notice as appropriate.

Effect on other Bidders

6.1.4 The disqualification of a Bidder shall not, subject to paragraph 6.1.5, affect the position of any other Bidder for the purposes of the Auction.

Consequences of disqualification

6.1.5 If, as a result of the disqualification of a Bidder at any time after the start of the First Phase as set out in the Bidder Participation Notice up to the start of the Third Phase specified in the Third Phase Notice, there are fewer than the Requisite Number of Provisional Successful Bidders which shall participate in the Third Phase, subject to paragraph 4.6.20, such number of Qualified Bidders which are neither Provisional Successful Bidders nor Revised Provisional Successful Bidders (the "Withdrawn Bidders") (if any) shall re-enter the Auction so that the number of Provisional Successful Bidders is equal to the Requisite Number or, where there are insufficient Withdrawn Bidders to re-enter the Auction pursuant to this paragraph to obtain the Requisite Number of Provisional Successful Bidders, all the Withdrawn Bidders shall re-enter the Auction pursuant to this paragraph. The Withdrawn Bidders shall re-enter the Auction according to the amount of their respective Final Offers (including, without limitation any Final Offers which are deemed under the terms and conditions of this Notice) so that the Bidder with the highest Final Offer shall re-enter the Auction first. The Applicable Royalty Percentage for the purposes of paragraph 4.5.2 shall, in these circumstances, be the aggregate of:

- (a) the highest Final Offer of all of the Withdrawn Bidders other than the Withdrawn Bidders which re-enter the Auction pursuant to this paragraph (the "Relevant Withdrawn Bidder"); and
- (b) a percentage equal to 0.01 per cent.

If there is no Relevant Withdrawn Bidder, the Applicable Royalty Percentage shall be the First Phase Reserve Price.

- 6.1.6 If there would be more than the required number of Withdrawn Bidders to obtain the Requisite Number of Provisional Successful Bidders as a result of two or more Withdrawn Bidders having made the same Final Offer ("Tied Withdrawn Bidders"), the Authority shall, by notice to the Tied Withdrawn Bidders, conduct a Tied Bidding Round for the Tied Withdrawn Bidders (the "Tied Withdrawn Bidder Procedure") in accordance with paragraph 6.1.7 provided that the Tied Withdrawn Bidder Procedure is necessary to determine which of the Tied Withdrawn Bidders shall re-enter the Auction to obtain the Requisite Number of Provisional Successful Bidders.
- 6.1.7 In the Tied Bidding Round, each of the Tied Withdrawn Bidders shall notify the Authority (using a duly completed Bidding Form and the communications method specified by the Authority) of a further Final Offer (a "Revised Final Offer") between (and including) its Final Offer up to and including:
- (a) if, at the start of the Tied Bidding Round, there is no Provisional Successful Bidder or Revised Provisional Successful Bidder which has made a Final Offer, the lowest Royalty Percentage of the Bidding Round immediately following the Final Bidding Round as set out in the Bidding Schedule; and
 - (b) if, at the start of the Tied Bidding Round, there is one or more Provisional Successful Bidders or Revised Provisional Successful Bidders which have made a Final Offer, the Final Offer, or the lowest Final Offer, of such Provisional Successful Bidder or Bidders or Revised Provisional Successful Bidder or Bidders, as the case may be.
- 6.1.8 The Tied Withdrawn Bidder which notifies the Authority of the highest Revised Final Offer pursuant to paragraph 6.1.7 shall re-enter the Auction (the "Successful Tied Withdrawn Bidder") or, if more than one Successful Tied Withdrawn Bidder is required to re-enter the Auction pursuant to paragraph 6.1.5 to obtain the Requisite Number of Provisional Successful Bidders for the purposes of paragraph 4.5.1(b), the relevant number of Tied Withdrawn Bidders which notified the Authority of the highest Revised Final Offers to obtain the Requisite Number of Provisional Successful Bidders shall be the Successful Tied Withdrawn Bidders. The Applicable Royalty Percentage for the purposes of paragraph 4.5.2 shall, in these circumstances, be the aggregate of:
- (i) the highest Revised Final Offer of all of the Tied Withdrawn Bidders other than the Successful Tied Withdrawn Bidder or Bidders; and
 - (ii) the percentage equal to 0.01 per cent.
- 6.1.9 If a Tied Withdrawn Bidder does not notify the Authority in accordance with the Tied Withdrawn Bidder Procedure, it shall be deemed to have notified the Authority of a Revised Final Offer equal to its Final Offer.
- 6.1.10 The Successful Tied Withdrawn Bidder or Bidders shall, subject to the procedures in the Second Phase which apply to Connected Bidders, participate in the Third Phase. If two or more of the Tied Withdrawn Bidders make, pursuant to paragraph 6.1.7, or are deemed to have made, pursuant to paragraph 6.1.9, the same Revised Final Offer ("Further Tied Withdrawn Bidders"), the Authority shall employ a random method to determine which of the Further Tied Withdrawn Bidder or Bidders shall, subject to

the procedures in the Second Phase which apply to Connected Bidders, participate in the Third Phase provided that the employment of a random method is necessary to determine which of the Further Tied Withdrawn Bidders shall be the Successful Tied Withdrawn Bidder or Bidders to obtain the Requisite Number of Provisional Successful Bidders. The Applicable Royalty Percentage for the purposes of paragraph 4.5.2 shall, in these circumstances, be the Revised Final Offer of the Further Tied Withdrawn Bidders.

Section 2 - Participation in Auction

- 6.2.1 Each Qualified Bidder shall participate in the Auction in good faith in accordance with the terms and conditions of this Notice including, without limitation, complying with the detailed provisions relating to bidding in the First Phase, Second Phase and Third Phase and the process set out in Part 5.

Section 3 - Submission of false or misleading information

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

Section 4 - Changes in Application

Changes to Bidder's Application

- 6.4.1 Subject to paragraph 6.4.2, no change shall occur in the contents of a Bidder's Application Form except as a result of:
- (a) a person ceasing to be a shareholder, directly or indirectly, of that Bidder; or
 - (b) merger or acquisition activity of, or affecting, a Bidder or any of its direct or indirect shareholders (which shall be deemed to include the establishment of a new body corporate) provided that such Bidder has demonstrated to the reasonable satisfaction of the Authority that none of the purposes of that activity is related to the Auction.

Duty to notify the Authority

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

Section 5 - Confidentiality and Non-Collusion

Confidential Information

- 6.5.1 None of a Bidder nor its Insiders shall convey, or attempt to convey, or cause or permit any person to convey, any Confidential Information, whether directly or indirectly, to any other person or enter into or attempt to enter into any arrangement, agreement or understanding for any of those purposes, without the prior written consent of the Authority.
- 6.5.2 Subject to paragraph 6.5.3 and 6.5.4, a Bidder shall not publish any Confidential Information nor disclose or disseminate any Confidential Information to any person other than to the Bidder's senior executives and those of the Bidder's professional advisers who, in each case, need to know the Confidential Information for the purpose of evaluating, negotiating or advising in connection with the Auction.
- 6.5.3 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 whose rules and regulations (not having the force of law) the Bidder is subject provided that the relevant Bidder has received the prior written consent of the Authority;
 - (b) if it is required to be disclosed to the Authority in accordance with the provisions of this Notice or otherwise; or
 - (c) if the use or disclosure is required for the Bidder (if it is a Provisional Successful Bidder or Revised Provisional Successful Bidder) to obtain an Irrevocable Undertaking in relation to it provided that the use or disclosure is restricted to those persons and those persons' senior employees and professional advisers who, in each case, need to know the Confidential Information for the purpose of enabling the Bidder to obtain that Irrevocable Undertaking.
- 6.5.5 None of a Bidder nor its Insiders shall receive or attempt to receive advice regarding the Auction from any person who has been retained by the Government to provide it with advice regarding the Auction since 1st January, 2001 (an "Adviser") including, without limitation, any person retained by an Adviser for that purpose provided that this shall not prevent a provider or prospective provider of finance, directly or indirectly, to a Bidder from receiving advice for that purpose from an Adviser to the Government, in circumstances where the provider or prospective provider of finance becomes an Insider in that capacity and is not itself a Bidder.

Meaning of Confidential Information

6.5.6 Confidential Information means:

- (a) unpublished information of whatever nature directly or indirectly relating to any proposed Final Offer or bid of a Bidder (the "First Bidder"), whether in writing or oral, which if it were made public, or made known to any other Bidder (the "Second Bidder") or its Insiders, would be reasonably expected to have an effect on the Final Offer or any bid which the Second Bidder proposes to make, including, without limitation, the First Bidder's interest or participation in the Auction, business case, auction strategy, the highest Final Offer and any bid that it is willing to make and the respective business cases (if any) of its Insiders relating to the First Bidder's proposed Final Offer and any bid that it is willing to make; and
- (b) any information relating to the Auction which has been provided by or to the Authority or otherwise including, without limitation, the details of the Final Offer of any Bidder,

but excluding:

- (i) information which is in, or which comes into, the public domain other than as a breach by any Bidder or its Insider, of the Activity Rules;
- (ii) information received by a director or employee of a person which holds shares in a Bidder (the "First Bidder") prior to the later of the Application Dates which relates to another Bidder (the "Second Bidder") of which he is also a director or employee for the purpose of considering whether the First Bidder should participate in the Auction with the Second Bidder; and
- (iii) information provided prior to the Application Date by a Bidder (the "First Bidder") or its Insiders to another Bidder (the "Second Bidder") or its Insiders for the purpose of enabling the Second Bidder to decide whether to participate in the Auction with the First Bidder.

Directors, employees and agents

6.5.7 If any person who is a director, employee or agent of a Bidder or any person who is an Insider in relation to that Bidder, is also a director, employee or agent of another Bidder or any person who is an Insider in relation to that other Bidder, the first-mentioned Bidder shall ensure that the person:

- (a) does not take part in preparing both Bidders or their respective Insiders for participation in the Auction;
- (b) is not in possession of, and does not receive, Confidential Information relating to both Bidders; and
- (c) does not pass Confidential Information relating to one Bidder to another Bidder or its Insiders.

Non-collusion

6.5.8 None of a Bidder nor its Insiders shall:

- (a) co-operate, collaborate, collude or discuss with, or disclose to, any other Bidder or any of its Insiders for any purpose relating to the Auction including, without limitation, in connection with the substance of that Bidder's Final Offer or bidding strategy; nor
- (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.

Section 6 - Anti-competitive activity

Prohibited arrangements

6.6.1 None of a Bidder nor its Insiders shall enter into, or permit to subsist, any agreement, arrangement or understanding with an equipment provider or software supplier which:

- (a) places, or would place, any restriction on the supplier as to the quantities of equipment or software which it supplies or offers to supply to another Bidder for the purposes of planning, building or operating a network which is to be operated in accordance with one of the Licences; or
- (b) places, or would place, any restriction as to the prices or other terms and conditions on which that equipment or software is supplied or offered to be supplied for the purpose referred to in subparagraph (a) to any other Bidder.

Section 7 - Prevention of bribery

6.7.1 If any Bidder or any of its Insiders acts contrary to the Prevention of Bribery Ordinance (Cap. 201) insofar as that Ordinance applies to the Auction including, without limitation, sections 6, 7 and 12A, that Bidder shall be deemed to be in breach of the Activity Rules.

Section 8 - Duty to abide by undertakings

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

PART 7 - MISCELLANEOUS

Suspension and cancellation

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

General power of disqualification

- 7.1.2 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.

Means of notification by the Authority

- 7.1.3 If, in accordance with any provision of this Notice, the Authority is required, or wishes to notify a Bidder of any fact or circumstance, he may do so, unless otherwise specified in this Notice, by any means. Any notification by the Authority shall be in the English language.

Means of notification to the Authority

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

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

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

- 7.1.5 If a Bidder sends any notification to the Authority and notification is received after 5 p.m. on a Business Day, it shall be deemed to have been received by the Authority at 9 a.m. on the next Business Day. If a tropical cyclone warning No. 8 or above or a "black" rainstorm warning is in force in Hong Kong on any Business Day on which a Bidder sends a notification to the Authority or on any Business Day on which a notification is deemed to have been received by the Authority, it shall be deemed to have been received by the Authority on the next Business Day on which none of the signals remains in force.

- 7.1.6 Paragraphs 7.1.4 and 7.1.5 shall not apply to any notification made to the Authority under any Bidding Round, Tied Bidding Round or period of time specified by the Authority in Part 4 for receipt of notifications relating to:

- (a) remaining, withdrawing making a Final Offer or Revised Final Offer with respect to a Bidding Round or Tied Bidding Round; and
 - (b) making a valid bid consisting of a cash amount,
- (together a "Bidding Notification").

- 7.1.7 Any Bidding Notification by a Bidder to the Authority shall be in the English language and be received by the Authority before the end of the relevant Bidding Round, Tied Bidding Round or period of time specified by the Authority in Part 4 for receipt of Bidding Notifications, as the case may be.

- 7.1.8 A Bidder which makes a Bidding Notification which is not in accordance with the terms and conditions of this Notice shall be deemed not to have made a Bidding Notification.

Publication of information

- 7.1.9 Subject to paragraph 7.1.10, where the Authority provides any information to a Bidder under any provision of this Notice, whether or not that information originated from that Bidder, he may publish that information in any manner which he thinks fit.
- 7.1.10 Subject to any other provision of this Notice, the Authority shall not publish 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 to publish the information would not unfairly prejudice other Bidders or be detrimental to the Auction.

Change of authorised personnel

- 7.1.11 If a Bidder wishes to substitute one or more of the authorised personnel 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 6.4.2. A substitution made in accordance with this paragraph shall take effect on receipt by the Authority of the revised Application Form and Bidder Compliance Certificate submitted in accordance with paragraph 6.4.2.

Additional information

- 7.1.12 The Authority may notify any Bidder of a reasonable request for additional information or documents relating to its Application with a reasonable time limit for the Bidder to submit that information or those documents to the Authority.
- 7.1.13 On receipt of a request made pursuant to paragraph 7.1.12, a Bidder shall use its best endeavours to provide the information or documents within the time limit specified.
- 7.1.14 If a Bidder fails to comply with paragraph 7.1.13, the Authority may refuse to determine that Bidder as a Qualified Bidder in accordance with section 2 of Part 3.

Interpretation

- 7.1.15 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 those terms and conditions.

Modifications to Notice

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

Bidding Forms

- 7.1.17 Each Bidding Form submitted by a Bidder to the Authority in accordance with this Notice is and shall remain the property of the Authority.

Powers of Authority to issue Licences

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

Waiver

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

SCHEDULE 1

Reserve Prices

| | |
|----------------------------|-----------|
| First Phase Reserve Price | 5% |
| Second Phase Reserve Price | HK\$ zero |
| Third Phase Reserve Price | HK\$ zero |

SCHEDULE 2

Conditions of Licence

The Conditions of the Licence follow. The page numbering is not part of the page numbering of this Notice.

TELECOMMUNICATIONS ORDINANCE
(Cap. 106)

MOBILE CARRIER LICENCE

DATE OF ISSUE:

.....

of

(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. AVAILABILITY OF NETWORK AND SERVICE

- 1.1 The licensee shall install, maintain and use equipment for the purposes of the network and the service such that:
- (a) coverage of the network and service shall be provided by the licensee by not later than 31st December, 2006 and maintained after that date to an area where at least 50% of the population of Hong Kong live from time to time; and
 - (b) all base stations to be installed shall be configured so as to be capable of supporting services operating at a minimum of 144 kbits per second for an individual customer, being the speed at which information is transferred across the air interface from the base station to the customers' apparatus connected to the network of the licensee and vice versa.
- 1.2 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 1.1.
- 1.3 The licensee shall not share the use of the network or any part of it with any other MNO unless prior written consent has been given by the Authority or such network sharing is in conformity with guidelines issued by the Authority from time to time.

2. PAYMENT OF SPECTRUM UTILIZATION FEES

2.1 The licensee shall pay the Spectrum Utilization Fees which shall be, in aggregate:

- (a) for each of the first five Royalty Years from the date of issue of this licence, the Appropriate Fee in respect of the relevant Royalty Year; [and]
- (b) for each of the remaining Royalty Years of this licence:
 - (i) []% multiplied by the Network Turnover or the Revised Network Turnover referred to in Special Condition 7.7, as the case may be, in respect of the relevant Royalty Year; or
 - (ii) the Appropriate Fee in respect of the relevant Royalty Year,

whichever is the greater;

- (c) [HK\$[]]; [and]
- (d) HK\$[].]

2.2 The licensee shall pay to the Authority the Spectrum Utilization Fees:

- (a) referred to in Special Condition 2.1(a) at the end of each Royalty Year; [and]
- (b) referred to in Special Condition 2.1(b) in accordance with Special Condition 2.3[; and
- (c) referred to in Special Condition 2.1(c) and (d) on the date of issue of this licence].

2.3 At the end of each Royalty Year after the fifth Royalty Year, the licensee shall pay to the Authority the Appropriate Fee for the relevant Royalty Year. Within a specified number of days as determined by the Authority after the end of each Royalty Year after the fifth Royalty Year, the licensee shall send to the Authority details of its Network Turnover for the relevant Royalty Year

derived from its Accounts for that Royalty Year. If the amount calculated in accordance with Special Condition 2.1(b)(i) for a Royalty Year is greater than the Appropriate Fee for that Royalty Year paid by the licensee to the Authority in accordance with this Special Condition, the licensee shall pay to the Authority, at the same time that it submits details of its Network Turnover for the relevant Royalty Year, the excess over the Appropriate Fee for that Royalty Year.

2.4 If the licensee fails to make any payment when due under Special Conditions 2.2 or 2.5(a) or both, the Authority may charge interest on any overdue amount from the date on which the relevant amount is due until the date of actual payment (both days inclusive) at a rate determined by the Authority to compensate it for the payment being overdue.

2.5 If the Authority carries out an audit of the licensee's Accounts pursuant to Special Condition 7.7 in respect of a Royalty Year, the licensee shall not be relieved of its obligation to pay the Spectrum Utilization Fee in accordance with Special Condition 2.2 in respect of that Royalty Year. If, as a result of that audit, the Spectrum Utilization Fee in respect of that Royalty Year is:

- (a) increased, the licensee shall pay the amount of the shortfall to the Authority; or
- (b) reduced, the Authority shall repay the amount of the excess to the licensee without interest.

Any payment which must be made under this Special Condition shall be made on the date specified by the Authority.

2.6 For the purposes of this Special Condition, "Accounts" has the meaning, for a Royalty Year, given in Special Condition 7.1

3. PERFORMANCE BOND

3.1 On the date of issue of this licence, the licensee shall have provided to the Authority a duly issued performance bond in accordance with this Special Condition (the "Performance Bond").

- 3.2 The licensee shall at all times during the validity period of this licence maintain in full force the Performance Bond for an aggregate amount equal to the Relevant Amount. For the purposes of this Special Condition, "Relevant Amount" means the aggregate of the Appropriate Fee set out in Schedule 4 for each of the five years (or where there are less than 5 years remaining under the validity period of such licence, the whole number of years remaining) in respect of which the obligation to pay the Spectrum Utilization Fee has not yet arisen immediately following the latest year in respect of which the obligation to pay the Spectrum Utilization Fee has arisen.
- 3.3 The Performance Bond shall be in the form determined by the Authority substantially in the form set out in Schedule 5 subject to any amendments to it as may previously have been approved in writing by the Authority in his absolute discretion.
- 3.4 The Performance Bond shall be issued by a Qualifying Bank or other surety approved in writing by the Authority prior to the date of issue of this licence. In the event of a proposed 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 3.4, "Qualifying Bank" means an institution holding a full banking licence under the Banking Ordinance (Cap. 155) whose long term debt rating is, or is higher than:
- (a) one or more of the following:
 - (i) Moody's A2;
 - (ii) Standard & Poor's A;
 - (iii) Duff & Phelps Credit Reference Agency's A; or
 - (iv) Fitch-IBCA's A; or
 - (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.

- 3.5 Notwithstanding any other conditions of this licence, any rights or remedies of the Authority under the Performance Bond, including any replacement of it, shall be without prejudice to any other rights or remedies of the Authority under this licence and of the Authority, the Chief Executive in Council and the Chief Executive under the Performance Bond or otherwise.

4. DISPOSAL OF ASSETS

- 4.1 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 howsoever determined dispose or agree to dispose of any interest (as determined in accordance with Special Condition 4.2) 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 10% 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 4.2).
- 4.2 The value of any interest and the net asset value of the licensee shall be determined by a certified public accountant (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.
- 4.3 In the event of any dispute between the Authority and the licensee as to the value of the interest or the net asset value referred to in Special Condition 4.1, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 341).

5. PURCHASE OF ASSETS

- 5.1 If the licensee is in a dominant position in the relevant telecommunications market within the meaning described in section 7L of the Ordinance, the Government may elect to take over the licensee's undertaking and purchase its assets if any of the following circumstances occur:
- (a) this licence expires;
 - (b) this licence is cancelled or withdrawn;
 - (c) the licensee goes into liquidation; or

(d) the licensee ceases to carry on business,

provided that if the Government elects to do so, it shall give notice in writing to the licensee not later than 90 days in advance of the expiry of this licence, immediately on cancellation or withdrawal of this licence or within a reasonable time after the occurrence of the events described in subparagraphs (c) and (d).

5.2 The price at which the licensee's assets shall be sold 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 by the licensee determined on the basis that this licence remains in force and that the licensee's network shall continue to be used for the provision of the service. If no agreement can be reached between the Government and the licensee on the price at which the licensee's assets shall be sold, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 341).

6. REQUIREMENTS FOR INTERCONNECTION

6.1 The licensee shall, 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.

6.2 Subject to the terms and conditions of any determination by the Authority under section 36A of the Ordinance or any direction by the Authority under section 36B of the Ordinance, the licensee shall use all reasonable endeavours to ensure that interconnection is done promptly, efficiently and at charges which are based on reasonable relevant costs incurred by the licensee so as to fairly compensate the licensee for those costs.

6.3 The licensee shall provide facilities and services reasonably necessary for the prompt and efficient interconnection of its service and network with the other telecommunications networks and services referred to in Special Condition 6.1. Those 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 network and networks of the other

party to the interconnection, including the provision of sufficient transmission capacity to connect between the network and networks of the other party to the interconnection;

- (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 types of interconnection facilities and services described in this Special Condition.

7. ACCOUNTING PRACTICES

7.1 Where directed by the Authority in writing, the licensee shall prepare separate accounts for the different services or business activities or types of services or business activities as identified in the Accounting Manual (each referred to as a "Business") referred to in Special Condition 7.2 to the extent that would be required if those Businesses were carried out by legally and commercially independent entities (the "Accounts"). The Accounting Manual will specify the Businesses for the purposes of this Special Condition. The Accounts shall identify all elements of costs, revenues, assets and liabilities, with the basis of their calculation and the detailed allocation methods used, arising from, attributable or related to each Business including, without limitation, an itemised breakdown of fixed assets in the manner as the Authority may require.

7.2 Where directed by the Authority in writing, the licensee shall adopt the accounting practices, consistent with accounting principles generally accepted in Hong Kong, that the Authority specifies in an accounting manual (the "Accounting Manual") under section 7H of the Ordinance for the purposes of preparing the Accounts. Without prejudice to the generality of the foregoing, the Accounts of the licensee shall be prepared in accordance with the following practices:

- (a) the costs, revenues, assets and liabilities arising from, attributable or related to each Business must be capable of being separately identified;

- (b) the costs, revenues, assets and liabilities arising from, attributable or related to the network and the service shall include any amount which, in the circumstances of a particular case, would reasonably be expected to be agreed to between the parties concerned were they negotiating in the open market and at arm's length on a non-discriminatory basis; and
 - (c) the provision of services or goods or both from one Business within the licensee to another Business within the licensee must be accounted for.
- 7.3 The Accounts shall be prepared in accordance with, and shall comprise the financial statements contained in, the Accounting Manual.
- 7.4 The licensee shall establish sufficient accounting and reporting arrangements to comply with its obligations under this licence.
- 7.5 The Accounts shall at the request of the Authority be reconciled with the statutory accounts of the licensee for the relevant financial year and that reconciliation shall be demonstrated and explained to the satisfaction of the Authority.
- 7.6 The licensee shall submit to the Authority in respect of the Accounts for each Business an audit report prepared by the auditor for the time being of the licensee within a specified number of days as determined by the Authority after the end of the Royalty Year to which they relate stating whether in his opinion the Accounts comply with the Accounting Manual.
- 7.7 The Authority may, pursuant to section 10 of the Regulation, appoint an auditor to inspect the books, records or any other relevant document of the licensee to determine whether the Accounts have been prepared in accordance with the Conditions of this licence and the Accounting Manual. If the auditor, following that inspection, determines that the Accounts have not been prepared in accordance with the Conditions of this licence and the Accounting Manual and, had they been so prepared, the Network Turnover in relation to the licensee (the "Revised Network Turnover") would differ from the Network Turnover in relation to the licensee specified in the Accounts, the Authority may specify that the Revised Network Turnover as determined by that auditor shall replace the Network Turnover in relation to the licensee

specified in the Accounts and shall be used to calculate the Spectrum Utilization Fee for the purposes of Special Condition 2.

8. METERING ACCURACY

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

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

8.3 The licensee shall keep records of any metering equipment in the form specified by the Authority and shall provide those records to the Authority as soon as reasonably practical following a written request from the Authority.

9. EMERGENCY SERVICES

9.1 The licensee shall provide public emergency services 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 licensee, communicate as quickly as practicable with the Hong Kong Police Emergency Centre and any other entities as may be directed by the Authority for the reporting of an emergency.

9.2 The licensee shall not charge for the use of the public emergency services described in Special Condition 9.1.

9.3 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.

10. NUMBERING PLAN AND NUMBER PORTABILITY

10.1 The licensee shall conform to the numbering plan made or approved by the Authority and any directions given by the Authority in respect of that numbering plan.

- 10.2 The licensee shall at the request of the Authority, consult with the Authority about the arrangements for the allocation and reallocation of numbers and codes within the numbering plan.
- 10.3 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.
- 10.4 The licensee shall, in the manner as the Authority may direct, facilitate the portability of numbers assigned to any customer of a mobile carrier licensee, Public Mobile Radiotelephone Services licensee, Personal Communications Services licensee or MVNO 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 mobile carrier licensee, Public Mobile Radiotelephone Services licensee, Personal Communications Services licensee or MVNO, as the case may be.
- 10.5 Directions by the Authority under Special Condition 10.4 shall include reasonable directions concerning the equitable sharing of all relevant costs associated with providing portability of numbers as between the licensee, any other mobile carrier licensee, Public Mobile Radiotelephone Services licensee, Personal Communications Services licensee, MVNO and any other person.
- 10.6 For the purposes of this Special Condition:
- (a) "MVNO" has the meaning given in Special Condition 12.16; and
 - (b) "portability of numbers" means the function of the network and the service which enables a customer of the service of a mobile carrier licensee, Public Mobile Radiotelephone Service licensee, Personal Communications Service licensee or MVNO to become a customer of another mobile carrier licensee, Public Mobile Radiotelephone Service licensee, Personal Communications Service licensee or MVNO without changing the number assigned to that customer.

11. NON-DISCRIMINATORY TREATMENT IN PROVISION OF SERVICE TO CUSTOMERS

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.

12. OPEN NETWORK ACCESS

12.1 Without prejudice to the Authority's powers under sections 36A and 36B of the Ordinance, the licensee shall, subject to Special Condition 12.2,:

- (a) interconnect its network and service with, or provide access to, the network and service of MVNOs in accordance with Special Condition 6 and this Special Condition; and
- (b) provide services to CSPs in accordance with Special Conditions 14, 18 and this Special Condition.

12.2 (a) Without limiting or affecting in any way the licensee's obligations under any other Condition, the licensee does not have any obligation under Special Condition 12.1 to an MVNO or CSP if:

- (i) that MVNO or CSP is affiliated with the licensee or another MNO; or
 - (ii) if the licensee has entered into one or more Network Capacity Agreements with one or more MVNOs or CSPs (which, neither in the case of MVNOs nor CSPs, are affiliated with the licensee) pursuant to which the licensee is required to make available to all or any of those MVNOs or CSPs an aggregate of 30% or more of its Network Capacity from time to time.
- (b) For the avoidance of doubt, nothing in this Special Condition restricts the licensee from interconnecting its network and service with, or providing access to, the network and services of MVNOs on a commercial basis, or providing services to CSPs on a tariffed basis beyond the obligation under this Special Condition.

- 12.3 The Authority may determine the terms and conditions of a Network Capacity Agreement with an MVNO in accordance with section 36A of the Ordinance.
- 12.4 Notwithstanding Special Condition 17, the Authority may determine the tariffs for the services offered to a CSP and published under Special Condition 14 if the tariffs are unfair, anti-competitive or in breach of Special Condition 12.5.
- 12.5 The licensee shall provide its Network Capacity to MVNOs and CSPs in accordance with this Special Condition on a non-discriminatory basis. For the purposes of this Special Condition, discrimination includes, without limitation, discrimination relating to:
- (a) charges, except to the extent that the discrimination only makes reasonable allowance for difference in the cost or likely cost of supplying the service;
 - (b) performance characteristics;
 - (c) points of interconnection or access;
 - (d) ancillary facilities; and
 - (e) other terms or conditions of supply,
- as between:
- (i) an MVNO which is not affiliated with the licensee on the one hand and an MVNO which is affiliated with the licensee or a Business (as defined in Special Condition 7) of the licensee providing similar services to that non-affiliated MVNO on the other hand; and
 - (ii) a CSP which is not affiliated to the licensee on the one hand and a CSP which is affiliated with the licensee or a Business (as defined in Special Condition 7.1) of the licensee providing similar content, applications or services to that non-affiliated CSP on the other hand.

- 12.6 Without limiting the generality of Special Condition 12.5, the licensee shall ensure that customers of the service shall have non-discriminatory access to the content, applications or services of all CSPs connected to the network, irrespective of whether the CSP is affiliated with the licensee or not.
- 12.7 Without prejudice to the powers of the Authority under section 36A of the Ordinance, the Authority shall, in deciding whether or not to make any determination under this Special Condition with respect to a Network Capacity Agreement between the licensee and an MVNO, have regard to:
- (a) whether that MVNO already has a Network Capacity Agreement with another MNO in circumstances where that Network Capacity Agreement is, in relation to the period for which interconnection or access is requested by the MVNO:
 - (i) still valid and in existence; and
 - (ii) remains in substantially the same form;
 - (b) the extent to which the licensee has fulfilled its obligations under this Special Condition;
 - (c) whether the provision of such access would be unfair or anti-competitive; and
 - (d) any other matters which he may consider appropriate in the particular circumstances.
- 12.8 If the licensee increases its Network Capacity, that increased Network Capacity shall be subject to this Special Condition.
- 12.9 The licensee shall:
- (a) from time to time publish the terms and conditions of a reference Network Capacity Agreement, including the charges to be made by the licensee for interconnection, which shall provide a reference to MVNOs for commercial negotiations with the licensee with a view to concluding a Network Capacity Agreement pursuant to which it

would interconnect its network and service to the network and service of an MVNO pursuant to this Special Condition; and

- (b) publish and charge no more than the tariffs for the provision of Network Capacity to CSPs in accordance with Special Conditions 14, 15, 16 and 18.

12.10 For the purposes of Special Condition 12.9, publication shall be effected by:

- (a) publication in the newspapers and, where available, the website of the licensee and by sending a copy of the relevant details to the Authority;
- (b) placing a copy of the relevant details in a publicly accessible part of the principal place of business and other business premises of the licensee as advised by the Authority; and
- (c) sending a copy of the relevant details to any person who may request them at a charge no greater than that which is necessary to cover the reasonable cost of sending the copy.

12.11 The licensee shall establish a methodology to determine its Network Capacity and the utilization of the Network Capacity by MVNOs and CSPs which are not affiliated to it under this Special Condition. Where directed by the Authority, the licensee shall provide details of the methodology and its Network Capacity determined in accordance with the methodology. The Authority may modify the licensee's methodology if:

- (a) he considers that the methodology does not produce a fair or accurate assessment of the Network Capacity and its utilization;
- (b) he states the reasons for his consideration referred to in subparagraph (a);
- (c) he invites the licensee to make representations to the Authority for his consideration; and
- (d) he has considered the representations made by the licensee pursuant to subparagraph (c).

- 12.12 The licensee shall be entitled to include reasonable terms in a Network Capacity Agreement with MVNOs or CSPs such that the relevant MVNO or CSP agrees to purchase, rent or use a minimum amount of Network Capacity within a specified period of time.
- 12.13 The licensee shall ensure that a copy of each Network Capacity Agreement which it enters into is filed with the Authority within 14 days after it is made unless the Authority waives this requirement with respect to any Network Capacity Agreement.
- 12.14 The Authority may publish all or part of a Network Capacity Agreement if he:
- (a) considers it is in the interest of the public to do so;
 - (b) has first given the parties an opportunity to make representations on which parts of the Network Capacity Agreement should not be published; and
 - (c) has considered those representations received within the time specified by him.
- 12.15 The licensee shall not, either alone or in conjunction with any other person, engage in any transaction which, in the reasonable opinion of the Authority, has the purpose or effect of mitigating or minimising its obligations under this Special Condition and having regard to factors as the Authority may consider to be relevant including, without limitation:
- (a) the manner in which the transaction was entered into or carried out;
 - (b) the form and substance of the transaction; and
 - (c) the result that, but for this Special Condition, would have been achieved by the transaction.
- 12.16 For the purposes of this Special Condition:
- (a) an MVNO or CSP is regarded as "affiliated" with the licensee or another MNO if:

- (i) the licensee or the other MNO is the beneficial owner or has control, directly or indirectly, of 15% or more of the voting shares of the relevant MVNO or CSP or has influence over the relevant MVNO or CSP such that it is, in the opinion of the Authority, for all practical purposes or effect, in an equivalent position as it would have been had it been the beneficial owner or had control of 15% or more of the voting shares of the relevant MVNO or CSP; or
 - (ii) the relevant MVNO or CSP is the beneficial owner or has control, directly or indirectly, of 15% or more of the voting shares of the licensee or the other MNO or has influence over the licensee or the other MNO such that it is, in the opinion of the Authority, for all practical purposes or effect, in an equivalent position as it would have been had it been the beneficial owner or had control of 15% or more of the voting shares of the licensee or the other MNO; or
 - (iii) a person (other than the licensee or the other MNO or the relevant MVNO or CSP) is the beneficial owner or has control, directly or indirectly, of 15% or more of the voting shares in each of the licensee or the other MNO and the relevant MVNO or CSP or has influence over each of the licensee or the other MNO and the relevant MVNO or CSP such that it is, in the opinion of the Authority, for all practical purposes, in an equivalent position as it would have been had it been the beneficial owner or had control of 15% or more of the voting shares of each of the licensee or the other MNO and the relevant MVNO or CSP;
- (b) "control" means, in the reasonable opinion of the Authority, any form of control or influence by whatever means, direct or indirect;
- (c) "voting share" in relation to a corporation, means a share which entitles the registered owner of the share to vote at meetings of the shareholders of the corporation;

- (d) "CSP" means a content or service provider which (a) does not have an allocation of Frequency; and (b) provides content, applications or services to its customers;
- (e) "MVNO" means an operator which:
 - (i) does not have a Relevant Licence;
 - (ii) establishes or maintains a means of telecommunications satisfying the requirements as determined by the Authority from time to time; and
 - (iii) provides mobile services to customers through interconnection with a Relevant Network pursuant to Special Condition 6 and this Special Condition;
- (f) "Network Capacity" as measured from time to time, means the volume of traffic capable of being sent over a Relevant Network of an MNO over a period of defined duration;
- (g) "Network Capacity Agreement" means an agreement made between an MVNO or CSP (as appropriate) and an MNO to purchase Network Capacity in accordance with this Special Condition whether or not as a result of a determination by the Authority; and
- (h) "Relevant Network" means a telecommunications network incorporating base station equipment operating in the Frequency.

13. ANTI-AVOIDANCE PROVISIONS

- 13.1 The licensee shall not, either alone or in conjunction with any other person, engage in any transaction which, in the reasonable opinion of the Authority, has the purpose or effect of mitigating or minimising its Network Turnover for the purpose of calculating the Spectrum Utilization Fees pursuant to Special Condition 2 and having regard to factors as the Authority may consider to be relevant including, without limitation:

- (a) the manner in which the transaction was entered into or carried out;

- (b) the form and substance of the transaction;
 - (c) the result that, but for this Special Condition, would have been achieved by the transaction; and
 - (d) any change in the amount of Network Turnover of the licensee that has resulted, will result, or may reasonably be expected to result, from the transaction.
- 13.2 The licensee shall ensure that the provision of goods or services or both by the licensee to any person affiliated with the licensee or by any Business of the licensee to another Business of the licensee shall be on arms' length commercial terms. For the purpose of this Special Condition, "affiliated" has the meaning given in Special Condition 12.16 but so that references to "MVNO" or "CSP" shall be to "a person".
- 13.3 The licensee shall ensure that the provision of goods or services or both from one Business within the licensee to another Business within the licensee must be accounted for so that at least the cost of those goods or services or both are charged by the Business providing the goods or services or both.
- 13.4 If it appears to the Authority that an act or omission of the licensee is or was prohibited by this Special Condition, he may make a determination to that effect. Before making a determination under this Special Condition, he must give notice to the licensee:
 - (a) stating that he is investigating a possible contravention of this Special Condition;
 - (b) setting out the reasons why it appears to him that this Special Condition may be being, or may have been, breached;
 - (c) requesting, within a reasonable period specified by him, any further information which he may require from the licensee to complete his determination; and
 - (d) setting out the steps which the licensee must take in order to remedy the alleged breach.

The Authority shall give the licensee a period within which the licensee may make representations in response to the notice as he considers reasonable in all the circumstances. This Special Condition shall not limit or affect in any way the licensee's obligations under any other Condition of this licence or limit the Authority's powers under the Ordinance or under any other Condition of this licence.

14. TARIFFS

14.1 The licensee shall publish, and charge no more than, the tariffs for the service operated under this licence. The tariffs shall include the relevant terms and conditions for the provision of the service.

14.2 Publication shall be effected by:

- (a) publication in the newspapers and, where available, the website of the licensee and by sending a copy to the Authority on or before the date on which the relevant service is to be introduced;
- (b) placing a copy in a publicly accessible part of the principal place of business and other business premises of the licensee as advised by the Authority; and
- (c) sending a copy to any person who may request it at a charge no greater than that which is necessary to cover the reasonable costs of sending the copy.

14.3 Where the licensee provides customer equipment integral to the provision of the service to its customers, the tariff shall clearly state the price of the customer equipment separately from the charges for the service.

14.4 The licensee shall not offer any discount to its published tariffs for a particular service or customer equipment subject to Special Condition 14.3 (other than a discount calculated in accordance with a formula or methodology approved by the Authority in advance of the relevant service and customer equipment being offered and published together with its tariffs) if, in the opinion of the Authority, the licensee is in a dominant position in any market for or which includes that service. For the purpose of this Special Condition, "a dominant position" has the meaning described in section 7L of the Ordinance.

- 14.5 The licensee shall not, without the approval of the Authority, bundle a number of services into a single tariff without also offering each of the constituent services under separate tariffs.

15. TARIFFS REVISIONS

- 15.1 The licensee may propose any revision to the tariffs that it has published by submitting details of the proposed revision to the Authority in writing in a form approved by the Authority.
- 15.2 Subject to Special Condition 15.5, the licensee may only publish the revised tariffs after the Authority has given his approval in writing.
- 15.3 The Authority shall not approve any revision submitted in accordance with Special Condition 15.1 where:
- (a) he considers that the proposed revision is in contravention of all or any of sections 7K, 7L, 7M or 7N of the Ordinance or any applicable price control arrangements; and
 - (b) he has notified the licensee within 30 days after the date of receipt of the licensee's proposed revision that he does not intend to give his approval.
- 15.4 The Authority shall endeavour to consider any proposed revisions within 7 days after the date of receipt of the relevant proposed revision by the Authority and will give written notice by that date to the licensee if the Authority requires more time to complete his review of the proposed revision.
- 15.5 Where the Authority has not notified the licensee within 30 days after receiving the licensee's proposed revision that he does not propose to give his approval, the tariff revision will be deemed to be approved.

16. TARIFFS FOR NEW SERVICES

- 16.1 If the licensee proposes to introduce any new service and charge which is not contained in its published tariffs and conditions of service, it shall notify the Authority of such a proposal. The notification shall be in a written form approved by the Authority. The Authority shall give his approval of the proposed service and charge unless he considers that the service and charge would lead to a contravention of all or any of sections 7K, 7L, 7M or 7N of the Ordinance or any applicable price control arrangements.

- 16.2 The Authority shall endeavour to consider any proposal referred to in Special Condition 16.1 within 20 days after the date of receipt of the proposal and shall give written notice by that date to the licensee if the Authority requires more time to complete his review of the proposed service and charge.
- 16.3 Where the Authority has not notified the licensee within 45 days after receiving the licensee's notice that he does not propose to give his approval, the new service and charge shall be deemed to be approved.

17. WAIVER OF APPLICATION

Where, in the opinion of the Authority, a licensee is not in a dominant position with respect to the relevant telecommunications market for the service within the meaning of section 7L of the Ordinance, the Authority may by direction in writing, for the period and on any conditions as the Authority may determine, direct that either one or any combination of Special Conditions 14, 15 and 16, either completely or as to particular obligations imposed under them, shall not apply to the licensee.

18. PROVISION OF TARIFFED SERVICE

- 18.1 The licensee shall, subject to Schedule 1 and the 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 14 (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 utilise the service to provide a lawful telecommunications service to third parties.
- 18.2 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 14 where the service reasonably could be provided by the licensee to the customer at the location at which the service is requested utilising the licensee's network in place at the time of the request.

19. DIRECTORY SERVICES

19.1 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, business address and telephone numbers of each of its customers; and
- (b) "raw directory information" means the licensee's directory information held in a basic format relating to all its customers other than its customers who request the directory information about them not be disclosed.

19.2 This Special Condition applies only in respect of standard printed directories and other directory databases and services which include all the names of a licensee's customers listed in alphabetical order and does not apply to classified directories where customers are listed by business or trade category or to other business or specialised directories.

19.3 Subject to compliance with the Personal Data (Privacy) Ordinance (Cap. 486), General Condition 7 and any applicable law, the licensee shall:

- (a) where directed by the Authority, publish or arrange for the publication of directory information at least biennially in a printed or other form approved by the Authority, relating to all those customers, other than its customers who request not to be included in a directory to be published (the "printed directory"); and
- (b) where directed by the Authority, establish, maintain and operate, or arrange for the establishment, maintenance or operation of, a telecommunications service whereby customers may, on request, be provided with directory information other than that of its customers who request information relating to them not to be disclosed (the "telephone directory service").

19.4 The licensee shall make the printed directory and the telephone directory service referred to in Special Condition 19.3 available free of charge to its customers and in a manner satisfactory to the Authority.

- 19.5 The licensee may make commercial arrangements with one or more of the other mobile carrier licensees, Public Mobile Radiotelephone Services licensees, Personal Communications Services licensees and MVNOs to co-operate in the provision jointly by them of either or both of the printed directory and the telephone directory service which the licensee is required to provide under Special Condition 19.3.
- 19.6 The licensee's printed directory shall be a unified printed directory and the licensee's telephone directory service shall be a unified telephonic directory service and shall utilise a unified directory database, containing directory information on all customers of all mobile carrier licensees, Public Mobile Radiotelephone Services licensees, Personal Communications Services licensees and MVNOs, except for those customers who request that directory information about them is not disclosed. Subject to compliance with the Personal Data (Privacy) Ordinance (Cap. 486), General Condition 7 and any applicable law, the licensee shall provide and update, on a frequent and regular basis, raw directory information about its customers to other mobile carrier licensees for which the licensee will be able to impose a charge to fairly compensate it for providing that information. The licensee shall endeavour to agree with each of the other mobile carrier licensees on a reasonable mode of exchange and transmission format for the raw directory information.
- 19.7 Where the licensee is unable to agree with another mobile carrier licensee pursuant to Special Condition 19.6 on what amounts to fair compensation for the 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.
- 19.8 Except with the prior written approval of the Authority, the licensee shall not make use of raw directory information provided by another mobile carrier licensee other than for discharging its obligations under this Special Condition.

20. COMPLIANCE WITH AUCTION RULES

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 auction as set out in the Notice, then the Authority may cancel, withdraw or suspend this licence and may, at the same time, enforce the Performance Bond submitted pursuant to Special Condition 3.1 in accordance with its terms. For the avoidance of doubt, the Authority's power to cancel, withdraw or suspend this licence is without prejudice and in addition to any rights or remedies of the Authority under the Performance Bond or its replacement and any other rights or remedies of the Authority, the Chief Executive, the Chief Executive in Council under the licence, the Ordinance, regulations made under the Ordinance or any other law.

21. NON-COMPLIANCE WITH IRREVOCABLE UNDERTAKING

The licensee shall comply, and shall procure that any person who has given an irrevocable undertaking with respect to the licensee (a "Relevant Person") shall comply, with the terms of any irrevocable undertaking provided pursuant to the terms and conditions of the Notice. Any breach by the licensee or a Relevant Person of any provision in that irrevocable undertaking shall be deemed to be a breach of this Special Condition and the Authority may cancel, withdraw or suspend this licence and may, at the same time, enforce the Performance Bond submitted pursuant to Special Condition 3.1 in accordance with its terms. For the avoidance of doubt, the Authority's power to cancel, withdraw or suspend this licence is without prejudice and in addition to any rights or remedies of the Authority under the Performance Bond or its replacement and any other rights or remedies of the Authority, the Chief Executive, the Chief Executive in Council under the licence, the Ordinance, regulations made under the Ordinance or any other law.

22. OWNERSHIP AND CONTROL OF THE LICENSEE

- 22.1 Subject to Special Condition 22.2, the licensee shall, at all material times or from time to time (as the case may be) during the validity period of this licence, comply with the statements and representations made in its Application regarding its control and ownership structure and shall not deviate from any of them without the prior written consent of the Authority. For the purpose of this Special Condition, "Application" has the same

meaning given to it in the Notice.

- 22.2 The Authority may generally or specifically in relation to a particular statement or representation referred to in Special Condition 22.1 by notice to the licensee waive the requirement for the licensee to comply with the said statement or representation.

23. UNSOLICITED ADVERTISING

The licensee shall not use the service, and shall endeavour to prevent the service from being used by any user, for the transmission of messages or communications comprised in any unsolicited advertising or unsolicited promotional information and comply with any codes of practice which may be issued by the Authority concerning unsolicited advertising or unsolicited promotional information from time to time.

24. LOCATION SERVICES

- 24.1 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.
- 24.2 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.
- 24.3 Where directed by the Authority, subject to General Condition 7 and all applicable law, the licensee shall provide relevant information relating to the location of a user sending a public emergency message described in Special Condition 9.1 for the sole purpose of responding to that message.

25. INTERPRETATION

For the purposes of these Special Conditions:

25.1 "Appropriate Fee" means the respective amounts for each Royalty Year set out in Schedule 4;

"Frequency" means any one of the frequency bands 1900-1980 MHz, 2015 - 2025 MHz and 2110-2170 MHz;

"MNO" means an operator who holds a Relevant Licence;

"Network Turnover" has the meaning given in the Regulation;

"Notice" means the Notice dated 18th July, 2001 issued by the Authority in exercise of its 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 Spectrum Utilization Fees;

"Personal Communications Services licensee" means the holder of a public radiocommunications service licence for the provision of public radiocommunications service using cellular technology in the 1.7 - 1.9 GHz band;

"publication in the newspapers" means published in at least one Chinese language local newspaper and one English language local newspaper, being in each case a newspaper registered under the Registration of Local Newspapers Ordinance (Cap. 268) and published daily and circulating generally in Hong Kong;

"Public Mobile Radiotelephone Services licensee" means the holder of a public radiocommunications service licence for the provision of public radiocommunications service using cellular technology in the 800/900 MHz band;

"Regulation" means the Telecommunications (Method For Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation (Cap. 106X);

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

"Royalty Year" means each period of 12 months in the 15 year period of this licence starting on the date of issue of this licence;

"Spectrum Utilization Fee" has the meaning given in the Regulation; and

"transaction" means any transaction, operation or scheme whether or not such transaction, operation or scheme is enforceable, or intended to be enforceable, by legal proceedings.

- 25.2 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.

SCHEDULE 1

SCOPE OF THE SERVICE

1. The service is a public mobile radiocommunication service using cellular radiocommunications technology operating at frequencies specified in Schedule 3 within the frequency bands 1900-1980 MHz, 2015 - 2025 MHz and 2110-2170 MHz to enable two-way communications between moving locations or between a moving location and a fixed location.
2. For the purpose of this Schedule, a "moving location" includes, without limitation, the following:
 - (a) mobile station of a customer of the service; and
 - (b) mobile station of a customer of an MVNO interconnected with the network and the service.
3. For the purpose of this Schedule, a "mobile station" includes any apparatus using the technology of a mobile station for a mobile customer but being installed at a fixed location.
4. For the purpose of this Schedule, a "fixed location" includes any apparatus, station or service connected to any public telecommunications networks, including the network under this licence, in Hong Kong.

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 service specified in Schedule 1.

SCHEDULE 3
TECHNICAL PARTICULARS OF RADIO STATIONS FOR
THE PROVISION OF THE SERVICE

Location
Frequency
Class and Characteristics of Emission
Power
Aerial characteristics

SCHEDULE 4
SPECTRUM UTILIZATION FEES

| Year | Appropriate Fee |
|-------------|------------------------|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |

SCHEDULE 5

FORM OF THE PERFORMANCE BOND

THIS PERFORMANCE BOND is made on _____, 2001

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 Special Condition 3 of the Mobile Carrier Licence dated [], 2001 (the "Licence"), the Licensee is required to provide to the Authority a Performance Bond issued by a Qualifying Bank (as defined below) which shall remain in full force for the duration of the Licence. The Bank is a Qualifying Bank.

1. INTERPRETATION

1.1 Definitions

In this Performance Bond:

"Bonded Sum" means an amount of HK\$[];

"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 [];

"Ordinance" means the Telecommunications Ordinance (Cap. 106);

"Qualifying Bank" has the meaning given to it in Special Condition 3.4;

"Regulation" means the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation;

"Spectrum Utilization Fee" means the fee determined in accordance with Special Condition 2.1; and

"subsidiary" has the meaning given to it in the Companies Ordinance (Cap. 32).

1.2 Construction

In this Performance Bond, unless the contrary intention appears, a reference to:

- (a) a provision of law is a reference to that provision as amended, extended or re-enacted;
- (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 person includes 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 On the occurrence of all or any of the following events:

- (a) failure of the Licensee to pay all or any of the Spectrum Utilization Fee due to insolvency of the Licensee;

- (b) surrender of the Licence by the Licensee;
- (c) a decision by the Chief Executive in Council to cancel or suspend the licence or the Authority to cancel, withdraw or suspend the Licence pursuant to section 34(4) of the Ordinance; or
- (d) the Licensee ceasing to provide telecommunications services over the telecommunications network pursuant to the Licence,

the Bank shall on demand made by the Authority in writing and without evidence that the relevant events have in fact occurred pay, satisfy and discharge without cavil or delay the Bonded Sum.

- 2.2 The obligations under this Performance Bond constitute direct primary, irrevocable and unconditional obligations of the Bank.
- 2.3 This Performance Bond shall continue in full force and effect until payment by the Bank to the Authority of the Bonded Sum in full in accordance with subclause 2.1 provided that no demand may be made under this Performance Bond after []. [Note: the expiry date shall be the date on which the payment of the Spectrum Utilization Fee in respect of the latest Royalty Year covered by this Performance Bond is due except that, where are less than 5 years remaining under the Licence, the expiry date shall be 12 months after the due date for payment of the Spectrum Utilization Fee for the last Royalty Year.]
- 2.4 For the purposes of this clause, "insolvency" of the Licensee includes where the Licensee goes into liquidation whether compulsory or voluntary or if an order is made or a resolution is passed for the winding up or a receiver or an administrator is appointed or it enters into any arrangement or composition with its creditors generally or ceases to carry on business or to be able to pay its debts when they fall due or becomes subject to other proceedings analogous in purpose or effect including, without limitation, the appointment of a receiver, trustee or liquidator for any such purpose.

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

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 condition, 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 authorised 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 authorisations 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 authorisations 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 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 of which this Performance Bond has been executed and delivered as a deed on the date which appears first on page 1.

EXECUTED as a deed by **[BANK]**)
acting by [] and)
[])

.....

SCHEDULE 3

Frequency Bands

| Frequency Band | Paired Band (MHz) | | Unpaired Band (MHz) |
|----------------|-------------------|-----------------|---------------------|
| | Lower Block | Upper Block | |
| A | 1920.3 - 1935.1 | 2110.3 - 2125.1 | 1914.9 - 1919.9 |
| B | 1935.1 - 1949.9 | 2125.1 - 2139.9 | 1904.9 - 1909.9 |
| C | 1950.1 - 1964.9 | 2140.1 - 2154.9 | 1909.9 - 1914.9 |
| D | 1964.9 - 1979.7 | 2154.9 - 2169.7 | 2019.7 - 2024.7 |

SCHEDULE 4

Roaming Special Condition

- [].1 Subject to Special Condition [].2, if and for so long as the licensee or any member of its Group is a 3G Operator and the licensee remains a 2G Operator, the licensee shall provide Domestic Roaming on request by any New Entrant or as directed by the Authority and shall be required to do so whether or not a Domestic Roaming Agreement has been entered into between the licensee and that New Entrant.
- [].2 The obligation under Special Condition [].1 shall come into force on the date on which the New Entrant first offers services for which it is licensed under its 3G Licence to the public and shall continue until 5 years from the date the New Entrant obtains its 3G Licence.
- [].3 The licensee shall, within a reasonable period after the request from the New Entrant under [].1, enter into an agreement with the New Entrant or an amendment to that agreement, as the case may be, to provide Domestic Roaming provided that the licensee shall be required to enter into negotiations with that New Entrant at any time prior to the date specified in Special Condition [].2.
- [].4 The licensee shall ensure that a Domestic Roaming Agreement entered into or an amendment made under Special Condition [].3 contains terms and conditions which are reasonable. To the extent that all or any of the terms and conditions of a Domestic Roaming Agreement made under Special Condition [].3 (whether on or after the coming into force of this Special Condition) cease to be reasonable, the licensee shall, within a reasonable period, negotiate with the New Entrant an amendment to the Domestic Roaming Agreement so that the terms and conditions of the Domestic Roaming Agreement are reasonable. In the event of a dispute as to the reasonableness of any term or condition under a Domestic Roaming Agreement, either party may refer the dispute to the Authority for determination.
- [].5 Subject to Special Condition [].2, if a Domestic Roaming Agreement is not concluded after a period of 3 months after the date on which the New Entrant first requested the licensee to enter into a Domestic Roaming Agreement, either party may seek a determination from the Authority in respect of all or some matters to be dealt with under the Domestic Roaming Agreement. The determination which the Authority makes shall have regard to any technical, commercial and financial terms and conditions that the Authority considers fair and reasonable. The determination which the Authority makes may cover the period, if applicable, from the date on which the licensee is obliged to provide the Domestic Roaming under this Special Condition.
- [].6 The licensee shall comply with the requirements of any determination under Special Conditions [].4 and [].5 in relation to any Domestic Roaming Agreement.

[].7 Any determination made under Special Conditions [].4 and [].5 shall be binding on the parties.

[].8 The Authority may publish details of any determination made under Special Conditions [].4 and [].5.

[].9 The Authority shall not be required to take steps to resolve any dispute referred to him under Special Condition [].4 and [].5 in respect of the New Entrant where another dispute has already been referred to him under these Special Conditions by that New Entrant which has not yet been determined or where he has previously resolved a dispute relating to a Domestic Roaming Agreement involving that New Entrant in circumstances where that Domestic Roaming Agreement is:

- (a) still valid and in existence; and
- (b) remains in substantially the same form.

[].10 In this Special Condition:

"Domestic Roaming" means the provision of mobile telecommunications services by means of the telecommunications systems of the licensee to customers of the New Entrant;

"Domestic Roaming Agreement" means an agreement which provides for Domestic Roaming;

"Group" means in relation to the licensee:

- (a) any holding company of the licensee;
- (b) any subsidiary of the licensee;
- (c) any subsidiary of any holding company referred to in (a);
- (d) a shareholder or partner in the licensee which beneficially owns (directly or indirectly) shares in the licensee in circumstances where there is one other shareholder or partner in the licensee which beneficially owns (directly or indirectly) the remaining shares in the licensee in circumstances where neither shareholder nor partner has control;
- (e) any undertaking in which the licensee beneficially owns (directly or indirectly) shares in circumstances where there is one other shareholder or partner in that undertaking which beneficially owns (directly or indirectly) the remaining shares in the licensee, in circumstances where neither shareholder nor partner has control;
- (f) any undertaking in circumstances where two or more of its shareholders or partners which, acting in concert, together beneficially own, (directly or indirectly) more than 50% of the shares or voting rights in that undertaking, acting in concert together beneficially own (directly or

indirectly) more than 50% of the shares, or voting rights of the licensee;
and

- (g) any undertaking in which the licensee beneficially owns (directly or indirectly) together with one or more undertakings acting in concert more than 50% of the shares or voting rights of that undertaking,

and:

- (i) "subsidiary" and "holding company" have the meanings given to them in sections 2(4) and 2(7) of the Companies Ordinance respectively;
- (ii) "shares" have the meaning given to it in section 2(1) of the Companies Ordinance;
- (iii) "acting in concert" means actively co-operating to obtain or consolidate control;
- (iv) "control" means controlling the composition of the board of directors of a company, controlling more than half of the voting power of that company, holding more than half of the issued share capital of that company (excluding any part of it which carries no right to participate beyond a specified amount in a distribution of either profits or capital), the right to exercise a dominant influence over that undertaking by virtue of provisions contained in that undertaking's memorandum or articles of association or by virtue of a control contract, or the holding of the majority of the voting rights in that undertaking pursuant to an agreement without the shareholders or members; and
- (v) "undertaking" means (a) a body corporate or partnership or (b) an unincorporating association carrying on a trade or business, with or without a view to profit;

"New Entrant" means a 3G Operator which is not a 2G Operator and does not have a 2G Operator within its Group;

"2G Operator" means a person who holds a 2G Licence;

"2G Licence" means a public radiocommunications service licence for personal communications service, a public radiocommunications service licence for public mobile radio telephone service or a mobile carrier licence issued by the Authority under section 7 of the Ordinance for the establishment or maintenance of a telecommunications network for carrying communications to or from the public between moving locations or between fixed locations and moving locations situated within Hong Kong and operating in all or any of the frequency bands 825-960 MHz, 1710-1785 MHz and 1805-1880 MHz;

"3G Operator" means a person which holds a 3G Licence other than an existing 2G Operator; and

"3G Licence" means a mobile carrier licence issued by the Authority under section 7 of the Ordinance for the establishment or maintenance of a telecommunications network for carrying communications to or from the public between moving locations or between fixed locations and moving locations situated within Hong Kong and operating in the frequency bands 1900-1980 MHz, 2015-2025 MHz and 2110-2170 MHz.

[The definitions of Group in this Special Condition may require to be amended and further definitions relating to the Group of the licensee may be required to be included to take account of any conditions to which any consent which the Authority may give under paragraph 3.1.3 of the Notice may be subject. Any amendments to this Special Condition will be structured to provide thresholds and parameters so as to be consistent with, and apply to, those conditions.]

APPENDIX 1 - APPLICATION FORM

The Application Form follows. The page numbering is not part of the page numbering of this Notice.

HONG KONG

THIRD GENERATION MOBILE SERVICES
LICENSING

APPLICATION FORM

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- 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.

1 The Applicant

1.1 Details of the Applicant

Provide the name of the applicant (the “Applicant”), its company number appearing on the certificate of incorporation issued by the Companies Registry of Hong Kong, registered address (and principal place of business if different) and official fax and telephone numbers.

1.2 Contact details for the Applicant

Provide an address, telephone number and fax number within the Hong Kong Special Administrative Region at which the Applicant can be reached between 8.00a.m. and 7.00p.m. Hong Kong time. This address will be considered as the Applicant’s official address for written correspondence during the procedure contemplated in the Notice (the “Auction Procedure”), and will generally be used for non-time critical communications.

1.3 Principal contacts for the Applicant

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 at any time during the Auction Procedure. These contacts must be fully authorised under law and the Applicant’s constitutional documents to represent the Applicant 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 Applicant would prefer the Authority to contact them. Such persons should be aware that the Authority may contact them outside of normal working hours.

1.4 Bank account

The details of the Applicant’s bank account into which the Deposit (if provided in cash) should be reimbursed in accordance with the provisions of the Notice.

1.5 Management of the Applicant

The names, titles and/or positions of the board of directors and any other key members of the management of the Applicant.

1.6 Applicant’s relationship with any 2G Operator(s)

Please answer the questions listed in this section. If any of the answers is yes, please provide the relevant 2G Operator’s identity and ensure that the information provided herein is included and highlighted in section 4 of the Application Form with details of such relationship. In addition, an Applicant who is part of a 2G Bidding Group must obtain TA’s consent to the

- APPLICATION FORM INSTRUCTIONS -

arrangement in order to pre-qualify, and provide a copy of the consent in its Application (see Section 5 – Checklist).

2 Representatives of the Applicant

2.1 Applicant's Representatives

Please provide the name, employer, title and/or position (together with one business card), ID Card number or passport number and signature of those parties who may represent ("Representatives") the Applicant in the Bidding Room. If any representative is not an employee of the Applicant, please also make clear their relationship with the Applicant in the "employer" section. A maximum of 8 Representatives of the Applicant are permitted in the Applicant's Bidding Room. If the Applicant wishes to provide for a larger number of Representatives from whom the 8 to be present will be selected, please attach additional sheets to the Application Form in the same format as for Section 2.1. Please limit any additional Representatives noted in the Application Form, over and above the permitted 8, to 4.

2.2 Representatives authorised to bid

Please provide the name and signature of each Representative listed under section 2.1 who is authorised to provide confirmations, make Final Offers and act in any other way necessary on behalf of the Applicant during the Auction. Although not all Representatives need to be so authorised, at least two of them must be authorised as the Bidding Form requires the signatures of two different authorised representatives.

Please list these Representatives who are authorised to act on behalf of the Applicant with the number assigned to them under section 2.1 of the Application Form.

The table in section 2.2 of the Application Form will be used by the Authority to determine the validity of signatures on Bidding Forms.

3 Insiders

Please provide the names, employer, title and/or position, and roles of all the Insiders to the Application and the Applicant's participation in the Auction Procedure. If any of the Insiders are not employees of the Applicant, then the information provided must show the relationship between this Insider and the Applicant. 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 Procedure.

4 Ownership structure of the Applicant

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

- i) Details of all parties who hold a Bidding Interest, as defined in the Notice, in the Applicant.

The information provided should make clear the factors that determine why each person has a Bidding Interest in the Applicant and the nature of each such factor (percentage shareholding, voting control,

- APPLICATION FORM INSTRUCTIONS -

board representation, management agreement etc). If more than one factor applies, each one should be made clear.

- ii) Details of any 2G Operator, together with details of ownership of any intermediate undertakings, in which the Applicant or any party listed pursuant to 4 i) above has a 2G Interest (as defined in the Notice).

The information provided should make clear the factors that determine how the 2G Interest arises and the nature of each such factor (percentage shareholding, voting control, board representation, management agreement etc). If more than one factor applies, each one should be made clear.

- iii) In accordance with the Connected Bidder Statutory Declaration, details of any other Applicant, together with details of ownership of any intermediate undertakings, in which the Applicant or any party listed pursuant to 4 i) above has a Bidding Interest (as defined in the Notice).

The information provided should make clear the factors that determine how the Bidding Interest arises and the nature of each such factor (percentage shareholding, voting control, board representation, management agreement etc). If more than one factor applies, each one should be made clear.

- iv) Please also indicate which of the parties provided pursuant to i), ii) or iii) above are Insiders to the Applicant.
- v) Please also provide a list of which of the parties listed pursuant to i), ii) or iii) above are listed on a stock exchange, the exchange on which they are listed, and the percentage of each class of their shares which form a public or free float. Please indicate which of these listed companies are also Insiders to the Applicant, and provide the latest annual report and accounts of the listed company.

The information provided pursuant to i), ii) or iii) above will be made available to other Bidders during the Second Phase of the Auction, in order to assist certification by the Bidders that they are not connected with any other Bidders. In issuing such information, the relevant parts of each Application Form will simply be copied. If the Applicant wishes particular ownership information that is not in the public domain to be kept confidential, 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 Applicant's overall ownership structure clearly and easily comprehensible). Applicants should note that, notwithstanding the above, the Authority retains full discretion to issue such information to other Bidders if he believes that it is in the interests of the Auction to do so.

The information required in this section of the Application Form should be provided in two formats.

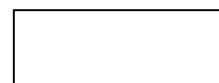
- a) In diagrammatic form, as follows. Each shape should contain the registered name of the relevant entity

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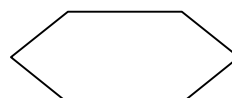
Applicant



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

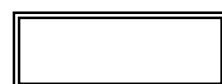


Company(ies) controlled by private individual or family (see illustration below)

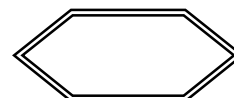


Where such entities are Insiders, the shape should be double-lined as follows:

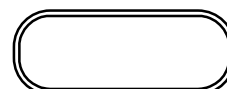
Company or other entity which is an Insider



Individual/family that is an Insider



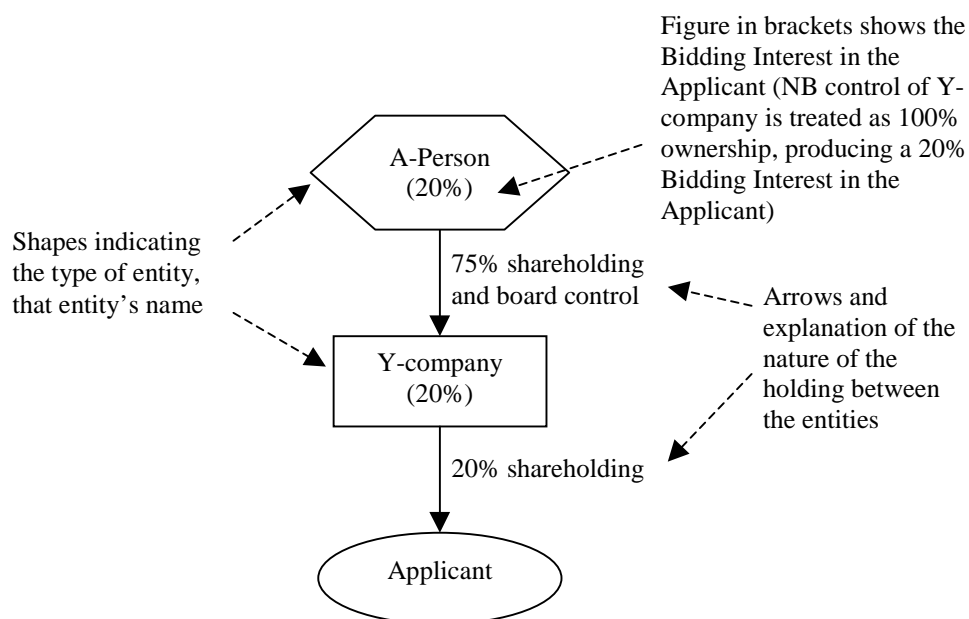
Company(ies) controlled by private individual or family that is an Insider



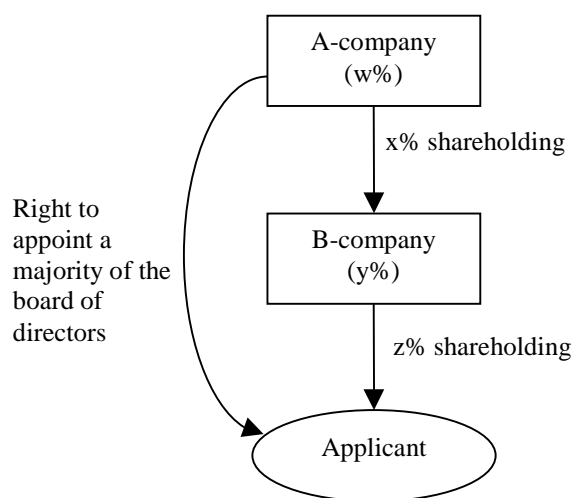
The Applicant is assumed to be an Insider, so it is not necessary to double-line the Applicant's shape.

Links (whether by ownership or some other form of control or arrangement falling with the definitions of Control, Participation and Indirect Interest) 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 (e.g. 25% shareholding). Each entity's shape should also contain in brackets a figure (or other explanatory note) stating that entity's Bidding Interest in the Applicant itself. For example:

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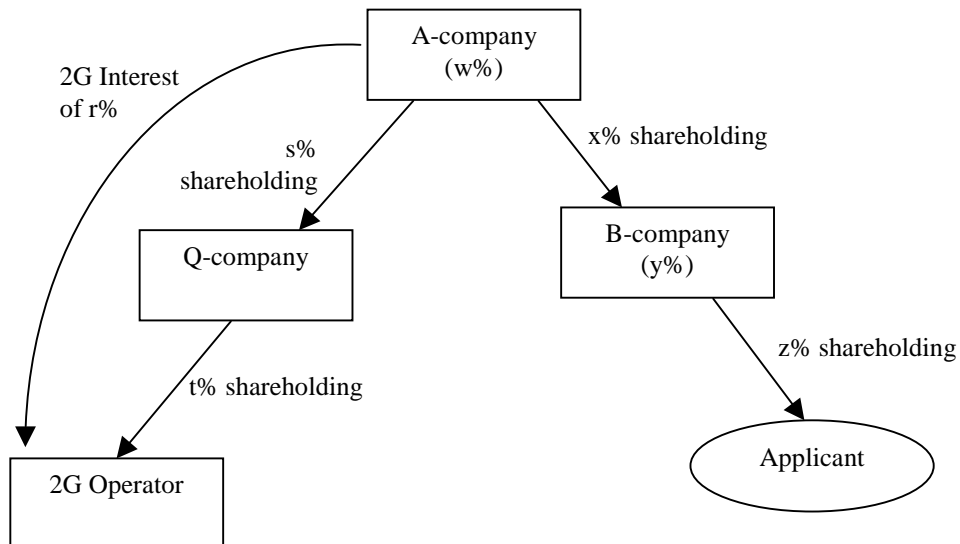


If the form of Bidding Interest in the Applicant is not readily explainable in the format set out above, provide additional arrows together with explanatory text either in the diagram or in a footnote. For example:



If it is necessary to show an interest in a 2G Operator and/or in another Applicant, please show the information in the same fashion (arrows and explanatory text between entities), but show an arrow between the relevant party and the 2G Operator and/or other Applicant together with explanatory text either in the diagram or a footnote to explain the relevant 2G Interest and/or Bidding Interest. For example:

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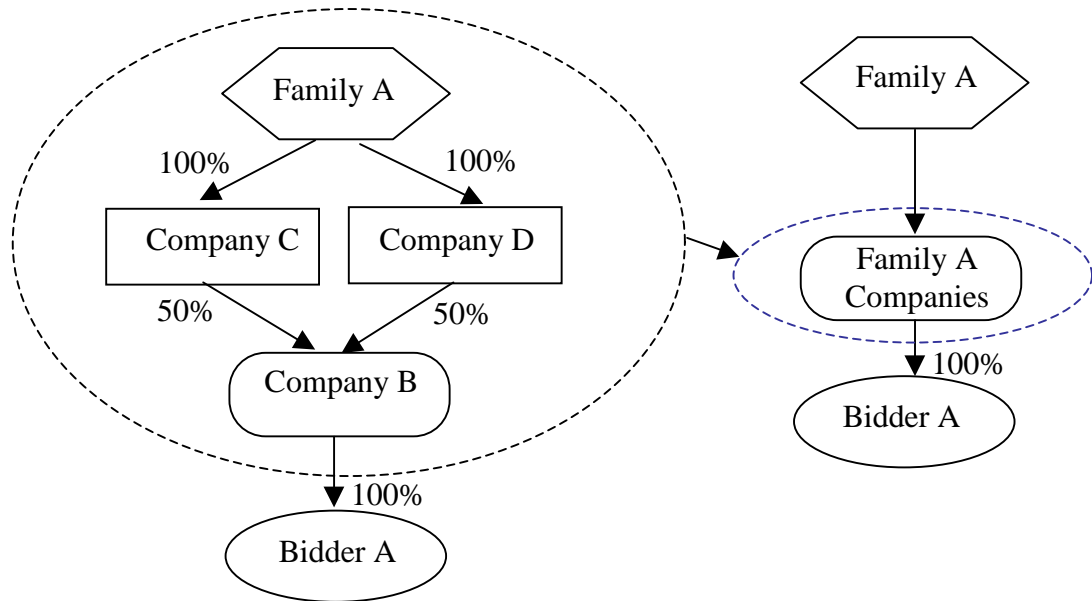


If these diagrams do not fit legibly onto a single sheet of paper, please provide additional sheets (which can be larger than A4 if necessary) to make the requested information clear.

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:

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- b) A spreadsheet or file in Excel (a soft copy saved on a floppy diskette or CD-ROM should be provided with the Application) for use in a database, listing the registered names of each entity listed pursuant to 4 i) to 4 v).

5 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 Applicant.

6 Declaration of minimum First Phase bid

Please sign the declaration.

7 Application Dates

The Application Dates shall be either 17th September, 2001 and 18th September, 2001 or any other dates as notified by the Authority pursuant to the Notice.

8 Submission instructions

The Application Form and all declarations, consents and certificates must be prepared in the English language. The items at 1. and 9. in the checklist can be provided in English and/or Chinese languages.

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

- APPLICATION FORM INSTRUCTIONS -

- i) business cards provided pursuant to 2.1; and
 - ii) the annual reports and accounts provided pursuant to 4 v);
- of which only a single set is required.

Applications must be sealed in an envelope or envelopes marked:

“For the attention of the Telecommunications Authority”

No other mark should be visible on the envelope.

Applications must be placed in the tender boxes by the person delivering the Application. Staff at OFTA and ITBB will not perform this function.

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

9 Signatures

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

Please note that any additional papers provided as part of the Application Form should be signed by the two officers 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. 4a), 4b), 4c) etc).

END OF APPLICATION FORM INSTRUCTIONS

- APPLICATION FORM -

1.1 DETAILS OF THE APPLICANT

Registered Name of the Applicant:

| |
|--|
| |
|--|

Company Number:

| |
|--|
| |
|--|

Registered Address:

| |
|--|
| |
| |
| |
| |

Principal Place of Business (if different from the registered address)

| |
|--|
| |
| |
| |
| |

Telephone Number:

| |
|--|
| |
|--|

Fax Number:

| |
|--|
| |
|--|

1.2 CONTACT DETAILS OF THE APPLICANT

Address:

| |
|--|
| |
| |
| |
| |

Telephone Number:

| |
|--|
| |
|--|

Signed:..... Signed:.....

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| | |
|------------------------|--|
| | |
| Fax Number: | |
| | |
| E-mail Address: | |
| | |

1.3 PRINCIPAL CONTACTS OF THE APPLICANT

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

| Contact 2 | |
|-------------------------------|--|
| Name: | |
| | |
| Title and/or Position: | |
| | |
| Telephone Number: | |
| | |
| Mobile Number: | |
| | |

Signed:..... Signed:.....

- APPLICATION FORM -

| | |
|------------------------|--|
| Fax Number: | |
| | |
| E-mail Address: | |
| | |

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

1.4 BANK ACCOUNT (FOR REIMBURSEMENT OF DEPOSIT)

| | |
|------------------------|--|
| Name of Bank: | |
| | |
| Account Name: | |
| | |
| Account Number: | |
| | |

Signed:..... Signed:.....

- APPLICATION FORM -

1.5 BOARD OF DIRECTORS AND OTHER KEY MEMBERS OF THE MANAGEMENT OF THE APPLICANT

| Name: | Title and/or Position: |
|-------|------------------------|
| | |
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If additional space is required, please attach additional sheets labelled 1.5(a),
1.5(b), 1.5(c) etc

Signed:..... Signed:.....

- APPLICATION FORM -

1.6 APPLICANT'S RELATIONSHIP WITH 2G OPERATOR(S)

Is the Applicant a 2G Operator?

| |
|--|
| |
|--|

Is the Applicant controlling, under the control of, or under common control with any 2G Operator?

| |
|--|
| |
|--|

Does the Applicant or any party with a Bidding Interest in the Applicant also have a 2G Interest in any 2G Operator?

| |
|--|
| |
|--|

Signed:..... Signed:.....

- APPLICATION FORM -

2.1 APPLICANT'S REPRESENTATIVES

| | | |
|-----------|--|--|
| 1. | Name: | |
| | Employer (or relationship between this representative and the Applicant): | |
| | Title and/or Position: | |
| | ID Card/Passport Number | |
| | Signature: | |
| | | |
| 2. | Name: | |
| | Employer (or relationship with the Applicant): | |
| | Title and/or Position: | |
| | ID Card/Passport Number | |
| | Signature: | |
| | | |
| 3. | Name: | |
| | Employer (or relationship with the Applicant): | |
| | Title and/or Position: | |
| | ID Card/Passport Number | |
| | Signature: | |
| | | |
| 4. | Name: | |
| | Employer (or relationship with the Applicant): | |
| | Title and/or Position: | |
| | ID Card/Passport Number | |
| | Signature: | |
| | | |

Signed:..... Signed:.....

- APPLICATION FORM -

| | | |
|-----------|---|--|
| 5. | Name: | |
| | Employer (or relationship with the Applicant): | |
| | Title and/or Position: | |
| | ID Card/Passport Number | |
| | Signature: | |
| | | |

| | | |
|-----------|---|--|
| 6. | Name: | |
| | Employer (or relationship with the Applicant): | |
| | Title and/or Position: | |
| | ID Card/Passport Number | |
| | Signature: | |
| | | |

| | | |
|-----------|---|--|
| 7. | Name: | |
| | Employer (or relationship with the Applicant): | |
| | Title and/or Position: | |
| | ID Card/Passport Number | |
| | Signature: | |
| | | |

| | | |
|-----------|---|--|
| 8. | Name: | |
| | Employer (or relationship with the Applicant): | |
| | Title and/or Position: | |
| | ID Card/Passport Number | |
| | Signature: | |
| | | |

Signed:..... Signed:.....

- APPLICATION FORM -

2.2 REPRESENTATIVES AUTHORISED TO BID

| Number: | Name: | Signature: |
|---------|-------|------------|
| | | |
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Signed:..... Signed:.....

- APPLICATION FORM -

3 INSIDERS

| Name: | Employer: | Title and/or Position: | Role: |
|-------|-----------|---------------------------|-------|
| | | | |
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Signed:..... Signed:.....

- APPLICATION FORM -

4 OWNERSHIP STRUCTURE OF THE APPLICANT

Signed:..... Signed:.....

- APPLICATION FORM -

5 CHECKLIST

| | | Please tick: |
|-----|--|--------------------------|
| 1. | Provide a certified true copy of the Memorandum and Articles of Association of the Applicant, or equivalent documents. | <input type="checkbox"/> |
| 2. | <input type="checkbox"/> Please provide the signed Bidder Compliance Certificate in the same format as set out at Appendix 2 to the Notice. | |
| 3. | <input type="checkbox"/> Please confirm that the Deposit has either: i) been provided together with this Applicant Form as a Letter of Credit in the same format as set out at Appendix 7 of the Notice; or ii) been provided in cash (clear funds) to the account of OFTA. A certified true copy of the relevant document(s) is provided together with this Applicant Form. | <input type="checkbox"/> |
| 4. | <input type="checkbox"/> Provide the signed Connected Bidder Statutory Declaration in the same format as set out at Appendix 3 to the Notice. | |
| 5. | <input type="checkbox"/> Please provide the MVNO Statutory Declaration in the same format as set out at Appendix 4 of the Notice. | |
| 6. | <input type="checkbox"/> Please provide the Domestic Roaming Consent Letter, if applicable | |
| 7. | <input type="checkbox"/> If the Applicant is part of a 2G Bidding Group, please provide a certified true copy of the TA' s consent to the arrangement. | |
| 8. | <input type="checkbox"/> Please provide one business card of each of the Applicant' s Representatives. | |
| 9. | <input type="checkbox"/> Provide one copy of the latest annual report and accounts of each party listed pursuant to 4 v) of the Application Form Instructions. | |
| 10. | <input type="checkbox"/> Please confirm provision of soft-copy ownership information pursuant to 4b) of the Application Form Instructions | |

Note: Please put "n/a" on the check box for item(s) which are not applicable

Signed:..... Signed:.....

- APPLICATION FORM -

6 DECLARATION OF MINIMUM FIRST PHASE BID

We, and, the undersigned, as directors and Representatives of the Bidder, confirm and acknowledge that this Application, once submitted to the Authority, cannot be withdrawn other than in accordance with the Notice and that this Application commits the Applicant to a minimum bid in the First Phase of the Auction at the First Phase Reserve Price.

We confirm that the factual information provided in, or in support of, the Application 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.

Signed:

Authorised signature
(name and position)

Authorised signature
(name and position)

Company seal

Date: _____

END OF APPLICATION FORM

Signed: Signed:

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APPENDIX 2 - BIDDER COMPLIANCE CERTIFICATE

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

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

DATE: [], 2001

Dear Sirs,

We refer to the Notice dated 18th July, 2001 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 (the "Notice").

1. The Bidder 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 Utilization Fee) Order, the notice issued by Secretary for Information Technology and Broadcasting specifying the Bidding Schedule, the Notice and the Information Memorandum dated 18th July 2001 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 any member of its Corporate Group, 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 capable of satisfying the Conditions in accordance with their terms including, without limitation:
 - (a) the obligation to provide interconnection to its network and services and to provide services in accordance with Special Condition 12 of the Conditions; and
 - (b) the obligation with respect to coverage of network and service in accordance with Special Condition 1 of the Conditions;
 - 1.4 the factual information provided in, or in support of, the Application 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;

- 1.5 it will comply, and ensure, to the best of its ability, that all of its Insiders will comply, with the provisions of the Notice including, without limitation, and in particular with the provisions of section 5 of Part 6 of the Notice relating to the confidentiality of information provided to them by the Authority during the course of the Auction;
- 1.6 it shall not and none of its Insiders shall co-operate, collaborate, collude or discuss with, or disclose 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 Final Offer or 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;
- 1.7 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;
- 1.8 none of the Bidder nor its Insiders have entered into, nor will not seek to enter into, or permit to subsist any agreement, arrangement or understanding of a type specified in paragraph 6.6.1 of the Notice or which might restrict its means of determining a business case;
- 1.9 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 of any of the Bidder's Insiders, 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 both Bidders or their Insiders for participation in the Auction;
 - (b) has been in possession, or is in possession, of Confidential Information relating to both Bidders;
 - (c) has passed, or will pass, Confidential Information relating to one Bidder to another Bidder or its Insiders;
- 1.10 save as disclosed in its Application Form, the Bidder is not a member of a 2G Bidding Group;
- 1.11 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;
- 1.12 no person with a Bidding Interest in the Bidder, no person controlled by the Bidder or by any person with a Bidding Interest in the Bidder and none of the Bidder's Insiders 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 its business or assets 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;

- 1.13 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;
 - 1.14 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 or allocation of radio spectrum in Hong Kong; and
 - 1.15 none of the Bidder nor its Insiders is 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.
2. Unless otherwise stated, words and expressions used in this certificate have the same meanings given to them in the Notice, unless the context otherwise requires.

Yours faithfully,

.....
Representative of Bidder
For ***[name of Bidder]***

.....
Representative of Bidder
For ***[name of Bidder]***

APPENDIX 3 - CONNECTED BIDDER STATUTORY DECLARATION

I, [] of []
being [] of [] (the
"Bidder") refer to the Notice dated 18th July, 2001 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 (the "Notice").

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 is controlling the Bidder;
- (b) so far as I am aware, has a Participation or Indirect Interest in the Bidder;
- (c) who is controlled by the Bidder;
- (d) who is under common control with the Bidder; and
- (e) in which the Bidder has a Participation or Indirect Interest,

and having informed them of the relevant provisions of the Regulation, the Notice and the Information Memorandum dated July, 2001:

- (i) there is no other 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 (e) above taken any steps deliberately to arrange for or assist in arranging, any other Bidder to be a Connected Bidder in relation to the Bidder; and
- (ii) the Bidder does not control, is not controlled by, nor is under common control with any other Bidder.

Connected Bidder

Name:

Address / Registered Office:

Unless otherwise stated, words and expressions used in this statutory declaration have the same meanings as those given to them in the Notice unless the context otherwise requires.

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 _____, 2001

Before me

(Signature and Designation
i.e. Justice of the Peace / Notary Public /
Commissioner of Oaths / Solicitor)

APPENDIX 4 - MVNO STATUTORY DECLARATION

I, [] of []
being [] of []
(the "Bidder") refer to the Notice dated 18th July, 2001 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 (the "Notice").

I do solemnly and sincerely declare that neither of the Bidder nor any person:

- (a) who is controlling the Bidder;
- (b) who is controlled by the Bidder; or
- (c) who is under common control with the Bidder,

has entered into any agreement or arrangement under which it will obtain interconnection, access or services in its capacity as an MVNO.

Unless otherwise stated, words and expressions used in this statutory declaration have the same meanings as those given to them in the Notice unless the context otherwise requires.

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 , 2001

Before me

(Signature and Designation
i.e. Justice of the Peace / Notary
Public / Commissioner of Oaths / Solicitor)

APPENDIX 5 - PERFORMANCE BOND

THIS PERFORMANCE BOND is made on _____, 2001

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 Special Condition 3 of the Mobile Carrier Licence dated [], 2001 (the "Licence"), the Licensee is required to provide to the Authority a Performance Bond issued by a Qualifying Bank (as defined below) which shall remain in full force for the duration of the Licence. The Bank is a Qualifying Bank.

1. INTERPRETATION

1.1 Definitions

In this Performance Bond:

"Bonded Sum" means an amount of HK\$[];

"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 [];

"Ordinance" means the Telecommunications Ordinance (Cap. 106);

"Qualifying Bank" has the meaning given to it in Special Condition 3.4;

"Regulation" means the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation;

"Spectrum Utilization Fee" means the fee determined in accordance with Special Condition 2.1; and

"subsidiary" has the meaning given to it in the Companies Ordinance (Cap. 32).

1.2 **Construction**

In this Performance Bond, unless the contrary intention appears, a reference to:

- (a) a provision of law is a reference to that provision as amended, extended or re-enacted;
- (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 person includes 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 On the occurrence of all or any of the following events:

- (a) failure of the Licensee to pay all or any of the Spectrum Utilization Fee due to insolvency of the Licensee;
- (b) surrender of the Licence by the Licensee;
- (c) a decision by the Chief Executive in Council to cancel or suspend the licence or the Authority to cancel, withdraw or suspend the Licence pursuant to section 34(4) of the Ordinance; or
- (d) the Licensee ceasing to provide telecommunications services over the telecommunications network pursuant to the Licence,

the Bank shall on demand made by the Authority in writing and without evidence that the relevant events have in fact occurred pay, satisfy and discharge without cavil or delay the Bonded Sum.

2.2 The obligations under this Performance Bond constitute direct primary, irrevocable and unconditional obligations of the Bank.

2.3 This Performance Bond shall continue in full force and effect until payment by the Bank to the Authority of the Bonded Sum in full in accordance with subclause 2.1 provided that no demand may be made under this Performance Bond after []. [Note: the expiry date shall be the date on which the payment of the Spectrum Utilization Fee in respect of the latest Royalty Year covered by this Performance Bond is due except that, where are less than 5 years remaining under the Licence, the expiry date shall be 12 months after the due date for payment of the Spectrum Utilization Fee for the last Royalty Year.]

2.4 For the purposes of this clause, "insolvency" of the Licensee includes where the Licensee goes into liquidation whether compulsory or voluntary or if an order is made or a resolution is passed for the winding up or a receiver or an administrator is appointed or it enters into any arrangement or composition with its creditors

generally or ceases to carry on business or to be able to pay its debts when they fall due or becomes subject to other proceedings analogous in purpose or effect including, without limitation, the appointment of a receiver, trustee or liquidator for any such purpose.

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

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 condition, 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 authorised 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 authorisations 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 authorisations 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 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 of which this Performance Bond has been executed and delivered as a deed on the date which appears first on page 1.

EXECUTED as a deed by **[BANK]**)
acting by [] and)
[])

.....

APPENDIX 6 - IRREVOCABLE UNDERTAKING

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

FROM: [*name and address of person giving undertaking*] (the "**Relevant Person**")

DATE: [], 2001

1. Background

- 1.1 The Authority has issued a notice dated 18th July, 2001 pursuant to section 32I of the Telecommunications Ordinance (Cap. 106) and the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation and all other powers enabling him to specify the terms and conditions of the Auction and the payment of the Spectrum Utilization Fee (the "**Notice**") and [] is a Connected Bidder within the definition of "Connected Bidder" contained in paragraph 1.2.1 of the Notice (the "**Relevant Connected Bidder**").
- 1.2 The Relevant Person is a person within subparagraphs [(a)] [(b)] [(c)] of the definition of "Connected Bidder" with respect to the Relevant Connected Bidder.
- 1.3 Pursuant to paragraph 4.6.11 of the Notice, the Relevant Connected Bidder has agreed to provide an irrevocable undertaking to the Authority on the terms set out in this undertaking and in accordance with the requirements set out in paragraph 4.6.11.
- 1.4 For the purposes of this undertaking, all defined terms shall have the same meanings as provided in the Notice, unless expressly provided otherwise, and shall apply notwithstanding that all stages of the Auction have completed in accordance with the terms and conditions of the Notice.

2. Irrevocable Undertaking

- 2.1 In consideration of the Authority inviting the Relevant Connected Bidder to participate in the Third Phase, the Relevant Person:
 - (a) undertakes and agrees with the Authority:
 - (i) to enter into a legally binding agreement or other arrangements with respect to the Bidding Interest or 2G Interest or both which has caused the Relevant Connected Bidder to be a Connected Bidder in relation to any other Provisional Successful Bidder (including, without limitation, the disposal of any Participation or Indirect Interest or both) which have the legal effect that immediately following the completion of the agreement or other arrangements the Relevant Connected Bidder would no longer be a Connected Bidder

in relation to any other Provisional Successful Bidder for the purposes of the Second Phase and the Third Phase;

- (ii) to complete the agreement or other arrangements referred to in subparagraph (i) within six months from the date of the Third Phase Notice;
 - (iii) to provide to the Authority all information which the Authority reasonably requests to enable the Authority to assess whether the Relevant Person is able to and will comply with this irrevocable undertaking;
 - (iv) to provide the Authority with all necessary evidence to show that the Relevant Connected Bidder has ceased to be a Connected Bidder; and
 - (v) not to enter into any agreement or other arrangement within six months from the date on which the Relevant Connected Bidder ceased to be a Connected Bidder which would have the effect of the Relevant Connected Bidder becoming a Connected Bidder in relation to any other Provisional Successful Award Bidder; and
- (b) represents and warrants to the Authority that:
- (i) in giving, and performing its obligations under, this undertaking, it shall not violate or conflict with, or exceed any limit imposed by any law or regulation to which it is subject, its memorandum and articles of association (or equivalent constitutional document) and any other agreement, instrument or undertaking binding on it; and
 - (ii) any information provided in accordance with paragraph 2.1(a)(iii) and (iv) is true and accurate in all respects.

3. Additional Provisions

The following additional provisions apply to this undertaking:

- (a) if there is a conflict between this undertaking and the Notice, the Notice shall prevail;
- (b) this undertaking shall bind any successor of the Relevant Person; and
- (c) this undertaking shall be governed by Hong Kong law and the Relevant Person submits to the non-exclusive jurisdiction of the courts of Hong Kong for all purposes in relation to this undertaking.

IN WITNESS WHEREOF this undertaking has been executed as a deed on the date above.

The common seal of the [)
name of person giving)
undertaking] was affixed)
in the presence of:)

APPENDIX 7 - LETTER OF CREDIT

FORM OF STANDBY LETTER OF CREDIT

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

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

DATE: [], 2001

The Issuing Bank issues an irrevocable standby letter of credit in your favour on the following terms on the application and request of [*Name of the Bidder*] (the "**Bidder**") pursuant to a Notice dated 18th July, 2001 issued by the Telecommunications Authority in exercise of the powers conferred by section 32I of the Telecommunications Ordinance (Cap. 106) and the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation and all other powers enabling him to specify the terms and conditions of the auction and the payment of the spectrum utilization fee (the "**Notice**");

IRREVOCABLE STANDBY LETTER OF CREDIT NO. []
DATED [], 2001

BENEFICIARY The Telecommunications Authority of Hong Kong.

EXPIRY DATE 364 days from the date of issue.

AMOUNT OF STANDBY LETTER OF CREDIT Up to a maximum amount of HK\$ [].

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

AGAINST Presentation from time to time of the Beneficiary's certificate in the following form, either by letter signed by an authorised signatory of the Beneficiary or authenticated telex or SWIFT to the Issuing Bank at [*Address of the Issuing Bank*] (telex no.: [] / SWIFT no.: []).

TO: []

(the "**Issuing Bank**")

FROM: The Telecommunications Authority of Hong Kong
The Office of the Telecommunications Authority
29th Floor, Wu Chung House
213 Queen's Road East
Wanchai
Hong Kong (the "**Beneficiary**")

DATE

Irrevocable Standby Letter of Credit dated [], 2001
No. [] (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 prior to the date of this certificate by way of payment of a Penalty (as defined in the Notice) under the terms and conditions of the Notice.
3. We request payment from the Issuing Bank of the amount specified in paragraph 1 within three Business Days (as defined in the Notice) after the date of this certificate to [*details of Beneficiary's account*] in our favour.

The Telecommunications Authority of Hong Kong

BY: []

TITLE: []

**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 without any deduction or withholding (whether in respect of set off, counterclaim, duties, present or future taxes, charges or otherwise).

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.

.....
Representative of Issuing Bank
For [*name of Issuing Bank*]

APPENDIX 8 - ROAMING CONSENT LETTER

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

FROM: [*Name and address of Licensee*] (the "**Licensee**")

DATE: [], 2001

Dear Sirs,

1. We refer to the Notice dated 18th July, 2001 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 Spectrum Utilization Fee (the "Notice").
2. We refer to the [public radiocommunications service licence[s] for personal communications service / public radiocommunications service licence[s] for public mobile radio telephone service / mobile carrier licence[s]] dated [] [respectively] granted to the Licensee (the "Licence[s]"). Subject to paragraph 3, the Licensee consents to the amendment of [each of] the Licence[s] to incorporate the special condition set out in the Appendix to this letter in accordance with regulation 8(3) of the Telecommunications Regulations (Cap.106 sub.leg.A).
3. The consent is conditional on the Licensee, any person within the Licensee's Corporate Group or any person which is under common control with the Licensee becoming a Third Phase Bidder.
4. If the consent becomes unconditional in all respects, the Licensee shall return the Licence[s] to the Authority so that the Authority can amend the Licence[s] by an appropriate endorsement on [it][them].
5. Unless otherwise stated, words and expressions used in this letter have the same meanings as those given to them in the Notice unless the context otherwise requires.

Yours faithfully,

.....
Representative of Licensee
For [*name of Licensee*]

.....
Representative of Licensee
For [*name of Licensee*]

[Appendix]

[Roaming Special Condition]

APPENDIX 9 - BIDDING FORM

The Bidding Forms follow. The page numbering is not part of the page numbering of this Notice.

This page is left blank intentionally

Bidding Form for Bidding Rounds of the First Phase

(please complete in block letters)

Bidding Round:

Bidding increment:

Bidder: _____ (the “Bidder”)

Either:

We confirm that the Bidder will remain in the First Phase in this Bidding Round. **We therefore confirm that the Bidder’s minimum Final Offer which we may now make is [*lowest percentage for next Bidding Round*]%.**

Password: _____

Signed:

Representative 1

Representative 2

Or:

We confirm that the Bidder withdraws from the First Phase in this Bidding Round.

We confirm that the Bidder’s Final Offer is:

| 10s | Units | 1st decimal | 2nd decimal | |
|----------------------|----------------------|------------------------|----------------------|---|
| <input type="text"/> | <input type="text"/> | • <input type="text"/> | <input type="text"/> | % |

In words: _____ Per
cent. (see note 1)

We confirm the Bidder is not willing to bid at or above (see note 2):

| 10s | Units | 1st decimal | 2nd decimal | |
|----------------------|----------------------|------------------------|----------------------|----------------|
| <input type="text"/> | <input type="text"/> | • <input type="text"/> | <input type="text"/> | % (see note 2) |

In words: _____ Per
cent. (see note 1)

Password: _____

Signed:

Representative 1

Representative 2
PTO for notes

Note 1:

For percentages in words, all numbers should be written. For example:

- (a) 15.16% should be written as “One five point one six” but not “Fifteen point one six” or any other variant;*
- (b) 15.10% should be written as “One five point one zero”, not “One five point one” or any other variant; and*
- (c) 15.01% should be written as “One five point zero one” but not any other variant.*

Note 2:

The percentage at which the Bidder withdraws must be 0.01% above the Bidder’s Final Offer

**Bidding Form for Revised Final Offer for resolution of tied bids in the
Tied Bidding Rounds**
(please complete in block letters)

Bidder: _____ (the “Bidder”)

We confirm that the Bidder makes a Revised Final Offer. The Bidder’s Revised Final Offer is:

| 10s | Units | 1st decimal | 2nd decimal | |
|---|---|---|---|---|
| <div style="border: 1px solid black; width: 40px; height: 30px; margin: 0 auto;"></div> | <div style="border: 1px solid black; width: 40px; height: 30px; margin: 0 auto;"></div> | <div style="border: 1px solid black; width: 40px; height: 30px; margin: 0 auto;"></div> | <div style="border: 1px solid black; width: 40px; height: 30px; margin: 0 auto;"></div> | % |

In words: _____ Per cent.
(see note 1)

We confirm the Bidder is not willing to bid at or above (see note 2):

| 10s | Units | 1st decimal | 2nd decimal | |
|---|---|---|---|---|
| <div style="border: 1px solid black; width: 40px; height: 30px; margin: 0 auto;"></div> | <div style="border: 1px solid black; width: 40px; height: 30px; margin: 0 auto;"></div> | <div style="border: 1px solid black; width: 40px; height: 30px; margin: 0 auto;"></div> | <div style="border: 1px solid black; width: 40px; height: 30px; margin: 0 auto;"></div> | % |

In words: _____ Per cent.
(see note 1)

Password: _____
Signed: _____

Representative 1

Representative 2

PTO for notes

Note 1:

For percentages in words, all numbers should be written. For example:

- (a) 15.16% should be written as “One five point one six” but not “Fifteen point one six” or any other variant;*
- (b) 15.10% should be written as “One five point one zero”, not “One five point one” or any other variant; and*
- (c) 15.01% should be written as “One five point zero one” but not any other variant.*

Note 2:

The percentage at which the Bidder withdraws must be 0.01% above the Bidder’s Final Offer

Bidding Form: spoken confirmation for First Phase

“I, *[Representative’s name]*, confirm that *[Bidder’s name]* will remain in the First Phase for this Bidding Round *[this Bidding Round number]*. I confirm that the minimum Final Offer that *[Bidder’s name]* may make in the First Phase is *[lowest royalty percentage of next round, in numbers]* percent in Round *[next round number]*. Our password is *[password]*.”

Bidding Form: spoken withdrawal for First Phase

“I, *[Representative’s name]*, confirm that *[Bidder’s name]* withdraws from the First Phase of the Auction. I confirm that *[Bidder’s name]*’s Final Offer to be *[percentage in numbers]* percent. I confirm that *[Bidder’s name]* is not willing to bid at or above *[Final Offer percentage plus 0.01%, in numbers]* percent for the First Phase of the Auction. Our password is *[password]*.”

Note: For spoken percentages, the Representative should say each number. For examples:

- (a) 15.16% should be spoken as “One five point one six” but not “Fifteen point one six” or any other variant;*
- (b) 15.10% should be spoken as “One five point one zero”, not “One five point one” or any other variant; and*
- (c) 15.01% should be spoken as “One five point zero one” but not any other variant.*

Bidding Form: spoken Revised Final Offer
(for resolution of tied bids in the First Phase)

“I, [*Representative’s name*], confirm that the Revised Final Offer of [*Bidder’s name*] for the First Phase of the Auction is [*percentage in numbers*] percent. I confirm that [*Bidder’s name*] is not willing to bid at or above [*Revised Final Offer percentage plus 0.01%, in numbers**] percent for the First Phase of the Auction. Our password is [*password*].”

Note: For spoken percentages, the Representative should say each number. For examples:

- (a) 15.16% should be spoken as “One five point one six” but not “Fifteen point one six” or any other variant;*
- (b) 15.10% should be spoken as “One five point one zero”, not “One five point one” or any other variant; and*
- (c) 15.01% should be spoken as “One five point zero one” but not any other variant.*

Bidding Form for the Second Phase
(please complete in block letters)

Bidder: _____

We confirm that _____ bids:

(in numbers): HK\$ _____

(in words): HK\$ _____

in the Second Phase of the Auction.

Signed:

Representative 1

Representative 2

Date: *[date of the Second Phase of the Auction]*

Bidding Form for the Second Phase for resolution of tied bids
(please complete in block letters)

Bidder: _____

We confirm that _____ bids an **additional**

(in numbers): HK\$ _____

(in words): HK\$ _____

in the Second Phase of the Auction.

Signed:

Representative 1

Representative 2

Date: *[date of the Second Phase of the Auction]*

Bidding Form for the Third Phase
(please complete in block letters)

Bidder: _____

We confirm that _____ bids:

(in numbers): HK\$ _____

(in words): HK\$ _____

in the Third Phase of the Auction.

Signed:

Representative 1

Representative 2

Date: [date of the Third Phase of the Auction]

Bidding Form for the Third Phase for resolution of tied bids
(please complete in **block letters**)

Bidder: _____

We confirm that _____ bids an **additional**

(in numbers): HK\$ _____

(in words): HK\$ _____

in the Third Phase of the Auction.

Signed:

Representative 1

Representative 2

Date: *[date of the Third Phase of the Auction]*

Bidding Form: Frequency band selection in the Third Phase
(please complete in **block letters**)

Bidder: _____ (the “Bidder”)

We confirm that the Bidder selects Frequency Band: _____ *[A, B, C or D]*

Signed:

Representative 1

Representative 2

Date: *[date of the Third Phase of the Auction]*

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