

**G.N. 8119**

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

By this Notice, the Communications Authority, in exercise of the powers conferred by section 32I of the Telecommunications Ordinance, the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation and all other powers enabling it for this purpose, specifies the terms and conditions of the auction in relation to the use of the frequency bands specified in this Notice and the payment of the spectrum utilization fees. This Notice shall, where appropriate, also constitute guidelines issued under section 6D of the Telecommunications Ordinance indicating the manner in which the Communications Authority proposes to perform its function of determining applications for licences which it may issue pursuant to section 7 of the Telecommunications Ordinance including the licensing criteria and other relevant matters it proposes to consider.

Communications Authority

21 December 2012

## **Part 1 – Introduction**

### **1.1 Commencement**

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

### **1.2 Purpose of Notice**

1.2.1 The purpose of this Notice is to specify:

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

### **1.3 Stages of the Auction**

1.3.1 This Notice provides for four stages of the Auction:

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

### **1.4 Definitions**

1.4.1 In this Notice, unless the context otherwise requires:

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

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

“**Application Dates**” means 21 February 2013 and 22 February 2013;

“**Application Form**” means the form specified in Appendix 4 of this Notice;

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

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

“**Approval Date**” means ten Business Days after the date of the Provisional Successful Bidder Notice;

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

“**Authorised Representative**” means the person authorised by a Bidder to submit a Bid in the Auction whose name and signature have been provided to the Authority in the Application submitted by the Bidder under Part 2 or in a notification under paragraph 7.7.1;

“**Authority**” means the Communications Authority established under the Communications Authority Ordinance (Cap.616, Laws of Hong Kong);

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

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

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

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

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

“**Bidder Compliance Certificate**” means the certificate specified in Appendix 5 of this Notice;

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

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

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

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

“**Commission**” means the Securities and Futures Commission established under the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong);

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

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

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

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

“**Deposit Bank**” means Bank of China Hong Kong Branch at Ground Floor, Wu Chung House, 213 Queen’s Road East, Wanchai, Hong Kong (“Bank of China”) or The Hongkong and Shanghai Banking Corporation Limited, Hopewell Centre Branch at Shop 2A, 2<sup>nd</sup> Floor, Hopewell Centre, 183 Queen’s Road East, Wanchai, Hong Kong (“HSBC”);

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

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

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

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

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

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

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

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

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

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

**“Letter of Credit”** means a letter of credit in the form specified in Appendix 6 of this Notice;

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

**“Losing Bidder”** has the meaning given in paragraph 4.14.1;

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

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

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

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

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

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

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

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

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

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

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

- (a) one or more of the following:
  - (i) Moody’s A2;
  - (ii) Standard & Poor’s A;
  - (iii) Fitch Ratings’ A; or
- (b) a rating of a body other than a body listed in subparagraph (a)

which, in the opinion of the Authority, is equivalent to one or more of the ratings in that subparagraph;

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

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

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

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

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

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

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

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

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

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

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

## **1.5 Interpretation**

1.5.1 In this Notice, unless the context otherwise requires:

- (a) a “person” includes any individual, body corporate, unincorporated association or body (including, without limitation, a partnership, trust, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separately legal personality and includes that person’s successors in title, permitted assigns and permitted transferees;
- (b) any reference in this Notice to a period to be determined in terms of a number of Business Days shall be calculated from midnight on the Business Day of notification or expiry of any specified time period, as the case may be, and expire at midnight on the last of the relevant number of Business Days and any reference to “midnight” in relation to a particular day shall be read as 11:59 pm on that day;
- (c) 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;
- (d) 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;
- (e) the singular includes the plural and vice versa and words and expressions importing each gender shall include the other gender;
- (f) references to this Notice shall include references to the Schedules and the Appendices and references to any “paragraph”, “Schedule” or “Appendix” are to paragraph, Schedule or Appendix of this Notice;
- (g) expression of time shall be reference to Hong Kong time; and

- (h) the headings do not affect their interpretation.

## **Part 2 – Application Stage**

### **2.1 Application**

- 2.1.1 No person other than a company formed and registered under the Companies Ordinance may make an Application. A company may make no more than one Application.
  
- 2.1.2 An Application must consist of the following documents duly completed in English language and in accordance with such instructions and accompanied by such documentary proof as may be required or specified therein:
  - (a) an Application Form;
  - (b) a Bidder Compliance Certificate; and
  - (c) a Deposit.
  
- 2.1.3 An Application must be:
  - (a) addressed, sealed and enclosed in the manner as may be specified by the Authority; and
  - (b) delivered by hand to Assistant Director (Market and Competition) at the Authority’s Office.
  
- 2.1.4 Subject to paragraph 2.1.5, an Application must be received by the Authority between 9:00 am and 5:30 pm on either of the Application Dates.
  
- 2.1.5 If a tropical cyclone warning signal number 8 or above or a “black” rainstorm warning signal is in force in Hong Kong during any of the times specified in paragraph 2.1.4, Applications must be received by the Authority between 9:00 am and 5:30 pm on the immediately following Business Day on which none of the signals remains in force.
  
- 2.1.6 A Bidder shall be subject to, and obliged to comply with, the terms and conditions of this Notice from the time its Application is received by the Authority.

## **2.2 Deposit**

### **Reference to Deposit**

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

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

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

### **Deposit**

2.2.3 The Deposit shall be in such amount as specified in Appendix 3 of this Notice, which shall be taken into account by the Authority for the purpose of determining the number of Eligibility Points to be attributed to a Bidder. The Deposit shall be payable or delivered, as the case may be, to the Authority in accordance with paragraph 2.2.6.

2.2.4 Where a Bidder provides its Deposit in cash, the Authority may notify that Bidder that its Application is invalid if funds representing that Bidder's Deposit are not cleared by 4:00 pm on the later of the Application Dates.

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

### **Method of payment or delivery of Deposit**

2.2.6 Where the Deposit is:

- (a) in cash, it shall be payable to the Authority by telegraphic transfer to the Authority's Account at the Deposit Bank and shall be accompanied by an identifier for the Bidder which shall consist of the registered name of the Bidder;
- (b) a Letter of Credit, it shall be addressed to the Authority and be delivered to the Authority's Office.

## **Deposit Interest**

- 2.2.7 Where the Deposit is in cash, it shall earn interest at the rate available to the Authority from the Deposit Bank in which the cash is deposited.
- 2.2.8 Subject to paragraph 2.2.9, where the Deposit is in cash and the Deposit, or part of the Deposit, is returned to a Bidder under any of the terms and conditions of this Notice, then the Deposit, or part of the Deposit, which is returned shall include all Deposit Interest as has been earned on that Deposit, or part of that Deposit, from (and including) the date on which it was received by the Authority up to (but excluding) the date on which it is returned.
- 2.2.9 Where the Deposit or part of the Deposit is forfeited under any of the terms and conditions of this Notice by way of Penalty, any Deposit Interest which has been earned on the forfeited part of the Deposit shall form part of the total amount which is forfeited.

## **Penalties**

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

Bidder.

**2.3 Withdrawal of Applications**

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

**2.4 Acceptance of terms and conditions and Conditions**

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

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

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

**Part 3 – Qualification Stage**

**3.1 Announcement of Identities of Bidders**

3.1.1 Without prejudice to the determination of the Authority under paragraph 3.2, the Authority shall publish a notice (“Bidder Notice”) which shall state the identity of each Bidder which has submitted an Application

**3.2 Determination as a Qualified Bidder**

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

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

- (a) unless the Bidder has submitted an Application in compliance with

all the requirements of paragraphs 2.1.1. and 2.1.2 to the satisfaction of the Authority;

- (b) if there is reasonable ground for the Authority to believe that the Bidder does not comply with or is not capable of complying with all the undertakings given in the Bidder Compliance Certificate.

### **3.3 Notification as a Qualified Bidder**

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

3.3.2 Subject to paragraph 3.3.3, on, or as soon as practicable after, the publication of the Qualified Bidder Notice, the Authority shall return, to each Bidder which has not been determined to be a Qualified Bidder that Bidder’s Deposit provided:

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

3.3.3 Notwithstanding the return to a Bidder of its Deposit in accordance with paragraph 3.3.2, that Bidder shall continue to comply with those terms and conditions of this Notice as are specified by the Authority. If the Authority does not specify any terms and conditions in accordance with this paragraph, that Bidder shall be required to comply with all of the terms and conditions of this Notice as appropriate, including all the undertakings given in the Bidder Compliance Certificate submitted by that Bidder.

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

3.4.1 If at any time before the start of the Bidding Stage, there is no more than

one Qualified Bidder, the Authority shall publish a notice that the Bidding Stage shall not take place.

- 3.4.2 Where, at any time before the start of the Bidding Stage, there is only one Qualified Bidder, the Authority shall notify that Qualified Bidder and that Qualified Bidder shall select in the Frequency Band Selection Form the Frequency Bands it wishes to be assigned. The Frequency Band Selection Form shall be duly completed in accordance with the instructions specified therein, signed on behalf of the Qualified Bidder by two Authorised Representatives and submitted to the Authority within the period specified by the Authority. A Frequency Band Selection Form shall not be approved by the Authority if it is not duly completed in accordance with the instructions specified therein or is otherwise unclear. The Authority may, at its discretion, request the Qualified Bidder to make such clarification as may reasonably be required if the Frequency Band Selection Form is not duly completed in accordance with the instructions specified therein or is otherwise unclear. Upon approval of the Frequency Band Selection Form by the Authority, the Qualified Bidder shall be the Provisional Successful Bidder of the Frequency Bands it has selected in the Frequency Band Selection Form and the Spectrum Utilization Fee payable by the Provisional Successful Bidder shall be the Minimum Fees for the Frequency Bands selected by the Provisional Successful Bidder. The Authority shall publish a notice (“Provisional Successful Bidder Notice”) to announce the identity of the Provisional Successful Bidder and the Spectrum Utilization Fee payable for the relevant Frequency Bands.
- 3.4.3 If the Qualified Bidder fails to select a Frequency Band by submitting a duly completed Frequency Band Selection Form within the period specified by the Authority or fails to make such clarification as required by the Authority in relation to the Frequency Band Selection Form, the Qualified Bidder shall not be entitled to the grant of a Licence and the Authority may forfeit an amount (up to the full amount of the Qualified Bidder’s Deposit) by way of Penalty from the Qualified Bidder’s Deposit where the Deposit is in cash or make a claim under the Letter of Credit to the extent of the relevant amount where the Deposit is a Letter of Credit.

## **Part 4 – Bidding Stage**

### **4.1 Reference to a Bidder**

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

### **4.2 Purpose and Structure of Bidding Stage**

4.2.1 The purpose of the Bidding Stage is to provide a procedure to determine:

- (a) which of the Bidders shall become a Provisional Successful Bidder of each Frequency Band; and
- (b) the amount of Spectrum Utilization Fee that shall be payable for each Frequency Band.

4.2.2 The Bidding Stage in respect of all Frequency Bands shall be conducted simultaneously and shall consist of one or more Rounds in which Bidders may submit Bids for the Frequency Bands.

### **4.3 Bidding Stage Notice**

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

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

### **4.4 Information to be provided to Bidders prior to each Round**

4.4.1 Prior to the start of each Round, the Authority shall notify each Bidder of:

- (a) the date on and the time at which the Round shall start and end,
- (b) the Round Price for each Frequency Band,
- (c) the number of Valid Bids, if any, received for each Frequency Band in the immediately preceding Round,
- (d) the Frequency Band, if any, in respect of which the Bidder is the Standing Highest Bidder,
- (e) the amount, if any, of the Standing Highest Bid for each Frequency Band,

- (f) the total number of Waivers that may be exercised by the Bidder, and
- (g) the total number of Withdrawals that may be exercised by the Bidder.

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

#### **4.5 Submission of Valid Bids**

4.5.1 In the first Round, each Bidder must submit to the Authority a Valid Bid for at least one Frequency Band. If a Bidder fails to submit a Valid Bid in the first Round, the Authority shall disqualify that Bidder from the Auction and forfeit an amount (up to the full amount of that Bidder's Deposit) by way of Penalty from that Bidder's Deposit where the Deposit is in cash or make a claim under the Letter of Credit to the extent of the relevant amount where the Deposit is a Letter of Credit.

4.5.2 In each Round other than the first Round, each Bidder may:

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

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

#### **4.6 Valid Bid**

4.6.1 A Valid Bid, in relation to each Round, is a Bid:

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

#### **4.7 Determination of Standing Highest Bid for each Round**

4.7.1 At the end of each Round, the Authority shall determine the Standing Highest Bid among the Valid Bids for each Frequency Band as follows:

- (a) if no Valid Bid is received in a Round in respect of a Frequency Band,
  - (i) where there was a Standing Highest Bid in respect of that Frequency Band at the end of the immediately preceding Round, that Standing Highest Bid shall remain as the Standing Highest Bid in respect of that Frequency Band (unless that Standing Highest Bid has been subject to a Withdrawal);
  - (ii) where there was no Standing Highest Bid in respect of that Frequency Band at the end of the immediately preceding Round, there shall be no Standing Highest Bid in respect of that Frequency Band;
  - (iii) where the Standing Highest Bid in respect of that Frequency Band at the end of the immediately preceding Round has been subject to a Withdrawal, there shall be no Standing Highest Bid in respect of that Frequency Band;
- (b) if only one Valid Bid is received in a Round in respect of a Frequency Band, that Valid Bid shall be the Standing Highest Bid for that Frequency Band;
- (c) if two or more Valid Bids are received in a Round in respect of a Frequency Band, the Authority shall determine by random which of them shall be the Standing Highest Bid for that Frequency Band.

#### **4.8 Eligibility Points and Activity Level**

4.8.1 One Eligibility Point shall be attributed to each Frequency Band in accordance with Appendix 2 of this Notice.

4.8.2 The Activity Level of a Bidder in a Round shall not exceed the number of Eligibility Points attributed to that Bidder for that Round.

4.8.3 For the first Round, the number of Eligibility Points attributed to each Bidder shall be determined in accordance with Appendix 3 of this Notice.

4.8.4 For each Round other than the first Round, the number of Eligibility Points attributed to a Bidder shall be equal to the Activity Level of the Bidder in the immediately preceding Round as determined in accordance with paragraph 4.8.5, unless the Bidder submits or is deemed to have submitted a Waiver in the immediately preceding Round in which case the number of Eligibility Points attributed to the Bidder shall be equal to the Activity Level of the Bidder in the most immediately preceding Round in which the Bidder did not submit or was not deemed to have submitted a Waiver.

4.8.5 The Activity Level of a Bidder in a Round shall be the aggregate of the number of Eligibility Points attributed to the Frequency Band in respect of which the Bidder:

- (a) submits a Valid Bid in that Round; and
- (b) was the Standing Highest Bidder at the end of the immediately preceding Round (except where the Bidder submits a Valid Bid for that Frequency Band in which case one Eligibility Point is attributed under paragraph 4.8.5 (a) or where the Bidder submits a Withdrawal for that Frequency Band in that Round in which case the Eligibility Point is disregarded in accordance with paragraph 4.9.3).

#### **4.9 Withdrawal**

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

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

- (a) where one or more Bidders submit Valid Bids in a subsequent Round for that Frequency Band but all the subsequent Valid Bids are lower than that Standing Highest Bid (irrespective of whether the subsequent Valid Bids are also withdrawn), that Bidder is liable to pay the Government the difference between that Standing Highest Bid and the amount of the next subsequent highest Valid Bid (which is in any case lower than that Standing Highest Bid) (irrespective of whether that next subsequent highest Valid Bid is

withdrawn or whether it is determined as the Spectrum Utilization Fee), subject to a maximum amount of 30% of that Standing Highest Bid;

- (b) where no other Bidder submits a Valid Bid in any subsequent Round for that Frequency Band, that Bidder is liable to pay the Government 30% of that Standing Highest Bid.

Without prejudice to any other rights or remedies of the Authority, the Authority may deduct from the Deposit of a Bidder or make a claim under the Letter of Credit submitted by a Bidder, the amount that Bidder is liable under this paragraph.

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

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

#### **4.10 Waiver**

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

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

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

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

- (a) Waivers were submitted under paragraph 4.10.1 or were deemed to

have been submitted by that Bidder in previous Rounds under this paragraph in less than two Rounds; and

- (b) the number of Eligibility Points attributed to all Standing Highest Bids of the Bidder at the end of the immediately preceding Round is less than the number of Eligibility Points attributed to the Bidder in the Round.

4.10.3 Where, in a Round, a Bidder submits a Waiver in accordance with paragraph 4.10.1 or is deemed to have submitted a Waiver in accordance with paragraph 4.10.2, the number of Eligibility Points attributed to that Bidder for the immediately following Round shall be the same as the Activity Level of the Bidder in the most immediately preceding Round in which the Bidder did not submit or was not deemed to have submitted a Waiver.

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

#### **4.11 Method for submitting Valid Bid, Withdrawal or Waiver**

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

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

4.11.2 A Valid Bid, a Withdrawal or a Waiver, once submitted to the Authority, shall not be amended, substituted or withdrawn, other than in accordance

with terms and conditions of this Notice.

#### **4.12 Conclusion of Bidding Stage**

4.12.1 The Bidding Stage shall end upon either:

- (a) the completion of a Round in which:
  - (i) no Valid Bid is submitted for any Frequency Band,
  - (ii) no Withdrawal is submitted for any Frequency Band, and
  - (iii) no Waiver is submitted or is deemed to be submitted by any Bidder; or
- (b) the completion of a Round which the Authority has specified to be the final Round and has permitted the Bidders to submit Valid Bids for the Frequency Bands at any amount at or above the Round Prices;

whichever first occurs.

In case of paragraph 4.12.1(a), the Provisional Successful Bidder of a Frequency Band shall be the Bidder which has submitted the Standing Highest Bid in respect of that Frequency Band at the end of the Bidding Stage and the amount of the Spectrum Utilization Fee payable for that Frequency Band shall be the amount of that Standing Highest Bid.

In case of paragraph 4.12.1(b), the Provisional Successful Bidder of a Frequency Band shall, subject to paragraphs 4.12.2 and 4.12.3, be the Bidder which has submitted the highest Valid Bid in respect of that Frequency Band and the amount of the Spectrum Utilization Fee payable for that Frequency Band shall be the amount of that highest Valid Bid.

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

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

- (a) where there was a Standing Highest Bid in respect of that Frequency Band at the end of the immediately preceding Round, that Standing Highest Bidder shall be the Provisional Successful

Bidder in respect of that Frequency Band (unless that Standing Highest Bid has been subject to a Withdrawal);

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

#### **4.13 Provisional Successful Bidder Notice**

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

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

#### **4.14 Return of Deposits to the Losing Bidders**

4.14.1 After publication of the Provisional Successful Bidder Notice the Authority shall return to a Bidder which is not a Provisional Successful Bidder (“Losing Bidder”) that Losing Bidder’s Deposit provided:

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

- 4.14.2 Notwithstanding the return to a Losing Bidder of its Deposit in accordance with paragraph 4.14.1, that Losing Bidder shall continue to comply with those terms and conditions of this Notice as are specified by the Authority. If the Authority does not specify any terms and conditions in accordance with this paragraph, that Losing Bidder shall be required to comply with all the terms and conditions of this Notice as appropriate, including all the undertakings given in the Bidder Compliance Certificate submitted by that Bidder.

## **Part 5 – Grant Stage**

### **5.1 Notification of any Approval**

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

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

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

## **5.2 Duties of Provisional Successful Bidder**

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

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

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

5.2.3 Where a Provisional Successful Bidder fails to comply with the requirements specified in paragraph 5.2.1, the Authority shall not grant a Licence to that Provisional Successful Bidder and shall disqualify that Bidder from the Auction and forfeit an amount (up to the full amount of that Bidder's Deposit) by way of Penalty from that Bidder's Deposit where the Deposit is in cash or make a claim under the Letter of Credit to the extent of the relevant amount where the Deposit is a Letter of Credit.

### **5.3 Return of Deposit to Provisional Successful Bidder**

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

- (a) there is no outstanding investigation being carried out by the Authority against that Provisional Successful Bidder in respect of any suspected contravention of the terms and conditions of this Notice;
- (b) where the Deposit is a Letter of Credit, the Authority shall make a claim under the Letter of Credit to the extent of:
  - (i) any amount forfeited by the Authority by way of Penalty under the terms and conditions of this Notice with respect to that Provisional Successful Bidder; and
  - (ii) any amount that Provisional Successful Bidder is liable under paragraph 4.9.2; and
- (c) where the Deposit is in cash, the Authority shall return the balance of the Deposit after deducting:
  - (i) any amount forfeited by the Authority by way of Penalty under the terms and conditions of this Notice with respect to that Provisional Successful Bidder;
  - (ii) any amount that Provisional Successful Bidder is liable under paragraph 4.9.2; and
  - (iii) any amount used for offsetting the Spectrum Utilization Fee payable by that Provisional Successful Bidder as permitted by the Authority under paragraph 5.2.2.

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

## **5.4 Successful Bidder Notice and grant of Licence**

5.4.1 After the later of:

- (a) the date on which a Provisional Successful Bidder has complied with the requirements specified in paragraph 5.2.1 and
- (b) the date on which the Authority receives notification from the Provisional Successful Bidder that it is not subject to an Approval in accordance with paragraph 5.1.1 or that it is no longer subject to an Approval in accordance with paragraph 5.1.3, the Authority shall, subject to the compliance by the Provisional Successful Bidder with the terms and conditions of this Notice,
  - (i) determine and publish a notice (“Successful Bidder Notice”) that the Provisional Successful Bidder shall become a Successful Bidder; and
  - (ii) grant a Licence to the Successful Bidder under which the Frequency Bands for which that Bidder is the Successful Bidder shall be assigned.

## **5.5 Cancellation, withdrawal or suspension of Licence**

5.5.1 The Authority may cancel, withdraw or suspend a Licence or the assignment of the relevant Frequency Band under the Licence pursuant to Special Condition 35 of the Conditions.

## **Part 6 – Rules on conduct of Bidders**

### **6.1 Breach of Notice**

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

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

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

terms and conditions of this Notice.

- 6.1.2 If a Bidder is disqualified during the Bidding Stage:
- (a) that Bidder shall no longer be entitled to participate in the Auction but shall continue to comply with those terms and conditions of this Notice as are specified by the Authority. If the Authority does not specify any terms and conditions in accordance with this paragraph, the Bidder shall be required to comply with all the terms and conditions of this Notice as appropriate, including all the undertakings given in the Bidder Compliance Certificate submitted by that Bidder;
  - (b) that Bidder shall, where applicable, cease to be a Standing Highest Bidder in respect of any Frequency Band;
  - (c) the Bid or the Bids submitted by that Bidder in the Round immediately preceding the disqualification shall be deemed invalid and disregarded; and
  - (d) the Authority may re-determine the result of the Round immediately preceding the disqualification as it considers appropriate.
- 6.1.3 If a Provisional Successful Bidder or a Successful Bidder is disqualified during the Grant Stage:
- (a) that Bidder shall not be granted a Licence or assigned with a Frequency Band; and
  - (b) the position of any other Bidder shall not be affected.

**Return of Deposit to disqualified Bidder**

- 6.1.4 If a Bidder is disqualified, the Authority shall return that disqualified Bidder's Deposit provided:
- (a) that there is no outstanding investigation being carried out by the Authority against that disqualified Bidder in respect of any suspected contravention of the terms and conditions of this Notice; and
  - (b) that if any amounts have been forfeited or deducted by the Authority in accordance with the terms and conditions of this Notice with respect to that disqualified Bidder:
    - (i) where the Deposit is in cash, the Deposit shall be returned less the aggregate amount of the Penalties and the amount

deducted by the Authority under paragraph 4.9.2; and

- (ii) where the Deposit is a Letter of Credit, the Authority shall make a claim under the Letter of Credit to the extent of the aggregate amount of the Penalties and the amount that disqualified Bidder is liable under paragraph 4.9.2.

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

## **6.2 Participation in Auction**

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

6.2.2 Each Bidder shall:

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

## **6.3 Submission of false or misleading information**

6.3.1 No Bidder shall submit to the Authority any information (including, without limitation, in an Application) in connection with the Auction

which that Bidder either knows to be false or misleading or which is false or misleading.

#### **6.4 Changes and notification to Authority**

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

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

#### **6.5 Confidentiality and non-collusion**

##### **Confidential Information**

6.5.1 A Bidder and its Insiders shall not directly or indirectly take steps to obtain or use in any unauthorised way Confidential Information of another Bidder.

6.5.2 Subject to paragraph 6.5.3, a Bidder and its Insiders shall not directly or indirectly disclose, or cause or permit to disclose, or enter into or attempt to enter into any arrangement, agreement or understanding to disclose, any Confidential Information to any person other than to the Bidder's professional advisers, providers of finance or prospective providers of finance who, in each case, need to know the Confidential Information for the purpose of evaluating, negotiating, advising the Bidder or considering provision of finance to the Bidder in connection with the Auction and shall become an Insider of the Bidder.

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

6.5.4 Subject to paragraph 6.5.3, a Bidder is not prevented from using or disclosing Confidential Information:

- (a) if the Bidder is required to do so by the law of Hong Kong;
- (b) if the Bidder is required to do so by the law of any place outside Hong Kong, the Stock Exchange of Hong Kong Limited, the Commission or other governmental or regulatory or supervisory body of competent jurisdiction to which rules and regulations (not having the force of law) the Bidder is subject provided the relevant Bidder has received the prior written consent of the Authority; or
- (c) if it is required to be disclosed to the Authority in accordance with the terms and conditions of this Notice or otherwise.

6.5.5 Confidential Information means, in relation to any Bidder, any information relating to the Auction which has not been made public by the Authority and which, if it were made public or made known to any other Bidder, would be reasonably expected to have an effect on the conduct or strategy of other Bidder or Bidders in the Auction, including without limitation, a Bidder's interest or participation in the Auction, business case, auction strategy and any Bid or offer that the Bidder is willing to make, but excluding:

- (a) information which is in, or which comes into the public domain other than as a breach of any Bidder or its Insider, of the terms and conditions of this Notice; and
- (b) information provided prior to the later of the Application Dates by a Bidder (or its Insiders) to another Bidder (or its Insiders) for the purpose of enabling the latter to decide whether to participate in the Auction with the Bidder.

**Directors, employees and agents**

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

- (a) does not take part in preparing any of the Bidders or their respective Insiders for participating in the Auction;
- (b) does not pass Confidential Information relating to one Bidder to another Bidder or its Insiders;
- (c) shall not be an Authorised Representative of any of the Bidders; and
- (d) shall not take part or participate in the Auction.

## **Non-collusion**

6.5.7 A Bidder and its Insiders shall not:

- (a) co-operate, collaborate, collude or discuss with, or disclose any information to, any other Bidder or any of its Insiders for any purpose relating to the Auction, including without limitation, in connection with the Bidder's bidding strategy or with any Bid or offer that the Bidder is willing to make in the Auction;
- (b) manipulate or attempt to manipulate or make any arrangements to manipulate the Auction in any way with a view to achieving a particular result or outcome of the Auction.

## **Return of information to the Authority**

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

## **6.6 Prevention of bribery**

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

## **6.7 Duty to abide by undertakings**

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

## **Part 7 – Miscellaneous**

### **7.1 Suspension and cancellation**

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

- (a) amend the date on and the time at which a Round shall start or end;
- (b) cancel a Round or a series of Rounds in which case the Authority may disregard all the Bids received in the Round or the series of

- Rounds and re-conduct the Round or the series of Rounds;
- (c) suspend the Auction;
- (d) cancel the Auction, in which case the Authority may disregard all the Bids received in the Auction;
- (e) re-conduct the Auction.

## **7.2 General power of disqualification**

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

## **7.3 Civil debt**

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

## **7.4 Means of notification by Authority**

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

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

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

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

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

- 7.5.2 If a Bidder sends any notification to the Authority and the notification is received after 5:30 pm on a Business Day, it shall be deemed to have been received by the Authority at 9:00 am on the immediately following

Business Day. If a tropical cyclone warning number 8 or above or a “black” rainstorm warning is in force in Hong Kong on any Business Day on which a Bidder sends a notification to the Authority or on any Business Day on which a notification is deemed to have been received by the Authority, it shall be deemed to have been received by the Authority on the immediately following Business Day on which none of the signals remains in force.

## **7.6 Publication and disclosure of information**

7.6.1 Subject to paragraph 7.6.2, the Authority may publish or disclose any information arising out of or in relation to the Auction, whether or not that information originates from a Bidder, in any manner as it thinks fit.

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

## **7.7 Change of Authorised Representatives**

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

## **7.8 Additional information**

7.8.1 The Authority may request any Bidder for such additional information or document as may reasonably be required for its determination as to whether the Bidder shall be a Qualified Bidder.

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

time specified by the Authority.

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

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

## **7.9 Interpretation**

7.9.1 The Authority shall be entitled to interpret conclusively the terms and conditions of this Notice and the validity of any act made pursuant to them in the event of any question, difference of opinion or dispute over these terms and conditions.

## **7.10 Modifications to Notice**

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

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

## **7.11 Documents submitted to the Authority**

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

## **7.12 Powers of Authority to issue licence or assign frequency**

7.12.1 Nothing in this Notice shall limit the power of the Authority to issue any licence pursuant to section 7 of the Ordinance, assign any frequency

pursuant to section 32H of the Ordinance or otherwise fetter its powers under the Ordinance.

**7.13 Waiver**

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

**7.14 Governing law and jurisdiction**

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

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

**APPENDIX 1**  
**Licence**

**TELECOMMUNICATIONS ORDINANCE  
(Chapter 106)**

**UNIFIED CARRIER LICENCE**

DATE OF ISSUE: [ ]

..... [Company Name] .....  
of [Address]

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

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

## **GENERAL CONDITIONS**

### **1. DEFINITIONS AND INTERPRETATION**

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

### **2. TRANSFER**

- 2.1 The licensee may, only with the prior written consent of the Authority and subject to such reasonable conditions as the Authority thinks fit, transfer this licence or any permission, right or benefit under this licence. In giving its consent the Authority will have regard to such matters as it 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 it thinks fit to avoid harmful interference or physical obstruction referred to in General Condition 9.1. The licensee shall comply with the directions.

## **10. RESTRICTIONS ON ATTACHMENT TO PUBLIC BUILDINGS AND TREES**

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

## **11. COMPLIANCE**

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

## **12. REQUIREMENTS OF RADIOCOMMUNICATIONS INSTALLATION**

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

### **13. USE OF FREQUENCIES**

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

### **14. SAFETY**

- 14.1 The licensee shall take proper and adequate safety measures for the safeguarding of life and property in connection with all installations, equipment and apparatus operated or used, including safeguarding against exposure to any electrical or radiation hazard emanating from the installations, equipment or apparatus operated or used under this licence.
- 14.2 The licensee shall comply with the safety standards and specifications as may from time to time be prescribed by the Authority and any directions of the Authority in relation to any safety matter.

### **15. PROHIBITION OF CLAIMS AGAINST GOVERNMENT**

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

### **16. INDEMNITY**

- 16.1 The licensee shall indemnify the Government against any losses, claims, charges, expenses, actions, damages or demands which the Government incurs or which may be made against the Government as a result of or in relation to the activities of the licensee or any employee, agent or contractor of the licensee in relation to the provision of the service or the installation, maintenance and operation of the network.

**17. CONTRAVENTION BEYOND LICENSEE'S CONTROL**

- 17.1 The licensee shall not be liable for any breach of this licence where it is able to demonstrate, to the reasonable satisfaction of the Authority, that the breach was caused by circumstances beyond its control and that it has taken all reasonable steps open to it to rectify that breach.
- 17.2 Where the circumstances referred to in General Condition 17.1 are such that there is an outage or interruption in the service affecting a significant number of the licensee's customers for a period of more than 7 days, the licensee shall provide the Authority with a full report in writing detailing the reasons for the breach and indicating when, or if, it will be able to continue to provide the service.
- 17.3 If the Authority is, after considering a report provided under General Condition 17.2, of the reasonable belief that the licensee would be able to provide the service within a reasonable period of time despite the circumstances outlined in that report, the Authority may direct that the licensee recommence the service within such reasonable period as the Authority may in writing direct. The licensee shall comply with such direction.

**18. PUBLICATION OF LICENCE**

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

## **SPECIAL CONDITIONS**

### **1. COMPLIANCE WITH CODES OF PRACTICE**

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

## **2. PURCHASE OF ASSETS**

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

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

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

2.2 The selling price shall be agreed between the Government and the licensee on the basis of the fair market value of those assets at the time of acquisition determined on the basis that this licence remains in force and that the network is continuing to be used for the provision of the service. If no agreement can be reached between the Government and the licensee, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 609).

2.3 For the purpose of Special Condition 2.1,

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

undertaking and assets of the licensee in relation to its operation that is subject to the universal service obligation.

### **3. REQUIREMENTS FOR INTERCONNECTION**

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

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

#### **4. NUMBERING PLAN AND NUMBER PORTABILITY**

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

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

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

## **5. ACCOUNTING PRACTICES**

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

**6. REQUIREMENT TO FURNISH INFORMATION TO THE AUTHORITY**

6.1 The licensee shall furnish to the Authority, in such manner and at such times as the Authority may request in writing, such information relating to the business run by the licensee under this licence, including financial, technical, and statistical information, accounts and other records, as the Authority may reasonably require in order to perform its functions under the Ordinance and this licence. Information referred to in this condition includes but is not limited to such information as is listed in Schedule 4.

6.2 Subject to Special Condition 6.3 the Authority may use and disclose information to such persons as the Authority thinks fit.

6.3 Where the Authority proposes to disclose information obtained and the Authority considers that the disclosure would result in the release of information concerning the business or commercial or financial affairs of a licensee which disclosure would or could reasonably be expected to adversely affect the licensee's lawful business or commercial or financial affairs, the Authority will give the licensee a reasonable opportunity to make representations on the proposed disclosure before the Authority makes a final decision whether to disclose the information.

**7. TARIFFS**

7.1 The licensee shall publish and charge no more than the tariffs for the service operated under this licence. The tariffs shall include the terms, as defined under section 7F(2) of the Ordinance, for the provision of the service.

7.2 Publication of a tariff shall be effected by –

- (a) publication in the website of the licensee on or before the date on which the tariff becomes effective;
- (b) the Authority receiving a copy of the tariff on or before the date as specified by the Authority;

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

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

## **8. NOTIFICATION OF DISCOUNTS**

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

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

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

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

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

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

## **9. BILLING AND METERING ACCURACY**

- 9.1 The licensee shall take all reasonable steps to ensure that any metering equipment and billing system used in connection with the service is accurate and reliable.
- 9.2 At the written request of the Authority or at regular intervals to be specified by the Authority, the licensee shall conduct tests on its metering equipment and billing system to assess its accuracy, reliability and conformity to the technical standards, if any, specified by the Authority. The licensee shall submit the test result to the Authority within 14 days after the date of the relevant test or such other longer period as the Authority may determine.
- 9.3 The licensee shall keep such records of any metering equipment and billing system in such form as may be specified by the Authority and shall supply such records to the Authority as soon as reasonably practical following a written request from the Authority.

## **10. PROVISION OF SERVICE**

- 10.1 The licensee shall, subject to Schedule 1 and any special conditions of this licence relating to the provision of the service, provide the service on its published terms and conditions and at the tariff published in accordance with Special Condition 7 (as applicable) and at the discount notified to the Authority in accordance with Special Condition 8 (as applicable), on request of a customer whether or not the customer intends the service to be available for its own use or

intends to utilize the service to provide a lawful telecommunications service to third parties.

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

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

## **11. DIRECTORY INFORMATION AND DIRECTORY INFORMATION SERVICE**

11.1 For the purposes of this Special Condition –

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

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

11.2 This Special Condition applies only in respect of standard printed directories and other directory databases and services which include all of the names of a licensee's customers listed in English language in

alphabetical order, or in Chinese language in order of the number of strokes, or in such other language in an appropriate order as is kept by the licensee, and does not apply to classified directories where customers are listed by business or trade category or to other business or specialised directories.

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

containing directory information as directed by the Authority, except for those customers who request that directory information about them not to be disclosed. Subject to compliance with the Personal Data (Privacy) Ordinance (Cap. 486), General Condition 7 and any applicable law, the licensee shall, as directed by the Authority, provide, and regularly update, raw directory information, for which the licensee will be able to impose a reasonable charge, if applicable, to fairly compensate it for providing the raw directory information. The licensee shall endeavour to agree with each of the other licensees on a reasonable mode of exchange and transmission format for the raw directory information.

- 11.7 Where the licensee is unable to agree with another licensee pursuant to Special Condition 11.6 on what amounts to fair compensation for provision of, or the reasonable mode of exchange and transmission format of, raw directory information, the matter at issue may be referred by either licensee to the Authority for determination. The licensee shall pay to the Authority, as it may require, any costs or expenses incurred by the Authority, including, without limitation, staff costs and expenses, and the financing of liabilities paid out of the Office of Communications Authority Trading Fund in respect of such a determination or determination process.
- 11.8 Except with the prior written approval of the Authority, the licensee shall not make use of raw directory information provided by another licensee other than for discharging its obligations under this Special Condition.
- 11.9 This Special Condition does not apply to the services described in Schedule 7 provided that -
- (a) the licensee (and where appropriate its agents, contractors and resellers) declares such service, in all promoting, marketing or advertising materials concerning such service, as a “Class 2 service” (where the materials are in English text) (or “第二類服務” where the materials are in Chinese text); or
  - (b) the licensee complies with such conditions as may be specified by the Authority in a direction that may be issued by the Authority.

## **12. EMERGENCY CALL SERVICE**

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

## **13. RECORDS AND PLANS OF THE NETWORK**

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

- 13.2 The licensee shall, at the reasonable request of any other licensee under the Ordinance if so authorized by the Authority, give reasonable access to its network information for the facilitation of network planning, maintenance and reconfiguration required for the purposes of Special Condition 3 and section 36AA of the Ordinance. The licensee shall be permitted to charge the requesting party so as to be fairly compensated for the reasonable relevant costs incurred in the provision of such network information.
- 13.3 Where the licensee and any other licensee that has requested access to the network information in accordance with Special Condition 13.2 are unable to agree what amounts to reasonable access (including confidentiality requirements and fair compensation for the reasonable relevant costs incurred) or a reasonable request, the matter at issue may be referred by either the licensee, the other licensee to the Authority for determination. The licensee shall pay to the Authority, as it may require, any costs or expenses incurred by the Authority, including, without limitation, staff costs and expenses, and the financing of liabilities paid out of the Office of Communications Authority Trading Fund in respect of such a determination or determination process.

#### **14. NETWORK LOCATION**

- 14.1 The licensee shall obtain the consent in writing of the Director of Lands before the commencement of any installation works for its network under, in, over or upon any unleased Government land.
- 14.2 The licensee shall keep accurate records of the location of the network installed under, in, over or upon any land.
- 14.3 The licensee shall record the information referred to under Special Condition 14.2 on route plans drawn on an Ordnance Survey Map background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.
- 14.4 The licensee shall, at the request of the Director of Highways, the

Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the network and who is authorized to do so by the Director of Highways, the Director of Lands or the Authority, provide free of charge information about the location of the network in diagrammatic or other form. The licensee shall make trained staff available on site to indicate the location and nature of the network to the Director of Highways, the Director of Lands, the Authority or any person authorized by the Director of Highways, the Director of Lands or the Authority.

- 14.5 The licensee shall mark or otherwise identify every wire laid or telecommunications installation installed by the licensee or any contractor on its behalf throughout the course of the wire, or at the location of the installation, so as to distinguish it from any other wire or telecommunications installation laid or installed in Hong Kong.
- 14.6 The licensee shall provide, at such intervals as the Authority may determine, distinguishable surface markers of the underground position of the network.

## **15. CHANGES TO THE NETWORK**

- 15.1 For the purposes of this licence, a change in the network is a material change where the implementation of the change would result in the network no longer being in compliance with any relevant technical standard which the Authority has power to issue.
- 15.2 The licensee shall notify the Authority of any proposals for material changes to the network and provide it with such information as the Authority reasonably requires.
- 15.3 The licensee shall not, without the prior consent in writing of the Authority, make any material changes which might reasonably be anticipated by the licensee to affect -
  - (a) any telecommunications service or installation connected to the network;

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

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

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

## **16. REQUIREMENTS FOR ROAD OPENING**

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

## **17. REQUIREMENTS OF INSTALLATION OF LINES OR CABLES**

- 17.1 The network, or any part of it, if installed under, in, over or upon any

public street or other unleased Government land, shall be at such depth, course, route and position as may be determined by the Director of Lands or the Director of Highways.

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

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

## **18. WORKS IN PUBLIC STREETS**

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

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

(d) reinstate the street immediately after the completion of the works to the satisfaction of the Director of Highways or the Director of Lands.

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

## **19. INTERFERENCE WITH WORKS OF OTHERS**

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

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

## **20. LICENSEE TO ALTER NETWORK ON NOTICE**

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

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

## **21. WITHDRAWAL AND RETURN OF FREQUENCIES**

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

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

## **22. UNIVERSAL SERVICE CONTRIBUTION**

22.1 Where directed by the Authority, the licensee shall pay to one or more fixed carrier licensees or unified carrier licensees or other licensees with a universal service obligation, as the case may be, its relevant share of the universal service contribution to assist those licensees to meet their universal service obligations, if any.

22.2 Any universal service contribution shall be subject to periodic review by the Authority as to description and quantum and the licensee shall pay its relevant share of such universal service contribution as the Authority may direct following a review. On the completion of an periodic review, the Authority may supply the licensee such information as the Authority is reasonably able to supply, and subject to any duty of confidentiality, as to the basis on which the universal service contribution is calculated.

22.3 For the purpose of Special Condition 22, the following definitions shall apply –

(a) Universal service contribution is that sum calculated in accordance with a formula adopted periodically by the Authority, to ensure that any licensee with a universal service obligation (referred to as “universal service provider” in this Special Condition), receives a fair contribution from other licensees as specified by the Authority for serving customers with basic service whom would otherwise not be served because it is not economically viable to do so but who are required to be served under the universal service obligation.

(b) Universal service obligation is the obligation by a licensee to provide, maintain and operate the relevant network in such manner as to ensure that a good, efficient and continuous basic service is reasonably available, subject to the Ordinance and the conditions of its licence, and to provide that basic service in such manner.

### **23. CIRCUMSTANCES OUTSIDE LICENSEE’S CONTROL**

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

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

### **24. INSURANCE**

24.1 Throughout the currency of this licence, the licensee shall have and maintain a valid insurance policy with a reputable insurance company

to cover its third party liabilities in respect of personal injury, death and damage to property, arising out of or in connection with the installation, maintenance and operation of the network or provision of the service. The amount of insurance shall be at least HK\$10,000,000 per occurrence or such sum as the Authority may notify in writing in future.

**25. USE OF PUBLIC FACILITIES FOR PROVISION OF SERVICES**

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

**26. LOCATION SERVICES**

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

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

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

**27. PROVISION OF SERVICE TO SUSPECTED STOLEN RADIOCOMMUNICATIONS APPARATUS**

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

**28. BACKUP POWER SUPPLY**

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

28.2 Unless there is backup power supply available in such manner as may be specified by the Authority to maintain continuity of the service without any deterioration in quality of the service during interruption of mains power supply on the customer's premises, to the network, or to any system or equipment delivering the service to the customer, the licensee shall not provide the service to users whose "lifeline devices" are connected to the service.

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

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

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

28.4 In this Special Condition, a "lifeline device" means a medical alarm or any other device for an elderly, infirm or invalid to summon assistance

in the event of an emergency without having to dial manually the telephone number of the emergency service.

**29. PAYMENT OF SPECTRUM UTILIZATION FEE**

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

**30. PROVISION OF INFORMATION TO CUSTOMERS**

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

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

**31. ROLLOUT OF NETWORK**

31.1 Save with the prior approval of the Authority in writing, the licensee shall comply with the network and service rollout requirement

described in Schedule 8.

- 31.2 The licensee shall provide such information in such manner and at such times as the Authority may require to demonstrate its compliance with Special Condition 31.1.

**31A. PERFORMANCE BOND**

- 31A.1 On the date of issue of this licence, the licensee shall have provided to the Authority a duly issued performance bond in favour of the Government in Hong Kong dollars in the amount, on the Milestone and with the Deadline for Compliance stipulated in the Annexe to the performance bond appearing in Schedule 9.

- 31A.2 The performance bond to be submitted pursuant to Special Condition 31A.1 shall be in the form appearing in Schedule 9 with only such amendments thereto as may previously have been agreed in writing by the Authority.

- 31A.3 The performance bond to be submitted pursuant to Special Condition 31A.1 shall be issued by a Qualifying Bank or other surety approved in writing by the Authority. If the licensee wishes to change to a different Qualifying Bank or another surety, the licensee shall seek the prior written approval of the Authority. For the purposes of Special Condition 31A.3, “Qualifying Bank” means an institution holding a full banking licence under the Banking Ordinance (Cap. 155) whose long term issuer rating is, or is higher than:

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

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

- (a) upon failure by the licensee to provide or maintain a performance bond in accordance with the foregoing provisions of this condition, the Authority may cancel or revoke this licence notwithstanding that the licensee may have embarked on its performance;
- (b) any rights of or claim by the Government under the performance bond submitted by the licensee pursuant to this condition, including any replacement thereof, shall be without prejudice to the other rights of the Authority under this licence and of the Authority, the Chief Executive in Council and the Chief Executive under the laws, regulations, guidelines and codes of practice affecting telecommunications in Hong Kong from time to time.

31A.5 The licensee shall upon demand by the Authority in writing submit proof in a form satisfactory to the Authority by a date specified by the Authority that it has complied with the Milestone by the Deadline for Compliance as specified in the Annexe to the performance bond shown in Schedule 9. In the event the licensee fails to comply with the Milestone by the Deadline for Compliance as specified in the Annexe to the performance bond, the Government may in writing demand the Qualifying Bank or other surety to satisfy and discharge the bonded sum and any other sums as specified in the performance bond.

31A.6 All references to “Government” in Special Condition 31A shall be construed as the Government of the Hong Kong Special Administrative Region as represented by the Office of the Communications Authority.

## **32. DISPOSAL OF ASSETS**

32.1 If a licensee is (1) in a dominant position in the relevant telecommunications market within the meaning described in section 7L of the Ordinance; or (2) subject to a universal service obligation specified under the Ordinance; or (3) required to pay spectrum

utilization fee as prescribed under the Ordinance for the provision of mobile or wireless carrier services under this licence, unless with the prior written consent of the Authority (which consent shall not be unreasonably withheld or delayed), the licensee shall not during the validity period of this licence dispose or agree to dispose of any interest (as determined in accordance with Special Condition 32.2) in the assets or undertaking of the licensee which, cumulatively with the value of any and all disposals or agreements to dispose of interests in those assets or undertaking prior to the disposal or agreement in question and after the date of issue of this licence, exceeds 15% as at the date of the disposal or agreement in question of the net asset value of the licensee (as determined in accordance with Special Condition 32.2).

- 32.2 The value of any interest or undertaking, and the net asset value, of the licensee shall be determined by a certified public accountant (practising) (being one who has the qualifications as prescribed under the Professional Accountants Ordinance (Cap. 50)) as may be nominated, or whose appointment by the licensee is agreed in writing, by the Authority.
- 32.3 In the event of any dispute between the Authority and the licensee as to the value of the interest, undertaking or the net asset value referred to in Special Condition 32.1, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 609).
- 32.4 For the purpose of Special Condition 32.1,
- (1) where the licensee is in a dominant position in the relevant telecommunications market, the interest in the assets or undertaking of the licensee shall be the relevant interest in the assets or undertaking of the licensee in relation to its dominant position in that relevant telecommunications market;
  - (2) where the licensee is subject to a universal service obligation, the interest in the assets or undertaking of the licensee shall be the relevant interest in the assets or undertaking of the licensee in relation to its operation that is subject to the universal service

obligation;

- (3) where the licensee is required to pay spectrum utilization fee as prescribed under the Ordinance for the provision of mobile or wireless carrier services under this licence, the interest in the assets or undertaking of the licensee shall be the relevant interest in the assets or undertaking of the licensee in relation to its operation that is subject to the payment of spectrum utilization fee for the provision of mobile or wireless carrier services under this licence.

### **33. ACCESS TO BUILDINGS**

- 33.1 The licensee shall not enter into any agreement, arrangement or understanding, whether legally enforceable or not, with any person, or receive any unfair advantage from a business carried on by it or any other person (whether associated or affiliated with it or not), which, in the opinion of the Authority, has or is likely to have the purpose or effect of preventing or restricting fair and non-discriminatory access to any buildings for the installation, operation or maintenance of any cables, equipment or network for the provision of service similar to the service by other operators licensed by the Authority.
- 33.2 The licensee shall comply with any guidelines or codes of practice that may from time to time be issued by the Authority for the facilitation and coordination of fair, non-discriminatory and orderly access to buildings for the installation, operation or maintenance of any cables, equipment or network for the provision of the service and other services similar to the service by other operators licensed by the Authority.
- 33.3 Without prejudice and in addition to section 18 of the Ordinance and General Condition 9, the licensee shall not, in providing, establishing, operating, adjusting, altering, replacing, removing or maintaining any telecommunications line or telecommunications installation in, over or upon any land for the purposes of this licence, obstruct, interfere with, or cause or permit damage to, any other telecommunications line or telecommunications installation, or means of telecommunications or

telecommunications service or any gas or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current.

**34. CHANNELS WITHIN IN-BUILDING COAXIAL CABLE DISTRIBUTION SYSTEMS**

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

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

34.3 The Authority may at any time, by giving not less than 12 months’ notice in writing to the licensee, require it upon such date as may be specified in the notice to cease using any channel previously assigned to it to carry the service, if having given the licensee sufficient opportunities to make representations, the Authority forms the opinion that the licensee is not making efficient use of that channel.

34.4 The Authority may at any time, by giving not less than 12 months’ notice in writing to the licensee, require it upon such date as may be specified in the notice to vary the purposes for which and the conditions under which the channels are to be used.

34.5 The Authority may at any time, by giving not less than 12 months’ notice in writing to the licensee, require it upon such date as may be specified in the notice to cease using any channel previously assigned to it by the Authority to carry the service and to use such new channel at its own expenses as the Authority may assign.

34.6 The licensee shall comply with any notice that may from time to time

be issued by the Authority under Special Condition 34.

- 34.7 The licensee shall comply with the guidelines and codes of practice issued by the Authority from time to time on the use of the IBCCDS channels.

### **35. COMPLIANCE WITH AUCTION RULES**

- 35.1 The licensee shall comply with all the terms and conditions of the Notice including all the undertakings given by the licensee in its Bidder Compliance Certificate submitted in the auction.

- 35.2 If the licensee is found, to the reasonable satisfaction of the Authority, to have been involved in an act, or omission of any act, constituting a breach of the terms and conditions of the Notice and the undertakings given by the licensee in its Bidder Compliance Certificate, then the Authority may cancel, withdraw or suspend this licence or the assignment of the relevant frequency band made under this licence. For the avoidance of doubt, the Authority's power to cancel, withdraw or suspend this licence or the assignment of the relevant frequency band is without prejudice, and in addition, to any rights or remedies of the Authority under any performance bond submitted by the licensee pursuant to this licence or its replacement and any other rights or remedies of the Authority, the Chief Executive, the Chief Executive in Council under this licence, the Ordinance, any regulations made under the Ordinance or any other law.

### **36. SERVICE CONTRACTS AND DISPUTE RESOLUTION**

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

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

(a) the style, format and structure of service contract

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

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

## **37. INTERPRETATION**

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

“mobile virtual network operator” means an operator which holds a licence for provision of mobile virtual network operator services;

“Notice” means the Notice dated 21 December 2012 issued by the Authority in exercise of its powers conferred by section 32I of the Ordinance and the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap.106AC) and all other powers enabling it to specify the terms and conditions of the auction and the payment of the spectrum utilization fees; and

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

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

directions, codes of practice and instruments made under that ordinance or regulation and for the time being in force.

37.3 The singular includes the plural and vice versa.

**SCHEDULE 1**  
**SCOPE OF THE SERVICE**

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

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

## **SCHEDULE 2**

### **DESCRIPTION OF NETWORK**

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

\*\*\* End of Schedule 2 \*\*\*



## **SCHEDULE 4**

### **REGULATORY ACCOUNTING AND INFORMATION PROVISION REQUIREMENTS**

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

**\*\*\* End of Schedule 4 \*\*\***

## **SCHEDULE 5**

### **TERMS OF DISCOUNT TO PUBLISHED TARIFFS**

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

\*\*\* End of Schedule 5 \*\*\*

**SCHEDULE 6**

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

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

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

## **SCHEDULE 7**

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

An internal telecommunications service

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

\*\*\* End of Schedule 7 \*\*\*

## **SCHEDULE 8**

### **NETWORK AND SERVICE ROLLOUT REQUIREMENT**

1. The licensee shall install, maintain and use equipment for the purposes of the network and the service such that:
  - (a) where the scope of the service stipulated in Schedule 1 of this licence includes a fixed service, coverage of the network and the service shall be provided on or before [date (the expiry of 5 years from the issue of this licence)] and maintained thereafter, to a minimum of 200 commercial and/or residential buildings in Hong Kong;  
AND
  - (b) where the scope of the service stipulated in Schedule 1 of this licence includes a mobile service, coverage of the network and the service shall be provided on or before [date (the expiry of 5 years from the issue of this licence)] and maintained thereafter, to an area where at least 50% of the population of Hong Kong live from time to time.
  
2. For the purpose of paragraph 1 of this Schedule, the following definitions shall apply:-
  - (a) a commercial building is a building consisting of at least 20 levels above street levels which is predominantly used for commercial purposes; and
  - (b) a residential building is a building consisting of at least 15 levels above street levels which is predominantly used as a dwelling place.

\*\*\* End of Schedule 8 \*\*\*

## SCHEDULE 9

### FORM OF PERFORMANCE BOND

**THIS PERFORMANCE BOND** is made on [DATE]

**BY:**

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

**IN FAVOUR OF:**

(2) The **GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION** as represented by the Office of the Communications Authority whose address is at 29th Floor, Wu Chung House, 213 Queen’s Road East, Wanchai, Hong Kong (the “Government”).

**WHEREAS:**

Pursuant to the terms and conditions of the Notice dated 21 December 2012 issued by the Authority in exercise of its powers conferred by section 32I of the Ordinance and the Regulation and all other powers enabling it to specify the terms and conditions of the auction in which the Licensee has participated and Special Condition 31A of the unified carrier licence to be issued to the Licensee on the date of issue (the “Licence”), the Licensee is required to provide to the Authority a performance bond issued by a Qualifying Bank, in order to secure the due performance of the Milestone set out in the Annexe by the Licensee. The Bank is a Qualifying Bank.

**1. INTERPRETATION**

**1.1 Definitions**

In this Performance Bond:

“Authority” means the Communications Authority;

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

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

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

“Licensee” means [ ] at [ ];

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

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

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

## 1.2 **Construction**

In this Performance Bond, unless the contrary intention appears,

- (a) a provision of law is a reference to that provision as amended, extended or 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 reference to any person shall include its successors and assigns; and
- (e) headings are for convenience only and are to be ignored in construing this Performance Bond.

## **2. PERFORMANCE BOND**

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

## **3. MAXIMUM LIMIT**

The maximum amount for which the Bank shall be liable under this Performance Bond shall not exceed the aggregate of:

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

#### **4. INTEREST AND COSTS**

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

#### **5. WAIVER OF DEFENCES**

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

- (a) any time or waiver granted to, or release of or composition with, the Licensee or any other person;
- (b) any suspension, cancellation, revocation, withdrawal or amendment of, or variation to, the Licence (including, without limitation, extensions of time for performance) or any concession or waiver by the Authority, the Government, 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, 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 Government as security for the obligations of the Licensee. The Government'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 Government any additional amounts as shall result in the Government 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 Government may specify.

## **9. WARRANTY**

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

## **10. INFORMATION AND CONSENTS**

The Bank shall:

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

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

## **11. NOTICES**

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

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

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

11.2 The Government 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 Government 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 Government 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 Government 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 Government would otherwise have.

#### **14. GOVERNING LAW AND FORUM**

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

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

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

#### **15. COUNTERPARTS**

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

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

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

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

OR

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

\_\_\_\_\_  
[Name]  
[Occupation]

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

**Annexe**

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

\*\*\* End of Schedule 9 \*\*\*

Communications Authority

Date: XXXX

## **APPENDIX 2**

### **Frequency Bands, Eligibility Points and Minimum Fees**

# FREQUENCY BANDS, ELIGIBILITY POINTS AND MINIMUM FEES

Frequency Band	Frequency Range (MHz)	Bandwidth of the Frequency Band	Eligibility Point required for bidding the Frequency Band	Minimum Fee
A1	2515 – 2520 2635 – 2640	5 MHz x 2	1	HK\$150 million
A2	2520 – 2525 2640 – 2645	5 MHz x 2	1	HK\$150 million
A3	2525 – 2530 2645 – 2650	5 MHz x 2	1	HK\$150 million
A4	2530 – 2535 2650 – 2655	5 MHz x 2	1	HK\$150 million
A5	2535 – 2540 2655 – 2660	5 MHz x 2	1	HK\$150 million

### **APPENDIX 3**

#### **Deposit and Eligibility Points to be attributed to Bidders**

# **DEPOSIT AND ELIGIBILITY POINTS TO BE ATTRIBUTED TO BIDDERS**

<b>Deposit</b>	<b>Eligibility Points to be attributed to Bidders</b>
HK\$ 150 million	1
HK\$ 300 million	2
HK\$ 450 million	3
HK\$ 600 million	4
HK\$ 750 million	5

**APPENDIX 4**  
**Application Form**

**AUCTION OF RADIO SPECTRUM  
IN THE 2.5/2.6 GHz BAND  
FOR THE PROVISION OF  
WIRELESS BROADBAND SERVICES**

**APPLICATION FORM**

THE OFFICE OF THE COMMUNICATIONS AUTHORITY

**A. APPLICATION FORM**

**A.1 The Bidder**

**A.1.1 Details of the Bidder**

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

Signed:.....

Signed:.....

**A.1.2 Contact details of the Bidder**

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

**A.1.3 Principal contacts of the Bidder**

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

Signed:.....

Signed:.....

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

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

Signed:.....

Signed:.....



## A.2 Bidder's Authorised Representatives

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

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

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

Signed:.....

Signed:.....

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

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

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

Signed:.....

Signed:.....



#### **A.4 Corporate and shareholding structures of the Bidder**

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

Signed:.....

Signed:.....

## A.5 Deposit Submission Form

	<b>Amount of Deposit submitted by Bidder by cash or by a Letter of Credit</b>	<b>Eligibility Points to be attributed to Bidder for the first Round of the Bidding Stage</b>	<b>Please tick: (one box only)</b>
1.	HK\$ 150 million	1	<input type="checkbox"/>
2.	HK\$ 300 million	2	<input type="checkbox"/>
3.	HK\$ 450 million	3	<input type="checkbox"/>
4.	HK\$ 600 million	4	<input type="checkbox"/>
5.	HK\$ 750 million	5	<input type="checkbox"/>

A Bidder must have the required number of Eligibility Points in order to bid for a Frequency Band. For details, please refer to the terms and conditions of the Notice.

Signed:.....

Signed:.....

**A.6 Brief Service and Technical Proposal**

**A.6.1** Please briefly describe the scope of service proposed to be provided using the Frequency Band(s).

If additional space is required, please attach additional sheets.

Signed:.....

Signed:.....

**A.6.2** Please provide a brief description of the technical configuration of the networks and systems to be deployed for the operation of the proposed service including network infrastructure and components, the technology to be employed, the likely choice of equipment and system design.

If additional space is required, please attach additional sheets.

Signed:.....

Signed:.....

**A.6.3** Please provide a brief description of the technical expertise available for the operation of the proposed service.

If additional space is required, please attach additional sheets.

Signed:.....

Signed:.....

## A.7 Checklist

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

Signed:.....

Signed:.....

		<b>Please tick:</b>
10.	Confirm that the amount of the Deposit conforms with the selection made by the Bidder in the Deposit Submission Form (section A.5).	<input type="checkbox"/>
11.	Provide one copy of the latest annual reports and accounts of the Bidder and the Listed Companies pursuant to B.4 of the Application Form Instructions.	<input type="checkbox"/>
12.	Provide five copies (one original and four copies) of the Application Form. All supporting documents must be included in each copy, except for the business cards provided pursuant to B.2 and the annual reports and accounts provided pursuant to B.4 of which only a single set is required.	<input type="checkbox"/>

Signed:.....

Signed:.....

## A.8 Declaration

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

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

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

Signed:

---

Authorised signature  
(name and title)

---

Authorised signature  
(name and title)

Company seal affixed

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

**END OF APPLICATION FORM**

## **B. APPLICATION FORM INSTRUCTIONS**

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

### **B.1 The Bidder**

#### **B.1.1 Details of the Bidder**

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

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

#### **B.1.2 Contact details of the Bidder**

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

#### **B.1.3 Principal contacts of the Bidder**

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

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

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

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

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

## B.2 Bidder's Authorised Representatives

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

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

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

## B.3 Insiders

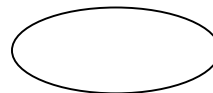
Please provide the names, employer, title and/or position, and roles of all the Insiders to the Application and the Bidder's participation in the Auction. If any of the Insiders is not an employee of the Bidder, then the information provided must state clearly the relationship between this Insider and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

## B.4 Corporate and shareholding structures of the Bidder

Please provide detailed information on corporate and shareholding structure including relationships with immediate / intermediate / ultimate holding companies, subsidiaries and other group companies. Please also indicate which of the companies appearing in the ownership structure are listed on a stock exchange (Listed Companies), the exchange on which they are listed, and the percentage of each class of their shares which form a public or free float. Please provide the latest annual reports and accounts of the Applicant and the Listed Companies.

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

Bidder



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



Individuals/family

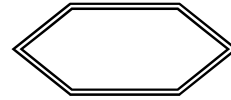


Where such entities are Insiders, the shape should be double-lined as follows:

Company or other entity which is an Insider



Individual/family that is an Insider



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

Links (whether by ownership or some other form of control or arrangement) between entities should be shown as an arrow between holder and held entities, together with a description of the amount of ownership or form of arrangement. (e.g. 25% shareholding).

## **B.5 Deposit Submission Form**

Please confirm by ticking the relevant box in the Deposit Submission Form the amount of Deposit provided by the Bidder.

## **B.6 Brief Service and Technical Proposal**

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

## **B.7 Checklist**

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

## **B.8 Application Dates**

The Application Dates shall be 21 February 2013 and 22 February 2013.

## **B.9 Declaration**

Please read carefully and sign the declaration.

## **B.10 Submission instructions**

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

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

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

of which only a single set is required.

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

**“For the attention of the Communications Authority”**

No other mark should appear on the envelope.

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

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

## **B.11 Signatures**

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

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

**APPENDIX 5**  
**Bidder Compliance Certificate**

# BIDDER COMPLIANCE CERTIFICATE

**TO :** The Communications Authority (the “**Authority**”)

The Office of the Communications Authority

29<sup>th</sup> Floor, Wu Chung House

213 Queen’s Road East

Wanchai

Hong Kong

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

**DATE :** [                    ] 2013

Dear Sirs,

We refer to the Notice (the “Notice”) dated 21 December 2012 issued by the Authority in exercise of the powers conferred by section 32I of the Ordinance and the Regulation and all other powers enabling it to specify the terms and conditions of the Auction and the payment of the Spectrum Utilization Fees.

1. The Bidder hereby certifies and undertakes to the Authority that:

1.1. the representatives of the Bidder have read and understood the Licence, the Ordinance, the Regulation, the Telecommunications (Designation of Frequency Bands Subject to Payment of Spectrum Utilisation Fee) Order, the Notice and the Information Memorandum dated 21 December 2012 issued by the Authority, and that it has complied, and will comply, with the Conditions and the Notice including the Schedules and Appendices to the Notice as appropriate;

1.2. it is legally capable of bidding in the Auction and has in place all necessary approvals, consents, permissions and board approvals including, without limitation, any approvals, consents, permissions and board approvals from its holding company(ies) under any law or rules and regulations issued by any governmental or regulatory or supervisory body in any competent jurisdiction other than an Approval;

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

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

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

1.15. none of the Bidder nor its Insiders have had any telecommunications or radiocommunications licence, consent, authority, permission, concession agreement, or other document or allocation of radio spectrum in Hong Kong withdrawn, cancelled or suspended owing to the default or breach by the Bidder or its Insiders of the conditions of that licence, consent, authority, permission, concession agreement, or other document for allocation of radio spectrum in Hong Kong;

1.16. none of the Bidder nor its Insiders is a party to any civil litigation or proceedings which may be expected to have a material adverse impact on the Bidder's ability to participate in the Auction or to satisfy the Conditions of any Licence granted to the Bidder; and

1.17. it has not submitted more than one Application to the Authority.

2. Words and expressions used in this certificate have the same meaning as given in the Notice, unless the context otherwise requires.

Yours faithfully,

Signed:

-----

Authorised signature

(name and title)

-----

Authorised signature

(name and title)

Company seal affixed:

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

**APPENDIX 6**  
**Letter of Credit**

# LETTER OF CREDIT

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

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

**DATE** : [            2013]

The Issuing Bank issues this irrevocable standby letter of credit in the favour of the Beneficiary on the following terms on the application and request of [*Name of the Bidder*](the “**Bidder**”) pursuant to the Notice (the “**Notice**”) dated 21 December 2012 issued by the Communications Authority in exercise of the powers conferred by section 32I of the Telecommunications Ordinance (Cap. 106), Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106AC) and all other powers enabling it to specify the terms and conditions of the auction and payment of the spectrum utilization fees.

---

**IRREVOCABLE STANDBY LETTER OF CERDIT NO [            ]**

**DATED [            ] 2013**

---

**BENFICIARY**            The Communications Authority.

**EXPIRY DATE**            22 August 2013

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

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

**BY** Payment into the account specified by the Beneficiary.

**BENEFICIARY'S CERTIFICATE**

**TO** : [ ] (the "**Issuing Bank**")

**FROM** : The Communications Authority  
(the "**Beneficiary**")

The Office of the Communications Authority

29<sup>th</sup> Floor, Wu Chung House

213 Queen's Road East

Wanchai

Hong Kong

**DATE** : [ ]

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

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

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

SIGNED BY

.....

(name and title)

for the Communications Authority

#### **ADDITIONAL CONDITIONS**

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

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

SIGNED BY:

.....

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

For *(name of the Issuing Bank)*

SIGNED BY:

.....

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

For *(name of the Issuing Bank)*

COMPANY SEAL / CHOP OF ISSUING BANK AFFIXED:

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

**APPENDIX 7**  
**Frequency Band Selection Form**

# FREQUENCY BAND SELECTION FORM

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

## 1. Instructions to Bidder

Please provide the details required in section 2 below and indicate clearly in section 3 below the Frequency Band(s) the Bidder wishes to be assigned by the Authority. This form must be signed by two Authorised Representatives who are directors of the Bidder, and affixed with the company seal of the Bidder. Each page of this form must also be signed by these two Authorised Representatives.

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

## 2. Details of the Bidder

Registered name of the Bidder:

Registered office:

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

Telephone number:

Fax number:

Email address:

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

### 3. Selection of Frequency Band(s)

Frequency Band	Frequency range (MHz)	Bandwidth of the Frequency Band	Minimum Fee	Frequency Band(s) selected by the Bidder (Please indicate with a tick (“✓”) the Frequency Band(s) the Bidder wishes to select.
A1	2515 – 2520 2635 – 2640	5 MHz x 2	HK\$150 million	
A2	2520 – 2525 2640 – 2645	5 MHz x 2	HK\$150 million	
A3	2525 – 2530 2645 – 2650	5 MHz x 2	HK\$150 million	
A4	2530 – 2535 2650 – 2655	5 MHz x 2	HK\$150 million	
A5	2535 – 2540 2655 – 2660	5 MHz x 2	HK\$150 million	

Signed:

Signed:

\_\_\_\_\_

\_\_\_\_\_

Authorised Representative

Authorised Representative

(name and title)

(name and title)

Company seal affixed:

Date: