

**TELECOMMUNICATIONS ORDINANCE
(Chapter 106)**

FIXED CARRIER LICENCE

DATE OF ISSUE: 31 May 2001

FLAG Telecom Asia Limited

.....
of Suite 3305, One International Finance Centre, 1 Harbour View Street,
Central, Hong Kong
.....

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

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

GENERAL CONDITIONS

1. DEFINITIONS AND INTERPRETATION

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

2. TRANSFER

- 2.1 The licensee may, only with the prior written consent of the Authority and subject to such reasonable conditions as the Authority thinks fit, transfer this licence or any permission, right or benefit under this licence. In giving his consent the Authority will have regard to such matters as he thinks fit including but not limited to the effect which the transfer will have on market structure and the financial and technical competence and viability of the transferee.

3. INTERNATIONAL CONVENTIONS

- 3.1 The licensee shall at all times perform and observe the requirements of

the Constitution and Convention of the International Telecommunication Union and the regulations and recommendations annexed to it, as are stated to be applicable to Hong Kong, and any other international convention, agreement, protocol, understanding or the like to the extent that the instruments described in this General Condition 3.1 impose obligations on Hong Kong of which the Authority gives notice to the licensee, except to the extent that the Authority may in writing exempt the licensee from such compliance.

- 3.2 Where the Government has been consulted about or is involved in the preparation or negotiation of an international convention, agreement, protocol or understanding or the like or amendments thereto which are on the subject-matter of telecommunications or which relate to another subject-matter but which the Government anticipates could have a material impact on the provision of the service under this licence, the Government will, where practicable, provide the licensee with a reasonable opportunity to make a submission stating its views on the matter.

4. COMPLIANCE GENERALLY

- 4.1 The licensee shall comply with the Ordinance, regulations made under the Ordinance, licence conditions or any other instruments which may be issued by the Authority under the Ordinance.

5. PROVISION OF SERVICE

- 5.1 The licensee shall, subject to Schedule 1 to this licence and any special conditions of this licence relating to the provision of the service, at all times during the validity period of this licence operate, maintain and provide a good, efficient and continuous service in a manner satisfactory to the Authority. The Authority may, on application in writing by the licensee, exempt a part or parts of the service from the requirement of continuous provision.

6. CUSTOMER CHARTER

- 6.1 Unless a waiver in writing is granted by the Authority, the licensee

shall prepare a customer charter which sets out the minimum standards of service to the licensee's customers and gives guidance to the employees of the licensee in their relations and dealings with customers.

7. CONFIDENTIALITY OF CUSTOMER INFORMATION

- 7.1 The licensee shall not disclose information of a customer except with the consent of the customer, which form of consent shall be approved by the Authority, except for the prevention or detection of crime or the apprehension or prosecution of offenders or except as may be authorized by or under any law.
- 7.2 The licensee shall not use information provided by its customers or obtained in the course of provision of service to its customers other than for and in relation to the provision by the licensee of the service.

8. RECORDS AND PLANS OF NETWORK

- 8.1 The licensee shall keep records and plans (including overall network plans and cable route maps) of the telecommunications installation (including radiocommunications installation) and telecommunications nodes and exchanges, if any, provided under this licence and any other details concerning the network as may be reasonably required by the Authority, including but not limited to information from operational support systems, traffic flow information, and database information relating to the manner in which the network treats any communication (“network information”).
- 8.2 As required by the Authority, the licensee shall make the network information available, within reasonable time, to the Authority or to a person authorized in writing by the Authority for inspection for the Authority's own purposes.

9. CONTROL OF INTERFERENCE AND OBSTRUCTION

- 9.1 The licensee shall take reasonable measures to install, maintain and operate the service and the network in such a manner as not to cause

any harmful interference or physical obstruction to any lawful telecommunications service, or cause any physical obstruction to the installation, maintenance, operation, adjustment, repair, alteration, removal or replacement of the facilities of any lawful telecommunications or utility service provider.

9.2 The licensee shall take reasonable measures to ensure that the customers of the service do not cause harmful interference to lawful telecommunications services or utility services through use of the service.

9.3 The Authority may give such reasonable directions as he thinks fit to avoid harmful interference or physical obstruction referred to in General Condition 9.1. The licensee shall comply with the directions.

10. RESTRICTIONS ON ATTACHMENT TO PUBLIC BUILDINGS AND TREES

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

11. COMPLIANCE

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

12. REQUIREMENTS OF RADIOCOMMUNICATIONS INSTALLATION

12.1 Each radiocommunications installation operated by or on behalf of the licensee shall be used only at the location and with emissions and at the frequencies and of the classes and characteristics specified in

Schedule 3 to this licence and with such power and aerial characteristics as are specified in that Schedule in relation to the class and characteristics of the emission in use.

12.2 The apparatus comprised in each radiocommunications installation shall at all times comply with such technical standards as may be issued by the Authority.

12.3 The apparatus comprised in a radiocommunications installation shall be of a type approved by the Authority and shall be so designed, constructed, maintained and operated that its use shall not cause any interference to any radiocommunications.

12.4 A radiocommunications installation shall be operated only by the licensee or a person authorized by the licensee. The licensee shall not allow an unauthorized person to have access to the apparatus comprised in a radiocommunications installation. The licensee shall ensure that persons operating each radiocommunications installation shall at all times observe the conditions of this licence.

12.5 The licensee shall not make a change –

- (a) to any radiocommunications installation; or
- (b) of the location of any radiocommunications installation,

without the prior written approval of the Authority.

12.6 If any telecommunications installation (including radiocommunications installation) crosses above or may fall or be blown onto any overhead power wire (including electric lighting and tramway wires) or power apparatus it shall be guarded to the reasonable satisfaction of the owner of the power wire or power apparatus concerned.

13. USE OF FREQUENCIES

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

14. SAFETY

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

15. PROHIBITION OF CLAIMS AGAINST GOVERNMENT

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

16. INDEMNITY

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

17. CONTRAVENTION BEYOND LICENSEE'S CONTROL

- 17.1 The licensee shall not be liable for any breach of this licence where it is able to demonstrate, to the reasonable satisfaction of the Authority, that the breach was caused by circumstances beyond its control and that it has taken all reasonable steps open to it to rectify that breach.

- 17.2 Where the circumstances referred to in General Condition 17.1 are such that there is an outage or interruption in the service affecting a significant number of the licensee's customers for a period of more than 7 days, the licensee shall provide the Authority with a full report in writing detailing the reasons for the breach and indicating when, or if, it will be able to continue to provide the service.
- 17.3 If the Authority is, after considering a report provided under General Condition 17.2, of the reasonable belief that the licensee would be able to provide the service within a reasonable period of time despite the circumstances outlined in that report, the Authority may direct that the licensee recommence the service within such reasonable period as the Authority may in writing direct. The licensee shall comply with such direction.

18. PUBLICATION OF LICENCE

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

SPECIAL CONDITIONS

1. TRANSFER

- 1.1 Where a licensee is in a dominant position in a market for the provision of a public basic telephonic service over fixed carrier or fixed telecommunications networks within the meaning described in section 7L(2) of the Ordinance, it may not without the prior written consent of the Authority, which can be withheld for the purposes of General Condition 5.1, assign, transfer or otherwise dispose of more than 15% of the licensee's assets constituting the network, other than where the transfer or disposal of those assets is in the ordinary course of the licensee's maintenance, replacement or upgrading of the network.

2. PROVISION OF SERVICE

- 2.1 The licensee shall, subject to Schedule 1 and any special conditions of this licence relating to the provision of the service, provide the service on its published terms and conditions and at the tariff published in accordance with Special Condition 7 (as applicable) on request of a customer whether or not the customer intends the service to be available for its own use or intends to utilize the service to provide a lawful telecommunications service to third parties.
- 2.2 Subject to Schedule 1 and any special conditions relating to the provision of the service, the licensee shall comply with a customer request for the service as tariffed by the licensee in accordance with Special Condition 7 where the service reasonably could be provided by the licensee to the customer at the location at which the service is requested utilizing the licensee's network in place at the time of the request.

3. REQUIREMENTS FOR INTERCONNECTION

- 3.1 The licensee shall interconnect the service and the network with the external public telecommunications network and services operated by Reach Networks Hong Kong Limited under its licence granted under

the Ordinance and other fixed carrier or fixed telecommunications networks and services licensed under the Ordinance and, where directed by the Authority, other telecommunications networks and services licensed, or deemed to be licensed, or exempt from licensing under the Ordinance.

3.2 The licensee shall also interconnect the service and the network with the fixed telecommunications network and services provided by the PCCW-HKT Telephone Limited licensed under the Ordinance.

3.3 The licensee shall use all reasonable endeavours to ensure that interconnection is done promptly, efficiently and at charges which are based on reasonable relevant costs incurred so as to fairly compensate the licensee for those costs.

3.4 The licensee shall provide facilities and services reasonably necessary for the prompt and efficient interconnection of the service and the network with the telecommunications networks or services of the other entities referred to in Special Conditions 3.1 and 3.2. Such facilities and services include –

- (a) carriage services for codes, messages or signals across and between the interconnected networks;
- (b) those necessary to establish, operate and maintain points of interconnection between the licensee's network and the networks of the other entities, including the provision of transmission capacity to connect between the licensee's network and networks of the other entities;
- (c) billing information reasonably required to enable the other entities to bill their customers;
- (d) facilities specified by the Authority pursuant to section 36AA of the Ordinance; and
- (e) ancillary facilities and services required to support the above types of interconnection facilities and services.

4. NUMBERING PLAN

- 4.1 The licensee shall conform to a numbering plan made or approved by the Authority and any directions given by the Authority in respect of the numbering plan.
- 4.2 The licensee shall at the request of the Authority or otherwise consult the Authority about the arrangements for the allocation and reallocation of numbers and codes within the numbering plan.
- 4.3 Where requested by the Authority, the licensee shall prepare and furnish to the Authority proposals for developing, adding to or replacing the numbering plan relating to the service.
- 4.4 The licensee shall, in such manner as the Authority may direct, facilitate the portability of numbers assigned to any customer of any fixed carrier or fixed telecommunications network service licensee, or the PCCW-HKT Telephone Ltd., so that any number so assigned may be used by that customer should it cease to be a customer of any such entity and become a customer of any other fixed carrier or fixed telecommunications network service licensee or the PCCW-HKT Telephone Ltd., as the case may be.
- 4.5 Directions by the Authority under Special Condition 4.4 include reasonable directions concerning the equitable sharing of all relevant costs associated with providing portability of numbers as between the licensee, any other fixed carrier or fixed telecommunications network services licensee, the PCCW-HKT Telephone Ltd., and any other person.
- 4.6 The licensee shall, in such manner as the Authority may direct and at its own expenses, facilitate the portability of numbers assigned to any customer of any public radiocommunications services licensed under the public radiocommunications service licence or mobile carrier licence granted under the Ordinance so that any number so assigned may be used by that customer should it cease to be a customer of any such entity and become a customer of any public radiocommunications

services.

5. ACCOUNTING PRACTICES

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

6. REQUIREMENT TO FURNISH INFORMATION TO THE AUTHORITY

- 6.1 The licensee shall furnish to the Authority, in such manner and at such times as the Authority may request in writing, such information related to the business run by the licensee under this licence, including financial, technical and statistical information, accounts and other records, as the Authority may reasonably require in order to perform his functions under the Ordinance and this licence.
- 6.2 Subject to Special Condition 6.3, the Authority may use and disclose information to such person as the Authority thinks fit.
- 6.3 Where the Authority proposes to disclose information obtained and the Authority considers that the disclosure would result in the release of information concerning the business or commercial or financial affairs of a licensee which disclosure would or could reasonably be expected to adversely affect the licensee's lawful business or commercial or financial affairs, the Authority will give the licensee a reasonable opportunity to make representations on the proposed disclosure before the Authority makes a final decision whether to disclose the information.

7. TARIFFS

- 7.1 The licensee shall publish and charge no more than the tariffs for the

service operated under this licence. The tariffs shall include the relevant terms and conditions for the provision of the service.

7.2 Publication shall be effected by –

- (a) submission for publication in the Hong Kong Government Gazette and by sending a copy to the Authority on or before the date on which the licensed service is to be introduced;
- (b) placing a copy in a publicly accessible part of the principal business place and other business premises of the licensee as advised by the Authority; and
- (c) sending a copy to any person who may request it. The licensee shall not levy a charge greater than that is necessary to cover reasonable costs involved.

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

7.4 The licensee shall not offer any discount to its published tariffs for a particular telecommunications service provided under this licence or customer equipment subject to Special Condition 7.3 (other than a discount calculated in accordance with a formula or methodology approved by the Authority and published together with its tariffs) if, in the opinion of the Authority, the licensee is in a dominant position in any market for or which includes that telecommunications service.

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

7.6 In this Special Condition, “a dominant position” has the meaning described by section 7L(2) of the Ordinance.

8. TARIFFS REVISIONS

- 8.1 The licensee may propose any revision to the tariffs that it has published by submitting details of the proposed revision to the Authority in writing in a form approved by the Authority.
- 8.2 Subject to Special Condition 8.5, the licensee may only proceed to publish the revised tariffs after the Authority has given his approval in writing.
- 8.3 The Authority will not approve the revision where -
- (a) he considers that the proposed revision is in contravention of section 7K or 7L of the Ordinance, or Special Condition 7.4 or any applicable price control arrangements; and
 - (b) he has notified the licensee within 30 days of the date of receipt of the licensee's proposed revision that he does not intend to give his approval.
- 8.4 The Authority will endeavour to consider proposed revisions within 5 business days after the date of receipt of the proposed revision by the Authority and will give written notice by that date whether the Authority requires more time to complete his review of the proposed revision.
- 8.5 Where the Authority has not notified the licensee within 30 days after receiving the licensee's proposed revision, the tariff revision will be deemed to be approved.

9. TARIFFS FOR NEW SERVICES

- 9.1 If the licensee proposes to introduce any new service and charge which is not contained in its published tariffs and conditions of service, it shall notify the Authority of such a proposal. The notification shall be in a written form approved by the Authority. The Authority shall give his approval of the proposed service and charge unless he considers that such service and charge would lead to a contravention of section 7K or 7L of the Ordinance, or Special Condition 7.4 or any

applicable price control arrangements.

- 9.2 The Authority will endeavour to consider a proposal referred to in Special Condition 9.1 within 15 business days of the date of receipt and will give written notice by that date whether the Authority requires more time to complete his review of the proposed service and charge.
- 9.3 Where the Authority has not notified the licensee within 45 days after receiving the licensee's notice that he does not propose to give his approval, the new service and charge will be deemed to be approved.

10. TRIALS

- 10.1 The Authority may, at the written request of the licensee, approve the introduction on a trial basis of –
- (a) any service for which there is no published tariff and in such case the licensee may charge its customers for the provision of such service such amount as it considers reasonable; and
 - (b) any new charging options or billing schemes for existing services.

The Authority shall determine any request for approval within 30 days after the date of receipt of the request.

- 10.2 Any trial service for which the licensee seeks approval pursuant to Special Condition 10.1 shall be –
- (a) for the purpose of establishing the technical or commercial feasibility of the trial service;
 - (b) of a limited duration, not exceeding 6 months; and
 - (c) offered during the trial period only in a defined geographic area of Hong Kong or to a defined class of customers reasonably suitable for the purposes of conducting a trial of the service.

- 10.3 The Authority may request additional information from the licensee reasonably required by the Authority for the purposes of considering a request from the licensee to approve a trial service.
- 10.4 The Authority may reject a request from the licensee to conduct a trial service where the Authority reasonably concludes that were the tariffs of the requested trial service proposed under Special Condition 7, 8 or 9 they would be disallowed under those special conditions.

11. METERING ACCURACY

- 11.1 The licensee shall take all reasonable steps to ensure that any metering equipment used in connection with the service is accurate and reliable.
- 11.2 Upon the written request of the Authority, the licensee shall conduct tests on metering equipment to assess its accuracy, reliability and conformity to the technical standards, if any, specified by the Authority. The licensee shall submit the test result to the Authority within 14 days after the date of the test or such other longer period as the Authority may determine.
- 11.3 The licensee shall keep such records of any metering equipment in such form as may be specified by the Authority and shall supply such records to the Authority on the written request of the Authority.

12. DIRECTORY INFORMATION AND DIRECTORY INFORMATION SERVICE

- 12.1 For the purposes of this Special Condition –
- (a) “directory information” means information obtained by the licensee in the course of the provision of services under this licence concerning or relating to the name, address, business and telephone numbers of each of its customers; and
- (b) “raw directory information” means the licensee’s directory information held in a basic format relating to all of its customers other than its customers who request that directory information

about them not be disclosed.

- 12.2 This Special Condition applies only in respect of standard printed directories and other directory databases and services which include all of the names of a licensee's customers listed in alphabetical order and does not apply to classified directories where customers are listed by business or trade category or to other business or specialised directories.
- 12.3 The licensee shall –
- (a) unless otherwise agreed by the Authority, publish or arrange at least biennially for the publication of directory information in a printed or other form approved by the Authority, relating to all its customers, other than its customers who request not to be included in a directory to be published (“the printed directory”); and
 - (b) establish, maintain and operate, or arrange for the establishment, maintenance or operation of a telecommunications service whereby customers may, upon request, be provided with directory information other than that of its customers who request the information not to be disclosed (“the telephonic directory service”).
- 12.4 The printed directory and the telephonic directory service provided under Special Condition 12.3 shall be made available free of charge to all of the licensee's customers and shall be provided in a manner satisfactory to the Authority.
- 12.5 The licensee is permitted to make commercial arrangements with one or more of the other fixed carrier or fixed telecommunications network service licensees and the PCCW-HKT Telephone Ltd. to co-operate in the provision jointly by them of either or both of the printed directory and the telephonic directory service which the licensee is required to provide under Special Condition 12.3.
- 12.6 The licensee's printed directory shall be a unified printed directory and

the licensee's telephonic directory service shall be a unified telephonic directory service and shall utilise a unified directory database, containing directory information on all customers of all fixed carrier or fixed telecommunications network service licensees and the PCCW-HKT Telephone Ltd., except for those customers who request that directory information about them not be disclosed. The licensee shall provide, and regularly update, raw directory information about its customers to each other fixed carrier or fixed telecommunications network service licensee and the PCCW-HKT Telephone Ltd., for which the licensee will be able to impose a charge to fairly compensate it for providing the raw directory information. The licensee shall endeavour to agree with each of the other licensees and the PCCW-HKT Telephone Ltd. on a reasonable mode of exchange and transmission format for the raw directory information.

12.7 Where the licensee is unable to agree with another licensee pursuant to Special Condition 12.6 on what amounts to fair compensation for provision of, or the reasonable mode of exchange and transmission format of, raw directory information, the matter at issue may be referred by either licensee or the PCCW-HKT Telephone Ltd. to the Authority for determination.

12.8 Except with the prior written approval of the Authority, the licensee shall not make use of raw directory information provided by another licensee or the PCCW-HKT Telephone Ltd. other than for discharging its obligations under Special Condition 12.

13. EMERGENCY CALL SERVICE

13.1 The licensee shall provide a public emergency call service by means of which any member of the public may, at any time and without incurring any charge, by means of compatible apparatus connected to the network, communicate as quickly as practicable with the Hong Kong Police Emergency Centre or other entity as directed by the Authority to report an emergency.

14. RECORDS AND PLANS OF THE NETWORK

- 14.1 The Authority may disclose the network information in accordance with section 7I(3) of the Ordinance.
- 14.2 The licensee shall, at the reasonable request of any other licensee under the Ordinance or the PCCW-HKT Telephone Ltd. if so authorized by the Authority, give reasonable access to its network information for the facilitation of network planning, maintenance and reconfiguration required for the purposes of Special Condition 3 and section 36AA of the Ordinance. The licensee shall be permitted to charge the requesting party so as to be fairly compensated for the reasonable relevant costs incurred in the provision of such network information.
- 14.3 Where the licensee and any other licensee or the PCCW-HKT Telephone Ltd. that has requested access to the network information in accordance with Special Condition 14.2 are unable to agree what amounts to reasonable access (including confidentiality requirements and fair compensation for the reasonable relevant costs incurred) or a reasonable request, the matter at issue may be referred by either the licensee, the other licensee, or the PCCW-HKT Telephone Ltd. to the Authority for determination.

15. NETWORK LOCATION

- 15.1 The licensee shall obtain the consent in writing of the Director of Lands before the commencement of any installation works for its network under, in, over or upon any unleased Government land.
- 15.2 The licensee shall keep accurate records of the location of the network installed under, in, over or upon any land.
- 15.3 The licensee shall record the information referred to under Special Condition 15.2 on route plans drawn on an Ordnance Survey Map background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.
- 15.4 The licensee shall, at the request of the Director of Highways, the Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the network and who is authorized

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

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

16. CHANGES TO THE NETWORK

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

- (c) a licensee under the Ordinance;
- (d) a licensee under the Broadcasting Ordinance (Cap. 562); or
- (e) a customer or a consumer of goods and services provided by any person or entity,

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

- 16.4 The licensee shall prepare and publish, after consultation with the Authority, its procedures for consulting with and giving notice to persons likely to be affected materially by changes to its network which are required to be notified in accordance with Special Condition 16.2 and any other changes required to be notified pursuant to any technical standard which the Authority has power to issue. Subject to approval of the Authority, the notification procedures to each of the classes of persons likely to be affected under Special Condition 16.3 may differ having regard to the practicality and costs of notifying them.

17. REQUIREMENTS FOR ROAD OPENING

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

18. REQUIREMENTS OF INSTALLATION OF LINES OR CABLES

- 18.1 The network, or any part of it, if installed under, in, over or upon any public street or other unleased Government land, shall be at such depth,

course, route and position as may be determined by the Director of Lands or the Director of Highways.

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

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

19. WORKS IN PUBLIC STREETS

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

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

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

19.2 If the licensee fails, within any period specified by the Director of Highways or the Director of Lands, to observe any of the requirements of Special Condition 19.1, the Director of Highways or the Director of Lands may take action to remedy the failure. The licensee shall reimburse the Government any such sum as may be certified by the Director of Highways or the Director of Lands to be reasonable cost for executing any works under the terms of this Special Condition 19.2.

20. INTERFERENCE WITH WORKS OF OTHERS

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

20.2 In the case where the other person holds a licence under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), any consent referred to in Special Condition 20.1 is refused, or cannot be obtained for any reason, the licensee may request the consent to proceed from the relevant authority in accordance with the terms of any licence issued to such other person under the Land (Miscellaneous Provisions) Ordinance, if any.

21. LICENSEE TO ALTER NETWORK ON NOTICE

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

21.2 Where the Director of Highways or the Director of Lands gives a direction under Special Condition 21.1, Special Condition 19 shall apply as if such alteration were part of the installation or maintenance of the network.

22. USE OF FREQUENCIES

22.1 The Authority may by notice require the licensee to cease operating the radiocommunications installations on any frequency assigned to the licensee if in the opinion of the Authority, the licensee is not making efficient use of that portion of the radio frequency spectrum.

23. PURCHASE OF ASSETS

23.1 If a licensee is –

- (a) in a dominant position in a market within the meaning described in section 7L(2) of the Ordinance; or
- (b) subject to a universal service obligation specified under the terms of the special conditions of its licence and the Ordinance, the Government may elect to take over the licensee's undertaking and purchase its assets if any of the following circumstances occur –
 - (i) this licence expires;
 - (ii) this licence is revoked;
 - (iii) the licensee goes into liquidation; or
 - (iv) the licensee ceases to carry on business.

Provided that if the Government elects to do so it shall give notice in writing not later than 90 days in advance of the expiry of this licence, or immediately upon revocation of this licence or within a reasonable time of the happening of the events at Special Condition 23.1(b)(iii) or 23.1(b)(iv).

23.2 The selling price shall be agreed between the Government and the

licensee on the basis of the fair market value at the time of acquisition determined on the basis that this licence remains in force and that the network is continuing to be used for the provision of the service. If no agreement can be reached between the Government and the licensee, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 341).

24. APPLICABILITY OF CERTAIN CONDITIONS

24.1 Where the Authority forms the opinion that a licensee is not in a dominant position with respect to any market for telecommunications services provided under the licence within the meaning of section 7L(2) of the Ordinance, the Authority may by direction in writing, for such period and on such conditions as the Authority may determine, direct that either one or any combination of Special Conditions 5, 7, 8, 9 and 10, either completely or as to particular obligations imposed thereunder, shall not apply to the licensee.

25. NETWORK AND SERVICE ROLLOUT

25.1 The licensee shall roll out the network and the service such that:

- (a) the service shall be launched not later than the date specified in the column headed “Deadlines for Compliance” in Schedule 4; and
- (b) the capacity for external telecommunications circuits available from the submarine cable referred to as “North Asian Loop” and described in the licensee’s letter/proposal to the Authority dated 30 September 1999 and 2 April 2001 (the “Submarine Cable”) owned by the licensee and brought into the Hong Kong Special Administrative Region shall not be less than that specified in the column headed “Milestones” in Schedule 4 by each of the respective deadlines specified in the column headed “Deadlines for Compliance” in Schedule 4.

25.2 For the purpose of this Special Condition,

- (a) the service is launched if the service is ready to be provided to a customer upon request from the customer in accordance with General Condition 5 and Special Condition 2 and within the period specified in the tariff published in accordance with Special Condition 7;
- (b) “external telecommunications circuit” means a telecommunications circuit between any termination point in the Hong Kong Special Administrative Region and one or more points outside the Hong Kong Special Administrative Region, and any means of telecommunications capable of facilitating such a circuit (but, for the avoidance of doubt, excluding local leased circuits and local switched circuits between two points in the Hong Kong Special Administrative Region);
- (c) “owned by the licensee” means in the case of a consortium cable, the cable capacity owned by the licensee or its holding company of which the licensee is a wholly-owned subsidiary, as a party to the construction and maintenance agreement of the Submarine Cable, or in the case of a private cable, the cable capacity owned by the licensee or its holding company of which the licensee is a wholly-owned subsidiary, as the entity investing in and owning the Submarine Cable; and
- (d) “brought into the Hong Kong Special Administrative Region” means the capacity for external telecommunications circuits available from the Submarine Cable is ready for the provision of the service upon request from customers in the Hong Kong Special Administrative Region.

26. CAPITAL EXPENDITURE

- 26.1 The licensee shall have incurred cumulative capital expenditure from the Date of Issue of this licence for the purpose of developing, establishing and maintaining the network (comprising any fixed assets of the licensee, used or designed for use in the establishment of the network for the provision of the service, constructed or under construction) for the provision of the service of not less than each of

the respective sums specified in the column headed “Milestones” by each of the respective deadlines specified in the column headed “Deadlines for Compliance” in Schedule 4.

27. PERFORMANCE BONDS

27.1 Within 14 days of the Date of Issue of this licence, the licensee shall submit to the Authority a duly issued performance bond in Hong Kong dollars in the amounts, on the Milestones and with the Deadlines for Compliance stipulated in the Annex to the performance bond appearing in Schedule 5.

27.2 The performance bond to be submitted pursuant to Special Condition 27.1 shall be in the form appearing in Schedule 5 with only such amendments thereto as may previously have been agreed in writing by the Authority.

27.3 The performance bond to be submitted pursuant to Special Condition 27.1 shall be issued by a bank or other surety details of which shall have been submitted in writing to the Authority prior to the Date of Issue of this licence and against which the Authority shall have no objection. If the licensee shall wish to change to a different bank or another surety, it shall give full written details of the proposed replacement to the Authority who shall within 14 days of receipt of the same notify the licensee in writing of any objection to such proposed replacement whereupon the licensee may either remain with the existing bank or surety or propose a further replacement in the same manner as set out above. If the Authority raises no objection in writing within 14 days then the bank or other surety shall be deemed acceptable to the Authority.

27.4 Notwithstanding any other conditions of this licence:

- (a) upon failure by the licensee to provide a performance bond in accordance with the foregoing provisions of this condition, the Authority may cancel or revoke this licence notwithstanding that the licensee may have embarked on its performance;

(b) any rights of or claim by the Authority under the performance bond submitted by the licensee pursuant to this condition, including any replacement thereof, shall be without prejudice to the other rights of the Authority under this licence and of the Authority, the Chief Executive in Council and the Chief Executive under the laws, regulations and Codes of Practice affecting telecommunications in the Hong Kong Special Administrative Region from time to time.

27.5 The licensee shall upon demand by the Authority in writing submit proof in a form satisfactory to the Authority by a date specified by the Authority that it has complied with each of the respective Milestones by the respective Deadlines for Compliance as specified in the Annex to the performance bond shown in Schedule 5.

28. UNIVERSAL SERVICE CONTRIBUTION

28.1 Where directed by the Authority, the licensee shall pay to PCCW-HKT Telephone Limited, or other licensees, as the case may be, its relevant share of the universal service contribution to assist PCCW-HKT Telephone Limited, or those licensees, to meet their universal service obligations, if any.

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

28.3 For the purpose of this Special Condition 28, the following definitions shall apply:

(a) Universal service contribution is that sum calculated in accordance with a formula adopted annually by the Authority, to ensure that PCCW-HKT Telephone Limited,

where it has a universal service obligation, and any other licensee with such an obligation, as the case may be, receives a fair contribution from other fixed telecommunications network services licensees towards the costs, net of attributable revenue, of serving customers with basic service whom would otherwise not be served because it is not economically viable to do so but who are required to be served under the universal service obligation.

- (b) Universal service obligation is the obligation to provide, maintain and operate the relevant network in such manner as to ensure that a good, efficient and continuous basic service is reasonably available, subject to the Ordinance, to all persons in Hong Kong and to provide that basic service in such manner.

29. CIRCUMSTANCES OUTSIDE LICENSEES CONTROL

- 29.1 For the avoidance of doubt, General Condition 17.1 of the licence shall apply to these special conditions and the Authority may at his discretion, and on such conditions as he thinks fit, extend any time period within which the obligations of the licensee under these special conditions may be met.
- 29.2 In exercising his discretion under Special Condition 29.1 with respect to any of the special conditions of the licence, the Authority shall take into account including, without limitation, whether circumstances are such that it would be unreasonable to require compliance by the licensee with the relevant special condition.

30. INTERPRETATION OF “FACILITY” UNDER SECTION 36AA OF THE ORDINANCE

- 30.1 For the avoidance of doubt, for the purpose of section 36AA of the Ordinance, “facility” shall include any telecommunications earth stations, overland or submarine cables, wayleaves and indefeasible rights of use which are reasonably necessary for the efficient provision and establishment of fixed telecommunications networks.

31. INTERPRETATION OF “MARKET” UNDER SECTIONS 7K AND 7L OF THE ORDINANCE

31.1 For the avoidance of doubt, the “market” referred to in sections 7K and 7L of the Ordinance shall include any market for telecommunications facilities or services between the Hong Kong Special Administrative Region and a place outside the Hong Kong Special Administrative Region.

32. PUBLICATION OF ACCOUNTING RATES

32.1 The Authority may at his discretion publish any information concerning international accounting rates obtained from the licensee.

33. INSURANCE

33.1 Throughout the currency of this licence, the licensee shall have and maintain a valid insurance policy with a reputable insurance company to cover its third party liabilities in respect of personal injury, death and damage to property, arising out of or in connection with the installation, maintenance and operation of the network or provision of the service. The amount of insurance shall be at least HK\$10,000,000 per occurrence or such sum as the Authority may notify in writing in future.

SCHEDULE 1

SCOPE OF THE SERVICE

1. Subject to General Condition 1.4 and Clauses 3, 4 and 5 of this Schedule 1, all external telecommunications services between fixed points capable of being provided utilising the network, other than telecommunications services the subject of an exclusive licence issued under the Ordinance, a deemed licence, a public radiocommunications service licence, a mobile carrier licence, a radio paging system licence, a service subject to licensing under any other Ordinance, a fixed carrier (restricted) licence, or a satellite broadcasting service under a satellite television uplink and downlink licence.

2. For the purpose of this licence,
 - a “fixed point” means a network termination point and shall include such area within the immediate vicinity of such a point as the Authority may direct in writing, either generally or specifically, to allow limited mobility for access to that point in such manner as the Authority may approve in writing not inconsistent with Clause 1 of this Schedule 1;

 - an “internal” telecommunications service means a service for communications between points within the Hong Kong Special Administrative Region; and

 - an “external” telecommunications service means a service for communications
 - (a) between one or more points in the Hong Kong Special Administrative Region and one or more points outside the Hong Kong Special Administrative Region; and

 - (b) between two or more points outside the Hong Kong Special Administrative Region but routed in transit via the Hong Kong

Special Administrative Region.

3. Nothing in this licence authorizes the licensee to establish or maintain any physical facilities for the supply of external telecommunications circuits (as defined in Special Condition 25.2(b)) to customers before the capacity for external telecommunications circuits available from the Submarine Cable owned by the licensee (as defined in Special Condition 25.2(c)) has been brought into the Hong Kong Special Administrative Region (as defined in Special Condition 25.2(d)).
4. After the capacity for external telecommunications circuits (as defined in Special Condition 25.2(b)) available from the Submarine Cable owned by the licensee (as defined in Special Condition 25.2(c)) has been brought into the Hong Kong Special Administrative Region (as defined in Special Condition 25.2(d)), the licensee may establish and maintain an external telecommunications circuit based on an external cable network or non-cable based external network at the Hong Kong end. For the purpose of this Schedule,

“external cable network” means a network comprising a physical wireline system of overland cables or submarine cables, including without limitation the capacity under any right of use over such cables connecting one or more points in the Hong Kong Special Administrative Region and one or more points outside the Hong Kong Special Administrative Region;

“non-cable based external network” means a network based on satellite or other forms of wireless transmission connecting one or more points in the Hong Kong Special Administrative Region and one or more points outside the Hong Kong Special Administrative Region.

5. Nothing in this licence authorizes the licensee to establish any means of telecommunications for internal telecommunications service. Access by customers to the external telecommunications services operated by the licensee shall be through internal telecommunications services lawfully operated in the Hong Kong Special Administrative Region.

SCHEDULE 2

DESCRIPTION OF NETWORK

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

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

Location

Frequency

Class and Characteristics of Emission

Power

Aerial characteristics

SCHEDULE 4
NETWORK AND SERVICE ROLLOUT
AND CAPITAL EXPENDITURE COMMITMENTS

FLAG Telecom Asia Limited

| <i>Milestones</i> | <i>Deadlines for Compliance</i> |
|--|--|
| Launch of the service (Special Condition 25.1(a)) | Within 24 months from the Date of Issue of the licence |
| Cable capacity referred to Special Condition 25.1 of not less than 20,000 Mbps for external telecommunications circuits (Special Condition 25.1(b)) | Within 24 months from the Date of Issue of the licence |
| Cable capacity referred to Special Condition 25.1 of not less than 25,000 Mbps for external telecommunications circuits (Special Condition 25.1(b)) | Within 36 months from the Date of Issue of the licence |
| Cable capacity referred to Special Condition 25.1 of not less than 30,000 Mbps for external telecommunications circuits (Special Condition 25.1(b)) | Within 48 months from the Date of Issue of the licence |
| Capital expenditure referred to Special Condition 26.1 of not less than HK\$300 million | Within 12 months from the Date of Issue of the licence |
| Cumulative capital expenditure referred to Special Condition 26.1 of not less than HK\$400 million | Within 24 months from the Date of Issue of the licence |
| Cumulative capital expenditure referred to Special Condition 26.1 of not less than HK\$500 million | Within 36 months from the Date of Issue of the licence |

SCHEDULE 5
THE FORM OF THE PERFORMANCE BOND

BY THIS BOND dated the day of 2001
We [] whose registered office is at []
("the licensee") and [] whose registered office is at
[] ("the Surety") are irrevocably and unconditionally bound to
the Telecommunications Authority of Hong Kong (together with his successors
and assigns, "the Authority") in the sums ("the Bonded Sums") and with the
Milestones set out in the Annexe hereto ("the Annexe") for payment of which
sums the licensee and the Surety bind themselves their successors and assigns
jointly and severally in accordance with the provisions of this Bond.

WHEREAS

Pursuant to the terms of the licence dated 31 May 2001 by the Authority, the licensee agreed to obtain a surety to be bound unto the Authority for the due performance of the licence by the licensee.

NOW THE TERMS AND CONDITIONS of this Bond are:-

1. Where applicable, words and expressions used in this Bond shall have the meaning assigned to them in the licence.
2. In the event of default by the licensee in respect of the Deadlines for Compliance with the Milestones set out in the Annexe the Surety shall upon demand made by the Authority in writing and without proof or conditions satisfy and discharge the Bonded Sums provided that the aggregate liability of the Surety under this Bond in respect of any Milestones shall not exceed the Bonded Sum in respect of that Milestone set out in the Annexe.
3. The liability of the Surety under this Bond shall not be affected or discharged in any way by (and the Surety hereby waives any requirement to give notice in respect of):-

- (a) any suspension of the licence, variation to or amendment of the licence (including without limitation extensions of time for performance) or any concession or waiver by the Authority in respect of the licensee's obligations under the licence. Without prejudice to the foregoing and purely on a 'for information basis', the Surety will be notified of any such suspension, variation, amendment, concession or waiver and if necessary and if so requested by the Surety, will amend the Annexe accordingly;
 - (b) the cancellation or revocation of the licence as a result of default by the licensee under the licence;
 - (c) any forbearance or waiver of any right or remedy the Authority, the Government of the Hong Kong Special Administrative Region, the Chief Executive in Council or the Chief Executive may have against the licensee;
 - (d) any act or omission of the licensee pursuant to any other arrangement with the Authority or with the Surety;
 - (e) subject to clauses 4 and 5 below, the issue of any certificate of completion by the Authority in respect of the Milestones set out in the Annexe.
4. The liability of the Surety under this Bond shall reduce on each occasion on which:
- (a) the Surety pays any part of the Bonded sums to the Authority; or
 - (b) the Authority issues its certificate of completion in respect of each Milestone (as set out in the Annexe);

the amount of such reduction being equal to the amount paid or the Bonded Sum set opposite such Milestone in the Annexe, and the Surety shall be discharged from all further liability under this Bond upon such liability being reduced to zero or the issue of the certificate

of completion by the Authority of the ultimate Milestones set out in the Annexe.

5. The liability of the Surety under this Bond shall cease on whichever of the following events first occurs:
 - (a) payment by the Surety of all the Bonded Sums in full to the Authority; or
 - (b) issue of any certificate of completion by the Authority in respect of all Milestones set out in the Annexe.
6. The Authority shall be entitled to assign the benefit of this Bond at any time without the consent of the Surety or the licensee being required. Without prejudice to the foregoing and purely on a 'for information basis', the Surety will be notified by the Authority after any such assignment from time to time.
7. This Bond shall expire on the date 120 days after the date of the last Milestone by which date any claim hereunder must be received by the Surety in writing.
8. All documents arising out of or in connection with this Bond shall be served:
 - (a) upon the Authority, at 29th Floor, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong marked for the attention Senior Assistant Director (Regulatory);
 - (b) upon the Surety, at [] Hong Kong. (Note 1)
9. The Authority and the Surety may change their respective nominated addresses for service of documents to another address in Hong Kong but only by prior written notice to each other. All demands and notices must be in writing.
10. This Bond shall be governed by and construed according to the laws for the time being in force in Hong Kong and the Surety agrees to submit to

the non-exclusive jurisdiction of the courts of Hong Kong.

IN WITNESS whereof this Bond has been executed as a deed on the date first above written.

THE COMMON SEAL of

[]

was affixed hereto in

the presence of :-

Director

Director/Secretary

OR

SIGN, SEALED AND)
DELIVERED (Note 2) for)
and on behalf of and as)
lawful attorney of)
[] under power of)
attorney dated [])
by [])
in the presence of:-)

[Name]
[Occupation]

Notes: (for preparation of but not inclusion in the engrossment of this performance bond)

1. The address for service shall be in Hong Kong.
2. For use where the licensee or the Surety, whether a firm or limited company, executes through an attorney.
3. The licensee must execute the bond as well as the Surety.

Annexe

| <i>Milestones</i> | <i>Deadlines for Compliance</i> | <i>Bonded Sum Payable</i> |
|--|--|---------------------------|
| Launch of the service (Special Condition 25.1(a)) | Within 24 months from the Date of Issue of the licence | HK\$4 million |
| Cable capacity referred to Special Condition 25.1 of not less than 20,000 Mbps for external telecommunications circuits (Special Condition 25.1(b)) | Within 24 months from the Date of Issue of the licence | HK\$4 million |
| Cable capacity referred to Special Condition 25.1 of not less than 25,000 Mbps for external telecommunications circuits (Special Condition 25.1(b)) | Within 36 months from the Date of Issue of the licence | HK\$4 million |
| Cable capacity referred to Special Condition 25.1 of not less than 30,000 Mbps for external telecommunications circuits (Special Condition 25.1(b)) | Within 48 months from the Date of Issue of the licence | HK\$4 million |
| Capital expenditure referred to Special Condition 26.1 of not less than HK\$300 million | Within 12 months from the Date of Issue of the licence | HK\$4 million |
| Cumulative capital expenditure referred to Special Condition 26.1 of not less than HK\$400 million | Within 24 months from the Date of Issue of the licence | HK\$4 million |
| Cumulative capital expenditure referred to Special Condition 26.1 of not less than HK\$500 million | Within 36 months from the Date of Issue of the licence | HK\$4 million |

THE ANNEXE SHALL BE READ IN CONJUNCTION WITH THE TERMS AND CONDITIONS OF THE LICENCE GRANTED TO THE LICENSEE ON 31 MAY 2001 BY THE AUTHORITY AND THE SPECIAL CONDITIONS REFERRED TO IN THE ANNEXE MEAN THE SPECIAL CONDITIONS OF THE LICENCE.

(Anthony Wong Sik-kei)
Telecommunications Authority