

**Commencement of Section 8(1)(aa) of  
The Telecommunications Ordinance (Cap. 106)  
and  
Creation of a Class Licence for  
Offer of Telecommunications Services under Section 8(1)(aa)**

**Statement of the Telecommunications Authority**

**15 September 2006**

**Introduction**

In the consultation paper entitled “Commencement of Section 8(1)(aa)<sup>1</sup> of the Telecommunications Ordinance and Creation of a Class Licence for Offer of Telecommunications Services under Section 8(1)(aa)” issued on 3 March 2006 (“the Second Consultation Paper<sup>2</sup>”), the Telecommunications Authority (“TA”) proposed to fully commence section 8(1)(aa) of the Telecommunications Ordinance (“the Ordinance”) and to create a class licence to regulate the offer of all kinds of telecommunications services (“the Class Licence”).

2. The TA received a total of eight submissions to the consultation, which ended on 28 April 2006, from the following parties:

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<sup>1</sup> Section 8(1)(aa) and the related section 8(1A), which are not yet in operation, provide as follows:

[Section 8]

*(1) Save under and in accordance with a licence granted by the Chief Executive in Council or with the appropriate licence granted or created by the Authority, no person shall in Hong Kong or on board any ship, aircraft or space object that is registered or licensed in Hong Kong –*

*(a) ...*

*(aa) offer in the course of business a telecommunications service; or*

*(b) ...*

*(1A) For the purpose of subsection (1)(aa), a person is to be regarded as offering a telecommunications service if –*

*(a) he makes an offer which, if accepted, would give rise to an agreement, arrangement or understanding for the provision of a telecommunications service by him or by another person with whom he has made an arrangement for the provision of the telecommunications service; or*

*(b) he invites a person to make an offer of the kind referred to in paragraph (a).*

<sup>2</sup> The TA issued a consultation paper on the subject on 15 October 2004.

- The Society of Hong Kong External Telecommunications Services Providers (ETS Society)
- Hong Kong CSL Limited and New World PCS Limited (CSL-NWM)
- Wharf T&T Limited (WTT)
- SmarTone Mobile Communications Limited (SmarTone)
- PCCW-HKT Telephone Limited (PCCW-HKT)
- China Mobile Peoples Telephone Company Limited (Peoples)
- New World Telecommunications Limited (NWT)
- Hutchison Global Communications Limited and Hutchison Telecommunications (Hong Kong) Limited (Hutchison)

3. The submissions can be downloaded from OFTA's website at <http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/20060504/table.html>.

4. Having considered the submissions received, the TA issues this Statement setting out his final views on the commencement of section 8(1)(aa) of the Ordinance and the creation of the Class Licence for the offer of telecommunications services under section 8(1)(aa).

### **Commencement of Section 8(1)(aa) to Regulate Offer of Telecommunications Services**

#### *Regulation of All Offers of Telecommunications Services*

5. Persons who offer telecommunications services without operating any telecommunications equipment are currently outside the regulation of the Ordinance. These persons are generally resellers of the telecommunications services operated by licensed operators. They usually purchase wholesale services from licensed operators and resell the services in the retail market under their own brand names. Common examples of such resellers are providers of international telephone cards and resellers of mobile phone services. That these resellers are currently outside the regulation of the Ordinance means that they are not required by law to comply with the provisions of the Ordinance, particularly those provisions prohibiting anti-competitive or misleading/deceptive conduct. Section 8(1)(aa) of the

Ordinance (yet to commence operation) was enacted to address this lacuna of regulation.

6. In the Second Consultation Paper, the TA proposed to adopt a holistic regulatory approach by fully commencing section 8(1)(aa) of the Ordinance and to create the Class Licence to regulate all activities that fall under section 8(1)(aa). There is no restriction on the nature of services that may be offered under the Class Licence. All kinds of telecommunications services that can be offered (such as voice or data services, local or external services, fixed or mobile services), in prepaid or post-paid format, would be subject to the same regulation. The Class Licence will however exclude services that are provided by establishing or maintaining a means of telecommunications in Hong Kong as these services are already regulated under other licences.

7. Respondents to the Second Consultation Paper are generally supportive of the proposal to commence section 8(1)(aa) in full to regulate offerors of telecommunications services and to make use of the Class Licence for such regulation. Hutchison comments that although currently the resale of telecommunications services mainly concentrates on the offer of prepaid telecommunications services, the holistic approach of applying the licensing framework to all resale activities provides a level playing field to all providers of telecommunications services and offers a mechanism for the TA to safeguard consumer interest through enforcement of licence conditions. NWT also supports the TA's proposal, stating that ensuring that all activities of offering telecommunications services are regulated will help maintain the integrity, standards and reputation of the telecommunications industry and protect consumer interest. SmarTone takes a similar view, adding that the Class Licence regime should commence as soon as possible. CSL-NWM says that if the TA is minded to push ahead with the activation of section 8(1)(aa), it agrees in principle that the holistic approach adopted is a more realistic and workable licensing platform as opposed to the creation of different classes of reseller licences. ETS Society and Peoples also indicate support to the proposal.

8. PCCW-HKT, although supporting the regulation of resellers, considers that the regulation should be restricted to only two kinds of resellers, namely prepaid resellers and building management offices which bundle telecommunications services with other building management services, on the

basis that there is no evidence of market failure in respect of other resale activities.

9. Business operations of resale activities can come in very different forms offering different types of telecommunications services to different customers, and with new services emerging from time to time. Against this background, the TA considers that it would be more appropriate to put in place a regulatory regime whereby all resale activities will be subject to one single licence as well as the same statutory provisions in the Ordinance, in particular provisions against anti-competitive behaviour and misleading or deceptive conduct. Consumers in general are not concerned with or may not be able to tell whether they are obtaining services from telecommunications operators or resellers. To subject all telecommunications resellers covering all resale activities to one single unified licensing arrangement will help promote consumer interests and maintain a level playing field for all telecommunications services providers.

10. Regarding the argument of “no evidence of market failure”, although no major complaints have so far arisen in the market against certain types of resellers, it is only reasonable to extend the same regulation especially those relating to prohibition of anti-competitive behaviour and misleading or deceptive conduct and protection of consumer interest to all persons engaged in the business of offering telecommunications services. The TA does not see any merit in the argument that certain classes of offerors need not comply with such regulation.

11. ***Therefore, the TA has advised the Government to fully commence section 8(1)(aa) (and its interpretation section, section 8(1A))<sup>3</sup>. Upon full commencement of the section, the TA will introduce the Class Licence to regulate the offer of telecommunications services.***

#### *Sales Agents or Representatives of Licensed Operators*

12. In the Second Consultation Paper, the TA explained that agents or contractors of licensed operators who sell or promote telecommunications services for or on behalf of the operators within the scope of the respective

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<sup>3</sup> The section shall come into operation on a day to be appointed by the Secretary by notice in the Gazette.

agency agreements will not fall within the proposed regulation. These agents or representatives, as employees, agents or contractors or otherwise of the operators, are only selling or promoting the services for or on behalf of the licensed operators. For example, retail outlets which sell telephone cards issued by licensed operators will generally be regarded as agents of the operators only. WTT and Peoples expressly indicate agreement to this treatment of sales agents and representatives of licensed operators.

13. PCCW-HKT generally agrees that the activities of sales agents fall outside the class licensing regime since they are not involved in providing or offering telecommunications services. Rather it is the principal who should be responsible for the acts of its agents acting within the scope of their authority. However, it considers the distinction made by the TA between reseller and agent in the Second Consultation Paper to be unclear.

14. It is a basic principle in agency law that principals will be responsible for the acts of their agents acting within the scope of authority. Such authority may be express, implied or ostensible in nature. In the context of telecommunications service offering, persons who offer or market services as agents for licensed operators are in fact entering into contractual arrangements with the customers for and on behalf of the licensed operators. In the circumstances, the offer and provision of services will be regulated under the licences issued to the operators, and the agents will not fall within the regulation of the Class Licence. Whether a sales agent or sales representative is acting as an agent of a licensed operator recognised under agency law principles is ultimately a matter of facts and the TA, in deciding whether a particular sales agent or sales representative is an agent of a licensed operator, will consider all the facts and circumstances, such as the commercial arrangement between the sales agent/sales representative and the licensed operator. That said, generally speaking, street stalls that sell telephone cards that are issued by licensed operators, or promote the service plans of licensed operators' are acting as agents of the operators. Under the general principle of agency law, the licensed operators will remain fully responsible for the offer and provision of services under their own licences.

#### *Offer in Hong Kong*

15. The TA explained in the Second Consultation Paper that so long as

the act of “offer” is conducted in Hong Kong (e.g. the act of selling the telephone cards is in Hong Kong), section 8(1)(aa) will apply and the act will be caught by the Class Licence, even if the services are to be consumed outside Hong Kong (such as where telephone cards sold in Hong Kong are for making calls in the Mainland). This is because section 8(1)(aa) regulates the act of “offer” of telecommunications services, not the consumption or operation of services.

16. PCCW-HKT questions whether section 8(1)(aa) and the Class Licence apply to services offered to Hong Kong customers over the Internet. The TA considers that this is a jurisdictional issue that affects all sorts of on-line business transactions. So far as section 8(1)(aa) is concerned, the section only has jurisdictional application to offer of telecommunications services *in Hong Kong*. As to PCCW-HKT’s query of whether the Class Licence will catch service which is offered to a Hong Kong customer by an offshore operator via a local agent, as stated in paragraph 14, the TA will consider the facts and circumstances of the case. If the “local agent” offering telecommunications services is acting as an agent within the meaning of agency law on behalf of a principal, the offer of services is in fact one made by the principal to the end customer. In the circumstances, the agent will not fall within the regulation of the Class Licence. On the other hand, if the “local agent” is in fact acting as a principal, the offer of the services in Hong Kong will be caught by the Class Licence.

## **The Class Licence**

### *No Registration Requirement*

17. Regulation under the Class Licence will be a light-handed one, with licence conditions aimed at promoting consumer interests. As such, in the Second Consultation Paper, the TA proposed not to impose any registration requirement. Persons offering telecommunications services will automatically become class licensees and will be subject to the conditions of the Class Licence.

18. While all respondents to the Second Consultation Paper agree with the light-handed approach, a number of the respondents including CSL-NWM,

WTT, Peoples and Hutchison argue for a registration requirement so that the TA and the public can readily identify the resellers and the size of the market, and the resellers themselves can positively know that they fall within the class licensing regime and therefore have to observe the licence conditions of the Class Licence.

19. The TA does not believe that registration will add significant value to the intended regulatory structure. Persons who are engaged in resale activities are believed to be generally small in size yet large in number. Any requirement of registration would place unnecessary administrative burden on the resellers, especially those resellers that are small in size. The regulatory intention is to bring resellers into the regulatory regime, albeit light-handed, and subject them to the statutory provisions and licence conditions that are principally aimed at protecting consumers. Imposing a registration requirement does not further such a cause. ***We however agree that there should be publicity to make consumers and the industry aware of the regime.***

20. Further, the registration requirement is unlikely to help the resellers to know positively that they fall within the class licensing regime. While the registration may help the TA in locating the resellers in breach of the licence conditions, the resellers not complying with the licence conditions may not register themselves anyway. The benefit of registration is marginal (so far as for the purpose of helping to locate the resellers) and has to be balanced against the cost of imposing such a requirement.

21. SmarTone, whilst preferring a registration requirement, nonetheless suggests that consideration can be given to the need for registration *after* the “no-registration” regime has run for a while. The TA considers that this approach is consistent with the spirit of light-handed regulation. ***The TA therefore maintains his original proposal of not requiring registration but will consider if there is a need to review the situation after the new regime is put in place.***

#### *No Licence Fee*

22. In view of the low estimated administrative costs involved, the TA explained in the Second Consultation Paper that he did not intend to levy any licence fee for the time being, but he would keep the matter in view.

SmarTone, WTT and CSL-NWM have questioned this approach on the basis that the issues involving class licensees may be more complicated than anticipated at this stage, and infrastructure providers should not be made to subsidise regulator's cost of administering the Class Licence. ***The TA notes their comments but considers that at the initial stage, no licence fee should be levied given the low administered costs expected, but he will review the fee issue from time to time having regard to the actual resources incurred in administering the Class Licence after its implementation.***

#### *Licence Conditions of the Class Licence*

23. The licence conditions proposed for the Class Licence are for the purposes of establishing the regulatory framework and protecting consumer interests. They are licence conditions that are commonly found in other telecommunications services licences. As licensees under the Ordinance, the class licensees will also be subject to the same statutory provisions in the Ordinance which apply to telecommunications licensees, including provisions prohibiting anti-competitive practices (sections 7K and 7L) and misleading or deceptive conduct (section 7M).

24. The respondents to the Second Consultation Paper have indicated no basic objection to the proposed licence conditions. Subject to their comments on the detailed provisions of certain licence conditions which are particularised in the following paragraphs, they generally support that the licence conditions proposed for the Class Licence are appropriate and commensurate with a light-handed regulatory regime.

#### Eligibility as a Class Licensee (Licence Condition 2)

25. In the Second Consultation Paper, the TA proposed that only a person incorporated or registered under the Companies Ordinance (Cap 32) is eligible as a class licensee. Unincorporated entities (e.g. sole proprietors or partnerships) will not be licensed to be engaged in the business of offering telecommunications services. CSL-NWM points out that maintaining an incorporated company involves not insignificant basic running cost that small services providers might not be able to afford. Some cost information is given in CSL-NWM's submission that the basic cost for maintaining an incorporated company in Hong Kong runs to over HK\$10,000 per annum. CSL-NWM

submits that the incorporation requirement creates an artificial barrier to entry by prospective participants into (or to remain in) the reseller industry. This is not an appropriate position for the TA to take given the intention to introduce a light-handed regulatory regime.

26. Taking into consideration the cost incurred in maintaining an incorporated company, and the regulatory intention to create a light-handed regime for service providers irrespective of their size, ***the TA accepts CSL-NWM's argument and has revised the eligibility criteria so that unincorporated persons, such as sole proprietors or partnerships, can also become class licensees.*** This revised arrangement will ensure that unincorporated entities which are currently offering telecommunications services will not face the difficult choices of either incurring cost to incorporate, or ceasing business when the new licensing regime comes into force.

27. Licence Condition 2.1 is accordingly amended as follows (with the amendments in bold):

*Subject to Condition 2.2 and the terms and conditions of this Licence, a person ~~who is incorporated or registered under the Companies Ordinance (Cap 32)~~, is licensed to offer in the course of business a telecommunications service.*

#### Provision of Information to Customers (Licence Condition 5)

28. In the Second Consultation Paper, the TA proposed to impose a condition to require the class licensees to provide specific information to the consumers when the telecommunications services are offered. The specific information includes the name of licensee, the registration number of the company, hotline number, access code, access instructions, tariffs and validity period of the services offered. The information provided would facilitate customers in making informed purchasing decisions as well as make it possible for customers to identify the person who offers the services. The TA will conduct consumer education programmes to encourage the public to purchase services only from persons who are able to provide or make available the information to them when the services are offered. All respondents indicate support to this proposal. However, as we have accepted in paragraph 26 above that unincorporated persons are also eligible as class licensees,

consequential amendments are required to be made to Licence Condition 5.1(b) as follows (with the amendments in bold):

*5.1 Without prejudice to the other terms and conditions of this Licence, the Class Licensee shall provide or make available the following information to the customers when the services are offered:*

...

*(b) Company registration number of the Class Licensee under the Companies Ordinance (Cap 32) or the number of the **business registration certificate issued to the Class Licensee under the Business Registration Ordinance (Cap 310)**...*

#### Other Licence Conditions

29. In the Second Consultation Paper, the TA proposed a licence condition requiring the class licensees to provide certain business related information upon request by the TA (Licence Condition 8). PCCW-HKT does not, in general, oppose the requirement for the licensees to provide information to the TA where justified under specific circumstances. However, PCCW-HKT submits that class licensees, being resellers, may not possess certain of the information specified. Further, the TA already has authority under the Ordinance to request information from licensees. PCCW-HKT wonders whether the licence condition (paragraph 8.3 in particular) seeks to expand that authority, which is unlawful, or alternatively, the licence condition is redundant.

30. Licence Condition 8 is not something novel for telecommunications licences issued under the Ordinance. Other licences contain a similar licence condition, such as Special Condition 6 of the Fixed Carrier (FC) Licence, and SC 3 of the Services-Based Operator (SBO) Licence. In proposing Licence Condition 8 for the Class Licence, the TA had regard to section 7B(7)(g) of the Ordinance which provides that the TA may include in the conditions for a class licence:

*“a requirement for the person to supply information including*

*technical, financial and accounting information for the telecommunications network, system, installation or service.”*

It is clear that the TA may introduce a licence condition that requires the licensee to supply information in relation to the telecommunications services offered, despite the presence of section 7I, the statutory provision that enables the TA to request information from the telecommunications licensees in general. Licence Condition 8 does not seek to expand the authority granted to the TA under section 7I but merely spells out in greater detail the type of information that the TA may request from the class licensees having regard to the nature of the class licensees' operations. The TA will retain Licence Condition 8 in the same form as proposed.

31. PCCW-HKT also makes comments on certain provisions in Licence Condition 10 on billing or charging accuracy, and Licence Condition 12 on unsolicited advertisements. The TA notes PCCW-HKT's comments but takes the view that the provisions are reasonable in all circumstances of the case. The TA will retain both Licence Conditions 10 and 12 in the same form as proposed.

32. PCCW-HKT also proposes that an additional licence condition be imposed to prohibit building management offices from bundling telecommunications services with other commonly shared services. The TA takes the view that whether “bundling of services” is objectionable depends on whether the conduct in question amounts to anti-competitive practices prohibited in sections 7K and/or 7L of the Ordinance. Where building management offices are offering telecommunications services and are regulated under the Class Licence, their conduct will be subject to compliance with sections 7K and 7L.

33. CSL-NWM points out that in other licences, a licensee is not able to discriminate between customers, refuse to provide services to any customer or impose onerous conditions on the provision of a service to a customer. CSL-NWM considers that such a condition should be included so as to ensure the class licensees do not engage in discriminatory practices.

34. Class licensees merely offer telecommunications services. They do not operate any telecommunications infrastructure or equipment. The TA

considers that it is not necessary to impose a licence condition on resale-based services providers specifically providing for regulation of “discriminatory practices”. The class licensees are subject to the anti-competition provisions of the Ordinance which, inter alia, prohibit discriminatory practices that infringe the provisions.

35. CSL-NWM also suggests that the class licensees should be made subject to the same codes of practice as other licensees (so far as they relate to the offer of a telecommunications service). The TA refers to Licence Condition 4.1 and Condition 15.1 which, either generally or specifically, provide that the class licensees have obligation to comply with the code of practice or guideline issued by the TA for the purpose of providing practical guidance in respect of the conditions of the Class Licence. The mechanism is already there to oblige the class licensees to comply with codes of practice issued by the TA. The TA will consider whether the class licensees should be made subject of any codes of practice as the occasions require after the implementation of the Class Licence.

36. There are no other major comments made by the respondents to the other licence conditions proposed for the Class Licence. The finalised version of the Class Licence is annexed to this Statement.

## **Other Issues**

### *Financial Obligations*

37. In the Second Consultation Paper, the TA explained that he would not introduce any “net asset value maintenance<sup>4</sup>” or “bank guarantee<sup>5</sup>” requirement into the Class Licence. Among the respondents to the Second Consultation Paper, only PCCW-HKT makes comments on this point. Whilst welcoming the TA’s proposal not to introduce the net asset value requirement, PCCW-HKT considers that the class licensees should be required to set up some kind of fund at the bank out of which compensation can be paid to

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<sup>4</sup> An accounting requirement that requires resellers of prepaid services to maintain a net asset value relative to the total amount of prepaid proceeds collected at all times during the operation of business.

<sup>5</sup> A requirement that requires resellers of prepaid services to procure a bank guarantee of a certain amount in favour of the TA as a form of security for the provision of prepaid services.

customers in the event of the licensees going out of business or absconding with clients' monies.

38. The TA considers that PCCW-HKT's suggestion will not resolve the problem identified in the Second Consultation Paper that it would be difficult or even virtually impossible to verify the monetary loss suffered by the customers. With the resellers already absconded, there are no means to ascertain the size of the transactions involved, not to mention the loss of individual customers. The TA maintains his views that given the inherent difficulties with implementation, the bank guarantee requirement is not beneficial to the end customers, as it would rather raise their level of expectations (that their loss will be compensated) and reduce their alertness to the potential risks of purchasing prepaid services from little known services offerors. The TA will rely on other safeguards designed to protect consumers.

#### *Issues in relation to External Telecommunications Services (ETS)*

39. In the Second Consultation Paper, the TA stated the position that class licensees would not be imposed with the obligation to pay universal service contribution ("USC") and local access charge ("LAC") and the associated duty to file monthly traffic reports and yearly audited reports to the TA. Such obligation shall remain vested with the underlying services operators namely external telecommunications services ("ETS") operators and other network or services operators who "operate" (rather than simply resell or offer) ETS. This position is not met with any objection from the respondents. The TA hence maintains the position that class licensees will not be imposed with the obligation to pay USC and LAC, nor the associated duty to file monthly traffic reports and audited reports to the TA. The ETS operators and other network or services operators who operate ETS should continue to report the traffic consumed by customers of these resellers.

#### **Timing for Implementation**

40. Regarding the implementation of the new licensing regime, the commencement notice for section 8(1)(aa) (and section 8(1A)) of the Ordinance will be tabled for negative vetting of the Legislative Council, with the effective date planned to be February 2007. On the same day the section

commences operation, the TA will introduce the Class Licence and publish the Class Licence in the gazette. The transitional period between now and the actual commencement date should enable services offerors to adjust their services operations in such a way that the terms and conditions of the Class Licence will be complied with. As an example, to comply with Condition 5, the would-be class licensees should have sufficient lead-time to print new promotional materials and calling cards. The TA will also brief the industry about the new regime in the interim to help them prepare themselves for the implementation of the Class Licence.

**Office of the Telecommunications Authority**  
**15 September 2006**

**TELECOMMUNICATIONS ORDINANCE  
(Chapter 106)**

**CLASS LICENCE**

**Section 8(1)(aa) of the Telecommunications Ordinance**

**OFFER OF TELECOMMUNICATIONS SERVICES**

**The Telecommunications Authority, in exercise of the powers conferred on him by sections 7(5) and 7B(2) of the Telecommunications Ordinance (Cap 106), issues this Licence on this [ ] day of [ ], 200[ ]. This Licence shall come into effect on [ ] of [ ], 200[ ].**

**1. Interpretation**

1.1 In this Licence

“Authority” means the Telecommunications Authority appointed under section 5 of the Ordinance;

“Class 1 service” means an internal telecommunications service

- (a) for carrying real-time voice communications which may be integrated with other types of communications;
- (b) which is capable of allowing customers to make and receive calls to and from parties assigned with numbers from the numbering plan of Hong Kong;
- (c) to which customers are assigned with numbers from the numbering

plan of Hong Kong; and

- (d) which is not a “Class 2 service” as defined in this Licence.

“Class 2 service” means an internal telecommunications service

- (a) for carrying real-time voice communications which may be integrated with other types of communications;
- (b) which is capable of allowing customers to make or receive calls to and from parties assigned with numbers from the numbering plan of Hong Kong;
- (c) to which customers are assigned with numbers from the numbering plan of Hong Kong; and
- (d) in the provision of which –
  - (i) the Class Licensee (and where appropriate its agents, contractors and resellers) in all promoting, marketing or advertising materials concerning such service declares the service as a “Class 2 service” (where the materials are in English text), or “第二類服務” (where the materials are in Chinese text); or
  - (ii) the Class Licensee, in lieu of (i), complies with such conditions as may be specified by the Authority in a direction that may be issued by the Authority.

“Class Licensee” means a person licensed under Condition 2.1 of this Licence;

“licensed telecommunications operators” means fixed telecommunications network services operators, fixed carriers, public radiocommunications service operators, mobile carriers, public non-exclusive telecommunications services operators, services-based operators or any telecommunications operators licensed under the Ordinance with whom a Class Licensee has entered into an agreement,

arrangement or understanding for the provision of any telecommunications service;

“the Ordinance” means the Telecommunications Ordinance (Cap 106).

1.2 Any word or expression used in this Licence shall, unless otherwise provided, have the same meaning as it has in the Ordinance or regulations made under the Ordinance.

1.3 For the purposes of interpreting this Licence, headings and titles shall be disregarded.

## **2. Grant of Licence**

2.1 Subject to Condition 2.2 and the terms and conditions of this Licence, a person is licensed to offer in the course of business a telecommunications service.

2.2 A person referred to in Condition 2.1 is not licensed to establish or maintain any means of telecommunications for the purpose of offering telecommunications services under this Licence.

## **3. General**

3.1 This Licence shall not be construed as granting an exclusive right to the Class Licensee.

3.2 The grant of this Licence does not authorize the Class Licensee to do anything which infringes any exclusive right to provide telecommunications circuits or services granted under the Ordinance or other Ordinance.

3.3 This Licence shall remain in full force unless expressly revoked by the Authority.

## **4. Compliance**

4.1 The Class Licensee shall comply with the Ordinance, regulations made

under the Ordinance, licence conditions or any other instruments which may be issued by the Authority under the Ordinance and such guidelines or codes of practices which may be issued by the Authority as in his opinion are suitable for the purpose of providing practical guidance on any particular aspect of any conditions of this Licence.

- 4.2 If the Class Licensee employs any person under contract for the purpose of the offering a telecommunications service under this Licence (a “contractor”), the Class Licensee shall continue to be responsible for compliance with the conditions of this Licence, and the performance thereof, by the contractor.

## **5. Provision of Information to the Customers**

- 5.1 Without prejudice to the other terms and conditions of this Licence, the Class Licensee shall provide or make available the following information to the customers when the services are offered:

- (a) Name of the Class Licensee;
- (b) Company registration number of the Class Licensee under the Companies Ordinance (Cap 32) or the number of the business registration certificate issued to the Class Licensee under the Business Registration Ordinance (Cap 310);
- (c) Customer service hotline number(s);
- (d) Where applicable, the access code(s) or number(s) (including any access password) used for obtaining the services;
- (e) Instructions on how to access the services;
- (f) the tariffs under which the services are offered; and
- (g) the duration or validity period of the services offered.

## **6. Offer of Satisfactory Service**

6.1 The Class Licensee shall at all times and from time to time during the subsistence of this Licence offer services under this Licence in a manner satisfactory to the Authority.

## **7. Inspection**

7.1 On receiving reasonable prior written notice from the Authority, the Class Licensee shall allow the Authority and any person authorized in writing by him for the Authority's own purposes to enter and inspect the offices, places and premises in Hong Kong where the Class Licensee has used in relation to the offer of services under this Licence, to verify that the Class Licensee is in compliance with the conditions of this Licence and the Ordinance.

7.2 The Class Licensee shall permit the Authority or any person authorized by him in writing for the Authority's own purpose to inspect and if required to make copies of records, documents and accounts relating to the Class Licensee's business for the purpose of enabling the Authority to perform his functions under the Ordinance and this Licence and to ensure the Class Licensee's compliance with the conditions of this Licence and the Ordinance.

## **8. Requirement to Furnish Information to the Authority**

8.1 The Class Licensee shall furnish to the Authority, in such manner and at such times as the Authority may request in writing, such information related to the business, including financial information, accounts, traffic information, technical configuration, circuit routing and other records or information as the Authority may reasonably require in order to perform his functions under the Ordinance and this Licence and to ensure the Class Licensee's compliance with the conditions of this Licence and the Ordinance.

8.2 Where the Authority proposes to disclose information obtained and the Authority considers that the disclosure would result in the release of information concerning the business or commercial or financial affairs of the Class Licensee which disclosure would or could reasonably be expected to adversely affect the Class Licensee's lawful business or

commercial or financial affairs, the Authority will give the Class Licensee a reasonable opportunity to make representations on the proposed disclosure before the Authority makes a final decision whether to disclose the information.

- 8.3 Without limiting the generality of Condition 8.1, the Class Licensee shall, upon request by the Authority, supply to the Authority, at such intervals and on/before such deadlines as may be specified by him in the request, copies of agreements, contracts, invoices, statements and other relevant documents as may be specified by the Authority to show the arrangements that the Class Licensee has entered into with such person(s) and / or telecommunications operators in relation to the services offered by the Class Licensee under this Licence.

## **9. Confidentiality of Customer Information**

- 9.1 The Class Licensee shall not disclose information of a customer except with the consent of the customer, which form of consent shall be approved by the Authority, except for the prevention or detection of crime or the apprehension or prosecution of offenders or except as may be authorized by or under any law.
- 9.2 The Class Licensee shall not use information provided by its customers or obtained in the course of offer of services to its customers other than for and in relation to the services offered by the Class Licensee under this Licence.

## **10. Billing or Charging Accuracy**

- 10.1 The Class Licensee shall take all reasonable steps to ensure that any billing or charging equipment used in connection with the services offered under this Licence is accurate and reliable. The Class Licensee shall, in relation to the billing or charging system used for the offer of the services, keep such records and make them available for inspection by the Authority.
- 10.2 Upon written request of the Authority, the Class Licensee shall conduct or take all practicable steps to procure the tests on billing or charging

equipment to assess its accuracy, reliability and conformity to the technical standards, if any, specified by the Authority. The Class Licensee shall submit the test result to the Authority within 14 days after the date of the test or such other longer period as the Authority may determine.

## **11. Tariffs**

11.1 The Class Licensee shall publish and charge no more than the tariffs for the services offered under this Licence. The tariffs shall include the relevant terms and conditions for the offer of the services. The licence shall comply with any code of practice which may be issued by the Authority from time to time concerning the publication of tariffs and the relevant terms and conditions for the offer of the services.

## **12. Unsolicited Advertisements**

12.1 The Class Licensee shall not use the services, and shall endeavour to prevent the services from being used by any user, for the transmission of unsolicited advertising information or unsolicited promotional information and shall comply with all codes of practice which may be issued by the Authority from time to time concerning unsolicited advertising information or unsolicited promotional information.

## **13. Numbering Plan and Related Matters**

13.1 The Class Licensee shall conform to any numbering plan made or approved by the Authority and any code of practice or direction given by the Authority in respect of the numbering plan.

13.2 The Class Licensee shall conform to any regulatory guide, code of practice or direction relating to the use or assignment of number, access code or calling line identification issued by the Authority.

## **14. Telecommunications Number Translation Device**

14.1 The Class Licensee shall comply with any directions given in writing by the Authority in relation to the use of a telecommunications number

translation device for access to the service.

14.2 The Class Licensee shall bear all the costs and financial losses incurred due to full compliance with the directions mentioned in Special Condition 14.1.

14.3 In this condition, “telecommunications number translation device” shall mean a device which translates a number input via the normal dialing pad into another number for access to specified destinations or services, but does not include a device which generates such a number upon input through a special function key or a combination of special function keys and the normal dialing pad. The “normal dialing pad” means the dialing pad comprising the buttons for digits 0 to 9, and for “\*” and “#”.

## **15. Compliance with Codes of Practice**

15.1 Without limiting or affecting in any way the Class Licensee’s obligations under any other licence condition, the Class Licensee shall comply with any code of practice or guideline which may be issued by the Authority from time to time for the purpose of providing practical guidance to the Class Licensee in respect of:

- (a) the offer or provision of satisfactory service;
- (b) the protection of customer information; and
- (c) the protection and promotion of the interests of consumers of telecommunications goods and services.

15.2 Before issuing any code of practice or guideline referred to in Special Condition 15.1, the Authority shall carry out such consultation as is reasonable in all the circumstances of the case.

## **16. Offer of Class 1 or Class 2 Service**

16.1 Where the Class Licensee offers a Class 1 or Class 2 service under this Licence, the provisions set out in the Schedule shall apply in relation to the Class 1 or Class 2 service offered.

## **SCHEDULE**

### **Provisions that Apply where the Class Licensee Offers Class 1 or Class 2 Service (Condition 16)**

#### **1. Emergency Call Service**

- 1.1 For the sole purpose of enabling Hong Kong Police Emergency Centre or other entity as directed by the Authority to respond to and (as appropriate) identify a public emergency call made by a customer of the Class Licensee whose location is potentially nomadic, the Class Licensee shall
- (a) provide free of charge the most up-to-date location information of a customer calling the emergency service (whose location is potentially nomadic) to the Hong Kong Police Emergency Centre or other entity as directed by the Authority;
  - (b) provide or make available a mechanism whereby the customers of the Class Licensee can update their location information; and
  - (c) remind the customers to update their location information whenever they change the location from which the service is used.

#### **2. Backup Power Supply**

- 2.1 Unless there is backup power supply available in such manner as may be specified by the Authority to maintain continuity of the service offered by the Class Licensee without any deterioration in quality of the service during interruption of mains power supply on the customer's premises, to the network, or to any system or equipment delivering the service to the customer, the Class Licensee shall not provide the service to users whose "lifeline devices" are connected to the service.
- 2.2 Where no backup power supply is available in such manner as described in Clause 2.1, the Class Licensee is deemed to have complied with Clause 2.1 if

- (a) the customers have, before or upon subscription of service, confirmed that the service will not be used by lifeline users or connected with lifeline devices; and
  - (b) the Class Licensee has affixed a label to the wall socket panel or any equipment installed on the customers' premises or taken other reasonable steps to remind the customers that the service is not suitable for connection to lifeline devices.
- 2.3 For the purpose of Clause 2, a "lifeline device" means a medical alarm or any other device for an elderly, infirm or invalid to summon assistance in the event of an emergency without having to dial manually the telephone number of the emergency service.