

Guidelines for the Application for Services-Based Operator Licence

14 February 2018 (Issue 16)

Section I – Introduction

- 1.1 These Guidelines are issued under section 6D(2)(a) of the Telecommunications Ordinance (Cap. 106) (the “Ordinance”). They indicate the manner in which the Communications Authority (the “CA”)¹ proposes to perform its function of determining applications for services-based operator (“SBO”) licences. These Guidelines are designed to assist interested parties in submitting their applications and should be read in conjunction with relevant CA Statements, and other policies and regulatory documents hereafter referred to.
- 1.2 All applications for SBO licences will be evaluated on their merits having regard to the information provided as required in Section IV and to the broad licensing criteria outlined in Section V of these Guidelines.
- 1.3 The applicants should use their best endeavours to ensure that all information contained in their applications and any other subsequent submissions and representations are correct and accurate in all respect, in reliance upon which the CA will consider the applications.
- 1.4 The applications and the required supporting documents should be submitted under confidential cover and reach the CA at the following address:

Office of the Communications Authority
29/F, Wu Chung House
213 Queen’s Road East
Wan Chai
Hong Kong
(Attn.: Principal Regulatory Affairs Manager, Regulatory 21)

Applicants can download the application form or apply online at <http://www.coms-auth.hk/en/licensing/telecommunications/apply/index.html>.

¹ Pursuant to the Communications Authority Ordinance (Cap 616), with effect from 1 April 2012, all duties and powers of the Telecommunications Authority are conferred on the CA, and all duties and powers of the Office of the Telecommunications Authority are conferred on the Office of the Communications Authority (“OFCA”), the executive arm of the CA.

- 1.5 Applicants will receive an acknowledgement of receipt of applications. The CA may request the applicants to provide additional information to clarify or supplement the applications submitted.
- 1.6 Upon receipt of the completed application form and all required supporting documents, the CA will process the application and respond to the applicant within 14 working days.
- 1.7 The CA reserves the right to disclose the names of the parties who have submitted applications. All other information received will be treated in confidence. Where the CA proposes to disclose any information of the applications and it considers that the disclosure would result in the release of sensitive information concerning business or commercial or financial affairs of the relevant parties, the CA will give the relevant parties an opportunity to make representations on the proposed disclosure before its final decision on whether or not to disclose such information, in full or in part.
- 1.8 Nothing in these Guidelines should be taken to bind the CA on the granting of any licence, the terms of any licence to be granted, or any particular course of action in relation to the handling of applications submitted.

Section II – Licensing and Regulatory Framework

The Broad Framework

- 2.1 In Hong Kong, public telecommunications services can be provided either by facility-based operators or SBOs. Facility-based operators refer to operators which are authorised to establish and maintain telecommunications networks and facilities, which may cross unleased Government land and public streets, for the provision of public telecommunications services. At present, facility-based operators are generally licensed under unified carrier licence (“UCL”). For details about application for UCL, please refer to the “Guidelines for the Submission of Proposals for Applying Unified Carrier Licence”.² On the other hand, SBOs are not authorised to establish or maintain telecommunications means which cross unleased Government land or public streets, and have to make use of the networks and facilities established by licensed facility-based operators for the provision of public telecommunications services.
- 2.2 Before 2009, SBOs were licensed under the Public Non-Exclusive Telecommunications Service (“PNETS”) licence and/or the SBO licence. In order to streamline the licensing regimes for SBOs, a public consultation for review of the PNETS and SBO licensing regimes was conducted in March 2009.³ On 19 October 2009, the Statement entitled “Review of the Public Non-Exclusive Telecommunications Service and Services-Based Operator Licensing Regimes” (“SBO Statement”)⁴ was issued to introduce the modified SBO licence as the single licensing vehicle for licensing and regulating all types of SBOs. Since then, PNETS licences were no longer issued. All the services previously licensed under PNETS licences were subsumed under the modified SBO licence by November 2010.

Scope of Service

- 2.3 The modified SBO licence covers the following types of services. A detailed description of each is given in Annex 1:
- (a) Class 1 services: Local voice telephony services provided to fixed and/or mobile customers that have all the attributes of the conventional telephone services and are subject to the same/similar licence obligations applicable to carrier licensees for

² The guidelines are available at http://www.coms-auth.hk/filemanager/en/content_652/gn152016e.pdf.

³ The consultation paper is available at http://tel_archives.ofca.gov.hk/en/report-paper-guide/paper/consultation/20090311.pdf.

⁴ The Statement is available at http://tel_archives.ofca.gov.hk/en/tas/sbo/tas20091019.pdf.

the provision of conventional telephone services;

- (b) Class 2 services: Local voice telephony services provided to fixed and/or mobile customers that do not have all the attributes of the conventional telephone services and are subject to minimal licensing conditions with the main purpose to protect consumer interests ;
- (c) Local voice telephony services other than Class 1, Class 2 or Class 3 services: Examples include local voice telephony services provided to fixed and/or mobile customers which do not require the use of numbers from the Numbering Plan for Telecommunications Service in Hong Kong (“Numbering Plan”)⁵; and
- (d) Class 3 services:
 - (i) External telecommunications services (“ETS”);
 - (ii) International value-added network services (“IVANS”) (including Internet Access Services);
 - (iii) Mobile virtual network operator (“MVNO”) services;
 - (iv) Public radio communications relay (“Radio Relay”) services;
 - (v) Teleconferencing services;
 - (vi) Private payphone services;
 - (vii) Security and fire alarm signals transmission (“Security & Alarm”) services;
 - (viii) Mobile communications services on board an aircraft (“MCA Services”);
 - (ix) Any other services designated by the CA as “Class 3 services”

2.4 The applicant may apply to provide multiple services as depicted in paragraph 2.3 under a single SBO licence. For example, the provision of both ETS and IVANS could be authorised under a single SBO licence.

⁵ The Numbering Plan is available at http://www.ofca.gov.hk/filemanager/ofca/tc/content_311/no_plan.pdf.

- 2.5 For the avoidance of doubt, a SBO licensee is only authorised to provide services in accordance with the scope of service as specified in Schedule 1 under the licence. If a SBO licensee intends to expand the scope of service under its existing licence, it should apply to the CA.

Local Voice Telephony Services (Class 1, Class 2 and Other than Class 1, Class 2 or Class 3 Services)

- 2.6 Class 1 and Class 2 services are local voice telephony services which have the following common attributes:

- (a) They are internal telecommunications services for carrying real-time voice communications which may be integrated with other types of communications;
- (b) The customers are assigned with numbers from the Numbering Plan; and
- (c) The services are capable of allowing customers to make and receive calls to and from parties assigned with numbers from the Numbering Plan.

- 2.7 The differentiation between Class 1 and Class 2 services is by means of:

- (a) a declaration by the SBO licensee (and where appropriate its agents, contractors and resellers) in all promotion, marketing or advertising materials concerning such service that it is a “Class 2” service; and
- (b) the use of different prefixes for the Hong Kong telecommunications numbers to be assigned by the SBO licensee to its customers.
 - (i) For Class 1 services provided to fixed customers, the numbers with prefixes for conventional fixed network numbers (e.g. ‘2’ or ‘3’) should be used.
 - (ii) For Class 1 services provided to mobile customers, the numbers with prefixes for conventional mobile network numbers (e.g. ‘4’, ‘5(1-7,9)’, ‘6’, ‘7’, ‘8’, or ‘9’) should be used.
 - (iii) For Class 2 services provided to fixed and/or mobile customers, the numbers with prefix ‘58’ should be used.

- 2.8 SBO licensees providing Class 1 services have to facilitate number portability, provide directory service to customers and publish a customer charter. SBO licensees providing Class 2 services are not imposed with such obligations. More details will be given below with regard to these obligations.
- 2.9 For other types of local voice telephony services (e.g. those services which do not require the use of numbers from the Numbering Plan), the applicant may apply for SBO licence of local voice telephony services other than Class 1, Class 2 or Class 3 services.

Hosting and Interconnection

- 2.10 A SBO licensee offering Class 1 or Class 2 services is required under its licence condition to ensure any-to-any (“A2A”) 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 CA, to any service offered in any interconnecting network. While the concerned licence condition is applicable to all types of telecommunications services, the CA has so far applied the requirement of A2A connectivity to voice services only.
- 2.11 In gaining access to the conventional public switched telephone network, a SBO licensee offering Class 1 or Class 2 services should seek a hosting connection to the network of at least one carrier licensee. The carrier licensee hosting a SBO licensee for Class 1 or Class 2 services provided to fixed customers is generally a fixed network operator (“FNO”) holding either a UCL with authorisation to provide fixed services or a fixed carrier licence. The carrier licensee hosting a SBO licensee for Class 1 or Class 2 services provided to mobile customers may be a FNO, or a mobile network operator (“MNO”) holding a UCL with authorisation to provide mobile services provided that the MNO is also authorised under its licence to provide ‘transit’ service or fixed services in general. This hosting carrier licensee will be responsible for the routing of the traffic of the Class 1 and Class 2 services of the SBO licensee being hosted to and from the networks of other carrier licensees. The terms and conditions of the interconnection agreement(s) between the SBO licensee and its hosting carrier licensee(s) will be negotiated on a commercial basis. As there are multiple FNOs and MNOs in the market, market forces should ensure that SBO licensees have fair access to the networks and the CA is not expected to intervene unless so doing will be in the public interest.

Use of Numbers

- 2.12 According to section 32F of the Ordinance, the Numbering Plan is administered by the CA. To ensure the efficient allocation and use of

numbers and codes for telecommunications networks/services which meet up-to-date requirements of the telecommunications industry, the CA issues a “Code of Practice Relating to the Use of Numbers and Codes in the Hong Kong Numbering Plan” (“Numbering CoP”)⁶ for the purpose of providing guidance to the telecommunications network operators and service providers to whom the CA has delegated the administration of part of the Numbering Plan. SBO licensees should comply with the Numbering Plan and the Numbering CoP.

- 2.13 Numbers for Class 1 and Class 2 services will be directly allocated by the CA to SBO licensees upon request. The Numbering CoP stipulates that the SBO licensees providing Class 1 and Class 2 services should not sell or pass the numbers to overseas operators for assignment to their customers, and should maintain a direct supplier-customer relationship with the end-users assigned with the numbers and codes in the Numbering Plan.

Number Portability

- 2.14 SBO licensees offering Class 1 services are required to facilitate fixed number portability (also known as operator number portability (“ONP”)) and mobile number portability (“MNP”) at their own expenses. In view of the technical complexity of setting up an administration database (“AD”) and interconnecting with other relevant parties to facilitate number portability, SBO licensees offering Class 1 services are expected to enter into commercial arrangements with their hosting carrier licensees to fulfil this licence obligation, instead of building their own AD.
- 2.15 Currently, SBO licensees offering Class 2 services are not required to facilitate ONP or MNP.

Emergency Call Service

- 2.16 SBO licensees offering Class 1 or Class 2 services are required to provide customers with free access to emergency call service, i.e. to make emergency calls free of charge. If a SBO licensee provides Class 2 services with inbound calling capability only, it may apply to the CA for exemption from providing the emergency call service. SBO licensees offering Class 2 services exempted from the requirement of emergency call service are required to indicate the non-provision of emergency call service in all promotion, marketing and advertising materials offering service to the customers and obtain their explicit consent on the non-provision of emergency call service before providing service to them.

⁶ The Numbering CoP is available at https://www.coms-auth.hk/filemanager/statement/en/upload/385/cop-numbering_e.pdf.

- 2.17 Where a SBO licensee offering Class 1 or Class 2 services provides access to emergency call service and the location of the customer making the call is potentially nomadic, the licensee is required to set up a database for maintaining the most up-to-date location information of customers. The licensee is required to provide a mechanism whereby the customers can update their location information, and to remind its customers to do so whenever they change the location from which the service is used. The SBO licensee is required to provide free of charge, to the Hong Kong Police Emergency Centre and other entities as directed by the CA, the up-to-date location information of its customer calling the emergency call service.

Backup Power Supply

- 2.18 A SBO licensee offering Class 1 or Class 2 services must not provide the service to users whose “lifeline devices” are connected to the service unless there is backup power supply to maintain continuity of the service without any deterioration in quality of the service during the interruption of mains power supply on the customers’ premises, to the network, or to any system or equipment delivering the service to the customers. A “lifeline device” means a medical alarm or any other device for the elderly, infirm or invalid to summon assistance in the event of an emergency without having to key in manually the number of the emergency service.
- 2.19 Where no backup power supply is available, the licensee is required to confirm with its customers, before or upon subscription of service, that the service will not be used by lifeline users or connected with lifeline devices. Furthermore, the licensee is also required to affix a label onto the wall socket panel or any equipment installed on the customers’ premises, or take other reasonable steps (such as a cautionary remark in telephone bills) to remind the customers that the service is not suitable for connection to lifeline devices.

Directory Service

- 2.20 The provision of telephonic directory service is a mandatory requirement for Class 1 services provided to fixed customers. SBO licensees providing Class 1 services to fixed customers are required to make commercial arrangements with their hosting FNOs to fulfil their obligations of providing the telephonic directory service. There is no requirement for the SBO licensee to provide printed directory for its customers.

Customer Charter

- 2.21 A SBO licensee offering Class 1 services is required to 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 unless a waiver in writing is granted by the CA.

Class 3 Services

External Telecommunications Services (ETS)

- 2.22 A SBO licensee providing ETS is required to pay to the local FNOs or MNOs relevant interconnection charges, including but not limited to:

- (a) local access charge ("LAC"); and
- (b) access charge or origination charge for interconnection necessary for the provision of international call forwarding service,

as may be specified by the CA in the relevant statements and regulatory guides, and/or determined by the CA from time to time under section 36A of the Ordinance.

- 2.23 LAC is the interconnection charge payable by ETS operators to local network operators for conveyance of ETS traffic to and from end users. On 23 December 2011, the CA decided to adopt a new regime for LAC from 1 July 2013. Under the new LAC regime, local FNOs and MNOs are entitled to receive LAC for the conveyance of ETS traffic, and the level of LAC will be set by commercial negotiations by the interconnecting parties. Details are provided in the Statement entitled "New Regulatory Regime for Local Access Charge" ("LAC Statement")⁷ and the "Regulatory Guide of Local Access Charge"⁸ issued on 23 December 2011.

- 2.24 In the LAC Statement, it was decided to introduce measures to combat illegal LAC bypass activities.⁹ Applicants for SBO licence for Class 3 (ETS) (including existing holders of SBO licences for non-ETS who seek to expand their service scope to cover ETS) should note that:

- (a) before the formal issue of the licence, applicants shall submit a properly signed interconnection agreement (or its equivalence) with a hosting network operator for the provision of their ETS under applications; and

⁷ The Statement is available at http://tel_archives.ofca.gov.hk/en/tas/interconnect/ta20111223.pdf.

⁸ The Regulatory Guide is available at http://coms-auth.hk/filemanager/statement/en/upload/37/gn_201125e.pdf.

⁹ Please refer to paragraphs 86 to 93 of the Statement.

- (b) where required by the CA in writing, the licensee shall provide to the CA and maintain a duly issued performance bond in Hong Kong dollars with the amount as specified by the CA in favour of the Hong Kong Government to guarantee the licensee's payment of the financial penalty, if any, imposed on it by the CA pursuant to section 36C of the Ordinance for breach of Special Conditions ("SC") 2.1, 7.1 and/or 8.1 of the SBO licence for Class 3 (ETS). SC 29 and Schedule 5 on this performance bond requirement are included in all new SBO licences (irrespective of the type of services authorised)¹⁰ as well as all existing SBO licences (upon their renewals) for the provision of ETS. At present, the requirement to submit a performance bond is not yet implemented but SBO licensees for Class 3 (ETS) should note that they may be subject to such requirement in future. The CA is closely monitoring the operation of the ETS market including the situation of illegal bypass activities. If it is considered that there is a need to impose the requirement of submission of performance bond, the CA will give the licensees reasonable advance notice. Reference may be made to Annex 2 for the form of the performance bond to be submitted by SBO licensees providing ETS if required by the CA. The CA may revise the form of the performance bond as appropriate at the time when the licensees are required to provide the performance bond.

2.25 A SBO licensee providing ETS shall comply with the Numbering Plan, the Numbering CoP and other relevant regulatory guides issued by the CA. Among others, it shall only use numbers with prefix(es) '15', '16' and/or '30(5-9)' for provision of ETS. The licensees for ETS may also apply for International Signalling Point Codes and Signalling Point Codes for the operation of the licensed services in accordance with the Numbering CoP.

2.26 The numbers with prefix(es) '15' and/or '16' will be assigned to each licensee by the CA upon request. Licensees who wish to use these numbers should submit separate applications to the CA for assignment of these numbers to them for providing ETS. On the other hand, the numbers with prefix '30(5-9)' for ETS will not be directly allocated by the CA to SBO licensees. The concerned numbers are allocated by the CA to FNOs for assignment to their customers. SBO licensees who wish to use these numbers should send their applications to their hosting FNOs direct. For details, please refer to the Numbering CoP.

¹⁰ For the avoidance of doubt, the performance bond requirement, upon its implementation, under SC 29 and Schedule 5 in relation to breach of SC 2.1, 7.1 and/or 8.1 of the SBO licence will only be applicable to SBO licensees providing ETS

International Value-Added Network Services (IVANS) including Internet Access Services

- 2.27 A SBO licensee is permitted under the SBO licence to provide IVANS which includes but not limited to Internet access services, data transmissions such as fax-to-email, email-to-fax, store and retrieve, store and forward services. A SBO licensee providing IVANS is required to pay to local FNOs or MNOs, as the case may be, to whom its IVANS is interconnected with, the necessary interconnection charges.
- 2.28 A SBO licensee providing IVANS shall comply with the Numbering Plan, the Numbering CoP and other relevant regulatory guides issued by the CA. Among others, it shall only use numbers with prefix(es) '300(1-9)' and/or '30(1-4)' for the provision of IVANS. Numbers with prefix(es) '300(1-9)' and/or '30(1-4)' for IVANS will not be directly allocated by the CA to SBO licensees. The concerned numbers are allocated by the CA to FNOs for assignment to their customers. SBO licensees who wish to apply for these numbers should send their applications to their hosting FNOs.
- 2.29 A SBO licensee authorised to provide IVANS is not allowed under its licence to provide any real-time voice telephony (including real-time facsimile) services. A SBO licensee who wishes to provide such services should apply to the CA for expansion of the scope of service of its existing licence to cover local voice telephony services (Class 1, Class 2 or Other than Class 1, Class 2 or Class 3 services) or ETS, as the case may be.

Mobile Virtual Network Operator (MVNO) Services

- 2.30 A MVNO is an operator who provides a public radiocommunications service to customers through interconnection with, and access to, the radiocommunications infrastructure of a MNO licensed under a UCL authorised for provision of mobile services or a MCL and assigned with the radio spectrum through which the public radiocommunications services are provided.
- 2.30a If a MVNO meets the relevant criteria stipulated in Appendix 4 of the Numbering CoP issued by the CA, the MVNO may be allocated its own numbers and a mobile network code.
- 2.31 A MVNO is required to fulfill, among others, the following obligations:
- (a) To ensure A2A connectivity;
 - (b) To comply with the Numbering Plan and the Numbering CoP;
 - (c) To facilitate MNP and ONP; and

- (d) To provide free access to emergency call service to its customers.
- 2.32 The terms and conditions of the interconnection agreement(s) between a MVNO and each of its hosting MNO(s) will be negotiated on a commercial basis. A MVNO will be required to pay the interconnection charges which are applicable to a MNO for interconnection with other networks.
- 2.32a To provide practical guidance to licensees in the event of cessation of MVNO services in order to better protect consumer interest, the CA has issued the mandatory “Code of Practice on the Cessation Arrangements for MVNO Services”¹¹. Issued under SC 13.1 of the SBO licence, this Code of Practice shall be observed and complied by all MVNOs, as well as their hosting MNOs, in the event of cessation of relevant services. In order to safeguard MVNOs’ commitment to comply with this Code of Practice, a MVNO is required, pursuant to SC 29 of the SBO licence for Class 3 (MVNO), to provide to the CA and maintain a duly issued performance bond in Hong Kong dollars in favour of the Hong Kong Government with the following amount:
- (a) For MVNOs with 100 000 or fewer subscribers, the bonded sum will be HK\$ 100,000; and
 - (b) For MVNOs with more than 100 000 subscribers, the bonded sum will be HK\$ 200,000.

The bonded sum is to guarantee the licensee’s payment of the financial penalty, if any, imposed on it by the CA pursuant to section 36C of the Ordinance for any breach of SC 13.1. Reference may be made to Annex 2 for the form of the performance bond to be submitted by SBO licensees providing MVNO services. The CA may revise the form of the performance bond as appropriate at the time when the licensees are required to provide the performance bond.

Mobile Communications Services on board an Aircraft (MCA Services)

- 2.33 A MCA service provider is a service provider who effectively extends the service coverage of terrestrial mobile networks to on board an aircraft registered in Hong Kong, enabling airline passengers to use mobile communications service operating in the 1710 – 1785 MHz and

¹¹ The code of practice is available at http://www.coms-auth.hk/filemanager/statement/en/upload/421/cop-mvno_e.pdf.

1805 – 1880 MHz frequency bands as well as the 1920 – 1980 MHz and 2110 – 2170 MHz frequency bands.

2.34 There are some key criteria and requirements to be fulfilled by a MCA service provider as follows:

- (a) Throughout the validity of the licence, the licensee shall maintain a valid agreement with the concerned airline operator for the provision of MCA services on board each aircraft as specified in the licence on an exclusive basis;
- (b) All installations and operations of the MCA system for the provision of MCA services must be licensed under an Aircraft Station Licence issued by the CA;
- (c) The operation of MCA system shall comply with the technical and operational requirements as prescribed in the Electronic Communications Committee (“ECC”) Decision ECC/DEC/(06)07¹² and in any applicable standard or specification that may from time to time be issued by the CA. The apparatus comprised in the MCA system shall be of a type approved by the CA; and
- (d) The MCA system must only be operated at cruising heights at or more than 3000 metres above ground and operation of the system must be immediately terminated and all radio transmissions ceased if it is below this level.

Other Requirements for SBO Licensees

Calling Line Identification (“CLI”)

2.35 SBO licensees are required to observe the requirements and responsibilities set out in the “Code of Practice in Relation to Calling Line Identification and Other Calling Line Identification Related Services”¹³ issued by the CA for the sending of CLI in their provision of services. In addition, licensees who provide a Class 3 service (such as IVANS) which involves the sending of short message service (“SMS”) through the Internet should adopt necessary procedures to ensure that the caller sends correct caller identification information.

¹² ECC Decision of 1 December 2006 on the harmonised use of airborne GSM and LTE systems in the frequency bands 1710 – 1785 MHz and 1805 – 1880 MHz and airborne UMTS systems in the frequency bands 1920 – 1980 MHz and 2110 – 2170 MHz (ECC/DEC/(06)07), amended 13 March 2009 and amended 14 March 2014.

¹³ The code of practice is available at http://www.ofca.gov.hk/filemanager/ofca/common/consumer/fixed_telecom/cop20150101e.pdf.

Technical Standards

- 2.36 Pursuant to section 32D of the Ordinance, the CA may from time to time prescribe standards and specifications of telecommunications networks, systems, installations, customer equipment and services, etc.¹⁴ Licensees are obligated to observe these specifications, where applicable, for the provision of services. Applicants should refer to these specifications before submitting their applications.

Universal Service Contribution (“USC”)

- 2.37 Under section 35B of the Ordinance, the CA may require that one or more FNOs¹⁵ have a universal service obligation (“USO”) for the provision of basic service, which mainly covers local fixed voice telephony service and public payphones. At present, PCCW-HKT Telephone Limited and Hong Kong Telecommunications (HKT) Limited, as joint holders of UCL No. 025, are appointed as the universal service provider. Telecommunications services providers, including SBO licensees, are required under their licence condition to pay to the universal service provider its relevant share of the USC to assist the later to meet the USO. The sharing basis of USC is based on the quantity of telecommunications numbers allocated to licensees for the provision of local fixed and mobile telecommunications services. Applicants may refer to the Statement entitled “Review of the Regulatory Framework for Universal Service Arrangements” issued on 8 June 2007 for details.¹⁶

Publication of Tariff

- 2.38 Pursuant to section 7F of the Ordinance and the respective licence condition of the SBO licence, a holder of SBO licence is obliged to publish tariffs and charge no more than the published tariffs for the services operated under its licence. The tariff of a service shall include not only all relevant service charges but also the terms and conditions on which the service is provided. To provide guidance to licensees on publication and filing of tariffs, the CA has issued the “Guidelines on Publication and Filing of Tariff”.¹⁷

Prohibition of Unfair Trade Practices

- 2.39 Pursuant to the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (“TDO(A)”) passed by the Legislative Council on 17 July 2012 and brought into operation on 19 July 2013, the

¹⁴ A full list of HKCA Specifications is available at http://ofca.gov.hk/en/industry_focus/telecommunications/standards/hkca/index.html.

¹⁵ Including FNOs holding UCLs with authorisation to provide fixed services.

¹⁶ The Statement is available at http://tel_archives.ofca.gov.hk/en/tas/ftn/ta20070608.pdf.

¹⁷ The guidelines are available at <http://www.coms-auth.hk/filemanager/statement/en/upload/187/gn201307e.pdf>.

Trade Descriptions Ordinance (Cap. 362) (“TDO”) has been amended to extend its coverage to prohibit traders of all sectors, including the telecommunications sector, from engaging in specified unfair trade practices, namely false trade descriptions of services, misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch, and wrongly accepting payment. With the TDO(A) coming into effect, section 7M of the Ordinance prohibiting misleading or deceptive conduct of telecommunications licensees has been repealed on the same date.

- 2.40 In addition to criminal prosecutions, a civil compliance-based mechanism has been introduced. The enforcement agency may, as an alternative to criminal prosecution, accept an undertaking from a trader, whom the enforcement agency believes has engaged in a prohibited unfair trade practice, to stop that practice, or where necessary, seek an injunction from the court for the purpose.
- 2.41 The Customs and Excise Department (“C&ED”) is the principal agency for enforcing the amended TDO, with concurrent jurisdiction conferred on the CA to enforce the relevant provisions of the amended TDO in relation to the commercial practices of licensees under the Ordinance and the Broadcasting Ordinance (Cap. 562) (“BO”) that are directly connected with the provision of a telecommunications or broadcasting service under the respective ordinances. Applicants should study the relevant enforcement guidelines which state the manner in which the C&ED and the CA would exercise their enforcement powers and provide guidance on the operation of the new legislative provisions.¹⁸

Prohibition of Anti-Competitive Practices

- 2.42 The Competition Ordinance (Cap. 619) (“CO”) is a cross-sectoral competition law prohibiting anti-competitive conduct through three competition rules. The First Conduct Rule provides that an undertaking must not make or give effect to an agreement, engage in a concerted practice, or as a member of an association of undertakings, make or give effect to a decision of the association, if the object or effect of the agreement, concerted practice or decision is to prevent, restrict or distort competition in Hong Kong. The Second Conduct Rule provides that an undertaking that has a substantial degree of market power must not abuse that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong. The Merger Rule provides that an undertaking must not, directly or indirectly, carry out a merger involving telecommunications carrier licensees that has, or is likely to have, the effect of substantially lessening competition in Hong Kong.

¹⁸ The guidelines are available at http://www.coms-auth.hk/en/policies_regulations/unfair_trade_practices/index.html.

- 2.43 Under the CO, the CA has concurrent jurisdiction with the Competition Commission (the “Commission”) to enforce the CO in respect of the conduct of certain undertakings operating in the broadcasting and telecommunications sectors. The CA and the Commission have signed a Memorandum of Understanding (“MoU”) to coordinate the performance of their functions under the CO. According to the MoU, for cases involving the telecommunications or broadcasting sectors and falling within the concurrent jurisdiction, the CA will ordinarily take the role of the lead authority, which will assume responsibility for exercising the relevant powers and functions conferred upon it under the CO. For matters involving issues that are partly within and partly outside the concurrent jurisdiction, the CA and the Commission will discuss and agree on how best to progress the matter on a case-by-case basis.
- 2.44 The CA and the Commission have jointly issued six guidelines¹⁹ under the CO describing how they expect to interpret and give effect to the three competition rules, and explaining the procedures for handling complaints, conducting investigations and considering applications for exclusions and exemptions.
- 2.45 For more information about the enforcement of the CO by the CA, please refer to the website of the CA.²⁰

Reporting Requirements

- 2.46 Under SC 3 of SBO licence, SBO licensees are required to submit, among others, statistics and reports in respect of services authorised under their licences, at the time and in the manner specified by the CA. The detailed reporting requirements will be notified to the SBO licensee upon the issue of licence. A “Nil” return is required even if any of the services have not yet been launched or are no longer provided.

Consumer Protection

Fair Usage Policy (“FUP”)

- 2.47 To provide guidance to broadband service providers on how they may implement their FUP and to enhance the transparency of service information to facilitate better informed consumer choices, the CA has issued the mandatory “Guidelines for the Implementation of Fair Usage Policy for the Provision of Mobile and Fixed Broadband Services”.²¹

¹⁹ The guidelines are available at http://www.coms-auth.hk/en/policies_regulations/competition/co/legislation_and_guidelines_issued_under_the_co/index.html.

²⁰ http://www.coms-auth.hk/en/policies_regulations/competition/co/index.html

²¹ The guidelines are available at

Holders of SBO licence providing fixed and/or mobile broadband services are required to comply with the guiding principles set out in these guidelines for the implementation of FUP.

Billing Information and Payment Collection for Telecommunications Services

- 2.48 To provide guidance to licensees on the chargeable items to be included in their bills for telecommunications services as well as arrangements for payment collection, the CA has issued the voluntary “Code of Practice in relation to Billing Information and Payment Collection for Telecommunications Services”.²² Holders of SBO licences are encouraged to pledge compliance with this code.

Industry Code of Practice for Telecommunications Service Contracts

- 2.49 To provide guidance to the telecommunications industry in drawing up service contracts with customers, the Communications Association of Hong Kong (“CAHK”) has promulgated a voluntary industry “Code of Practice for Telecommunications Service Contracts” as an industry self-regulatory initiative.²³ All major telecommunications service providers in Hong Kong have pledged compliance with this industry code. Holders of SBO licences are encouraged to comply with the industry code and follow the practices prescribed therein.

Customer Complaint Settlement Scheme (“CCSS”)

- 2.50 To help resolve billing disputes in deadlock between telecommunications service providers and their residential/individual customers by means of mediation, the telecommunications industry has set up the CCSS.²⁴ The CCSS is managed and operated by an independent CCSS mediation service centre set up under the CAHK. All major telecommunications service providers and MVNOs in Hong Kong have participated in the CCSS. Holders of SBO licences offering services for residential/individual customers are encouraged to join the CCSS.

http://coms-auth.hk/filemanager/statement/en/upload/38/gn_201124e.pdf.

²² The code of practice is available at

<http://www.coms-auth.hk/filemanager/statement/en/upload/33/cop20111011e.pdf>.

²³ The code of practice is available at

http://www.cahk.hk/News/310/Industry_CoP_Telecom_Service_Contract.pdf.

²⁴ Details of the CCSS are available at

http://ofca.gov.hk/en/consumer_focus/fixed_telecom/ccss/index.html.

Section III – Licensing Arrangement

- 3.1 A holder of SBO licence shall be a company registered under the Companies Ordinance (Cap. 622) in Hong Kong. There will be no foreign ownership restriction on the SBO licensee. In line with the full liberalisation policy in telecommunications services, the CA has not pre-set a limit on the number of SBO licence to be issued, or any restriction on the types of services which may be authorised under the SBO licence, when there are no physical or other constraints on the provision of the proposed services.

Period of Validity

- 3.2 A new SBO licence issued to a new applicant shall be valid for one year and shall expire on the first day of the month next following the month in which it was issued and in the year next following the year in which it was issued.
- 3.3 The SBO licence may be renewed for a period of one year at a time, subject to the discretion of the CA and production of supporting documents by the SBO licensee as the case may be (e.g. for MVNOs, they need to include but without limitation to documents showing their arrangement(s) with its hosting network operator(s) for the provision of hosting services and their capability of on-going compliance with their licence obligations and provision of service in a manner to the satisfaction of the CA pursuant to the relevant condition of the SBO licence).

Licence Fee

- 3.4 The licence fee for a SBO licence is determined and published by the CA from time to time.²⁵ The licence fee payable on the issue and on each annual renewal of the SBO licence consists of the following components:
- (a) A fee of
 - (i) \$25,000 where services other than Class 3 services (i.e. Class 1, Class 2 or Other than Class 1, Class 2 or Class 3 services) is authorised under the SBO licence; or
 - (ii) \$750 for each type of Class 3 services authorised under the SBO licence, if the licensee is authorised to provide Class

²⁵ Please refer to the document “Period of Validity and Licence Fees determined by the Communications Authority” published by the CA, available at http://www.coms-auth.hk/filemanager/en/content_54/fee_validity_e.pdf.

3 services only. If the licensee is authorised to provide services other than Class 3 services (i.e. Class 1, Class 2 or Other than Class 1, Class 2 or Class 3 services), only the fixed fee under (i) will apply and the licensee does not need to pay the fixed fee under (ii) for any additional Class 3 services that are authorised.

Where there is any expansion in scope of service authorised under the licence during the validity period of the licence, a pro-rata fee of (i) or (ii) as determined by the CA in respect of the additional service authorised for remaining validity period of the licence shall be payable at the time when the expansion in scope of service is made to the licence.

(b) A fee of \$3 for each subscriber number (“number fee”) allocated or assigned to the licensee. A subscriber number is a number in the Numbering Plan within the numbering blocks allocated by the CA to a licensee, which number may be assigned by the licensee to its customer for use of a telecommunications service. The number fee shall be payable as follows:

(i) the number fee shall be payable on the issue and on each annual renewal of the licence, (1) for each subscriber number allocated to the licensee that is not ported out from the licensee’s system or re-allocated or assigned, as authorised by the CA, to another licensee (who has made payment of the licence fee for such number under its licence) and (2) for each subscriber allocated to another licensee that is ported in to the licensee’s system or re-allocated or assigned, as authorised by the CA, by another licensee to the licensee; and

(ii) in addition to (i) above, where a subscriber number allocated to another licensee is re-allocated or assigned, as authorised by the CA, to the licensee during the validity period of the licence, a pro-rata number fee for the remaining validity period of the licence shall be payable at the time of the re-allocation or assignment,

provided that the number fee does not apply to numbers used (if any) for the provision of (a) ETS, (b) IVANS, (c) Radio Relay services, (d) teleconferencing services, (e) private payphone services, (f) Security & Alarm services, (g) MCA services and (h) any other services designated by the CA as not subject to number fee.

(c) When apparatus for radiocommunications is possessed, used,

established or maintained for the purposes of the services provided, the following additional fees shall be payable on the issue and on each annual renewal of the licence:

- (i) a fee of \$750 for every base or fixed station; and
- (ii) a fee of \$700 for each 100 mobile stations or less used by customers of the service.

3.5 For the purpose of the provisional licence fee calculation, the SBO licensee providing Class 1, Class 2 and/or Class 3 (MVNO, Radio Relay or MCA) services is required to report to OFCA one month before the licence renewal date (the “Self-Declaration”):

- (a) the estimated quantity of numbers to be held by the SBO licensee as at the forthcoming licence renewal date for providing Class 1, Class 2 and/or Class 3 (MVNO) services; and
- (b) the estimated quantity of fixed / base stations and mobile stations in respect of the Class 3 (MVNO, Radio Relay or MCA) services, as the case may be.

3.6 For the purpose of the actual licence fee calculation, the SBO licensee is required to provide a relevant auditor report as explained below.

- (a) For the SBO licensee which provided Class 1 and/or Class 3 (MVNO, Radio Relay or MCA) services since its last licence renewal date (or licence issue date for newly issued licence), it would be required to provide an auditor report to certify the figures reported to OFCA in paragraph 3.5 as at the licence renewal date for determining the exact amount of licence fee. Such auditor report should be submitted to OFCA within one month from the licence renewal date. If there is any discrepancy between the figures in the Self-Declaration and those in the auditor report, an adjustment on the licence fee will be made.
- (b) For the SBO licensee which has been authorised and has previously indicated its intention to OFCA to provide Class 1 and/or Class 3 (MVNO, Radio Relay or MCA) services (e.g. by applying for a network ID for the use of an AD platform for number portability or applying for the establishment of a base station), but did not provide such service(s) since its last licence renewal date (or licence issue date for newly issued licence), it would be required to submit an auditor report to prove that no Class 1 and/or Class 3 (MVNO, Radio Relay or MCA) services (as the case may be) are provided or have been provided during the licence period in question. Such auditor report should be provided one month from licence renewal date. If there is any discrepancy between the findings in the Self-Declaration and

those in the auditor report, an adjustment on the licence fee will be made.

Performance Bond

3.7 All SBO licensees authorised to provide MVNO services are required to, pursuant to SC 29 of the SBO licence, provide to the CA and maintain a duly issued performance bond in Hong Kong dollars in favour of the Hong Kong Government:

- (a) For new applicants, before the formal issue of their licences, they shall provide to the CA and maintain a duly issued performance bond in the bonded sum of HK\$ 100,000 as referred to in paragraph 2.32a; and
- (b) For existing licensees seeking annual renewals of their SBO licences, they shall provide to the CA and maintain a duly issued performance bond in the bonded sum of either HK\$ 100,000 or HK\$ 200,000 based on the number of subscribers as referred to in paragraph 2.32a one month prior to the renewal date of their SBO licences. The number of subscribers to be adopted for deciding the amount of the bonded sum shall be based on the number of mobile stations used by customers of the service in the Self-Declaration as referred to in paragraphs 3.5 and 3.6. If the number of mobile stations in the auditor report is over 100 000, the CA may request the licensees to submit a revised performance bond with a bonded sum of HK\$ 200,000, notwithstanding that the licensee may have already provided a bonded sum of HK\$ 100,000 based on the smaller number of mobile stations in the Self-Declaration.

3.8 A sample form of the performance bond is set out at Annex 2. The CA may revise the form of the performance bond as appropriate at the time when the licensees are required to provide the performance bond.

Section IV – Information to be Submitted

- 4.1 A SBO licence may be granted under the following scenarios:
- (a) Application for a new SBO licence; or
 - (b) Conversion of multiple SBO licences into one SBO licence.
- 4.2 Information required to be provided by an applicant for a new application (i.e. scenario in paragraph 4.1(a)) are set out in paragraph 4.3 to 4.10 below. Information required for conversion of multiple SBO licences into one SBO licence (i.e. scenario in paragraph 4.1(b)) will be on a case-by-case basis.

Information to be Submitted in the Application

- 4.3 Company Structure
- (a) Holders of a SBO licence must be registered in Hong Kong under the Companies Ordinance. The application should contain details of the company intended to be the holder of the SBO licence under application, including:
 - (i) photocopies of the Certificate of Incorporation and the Business Registration Certificate of the company;
 - (ii) detailed information on corporate and shareholding structure including relationships with holding or related companies;
 - (iii) certified copies of Articles of Association of the company; and
 - (iv) details on the composition of the company Board of Directors and key officers.
- 4.4 Financial Capability (applicable only for applicants proposing to provide (i) local voice telephony services of Class 1, Class 2 and Other than Class 1, Class 2 or Class 3 services; or (ii) MVNO services)
- (a) If the applicant is an established company, the application should include copies of audited financial statements, including the auditor reports for the last three years, together with the most recent interim results (if applicable).
 - (b) If the applicant is a newly-formed company, the application

should include:

- (i) the directors' certificate of the amount of issued and paid-up share capital,
 - (ii) bankers' confirmation of the amount of its deposits and/or available credit facilities, and
 - (iii) copies of audited financial statements, including the auditor reports for the last three full years, together with the most recent interim results (if applicable), of the company's shareholding companies.
- (c) The applicant should provide a budgeted profit and loss statement for the proposed service for the first three years of operation, with a breakdown of the planned capital expenditure, operating costs, level of charges, estimated number of subscribers and estimated annual revenue.
- (d) The applicant should provide sufficient documentary evidence to prove that the applicant has the financial capability to meet the capital investment required in the financial plan. Examples of documentary evidence may include bankers' confirmation of the amount of deposits or available credit facilities, copies of the audited accounts of the applicant showing that there are sufficient internal funds available, etc.

4.5 Description of the System

The applicant should provide a detailed description of the system to be installed, including:

- (a) system configuration, architecture and operation and if appropriate, diagram(s) illustrating how the system is interconnected with other public telecommunications networks/services; and
- (b) the planned location of system to be installed.

Application should illustrate how the applicant would operate, maintain and provide a good, efficient and continuous service.

4.6 Description of the Proposed Services

- (a) The applicant should provide a detailed description of all services to be provided, including any special operational features available.

- (b) The applicant should provide the expected service launch date and implementation schedule if the proposed services are to be introduced in stages.
- (c) Successful applicants should be committed to the provision of the proposed services in Hong Kong as detailed in their applications, submissions and representations.

4.7 Technical Support

- (a) Application should include the details of the technical support facilities in Hong Kong, including a description of the technical personnel responsible for the day-to-day operation and maintenance of the facilities and the routine maintenance schedule/procedure.

4.8 Previous Relevant Experience

- (a) Details on the previous experience of the applicant, its shareholders and key personnel in establishing and running the proposed telecommunications services, as well as information on the current status of these services, should be given.
- (b) Information should also be provided on the applicant and its shareholders' experience in running other relevant businesses in Hong Kong or overseas.

4.9 Supplementary documents to be submitted for application for individual services

- (a) Class 3 (ETS)

Applicants for provision of ETS should note that they will need to submit a properly signed interconnection agreement (or its equivalence) with a hosting network operator for the provision of the ETS under application before the licence is formally issued. Applicants are NOT required to submit the interconnection agreement when they submit their applications for the SBO licence. After the CA has completed the assessment of their applications and formed the view that the SBO licence may be granted, it shall inform the applicant of its approval in principle subject to a set of conditions, including the provision of the concerned interconnection agreements. Applicants should submit the interconnection agreements after they are notified by the CA.

(b) Class 3 (MVNO Services)

The applicant should submit supporting document to demonstrate its intention to provide MVNO service. The supporting documents shall include an interconnection agreement or a MoU signed with a licensed MNO for provision of MVNO service, a purchasing agreement or a MoU signed with an equipment provider for acquiring the ownership or usage right of relevant network equipment and infrastructure, etc., as the case may be.

(c) Class 3 (MCA Services)

The applicant should submit the following documents and information:

- (i) A valid agreement mentioned in 2.34(a) above, or a written confirmation from both the applicant and the concerned airline operator that a valid agreement mentioned in 2.34(a) above has been established;
- (ii) The geographic locations where the services will be provided;
- (iii) Aircraft information, including the airline operator, identification of the aircraft, and type of the aircraft, on which the services will be provided; and
- (iv) The height above which the MCA system will operate and the frequencies will be operated by Base Transceiver Station and Network Control Unit.

4.10 Other Information

- (a) The applicant may submit any other information not specified above which it considers helpful to the application.
- (b) The CA may request the applicant to submit any other information it considers necessary for its consideration on the application.

Section V – Broad Licensing Criteria

- 5.1 The basis for assessment of applications will be the information supplied by applicants according to the requirements set out in Section IV of this document. The CA reserves all rights not to accept applications which are substantially incomplete in this respect.
- 5.2 The proposed service in the application must be technically sound and compatible with the local environment. The CA will consider the expertise required in the operation and maintenance of the system(s) as well as the knowledge and previous experience of the applicant in operating similar services.
- 5.3 The applicant must have the financial capability and demonstrate willingness to invest sufficient capital to provide a satisfactory service.
- 5.4 The proposed telecommunications systems, installation, customer equipment and services, etc will be expected to comply with the standards and specifications as may be specified by the CA.
- 5.5 For interconnection with other local or external public telecommunications networks and/or services, the applicant shall have proper interconnection arrangement established with other licensed telecommunications operators and the equipment of the proposed service shall meet the technical specifications for interconnection with such networks and/or services as may be specified by the CA.
- 5.6 The licensing criteria set out in these Guidelines are not intended to be a definitive list of criteria. While evaluating whether the criteria have been satisfied, the CA is entitled to determine the weight it will give to the individual matter to which it considers appropriate in the circumstances, after taking the relevant factors into account, and will decide each case on its own merits.

**Office of the Communications Authority
15 February 2018**

Typical description of services under SBO licence²⁶

Type of Services	Description of services in Schedule 1 of the SBO licence
Class 1 services, Class 2 services and other than Class 1, Class 2 or Class 3 services	<p>Part I</p> <ol style="list-style-type: none"> 1. Subject to General Condition 3, Clause 3 [and Clause 4] of this Schedule 1, all internal and external telecommunications services as listed in Part II, other than telecommunications services the subject of an exclusive licence issued under the Ordinance, [a Mobile Carrier Licence, a Mobile Carrier (Restricted) Licence, a Unified Carrier Licence authorizing provision of mobile services, a Public Radiocommunications Service Licence, a Public Radiocommunications Service Licence (For Services Other Than Land Mobile Services),]²⁷ a service subject to licensing under any other Ordinance, or a satellite broadcasting service under a Satellite Television Uplink and Downlink Licence. 2. For the purpose of this licence, an “internal” telecommunications service means a service for communications between points within Hong Kong; and an “external” telecommunications service means a service for communications <ol style="list-style-type: none"> (a) between one or more points in Hong Kong and one or more points outside Hong Kong; and (b) between two or more points outside Hong Kong but routed in transit via Hong Kong. 3. Nothing in this licence authorizes the licensee to establish or maintain (a) any means of telecommunications,

²⁶ The descriptions of services in the table are extracted from Schedule 1 of respective sample licences, which are available at <http://www.coms-auth.hk/en/licensing/telecommunications/sbo/index.html>. They are for reference only. Depending on the services proposed by the applicant, the CA will adopt the appropriate scope for the services concerned.

²⁷ The restriction on provision of local voice telephony services to mobile customers (viz. the text in square bracket) will be removed if the licensee is authorised to provide such under its SBO licence.

Type of Services	Description of services in Schedule 1 of the SBO licence
	<p>including but not limited to physical facilities or telecommunications installations, which cross public streets or unleased Government lands (b) telecommunications or radiocommunications network as a carrier licensee as defined in the Ordinance.</p> <p>[4.The scope of service specified in Clause 1 of this Schedule 1 does not include internal voice telephony services provided to mobile customers.]²⁸</p> <p>Part II</p> <p>1. Class 1 services</p> <p>Services with the same meaning as defined in Special Condition 17.2</p> <p>2. Class 2 services</p> <p>Services with the same meaning as defined in Special Condition 18.2</p> <p>3. Other than Class 1, Class 2 and Class 3 services</p> <p>An internal telecommunications service which is not a Class 1 service (as defined in Special Condition 17.2), Class 2 service (as defined in Special Condition 18.2) or Class 3 service (as defined in Special Condition 16.1), for carrying real time voice communications which may be integrated with other types of communications.</p>
Class 3 (ETS)	<p>1. The service is an external public telecommunications service operated over external leased circuits supplied by a Fixed Carrier Licensee or a Unified Carrier Licensee authorized to provide fixed services and to supply such circuits at the Hong Kong end or over other external switched telecommunications services lawfully operated in</p>

²⁸ Please see footnote 24.

Type of Services	Description of services in Schedule 1 of the SBO licence
	<p>Hong Kong at the Hong Kong end.</p> <p>2. In the above description of service, “external” means communications with places outside Hong Kong.</p> <p>3. For the avoidance of doubt, the service shall not include the provision to customers of a telecommunications circuit between a point in Hong Kong (including, without limitation, a radiocommunications facility or cable termination facility) and one or more points outside Hong Kong, and any means of telecommunications capable of facilitating such a circuit.</p> <p>4. Customers at the Hong Kong end and/or at the distant end may be connected to the service through any public switched telecommunications network or dedicated circuits.</p> <p>5. This licence does not authorize the licensee to establish and maintain any physical facilities for the supply of external circuits to customers.</p>
Class 3 (IVANS)	<p>1. The service is a local and/or external public telecommunications service accessed by its customers via, and provided over, circuits provided by public telecommunications networks and/or public telecommunications services licensed under the Ordinance and, subject to Clauses 3 to 6 of this Schedule, may include the following service elements:</p> <ul style="list-style-type: none"> (a) data communications; (b) non-real time facsimile communications; (c) electronic mailbox/messaging; (d) electronic data interchange; (e) code, protocol and/or format conversions; (f) database access and retrieval; (g) value added voice services; (h) call management services; and (i) public teletext services.

Type of Services	Description of services in Schedule 1 of the SBO licence
	<p data-bbox="544 277 799 309">2. In this Schedule,</p> <p data-bbox="580 376 1347 600">“circuits provided by public telecommunications networks” means the dedicated circuits or switched circuits or a means of transmission by telecommunications line or radiocommunications link operated or authorised under the Ordinance.</p> <p data-bbox="580 667 1347 743">“external” means communications with places outside Hong Kong.</p> <p data-bbox="580 810 1347 1079">“external circuit” means a telecommunications circuit between a point in Hong Kong (including, without limitation, a radiocommunications facility or cable termination facility) and one or more points outside Hong Kong, and any means of telecommunications capable of facilitating such circuit.</p> <p data-bbox="544 1146 1347 1272">3. “Non-real time facsimile communications” in Clause 1(b) of this Schedule refer to the following types of facsimile communications:</p> <p data-bbox="580 1339 890 1370">(a) store and retrieve; or</p> <p data-bbox="580 1438 1347 1608">(b) store and forward (in the case of automatic delivery to the destination terminal(s), there must be at least one other function such as deferred delivery or multi-addressing).</p> <p data-bbox="544 1675 1347 1845">4. “Value added voice services” in Clause 1(g) of this Schedule do not include basic voice service for carrying real-time voice communications which may be integrated with other types of communications.</p> <p data-bbox="544 1912 1347 2033">5. “Call management services” in Clause 1(h) of this Schedule refer to call forwarding and/or routing services which allow the redirection of an incoming voice or</p>

Type of Services	Description of services in Schedule 1 of the SBO licence
	<p>facsimile call to computerised call processing equipment operated by the licensee or to telephone numbers or for access to a licensed telecommunications service.</p> <p>6. “Public teletext services” in Clause 1(i) of this Schedule refer to services which involve the transmission and reception of data and information in compliance with the relevant technical standard for public teletext services issued by the Authority.</p> <p>7. For the avoidance of doubt, this licence does not authorize the licensee to establish and maintain any physical facilities for the supply of external circuits to customers.</p>
Class 3 (MVNO services)	<p>1. The service is a mobile virtual network operator service provided to subscribers or customers within the territory of Hong Kong by making use of and by having access to, and interconnection with, radiocommunications infrastructure of a Mobile Carrier Licensee or Unified Carrier Licensee authorized to provide mobile services and assigned with the radio spectrum using which the public radiocommunications service is provided.</p> <p>2. Subject to Clause 1, the licensee shall provide the service through and by setting up, maintaining and operating the apparatus, equipment, facility, infrastructure and interconnection including but not limited to billing, switching, home location register and Intelligent Network systems but without radio transmission parts and radio base stations. For the avoidance of doubt, the licensee has not been assigned, and is not entitled to the assignment of, any radio spectrum and therefore does not operate any radio base station for the purpose of operating the service.</p> <p>3. Subject to Clause 1, the service may provide for the carriage of telephonic and non-telephonic messages.</p> <p>4. Subject to Clause 1, the service may include (but without</p>

Type of Services	Description of services in Schedule 1 of the SBO licence		
	<p>limitation to) voice, facsimile, voice mail, electronic mail and short message services and the provision of electronic mailbox or storage facilities to be operated in conjunction with services described in this First Schedule and which enable any member of the public (whether a subscriber of the service or not) to deposit voice, facsimile, voice mail, electronic mail, short message or other files into the electronic mailbox or storage facilities allocated to subscribers of the service or to display the same on handset or other devices of the subscriber of the service.</p> <p>5. The service includes dealing in and demonstration with a view to selling in the course of trade or business of the service and the applicant, such apparatus, facility, equipment, handset, device, accessory, material, case and packaging item for radiocommunications as may be necessary for subscribers of the service to make use of, participate in or receive the service.</p>		
Class 3 (Radio Relay services)	<p>1. The service provides a telecommunications system for interconnection with the mobile services licensed under the Ordinance, and other radiocommunications services as may be authorized or directed by the Authority, for extension of the radio coverage of these services within the following areas:</p> <table data-bbox="582 1473 1102 1514" style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding: 0 20px;">Name of Building</td> <td>Address</td> </tr> </table> <p>2. The service is a radio relay service for relaying the signals of mobile services licensed under the Ordinance. It does not provide any mobile service directly to the end users.</p>	Name of Building	Address
Name of Building	Address		
Class 3 (Teleconferencing services)	<p>1. The service is a local and/or external teleconferencing service whereby customers of the service can hold audio or video conference through the facilities provided by the licensee.</p> <p>2. Connections between the facilities of the licensee in Hong</p>		

Type of Services	Description of services in Schedule 1 of the SBO licence
	<p>Kong and the users in Hong Kong shall be made through dedicated circuits, switched circuits or a means of transmission by telecommunications line or radiocommunications link operated or authorised under the Ordinance.</p> <p>3. The licensee operates a teleconference operator centre (or call centre) and provides bridging facilities so that conference participants at different locations can see, talk and listen to one another in conference mode through the telecommunications network/circuit connections made by the licensee’s system.</p> <p>4. Nothing under this licence authorizes the licensee to operate an external public telephone or non-telephone service. External calls to and from the facilities of the service in Hong Kong shall be routed through an external public telephone or non-telephonic service licensed in Hong Kong.</p>
Class 3 (Private payphone services)	<p>1. In this licence,</p> <p>(a)“payphone” means a fixed telephone that is connected to the public switched telephone network operated by a Fixed Carrier Licensee or Unified Carrier Licensee authorized to provide fixed services and that cannot be used to make a telephone call (other than an emergency call, a free call for access to other services provided by Fixed Carrier Licensees or Unified Carrier Licensees authorized for provision of fixed services as may be specified by the Authority pursuant to Special Condition 28 or a call made through an operator-assisted or automated caller identity verification system) unless the user, immediately prior to using the telephone, makes, or arranges to make, a payment for that particular individual call;</p> <p>(b)“private payphone” means a payphone that is located on</p>

Type of Services	Description of services in Schedule 1 of the SBO licence
	<p>or over privately owned land or leased land as defined in section 2, Part I of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) and to which members of the general public have access; and</p> <p>(c)“external calls” means calls for communications with places outside Hong Kong.</p> <ol style="list-style-type: none"> 2. The service is a private payphone service provided through the use of payphone equipment established and maintained by the licensee. 3. The service may carry telephonic and non-telephonic messages. 4. Subject to Special Condition 28, the service may include services which enable the customers to make local and external calls. 5. The payphone equipment established and maintained by the licensee shall be connected to access lines provided by a Fixed Carrier Licensee or Unified Carrier Licensee authorized to provide fixed services. Nothing in the licence authorizes the licensee to establish or maintain any network facilities. 6. Nothing in this licence authorizes direct interconnection between the payphone equipment established and maintained by the licensee with the gateways for external public telephone services licensed under the Ordinance.
Class 3 (Security & Alarm services)	The service is a local public telecommunications service for the transmission of security and fire alarm signals from customers’ premises to a security fire service communication centre. The conveyance of the security and fire alarm signals may be made through the dedicated circuits or switched circuits provided by a Fixed Carrier Licensee, Mobile Carrier Licensee, or Unified Carrier Licensee, or the

Type of Services	Description of services in Schedule 1 of the SBO licence						
	<p>other telecommunications network and services licensed, or deemed to be licensed, or exempt from licensing, under the Ordinance.</p>						
<p>Class 3 (MCA services)</p>	<p>1. The service is a mobile communications service on board an aircraft (“MCA service”) which utilizes the MCA system described in paragraph 3 of this Schedule 1, and effectively extends the service coverage of the terrestrial mobile networks to on board an aircraft, to enable airline passengers to use mobile communication services operating in the frequency bands specified in paragraph 4 of this Schedule 1 without establishing direct connections with the terrestrial mobile networks. The service is designated as a Class 3 service pursuant to Special Condition 16.1(h) of this licence.</p> <p>2. The service can only be provided on board the aircrafts listed in Schedule 7.</p> <p>3. The MCA system referred to in paragraph 1 of this Schedule 1 shall comprise all such telecommunications installations established, maintained or possessed under an Aircraft Station Licence, including a Base Transceiver Station and a Network Control Unit, for the purpose of providing the MCA service as specified in paragraph 1 of this Schedule 1.</p> <p>4. All such radiocommunications installations comprised in the MCA system referred to in paragraph 3 of this Schedule 1 shall operate on board an aircraft at the frequency bands listed below –</p> <p>Base Transceiver Station:</p> <table border="1" data-bbox="576 1800 1289 1951"> <thead> <tr> <th data-bbox="576 1800 948 1850">Transmitting frequencies</th> <th data-bbox="948 1800 1289 1850">Receiving frequencies</th> </tr> </thead> <tbody> <tr> <td data-bbox="576 1850 948 1899">1805 – 1880 MHz</td> <td data-bbox="948 1850 1289 1899">1710 – 1785 MHz</td> </tr> <tr> <td data-bbox="576 1899 948 1951">2110 – 2170 MHz</td> <td data-bbox="948 1899 1289 1951">1920 – 1980 MHz</td> </tr> </tbody> </table> <p>Network Control Unit*:</p>	Transmitting frequencies	Receiving frequencies	1805 – 1880 MHz	1710 – 1785 MHz	2110 – 2170 MHz	1920 – 1980 MHz
Transmitting frequencies	Receiving frequencies						
1805 – 1880 MHz	1710 – 1785 MHz						
2110 – 2170 MHz	1920 – 1980 MHz						

Type of Services	Description of services in Schedule 1 of the SBO licence
	<ul style="list-style-type: none"> • Transmitting frequencies: <ul style="list-style-type: none"> 460 – 470 MHz 791 – 821 MHz 921 – 960 MHz 1805 – 1880 MHz 2110 – 2170 MHz 2570 – 2620 MHz 2620 – 2690 MHz <p>* These transmitting frequencies assigned to the Network Control Unit shall solely be used for facilitating the provision of MCA service by the Base Transceiver Station and ensuring that the Base Transceiver Station will not cause interference to the services provided by the terrestrial mobile networks. The licensee shall not make use of these frequencies (except 1805 – 1880 MHz and 2110 – 2170 MHz) for the provision of any public telecommunications services.</p>

FORM OF PERFORMANCE BOND

**(For the Provision of External Telecommunications Services
("ETS")/Mobile Virtual Network Operator ("MVNO") Services)***

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 a request made by the Communications Authority (the "Authority") in writing under Special Condition 29 of the Licence issued to the Licensee on the date of issue, the Licensee is required to provide to the Authority a performance bond issued by a Qualifying Bank, in order to guarantee the Licensee's payment of the financial penalty, if any, imposed on it by the Authority pursuant to section 36C of the Ordinance for breach of [Special Conditions 2.1, 7.1 and/or 8.1] (*note: for the provision of ETS*) / [Special Condition 13.1] (*note: for the provision of MVNO Services*)* of the Licence. The Bank is a Qualifying Bank.

1. INTERPRETATION

1.1 Definitions

In this Performance Bond:

"Authority" means the Communications Authority;

* To delete where appropriate

“Bonded Sum” means an amount of HK\$ []

“Bonded Sum Payable” means the amount of financial penalty imposed by the Authority due to the breach of [Special Conditions 2.1, 7.1 and/or 8.1] (*note: for the provision of ETS*) / [Special Condition 13.1] (*note: for the provision of MVNO Services*)* of the Licence and defaulted by the Licensee;

“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;

“Licence” means Services-Based Operator Licence;

“Licensee” means [**Name of Licensee**] at [**Address**];

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

“Qualifying Bank” means an institution holding a full banking licence under the Banking Ordinance (Cap. 155);

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.

* To delete where appropriate

2. PERFORMANCE BOND

- 2.1 In the event that the Authority imposes a financial penalty on the Licensee pursuant to section 36C of the Ordinance due to the Licensee's breach of [Special Conditions 2.1, 7.1 and/or 8.1] (*note: for the provision of ETS*) / [Special Condition 13.1] (*note: for the provision of MVNO Services*)* of the Licence, and the Licensee defaults the payment of the financial penalty as required by the Authority, 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 Payable, provided that the aggregate liability of the Bank under this Performance Bond to the Government shall not exceed the Bonded Sum.
- 2.2 The obligations under this Performance Bond constitute direct primary, irrevocable and unconditional obligations of the Bank.
- 2.3 The Bank shall be discharged from all further liability under this Performance Bond after the Bank has paid the Bonded Sum Payable to the Government or the Bank is notified by the Authority that its liability under this Performance Bond is discharged.
- 2.4 This Performance Bond shall remain effective until the Bank has paid the Bonded Sum Payable to the Government or the Bank is notified by the Authority that its liability under this Performance Bond is discharged. In accordance with Clause 2.1 no demand may be made under this Performance Bond after [date] (1 year plus the expiry date of the Licence).

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 Payable from the date of

* To delete where appropriate

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 and 2.4, 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, expiration 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 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