

第 2413 號公告

《電訊條例》(第 106 章)

《電訊(頻譜使用費的水平)(第二代移動服務)規例》  
(第 106AA 章)

及

《電訊(以拍賣方法釐定頻譜使用費)規例》(第 106AC 章)

電訊管理局局長現根據《電訊條例》第 32I 條、《電訊(頻譜使用費的水平)(第二代移動服務)規例》、《電訊(以拍賣方法釐定頻譜使用費)規例》與其他為此目的獲授予的權力，指明在本公告內指明的頻帶使用權的拍賣和繳付頻譜使用費的條款及條件，特此公告週知。

拍賣和繳付頻譜使用費的條款及條件只備有英文本



電訊管理局局長

黎陳芷娟

二零零九年四月二十四日

## **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 assignment of a Frequency Band for provision of public mobile telecommunications services in areas other than the Designated Areas.

### **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) Assignment 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 May 2009 and 22 May 2009;

“**Application Form**” means the form specified in Appendix 5 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 Frequency Band is assigned 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;

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

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

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

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

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

“**Authority’s Office**” means Office of the Telecommunications 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 the Upfront Spectrum Utilization Fee a Bidder wishes to offer in relation to a Frequency Band or Frequency Bands in the Auction;

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

“**Bidder Compliance Certificate**” means the certificate specified in

Appendix 6 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 conditions which shall be added to the Licence and substantially in the form set out in Appendix 2 of this Notice;

“**Confidential Information**” has the meaning given in paragraph 6.5.6;

“**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;

“**Designated Areas**” means the areas specified by the Authority to be the

designated areas for the purposes of section 4A of the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (Cap.106AA, Laws of Hong Kong) and set out in Appendix 1 of this Notice;

“**Eligible Person**” means one of the following persons:

- (a) China Mobile Hong Kong Company Limited,
- (b) CSL Limited,
- (c) Hong Kong Telecommunications (HKT) Limited,
- (d) Hutchison Telephone Company Limited, and
- (e) SmarTone Mobile Communications Limited,

each of which is a company incorporated in Hong Kong under the Companies Ordinance;

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

“**Frequency Band**” means a frequency band specified in Appendix 3 of this Notice;

“**Frequency Band Selection Form**” means the form specified in Appendix 8 of this Notice;

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

“**Government’s Adviser**” means DotEcon Ltd and Allen & Overy LLP;

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

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

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

- (a) by any person who is an officer, employee, agent, adviser or associate of that Bidder;
- (b) by any person who controls, or is controlled by, or is under

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

“**Letter of Credit**” means a letter of credit in the form specified in Appendix 7 of this Notice;

“**Licence**” means a relevant mobile carrier licence or relevant unified carrier licence (as the case may be) 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 operating in the spectrum which falls within 1710.5 – 1780.1 MHz and 1805.5 – 1875.1 MHz;

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

“**Minimum Fee**” means the minimum amount of the Upfront Spectrum Utilization Fee specified by the Secretary for Commerce and Economic Development and set out in Appendix 3 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;

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

“**Provisional Successful Bidder**” means the Bidder determined as such in accordance with paragraph 3.4.2 or 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 paragraph;

**“Regulations”** means the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (Cap.106AA, Laws of Hong Kong) and 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 the Upfront 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 spectrum utilization fee payable by the user of a Frequency Band as prescribed in section 2(2) of the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (Cap.106AA, Laws of Hong Kong);

“**Standing Highest Bid**” means, in respect of a Frequency Band, the Valid Bid determined as such 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**” means the Bidder determined as such in accordance with paragraph 5.4.1;

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

“**Upfront Spectrum Utilization Fee**” means the fixed fee mentioned in section 2(2)(a) of the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (Cap.106AA, Laws of Hong Kong), which forms part of the Spectrum Utilization Fee and the sum of which is determined in accordance with the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap.106AC, Laws of Hong Kong) and terms and conditions of this Notice;

“**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

“**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 its 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 another time period, as the case may be, and expire at midnight on the last of the relevant number of Business Days and any reference to “midnight” in relation to a particular day shall be read as 11:59 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 the 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 expression importing each gender shall include the others;
- (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 references to Hong Kong time; and
- (h) the headings do not affect its interpretation.

## **Part 2 – Application Stage**

### **2.1 Application**

- 2.1.1 No person other than an Eligible Person may make an Application. An Eligible Person may make no more than one Application. An Application jointly submitted by two or more Eligible Persons shall not be accepted.

- 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;
  - (b) delivered by hand to Assistant Director (Regulatory) at the Authority's Office.
- 2.1.4 Subject to paragraph 2.1.5, an Application must be received by the Authority between 9:00 am and 5:00 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 5:00 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 4 of this Notice, which shall be taken into account by the Authority in accordance with paragraph 4.8.3 for the purpose of determining the number of Eligibility Points to be attributed to a Bidder for the first Round. 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.

### **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.

### **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 assignment of a Frequency Band 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 Regulations 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 (a “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 his determination under paragraphs 3.2.1 and 3.2.2, publish a notice (a “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 Penalty by the Authority in accordance with the terms and conditions of this Notice with respect to that Bidder,
    - (i) where the Deposit is in cash, the Deposit shall be returned less the aggregate amount of those Penalties; and
    - (ii) where the Deposit is a Letter of Credit, the Authority shall make a claim under the Letter of Credit to the extent of the aggregate amount of those Penalties.
- 3.3.3 Notwithstanding the return to a Bidder of its Deposit in accordance with paragraph 3.3.2, that Bidder shall continue to comply with those terms and conditions of this Notice as are specified by the Authority. If the Authority does not specify any terms and conditions in accordance with this paragraph, the Bidder shall be required to comply with all of the terms and conditions of this Notice as appropriate.

### **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 Band or 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. Upon approval of the Frequency Band Selection Form by the Authority, the Qualified Bidder shall be the Provisional Successful Bidder of the Frequency Band or Frequency Bands it selects in the Frequency Band Selection Form and the Upfront Spectrum Utilization Fee payable by the Provisional Successful Bidder shall be the sum of 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 Upfront Spectrum Utilization Fee payable for the relevant Frequency Band or Frequency Bands.

- 3.4.3 The Authority may, at his discretion, request the Qualified Bidder to make such clarification as may reasonably be required if the Frequency Band Selection Form is not duly completed in accordance with the instructions specified therein or is otherwise unclear. If the Qualified Bidder fails to select a Frequency Band by submitting the 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 an assignment of any Frequency Band 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 be 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 the Upfront Spectrum Utilization Fee that shall be payable for each Frequency Band.
- 4.2.2 The Bidding Stage in respect of all Frequency Bands shall be conducted simultaneously and shall consist of one or more Rounds in which Bidders may submit Bids for the Frequency Bands.

## **4.3 Bidding Stage Notice**

- 4.3.1 At least two Business Days before the commencement of the Bidding Stage, the Authority shall issue to each Bidder a notice (“Bidding Stage Notice”) which shall provide details of the date on which and the time at which the Bidding Stage shall commence.
- 4.3.2 If the Authority is of the opinion that it is impractical for the Bidding Stage to commence on the date or at the time referred to in the Bidding Stage Notice, he may notify each Bidder of a different date or time, as the case may be. If a different date or time is to be notified, the date or time shall not be earlier than that originally notified as the relevant date or time.

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

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

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



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

4.5.1 In the first Round, each Bidder must submit to the Authority a Valid Bid for 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) (i) where no Valid Bid is received in a Round in respect of a Frequency Band but 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 no Valid Bid is received in a Round in respect of a Frequency Band and 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 no Valid Bid is received in a Round in respect of a Frequency Band and 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 A number of points (“Eligibility Points”) shall be attributed to each Frequency Band in accordance with Appendix 3 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 4 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 submit 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 Bands 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 Eligibility Points are attributed under subparagraph (a) or where the Bidder submits a Withdrawal for that Frequency Band in that Round in which case Eligibility Points are 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 (a “Withdrawal”) for which the Bidder holds the Standing Highest Bid in respect of a Frequency Band 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 Upfront Spectrum Utilization Fee);
- (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 an amount equal to 100% of that Standing Highest Bid.

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