

LEGISLATIVE COUNCIL BRIEF

Telecommunications Ordinance
(Chapter 106)

Grant of Sound Broadcasting Licences for Providing Digital Audio Broadcasting Services

INTRODUCTION

At the meeting of the Executive Council held on 22 March 2011, the Council ADVISED and the Chief Executive (CE) ORDERED that –

- (a) the sound broadcasting licence at **Annex A** (with certain terms applicable to a specific licensee only) should be approved and granted to each of Digital Broadcasting Corporation Hong Kong Limited (DBC), Metro Broadcast Corporation Limited (Metro) and Phoenix U Radio Limited (Phoenix U) in accordance with section 13C of the Telecommunications Ordinance (TO) for providing digital audio broadcasting (DAB) service;
- (b) the application of DBC to surrender its existing licence for providing Amplitude Modulation (AM) radio service should be approved; and
- (c) the Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2011 at **Annex B** should be made to include Phoenix U and DBC (in place of Wave Media Limited)¹ in Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) (POBO).

¹ DBC notified the Broadcasting Authority (BA) in writing on 8 December 2010 that Wave Media Limited had been renamed as Digital Broadcasting Corporation Hong Kong Limited and confirmed that all the submissions made by Wave Media Limited in connection with its application for a sound broadcasting licence to provide digital audio broadcasting service were applicable to DBC.

JUSTIFICATIONS

2. On 5 November 2010, the Government announced the decision of the CE in Council that -

- (a) on the recommendations of the Broadcasting Authority (BA) under section 13C(1) of the TO, the applications by DBC, Metro and Phoenix U for sound broadcasting licences under section 13B of the TO to provide digital audio broadcasting (DAB) services for a validity period of 12 years should be approved in principle;
- (b) full use of one Band III multiplex should be made by allocating spectrum to the prospective DAB operators to provide 13 programme channels (three each for Metro and Phoenix U and seven for DBC) upon the grant of licences to them in due course and reserving spectrum for Radio Television Hong Kong (RTHK) to provide five programme channels;
- (c) the application of DBC to surrender its existing licence for providing AM radio services and to waive its compliance with the relevant performance bond and payment of licence fee should be decided in due course upon the grant of a licence to DBC for providing DAB services; and
- (d) the sound broadcasting licences to be granted to DBC, Metro and Phoenix U should be prepared and submitted to the CE in Council for approval.

We have since taken follow-up actions on the decision of the CE in Council set out above.

Sound Broadcasting Licence

3. The licence to be granted to each of DBC, Metro and Phoenix U is at Annex A. The licence has been endorsed and recommended by the BA. The three applicants have also been consulted on the licence and they are content with the terms and conditions therein. The licence contains general terms and conditions similar to those of the existing analogue licensees, with specific provisions relevant to DAB services and individual applicants. The key conditions are listed below -

(a) Condition 3

Unless otherwise approved by the BA, a licensee shall formally commence its DAB services within the first 18 months after the licence grant date. Soft-launching of a DAB service will not be regarded as formal commencement of the services.

(b) Condition 6

The licences shall be valid for a period of 12 years from the date the CE in C approves and grants the licences. The licences shall be subject to a mid-term review six years after the licence grant date.

(c) Condition 8

Each licensee shall provide its sound broadcasting services and ancillary visual service² (AVS) free of charge to the public.

(d) Condition 11

A licensee shall pay the full annual licence fee starting from the date the licensee commences its sound broadcasting services (including any soft-launching of the services). The annual licence fee is calculated on the basis of recovery of reasonable costs and expenses incurred by or on behalf of the Government in relation to the licence, including but not limited to administrative costs and expenses in administering the licence, and is subject to annual adjustment based on the index of Government consumption expenditure. If a licensee commences its services in 2011, the licence fee payable for the first year of the services is specified to be HK\$3,729,794 for DBC and HK\$2,873,126 for Metro and Phoenix U.

² In the licence, “Ancillary Visual Service” has the meaning of “an ancillary service to be provided by the Licensee to transmit the following visual images in digital form for viewing by the audience of its sound broadcasting service –

- (i) Electronic Programme Guide;
- (ii) advertising material; and
- (iii) other information in relation to the sound broadcasting service established and maintained by the Licensee.”

(e) Condition 18

The licensees shall provide 24-hour sound broadcasting services comprising programme channels as submitted in their licence applications. DBC shall broadcast a total of seven channels consisting of a Talk Radio channel, an Ethnic Minorities channel and two music channels which shall be launched upon formal commencement of the services as well as a News & Market Update channel, a Leisure Life channel and a Community channel which shall be launched within 12 months after formal service commencement. Metro shall broadcast at least one channel on financial news and information upon formal service commencement. The second channel on music and entertainment and the third channel on lifestyle shall be launched respectively within 12 months and 24 months after formal service commencement. Phoenix U shall broadcast at least one channel on current and social affairs, economic and financial issues and historical and cultural programmes upon formal service commencement. It shall launch the second channel on information exchange between Hong Kong and Guangdong and the third channel on Putonghua learning and music respectively within 6 months and 12 months after formal service commencement.

A licensee is also required to broadcast on its DAB channels an aggregate of at least 50 hours of non-Cantonese programmes per week (the language requirement).

Upon application by the licensees, the BA may approve arrangements different from those set out in this Condition.

(f) Condition 25

Unless the BA otherwise approves or determines, a licensee shall not –

- (i) use more than 50% (i.e. 84 hours for a 24-hour channel) of the total broadcast time of a DAB channel per week to provide simulcast of any Frequency Modulation (FM) broadcasting service; and
- (ii) use more than 50% (i.e. 84 hours for a 24-hour channel) of the total broadcast time of a DAB channel per week to

broadcast FM programmes transmitted in digital format for the first time on a DAB channel.

(g) Condition 26

A licensee, in providing AVS, shall monitor and ensure strict compliance with the relevant codes of practice to be issued by the BA. A licensee shall not provide any AVS which consists of moving images at a refresh rate faster than one picture per second, unless the moving images consist of text only.

(h) Condition 27

A licensee shall ensure that the management of the licensee shall not be performed by persons other than the directors and principal officers of the licensee and persons duly authorised by the licensee. This condition is added by modelling on the existing domestic free television programme service licences.

(i) Conditions 28 – 29

The licensees shall be subject to the requirements on the broadcast of announcements in the public interest and BA's publicity material, which also apply to the incumbent sound broadcasting licensees.

(j) Condition 31

Same as the incumbent sound broadcasting licensees, a DAB licensee shall not broadcast on any day sound advertising material which exceeds 12% of the total sound broadcast time on that day.

In addition, a DAB licensee shall not display on any day visual advertising material which exceeds 30% of the total time an AVS is provided on that day.

These requirements are on a per programme channel basis.

(k) Condition 32

A licensee shall implement the six-year investment plan submitted in its licence application. It shall also report, on a yearly basis, the actual capital and programming expenditures in the preceding year. If the actual expenditure deviates from the six-year investment plan, the licensee shall provide explanations to the BA.

(l) Condition 34

The CE in C may direct the Financial Secretary Incorporated to acquire by purchase any lands, installations, plant and equipment of the licensee at open market value in the event of non-renewal of the licence, or its licence is revoked or surrendered.

(m) Condition 40

A licensee shall be bound by all its statements and representations made in relation to its licence application.

(n) Conditions 43

Each licensee shall submit within one month after the grant of licence a \$2 million performance bond to secure the licensee's formal commencement of service within 18 months after the grant of licence (unless the BA approves of or determines another commencement date).

(o) Condition 44

After the grant of licences and preceding the formal commencement of DAB as detailed in (e) above, a licensee may "soft-launch" its services, either in the form of music broadcast, simulcast of existing AM/FM analogue services or broadcasting a part of their formal services to be provided. The materials broadcast under such "soft-launch" of services, including the programmes and AVS as well as advertising material, will be subject to the relevant codes of practice issued by the BA. The language requirement, restrictions on the simulcast of FM programmes as well as the broadcast of FM programmes for the first time on a DAB channel, and requirements on the broadcast

of announcements in the public interest and BA's publicity material will not apply to the soft-launch.

(p) Schedule 1

This schedule sets out the specified form of the performance bond to be submitted by the licensees.

(q) Schedule 2

A licensee shall be bound by the transmission plan as set out at Annex to this schedule. Each licensee shall cooperate with other users of the DAB multiplex, including RTHK, in the establishment and operation of the transmission network and share the relevant cost. The Telecommunications Authority (TA) can intervene and determine the matter if an agreement cannot be reached, and the licensee shall pay to the TA, as the TA may require, any costs or expense incurred by the TA in respect of such a determination or the determination process. A licensee shall also comply with such technical specifications and take such measures as may be required by the TA (including but without limitation to specifications and measures regarding system configuration, capacity, redundancy and provision of standby equipment) in relation to the use of the common transmission network.

A licensee shall use a capacity of no less than 32 kilobits per second (kbps) and 48 kbps for transmission of non-music and music programmes respectively, unless otherwise directed or approved by the BA.

DBC's Application to Surrender AM Licence and Waive the Performance Bond and Licence Fee

4. The CE in Council granted DBC a 12-year sound broadcasting licence on 11 November 2008 for the provision of AM service. According to Condition 44.1 of DBC's AM licence, the company shall within 24 months after grant of the licence establish and maintain an AM radio service (the Milestone). To ensure its compliance with the Milestone, DBC has submitted a duly issued performance bond in favour of the Government in the sum of \$2 million. In case DBC fails to achieve the Milestone, the Government may forfeit the bonded sum. A licence fee

is also payable upon the commencement of DBC's AM service or the second anniversary of the grant of the licence, whichever is the earlier.

5. DBC has submitted that, subject to the grant of the DAB licence, it would surrender its AM licence and focus on delivering DAB services. The CE in Council has approved DBC's application to surrender its AM licence. In this connection, the Financial Secretary has exercised his power under section 38(1)(a) of the Public Finance Ordinance (Cap.2) to waive claims that the Government has against DBC and its surety in relation to the making of payment under the existing performance bond and DBC's obligation to pay licence fee payable under its AM licence.

Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2011

6. The DAB licensees, similar to the existing analogue sound broadcasting licensees, should be listed as public bodies in Schedule 1 to the POBO. By doing so, the employees of the licensees will be regarded as "public servants" under the POBO. In this connection, Metro and Wave Media are already listed in the POBO. Since Wave Media has been renamed as DBC, there is a need to change its name in Schedule 1 to the POBO. In addition, Phoenix U will have to be included in the Schedule. Section 35 of the POBO provides that the CE in Council may by order published in the Gazette amend the Schedule. The Order, to be gazetted on 1 April 2011, is at Annex B.

Promotion of DAB services

7. We have set up a DAB Steering Committee comprising members from the Television and Entertainment Licensing Authority, the Office of the Telecommunications Authority, RTHK and the licensees to oversee the implementation and development of DAB services, which include monitoring the network coverage and rollout, take-up of DAB (sales of DAB receivers), devising DAB publicity and promotion strategies, etc. The licensees are discussing a number of initiatives to promote their new services including the organising of a launching ceremony, the holding of industry forum, advertising, producing leaflets/pamphlets for distribution, participation in relevant exhibitions, etc. We are coordinating with relevant bureaux/departments to facilitate the successful launch of DAB in Hong Kong. We will also produce a set of Announcement in the Public Interest for broadcasting in television and on radio, and launch a dedicated website for DAB services.

IMPLICATIONS OF THE PROPOSAL

8. The introduction of three sound broadcasting licensees has economic, financial and civil service, sustainability and environmental implications as set out in **Annex C**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal has no productivity implications.

PUBLIC CONSULTATION

9. The BA published notices on 9 July 2010 at its website and in newspapers, setting out the details of the three applications and inviting members of the public to express their views on the applications by 30 July 2010. The BA has taken the views gathered, where appropriate, into account when formulating its recommendations.

PUBLICITY

10. We will hold a press conference with the licensees to brief the media and issue a press release today. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

11. For enquiries, please contact Mr Aaron Liu, Principal Assistant Secretary (A) for Commerce and Economic Development Bureau (Communications and Technology), at 2189 2236.

Communications and Technology Branch
Commerce and Economic Development Bureau
24 March 2011

No. 1 of THREE ORIGINALS

Sound Broadcasting Licence
(granted by the Chief Executive In Council on 22 March 2011)

Telecommunications Ordinance (Chapter 106)

**[Digital Broadcasting Corporation Hong Kong Limited (DBC) /
Metro Broadcast Corporation Limited (Metro) /
Phoenix U Radio Limited (Phoenix U)]**

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**SCHEDULE 1 : FORM OF PERFORMANCE
BOND**

**SCHEDULE 2 :
TRANSMISSION PLAN AND TECHNICAL
REQUIREMENTS**

1. **Grant of licence**

In exercise of the powers conferred by sections 13C and 13D of the Telecommunications Ordinance (Cap. 106) and all the powers enabling him in that behalf, the Chief Executive in Council hereby grants a licence to establish and maintain a broadcasting service to [*Digital Broadcasting Corporation Hong Kong Limited / Metro Broadcast Corporation Limited / Phoenix U Radio Limited] (“the Licensee”), a company formed and registered in Hong Kong under the Companies Ordinance (Cap. 32), whose registered office is situated at [*Unit 306, L3, Cyberport 3, 100 Cyberport Road, Pokfulam, Hong Kong (for DBC) / 22nd Floor, Hutchison House, 10 Harcourt Road, Hong Kong (for Metro) / No. 2-6 Dai King Street, Tai Po Industrial Estate, Tai Po, N.T., Hong Kong (for Phoenix U)] (this “Licence”).

2. **Interpretation**

2.1 Save where the contrary intention appears expressly or by necessary implication in this Licence, the following words and expressions shall have the meanings as follows:-

“Ancillary Visual Service”

means an ancillary service to be provided by the Licensee to transmit the following visual images in digital form on the Multiplex for viewing by the audience of its Sound Broadcasting Service –

- (i) Electronic Programme Guide;
- (ii) advertising material; and
- (iii) other information in relation to the Sound Broadcasting Service established and maintained by the Licensee.

“associate”

bears the meaning given in Schedule 1 to the Broadcasting Ordinance (Cap. 562).

“auditor”

means a professional accountant registered and holding a practising certificate under the Professional Accountants Ordinance (Cap. 50) who is neither an employee of the Licensee or its associate nor a person who is required to devote the whole or substantially the whole of his practice to the affairs of the Licensee or its associate.

“clock-hour”

means a period of 60 minutes beginning on any hour.

“Code of Practice”

bears the meaning given in section 2 (in relation to sound broadcasting) of the Broadcasting Authority Ordinance (Cap. 391).

“day”

means a period of 24 hours beginning at 12:00 midnight.

“director”

includes any person occupying in relation to a company the position of a director (by whatever name called) and any person in accordance with whose directions or instructions (not being advice given in an independent professional capacity) the directors of that company are accustomed to act.

“Electronic Programme Guide”

means a continuously updated menu showing scheduling information of current and upcoming programmes on each of the sound broadcasting service channels provided on the Multiplex, whether operated by the Licensee, RTHK or any other broadcaster.

“FM programme”

means a programme transmitted by telecommunications using any spectrum within the 88 – 108 MHz frequency band in the frequency modulation mode allocated for Sound Broadcasting Services in Hong Kong.

“FM broadcasting service”

means any broadcasting service transmitted by telecommunications using any spectrum within the 88 – 108 MHz frequency band in the frequency modulation mode allocated for Sound Broadcasting Services in Hong Kong.

“Grant Date”

means 22 March 2011.

[The following definition of “Licensee’s Proposal” is applicable to DBC only.]

“Licensee’s Proposal”

means the proposals submitted to the Broadcasting Authority and the Government by or on behalf of the Licensee in its application for this

Licence, including but not limited to its application dated 30 April 2010, the letters dated 3 June 2010, 31 July 2010, 9 August 2010, 27 August 2010, 6 October 2010, 21 January 2011, 25 February 2011, 28 February 2011 and e-mails dated 10 August 2010 and 8 December 2010 and the Six-year Investment Plan.

[The following definition of “Licensee’s Proposal” is applicable to Metro only.]

“Licensee’s Proposal”

means the proposals submitted to the Broadcasting Authority and the Government by or on behalf of the Licensee in its application for this Licence, including but not limited to its application dated 30 April 2010, the letters dated 3 June 2010, 2 August 2010, 2 September 2010, 12 October 2010, 21 January 2011 and 25 February 2011 and the Six-year Investment Plan.

[The following definition of “Licensee’s Proposal” is applicable to Phoenix U Radio only.]

“Licensee’s Proposal”

means the proposals submitted to the Broadcasting Authority and the Government by or on behalf of the Licensee in its application for this Licence, including but not limited to its application dated 29 April 2010, the letters dated 3 June 2010, 2 August 2010, 17 September 2010, 24 September 2010, 6 October 2010, 13 October 2010, 30 December 2010, 21 January 2011, 2 February 2011 and 25 February 2011 and e-mails dated 18 August 2010, 31 August 2010, 7 September 2010, 10 September 2010 and 13 September 2010 and the Six-year Investment Plan.

“Multiplex”

means the multiplex specified in the Annex to Schedule 2.

“Period of Validity”

means a continuous period of 12 years commencing on and including the Grant Date.

“principal officer”

means, in relation to a corporation, –

- (a) a person employed or engaged by the corporation who, by himself or with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or

(b) a person so employed or engaged who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, performs managerial functions in respect of the corporation.

“RTHK”

means Radio Television Hong Kong, including its assignee and successor.

“Services”

means the services that the Licensee is authorised and required to establish and maintain under Condition 3.1.

“Service Commencement Date”

means the date specified by the Licensee in the written notice submitted to the Broadcasting Authority pursuant to Condition 44.2 as the date on which it will commence the provision of a Sound Broadcasting Service pursuant to Condition 18.1(a).

“Six-year Investment Plan”

means all statements and representations made to the Broadcasting Authority and the Government by or on behalf of the Licensee in its application for this Licence, in relation to the Licensee’s financial plan of capital investment and programming investment for the first six years from the Grant Date for establishing and maintaining the Services, which is contained in the Licensee’s letters dated 21 January 2011 and 25 February 2011 to the Broadcasting Authority.

“Soft Launch Date”

means the date specified by the Licensee in the written notice submitted to the Broadcasting Authority pursuant to Condition 44.6 as the date on which it will commence the provision of a Sound Broadcasting Service pursuant to Condition 44.3.

“Sound Broadcasting Service”

means the provision of a service for transmitting sound (otherwise than as part of a television broadcast) for general reception by means of radio waves.

“sound broadcasting service channel”

means an audio programme channel encoded in digital format and provided under this Licence in accordance with Condition 13 of Schedule 2 to this Licence.

“subsidiary company”

bears the meaning given in section 2 of the Companies Ordinance.

“television programme service licensees”

means holders of any licences within the meaning given in section 2 of the Broadcasting Ordinance or any deemed licences within the meaning given in Schedule 8 of the Broadcasting Ordinance.

“Technical Specifications”

means any technical standard and requirement as may be directed or approved by the Chief Executive in Council or the Telecommunications Authority pursuant to this Licence or any law or Ordinance, including but not limited to any subsequent changes to be made to the details of the Transmission Plan specified in Schedule 2.

“week”

means a continuous period of 7 days beginning on a Monday.

- 2.2 Save where the contrary intention appears expressly or by necessary implication in this Licence, words and expressions used in this Licence shall bear the same meaning, if any, as in the Telecommunications Ordinance and in the Interpretation and General Clauses Ordinance (Cap. 1) and in the event of any conflict or inconsistency between their meanings, the meaning in the Telecommunications Ordinance shall prevail over that in the Interpretation and General Clauses Ordinance.
- 2.3 The interpretation of this Licence shall not be varied, limited or extended by any indexes or headings annexed to or contained in this Licence.
- 2.4 All references herein to an Ordinance, subsidiary legislation, regulation, direction, Code of Practice, this Licence, any other licence or document, or any provision thereof include that from time to time in force and that enacted or made (as the case may be) in place or substitution in whole or in part of that Ordinance, subsidiary legislation, regulation, direction or Code of Practice, this Licence, that other licence or document, or the provision thereof.
- 2.5 Subject to any express terms or conditions herein, where this Licence requires any act, conduct, matter, issue or thing of the Licensee to be

approved, the approval shall not be validly given unless given in writing under the hand of or on behalf of the person giving it.

- 2.6 This Licence shall include the Schedules and other attachments hereto which shall form and be read as an integral part of this Licence.
- 2.7 In this Licence, save where the contrary intention appears expressly or by necessary implication, words and expressions:-
- (a) which import one gender include the other genders;
 - (b) which import the singular include the plural and vice versa; and
 - (c) extend to their grammatical variations and cognate expressions where those words and expressions are defined herein or by reference to any other definition.
- 2.8 If at any time any terms or conditions of this Licence are or become illegal, invalid or unenforceable in any respect, the legality, validity or enforceability of the remaining provisions shall not in any way be affected or impaired.
- 2.9 In this Licence, all references to a Condition means a condition of this Licence.

3. Authorisation

- 3.1 This Licence authorises and requires the Licensee to establish and maintain the following services at all times during the Period of Validity:-
- (a) a Sound Broadcasting Service and an Ancillary Visual Service in accordance with this Licence and any law and Ordinance; and
 - (b) such associated telecommunication installation and services incidental to the provision of a Sound Broadcasting Service and an Ancillary Visual Service under this Licence, each as may be authorised or directed by the Telecommunications Authority.
- 3.2 Unless otherwise expressly authorised or required under this Licence, no telecommunications service or means of telecommunications of any kind regulated by the Telecommunications Ordinance shall be provided,

established or maintained by or on behalf of the Licensee in relation to the Multiplex.

- 3.3 Unless the Broadcasting Authority otherwise approves or determines, the Service Commencement Date shall be a date falling within 18 months after the Grant Date.

4. Licence granted subject to

This Licence is granted subject to:-

- (a) the provisions from time to time in force of the Telecommunications Ordinance, the Broadcasting Authority Ordinance and any Ordinance enacted in place or substitution in whole or in part thereof, and all subsidiary legislation, regulations, directions and Codes of Practice made thereunder; and
- (b) the terms and conditions set out in this Licence, and as any of them may be amended from time to time.

5. Indemnity

The Licensee shall indemnify the Broadcasting Authority, the Telecommunications Authority and the Government against any losses, claims, charges, expenses, actions or demands which the Broadcasting Authority, the Telecommunications Authority or the Government may incur or which may be made against any of them, as the case may be, as a result of or in relation to any breach or alleged breach of or failure or alleged failure to observe or perform any term or condition subject to which this Licence is granted.

6. Period and Review

- 6.1 Subject to the terms and conditions of this Licence and any law or Ordinance, this Licence shall be valid for the Period of Validity.
- 6.2 This Licence shall be subject to review by the Chief Executive in Council after 22 March 2017.

6.3 For the purposes of or in connection with the review referred to in Condition 6.2, account may be taken of, but not limited to the following matters:

- (a) the Licensee's compliance with all relevant statutory requirements, licence conditions and Codes of Practice;
- (b) the prevailing broadcasting policy;
- (c) technological developments such as progress in the further development of digital, Internet and multimedia technologies; and
- (d) the public interest.

6.4 The Broadcasting Authority may conduct any public hearing as it thinks fit for the purposes of or in connection with any review referred to in Condition 6.2.

7. **Notice of intent**

The Licensee shall indicate in writing its interest (if any) in applying for a further licence to establish and maintain a Sound Broadcasting Service and an Ancillary Visual Service not less than 24 months (or such shorter period as may be determined by the Broadcasting Authority) before this Licence may otherwise expire.

8. **Principles of broadcasting**

8.1 The Licensee shall accept that the radio frequency spectrum assigned, or to be assigned from time to time, as the case may be, to the Licensee, is not the property of the Licensee but of the community and being a natural and limited asset the Licensee shall make proper use of it in the best interests of the whole community and the Licensee shall accept that regulation of that use of the radio frequency spectrum is one of the purposes of this Licence and is necessary and justified because radio programmes go freely into homes and may be readily understood by children and adults.

8.2 The Licensee shall:-

- (a) entertain, inform and educate;

- (b) ensure that its programming is balanced in content and provides an adequate and comprehensive service which is responsive to the diverse needs and aspirations of the community;
- (c) apply up-to-date technology to perfect the sounds that it broadcasts; and
- (d) provide the Sound Broadcasting Service and Ancillary Visual Service to the general public free of charge.

8.3 The Licensee shall comply with all Technical Specifications to the satisfaction of the Telecommunications Authority during the Period of Validity.

9. Reservation

9.1 There is hereby reserved the power to impose during the Period of Validity of this Licence such further terms and conditions as the Chief Executive in Council may in the public interest specify from time to time and for that purpose the Chief Executive in Council may revoke, vary, limit or extend the terms and conditions of this Licence.

9.2 For the purposes of Condition 9.1, the Chief Executive in Council shall afford the Licensee a period of at least 14 days but not exceeding one month from the date of a notice in writing to the Licensee to the effect that the Chief Executive in Council is considering an amendment and the nature thereof, in order for the Licensee to make representations in writing to the Chief Executive in Council as to why the proposed amendment should not be made or should be modified or qualified, and the nature thereof.

9.3 In the period referred to in Condition 9.2 and thereafter, the Chief Executive in Council may consult with and receive written recommendations from such persons as he sees fit and the Licensee shall be afforded a period of at least 7 days but not exceeding 14 days to make representations in writing to the Chief Executive in Council on those recommendations.

10. The relevant authority

Subject to the express terms and provisions of the Telecommunications Ordinance, the Broadcasting Authority Ordinance and this Licence, the Chief Executive in Council, the Chief Executive, the Broadcasting Authority or the Telecommunications Authority shall in its absolute discretion determine, approve, disapprove, hold an opinion or decide any matter, issue or thing which it is requested, permitted or required to determine, approve, disapprove, hold an opinion regarding or decide under this Licence.

11. Licence fee

11.1 Subject to the right of the Chief Executive in Council to revise by notice in writing to the Licensee at any time the amount of licence fee on the basis of recovery of the reasonable costs and expenses incurred by or on behalf of the Government in relation to this Licence, including but not limited to administrative costs and expenses in administering this Licence, the Licensee shall pay to the Government a licence fee for the first year beginning with the Soft Launch Date or the Service Commencement Date, whichever is earlier, and such date shall be referred to as the "Due Date" in this Condition, and for each subsequent year beginning on the anniversary of the Due Date specified as follows:-

- (a) First Year - X
- (b) Second Year - $X \times (1 + \text{GCED for the Second Year})$
- (c) Third Year - $X \times (1 + \text{GCED for the Second Year}) \times (1 + \text{GCED for the Third Year})$

and so on for the subsequent years, where $X = [\text{HK}\$3,729,794 \text{ (for DBC), HK}\$2,873,126 \text{ (for Metro and Phoenix U)}]$ if the Due Date falls within 2011, or $[\text{HK}\$3,729,794 \text{ (for DBC), HK}\$2,873,126 \text{ (for Metro and Phoenix U)}] \times (1 + \text{GCED for 2012})$ if the Due Date falls within 2012, or $[\text{HK}\$3,729,794 \text{ (for DBC), HK}\$2,873,126 \text{ (for Metro and Phoenix U)}] \times (1 + \text{GCED for 2012}) \times (1 + \text{GCED for 2013})$ if the Due Date falls within 2013.

If on an anniversary of the Due Date, the remaining term of this Licence is less than a year, the licence fee payable in respect of that portion of the Period of Validity shall be payable on a pro rata basis.

11.2 For the purposes of Condition 11.1,

- (a) if a notice for revision of the amount of licence fee is issued under Condition 11.1, the first payment payable following the date on which the notice is issued shall, for the purpose of determining the amount of licence fee payable thereafter pursuant to the Condition, be regarded as payment for the First Year referred to therein, and payment for each subsequent year shall be made accordingly until another notice is issued pursuant to Condition 11.1. For the avoidance of doubt, this Condition shall apply to each notice issued pursuant to Condition 11.1;
- (b) GCED for any year means the forecast movement of the Government Consumption Expenditure Deflator for the year of publication of “Economic Prospects” published by the Government or of any similar Government publications containing the forecast movement of the Government Consumption Expenditure Deflator. For the avoidance of doubt, the formula for calculating GCED for any year of publication (Year N) is as follows:-

“GCED” for Year N =

$$\frac{\text{Forecast Government Consumption Expenditure for Year N}}{(1 + \text{Forecast Growth Rate of Government Consumption Expenditure in Real Terms for Year N})} - 1$$

- 11.3 The first payment of the licence fee under this Licence shall be made within 14 days of the Due Date, and thereafter payments of the licence fee shall be made on an annual basis during the Period of Validity within 14 days of a demand in writing by the Government made on or after the anniversary of the Due Date.
- 11.4 In the event of a revocation, surrender or suspension of this Licence, no licence fees or other fees or charges paid or payable by the Licensee before the revocation, surrender or suspension shall be refunded to or cease to be payable by the Licensee, as the case may be.

12. Non-assignment

- 12.1 The Licensee shall not, without the approval of the Chief Executive in Council, assign, share, franchise or grant any permission to any person for the use of, in whole or in part, any rights, powers and privileges granted hereunder or purport to do the same.

- 12.2 The Licensee shall not delegate any of its duties or responsibilities granted hereunder other than those commonly carried out by independent professional advisers or auditors.

13. Revocation

- 13.1 Where the Chief Executive in Council considers that there may be cause for revoking this Licence, he may direct the Broadcasting Authority to conduct an inquiry and submit recommendations concerning the revocation of this Licence, and, after having considered such recommendations and such other information, matter and advice as he may see fit, may revoke this Licence.
- 13.2 Revocation of this Licence under Condition 13.1 shall take effect subject to the notice required to be given under Condition 13.5.
- 13.3 Notwithstanding Conditions 13.1 and 13.2, the Chief Executive in Council may at any time revoke this Licence:-
- (a) for failure by the Licensee to pay, within one month after payment thereof has been demanded, any financial penalty imposed on him under the Broadcasting Authority Ordinance;
 - (b) if having regard to such of the following as is or are appropriate in the particular case, namely, the number of times this Licence has been suspended, the number and amount of financial penalties imposed on the Licensee under the Broadcasting Authority Ordinance since the grant of this Licence; the number of occasions on which, since such grant, the requirements of the Telecommunications Ordinance have, in relation to the Licensee, been contravened; any failure by the Licensee, whether by act or omission, to comply with a term or condition attached to this Licence; or any such failure to comply with any direction or order applicable to the Licensee and given or made by the Broadcasting Authority either under the Broadcasting Authority Ordinance or under a provision of a Code of Practice, he is satisfied that this Licence should be revoked;

- (c) if the Licensee:-
 - (i) goes into compulsory liquidation or into voluntary liquidation other than for the purpose of amalgamation or reconstruction; or
 - (ii) makes any assignment to, or voluntary arrangement with, its creditors; or
- (d) if the Licensee fails to submit or maintain a performance bond in accordance with Condition 43.

Such revocation shall take effect forthwith or on such day as the Chief Executive in Council specifies.

- 13.4 In determining whether to revoke this Licence, the Chief Executive in Council may have regard to the matters to which the Broadcasting Authority had regard under Condition 14.2.
- 13.5 Where it is decided to revoke this Licence pursuant to Condition 13.1, the Chief Executive in Council shall cause notice in writing of the decision to be given to the Licensee, and the decision shall come into effect on the day specified therein which shall be a day not earlier than the 60th day after the date of the notice.
- 13.6 Where it is necessary for the due compliance with this Condition, the Chief Executive in Council may extend the term of this Licence.

14. Suspension of Licence

- 14.1 Subject to the provisions of this Condition 14, the Broadcasting Authority may suspend this Licence for such period, being a period not exceeding 30 days, as specified in the suspension.
- 14.2 This Licence shall only be suspended under this Condition 14, if having regard to such of the following as is or are appropriate in the particular case, namely, the number and amount of financial penalties imposed on the Licensee under the Broadcasting Authority Ordinance since the grant of this Licence; the number of occasions on which, since such grant, the requirements of the Telecommunications Ordinance have, in relation to the Licensee, been contravened; any failure by the Licensee, whether by act or omission, to comply with a term or condition attached to this

Licence; or any such failure to comply with any direction or order applicable to the Licensee and given or made by the Broadcasting Authority either under the Broadcasting Authority Ordinance or under a provision of a Code of Practice, the Broadcasting Authority is satisfied that this Licence should be suspended.

- 14.3 The Broadcasting Authority shall not suspend this Licence unless and until it has given to the Licensee notice in writing stating that that Authority has under consideration the suspension of this Licence and the grounds upon which such suspension is being considered and the Broadcasting Authority has considered any representation or objection made to it as regards the proposed suspension.
- 14.4 The notice referred to in Condition 14.3 shall, in addition to stating the matters required by that Condition, state that representations and objections as regards the proposed suspension may be made to the Broadcasting Authority (either orally or in writing or both) during such period (being a period of not less than 28 days beginning on the date of receipt by the Licensee of the notice) as shall be specified in the notice.
- 14.5 Where this Licence is suspended under this Condition 14, the suspension shall not come into force before:-
- (a) in case an appeal is not taken under section 26 of the Broadcasting Authority Ordinance, the expiration of the period during which such an appeal may be taken; or
 - (b) in case such an appeal is taken, the appeal is either withdrawn or determined.

15. Station identification

- 15.1 The Licensee shall, when broadcasting any programmes, including any test or experimental transmissions, transmit a station identification signal as frequently as practicable.
- 15.2 Without prejudice to Condition 15.1, the Licensee shall transmit its station identification signal at least once during each clock-hour of the transmission of its broadcast programmes, unless to do so would cause unreasonable interruption of its broadcast programmes.

- 15.3 The Licensee shall give the Broadcasting Authority not less than 14 days' notice in writing of any proposed change to its station identification signal and shall comply with any direction of that Authority in relation to the signal.
- 15.4 For the purposes of this Licence, "station identification signal" means any aural transmission exclusively for the purpose of identifying the broadcasting service as that of the Licensee and, without prejudice to the generality of the foregoing, not for the promotion of the Licensee's station or programme services.

16. Intellectual property rights

The Licensee shall not do any act or permit any act to be done which is an infringement of any intellectual property right or any other rights (including but not limited to moral rights) of any other person which may exist in any published programme or other printed or recorded matter or which is or may be protected under the provision of any enactment for the time being in force or under any other law enforceable in Hong Kong.

17. Language of books and accounts

All books and accounts of the Licensee shall be written in the English or Chinese language.

18. Number of sound broadcasting service channels, language and hours of service

[The following Condition 18.1 is applicable to DBC only:]

- 18.1 The Licensee shall --
- (a) from the Service Commencement Date, broadcast each day seven 24-hour sound broadcasting service channels, comprising one 24-hour Talk Radio channel, one 24-hour Ethnic Minorities channel, two 24-hour Music channels and three other 24-hour sound broadcasting service channels which may be News & Market Update channel, Leisure Life channel, Community channel or Music channel; and

- (b) within 12 months from the Service Commencement Date and at all times thereafter, broadcast seven 24-hour sound broadcasting service channels, comprising one 24-hour Talk Radio channel, one 24-hour Ethnic Minorities channel, one 24-hour News & Market Update channel, one 24-hour Leisure Life channel, one 24-hour Community channel and two 24-hour Music channels, each day,

in accordance with this Licence and using a specific range of transmission frequencies and capacity thereof as directed or approved by the Telecommunications Authority from time to time.

[The following Condition 18.1 is applicable to Metro only:]

18.1 The Licensee shall –

- (a) from the Service Commencement Date, broadcast not fewer than one 24-hour sound broadcasting service channel, including one 24-hour sound broadcasting service channel on financial news and information, each day;
- (b) within 12 months from the Service Commencement Date, broadcast not fewer than two 24-hour sound broadcasting service channels, including one 24-hour sound broadcasting service channel on financial news and information and one 24-hour sound broadcasting service channel on music and entertainment, each day; and
- (c) within 24 months from the Service Commencement Date and at all times thereafter, broadcast three 24-hour sound broadcasting service channels, including one 24-hour sound broadcasting service channel on financial news and information, one 24-hour sound broadcasting service channel on music and entertainment and one 24-hour sound broadcasting service channel on lifestyle each day,

in accordance with this Licence and using a specific range of transmission frequencies and capacity thereof as directed or approved by the Telecommunications Authority from time to time.

[The following Condition 18.1 is applicable to Phoenix U only:]

18.1 The Licensee shall –

- (a) from the Service Commencement Date, broadcast not fewer than one 24-hour sound broadcasting service channel, including one 24-hour sound broadcasting service channel on current and social affairs, economic and financial issues and historical and cultural programmes, each day;
- (b) within 6 months from the Service Commencement Date, broadcast not fewer than two 24-hour sound broadcasting service channels, including one 24-hour sound broadcasting service channel on current and social affairs, economic and financial issues and historical and cultural programmes and one 24-hour sound broadcasting service channel on information exchange between Hong Kong and Guangdong, each day; and
- (c) within 12 months from the Service Commencement Date and at all times thereafter, broadcast three 24-hour sound broadcasting service channels, including one 24-hour sound broadcasting service channel on current and social affairs, economic and financial issues and historical and cultural programmes, one 24-hour sound broadcasting service channel on information exchange between Hong Kong and Guangdong and one 24-hour sound broadcasting service channel on Putonghua learning and music each day,

in accordance with this Licence and using a specific range of transmission frequencies and capacity thereof as directed or approved by the Telecommunications Authority from time to time.

- 18.2 The Licensee shall immediately notify the Broadcasting Authority when a sound broadcasting service channel commences service.
- 18.3 The Licensee shall broadcast on its sound broadcasting service channels not fewer than a total of 50 hours of non-Cantonese audio programmes each week.
- 18.4 Upon application in writing by the Licensee, the Broadcasting Authority may approve arrangements different from those in Conditions 18.1 and 18.3.

19. Residential requirement of directors

- 19.1 The Chairman and the managing director (and any person occupying these positions by whatever name called) and the majority of the directors who take an active part in the control of the Licensee shall, unless otherwise approved by the Broadcasting Authority, each be ordinarily resident in Hong Kong and have been so ordinarily resident for one continuous period of at least seven years.
- 19.2 The control and management of the Licensee shall be bona fide exercised within Hong Kong.

20. Licensee to formulate general guidelines

The Licensee shall formulate written guidelines for all staff and agents concerned with the contents included in its Sound Broadcasting Service and Ancillary Visual Service, including but not limited to all programmes and advertising, stating the Licensee's principles regarding its responsibilities to the public, with particular reference to its obligations under the relevant Codes of Practice, and the Licensee shall make these staff and agents aware, and refresh their memory at regular intervals, of the guidelines and Codes of Practice.

21. Discipline and training

The Licensee shall ensure good discipline and training among its staff as regards adherence to the relevant Codes of Practice.

22. Comments and complaints

- 22.1 The Licensee shall receive and consider all comments and complaints made by or on behalf of any person who believes himself to have been treated unjustly or unfairly in any programme, material or item included in its Sound Broadcasting Service or in any Ancillary Visual Service provided by the Licensee, or who comments or complains in substance or in form with respect to the whole or part of the content, production, transmission coverage, technical requirements or time of broadcasting of such programme, material or item or the Services, or any matter relating thereto, or with respect to the management of the Licensee.

- 22.2 The Licensee shall implement a procedure for dealing with comments and complaints as required from time to time by the Broadcasting Authority.
- 22.3 The Licensee shall keep a complete, accurate and up-to-date record in writing of all comments and complaints received, and submit it to the Broadcasting Authority on a regular basis and on demand. The record shall be retained by the Licensee for not less than 2 years.
- 22.4 The Licensee shall keep a record, in writing or in a retrievable and perceivable form, of audio programmes broadcast showing the date and time of broadcasting and shall retain the written scripts (if any) and recordings of all broadcasts, each for such a period as specified by the Broadcasting Authority and shall submit them to the Broadcasting Authority in a visible and legible manner for examination on demand.
- 22.5 The Licensee shall keep a record, in writing or in a retrievable and perceivable form, of the Ancillary Visual Service showing the date and time of transmission or display, or both if the respective date and time of transmission and display are different, and shall retain the written scripts (if any) and recordings of all the programmes, material and items transmitted or displayed, each for such a period as specified by the Broadcasting Authority and shall submit them to the Broadcasting Authority in a visible and legible manner for examination on demand.

23. News programmes

In transmitting any news programmes or reports, the Licensee shall ensure that international and local affairs are treated impartially and transmitted accurately.

24. Weather-related information

- 24.1 Subject to Condition 24.2, the Licensee may transmit any weather programme or announcement produced from sources which are, in the opinion of the Broadcasting Authority, official or authentic.
- 24.2 The Licensee shall, if it is directed to do so by the Broadcasting Authority, transmit any weather programme or announcement supplied to it by the Government in place of or in addition to any other such programme or announcement produced by the Licensee or any other person.

25. Simulcast and FM programmes

- 25.1 Unless the Broadcasting Authority otherwise approves or determines, for each sound broadcasting service channel broadcast under this Licence, the Licensee shall ensure that the aggregate time in any week for simulcasting any FM broadcasting service shall not exceed 50 percent of the total broadcast time of that week (i.e. not more than 84 hours for a 24-hour sound broadcasting service channel).
- 25.2 Unless the Broadcasting Authority otherwise approves or determines, for each sound broadcasting service channel broadcast under this Licence, the Licensee shall ensure that the aggregate time in any week for broadcasting any FM programme transmitted in the digital form for the first time on any sound broadcasting channel shall not exceed 50 percent of the total broadcast time of that week (i.e. not more than 84 hours for a 24-hour sound broadcasting service channel).

26. Ancillary Visual Service

- 26.1 Unless the Broadcasting Authority otherwise approves or determines, the Licensee shall coordinate with all other licensees using the Multiplex and RTHK, and, include in its Ancillary Visual Service an Electronic Programme Guide within 18 months after the Grant Date.
- 26.2 The Licensee, in providing an Ancillary Visual Service, shall monitor and ensure strict compliance with the Codes of Practice.
- 26.3 The Licensee shall not provide any Ancillary Visual Service which consists of moving images at a refresh rate faster than one picture per second, unless the moving images consist of text only.

27. Management of the Licensee

The Licensee shall ensure that the management of the Licensee shall not be performed by persons other than the directors and principal officers of the Licensee and persons duly authorised by the Licensee.

28. Announcement in the public interest

The Licensee shall broadcast on each of its sound broadcasting service channels for periods not exceeding in total one minute in each clock-hour such announcements in the public interest as the Broadcasting Authority may determine.

29. Publicity material of the Broadcasting Authority

29.1 The Licensee shall broadcast on each of its sound broadcasting service channels such publicity material as the Broadcasting Authority may direct in order to promote knowledge and understanding of the activities and functions of that Authority.

29.2 The publicity material referred to in Condition 29.1 may be directed to be broadcast twice daily for not more than one minute on each of its sound broadcasting service channels between the hours of 6:00 p.m. and 11:00 p.m. subject to a maximum limit of 5 minutes in aggregate each week on each of its sound broadcasting service channels.

30. Advertising

The Licensee shall monitor and ensure strict compliance with the relevant Codes of Practice issued by the Broadcasting Authority.

31. Restriction on advertising

31.1 For each sound broadcasting service channel broadcast under this Licence, the Licensee shall ensure that the aggregate audio advertising time on any day shall not exceed 12 percent of the total broadcast time of that day.

31.2 For each sound broadcasting service channel broadcast under this Licence, the Licensee shall ensure that the aggregate time for displaying visual advertising material on any day shall not exceed 30 percent of the total time for which an Ancillary Visual Service is provided on that day.

32. Programme development and capital investment

- 32.1 Unless otherwise approved by the Broadcasting Authority, the Licensee shall implement the Licensee's Proposal.
- 32.2 Unless otherwise approved by the Broadcasting Authority, the Licensee shall make such acquisitions and investments as are necessary in order to:-
- (a) perform all the Licensee's obligations under this Licence, including but not limited to complying with the Six-year Investment Plan; and
 - (b) comply with the provisions from time to time in force of the Telecommunications Ordinance, the Broadcasting Authority Ordinance and all subsidiary legislation, regulations, directions and Codes of Practice made thereunder.
- 32.3 Within three months from each anniversary of the Grant Date, the Licensee shall submit to the Broadcasting Authority a management report of the Licensee certifying the capital investment and programming investment incurred by the Licensee in providing the Services for the year preceding the anniversary date. The management report shall give a true and fair view of the capital investment and programming investment so incurred by the Licensee, and shall be approved by the directors of the Licensee and signed on behalf of the board by chairman of the meeting at which the management report was approved or by the secretary of the Licensee. The Licensee shall explain to Broadcasting Authority if the actual annual expenditure deviates from the Six-year Investment Plan.

33. Notices or directions given to the Licensee

- 33.1 Where any consent, notice, direction, authorisation or approval of or from any person is required under this Licence for the doing of any matter or thing by or on behalf of the Licensee, or a notice or notification is required to be given by or on behalf of the Licensee to any person, that consent, notice, direction, authorisation, approval or notification is valid only if given in writing and signed by a person with authority to do so and, subject to Condition 33.2, given before the doing of the said matter or thing in question.

- 33.2 The person referred to in Condition 33.1 may generally or specifically in relation to a particular matter or thing referred to in Condition 33.1 by notice in writing to the Licensee waive the requirement for its or his (as the case may be) consent, notice, direction, authorisation or approval to be given before the doing of the matter or thing in question, provided that no such waiver shall estop that person from withdrawing the waiver, with prospective effect, in whole or in part, or from requiring that the consent, notice, direction, authorisation or approval (as the case may be), be required timeously in relation to other matters or things.
- 33.3 Without any limitation whatsoever on the rights and powers conferred by Part VI (Powers) of the Interpretation and General Clauses Ordinance, where a person other than the Licensee gives any consent, notice, direction, authorisation or approval under this Licence to the Licensee, the same may be:-
- (a) withdrawn, modified or replaced from time to time by that person as if the withdrawal, modification or replacement were the giving of a consent, notice, direction, approval or authorisation under this Licence and the Licensee shall comply therewith;
 - (b) given once or from time to time; and
 - (c) made subject to such conditions as that person may impose.
- 33.4 All references in this Licence to the doing of any matter or thing by a person other than the Licensee include the delegate of such person, or other agent of that person, who is authorised in that regard by or under any law or Ordinance.
- 33.5 Any communication in writing moving from a person to the Licensee under this Licence may be validly served or given either by delivering it to an officer or employee of the Licensee at the registered office of the Licensee or its last known place of business in Hong Kong or by forwarding it by registered post to its registered office or last known place of business in Hong Kong.

34. Purchase of lands, buildings, etc.

- 34.1 Where:-

- (a) notice of non-renewal of this Licence is given under section 13E of the Telecommunications Ordinance; or
- (b) this Licence is or has been, or is to be, revoked or surrendered;

the Chief Executive in Council may, subject to Condition 34.2(a), not later than 3 years from the date of expiry, revocation or surrender of the Licence, direct The Financial Secretary Incorporated to acquire by purchase any lands (which for the purposes of this Condition 34 shall include any licence or option over land), installations, plant and equipment in or over which the Licensee has a right, title or interest and used by the Licensee for the purposes of this Licence within 6 years prior to the date of expiry, revocation or surrender of the Licence.

34.2 Where a direction of the Chief Executive in Council has been given pursuant to Condition 34.1, The Financial Secretary Incorporated shall within the following period specify the land, installations, plant and equipment to be acquired-

- (a) not less than 4 months and not more than 8 months after the giving of notice of non-renewal of this Licence under section 13E of the Telecommunications Ordinance; or
- (b) where this Licence is or has been, or is to be, revoked or surrendered, within 12 months after the giving of the direction under Condition 34.1.

provided that the specification may be made by The Financial Secretary Incorporated more than once and from time to time during the relevant period.

34.3 The consideration to be paid to the Licensee for the right, title or interest in or over the said land, installations, plant and equipment shall be a sum equal to the open market value thereof at the date of non-renewal, revocation or surrender (as the case may be) of this Licence as between a willing buyer and a willing seller but without regard to:-

- (a) loss of profit;
- (b) goodwill;
- (c) the right of pre-emption;

- (d) the cost of raising capital; and
 - (e) all the property being placed on the market at one and the same time.
- 34.4 In the event of the price offered by The Financial Secretary Incorporated being refused, the price shall be determined by arbitration in accordance with the Arbitration Ordinance (Cap. 341) and for the purpose of giving effect to the foregoing, The Financial Secretary Incorporated and the Licensee shall be regarded as having concluded an arbitration agreement (within the meaning of that Ordinance) whose provisions shall be taken to include a provision that the aforesaid price shall, in the absence of agreement, be determined by a single arbitrator.
- 34.5 Where land or any interest in land is acquired under this Condition 34 on the direction of the Chief Executive in Council, The Financial Secretary Incorporated shall, within 1 month after the acquisition, register in the Land Registry by memorial a declaration that it has been so purchased.
- 34.6 All property acquired under this Condition 34 on the direction of the Chief Executive in Council shall, as the case may be, vest in The Financial Secretary Incorporated:-
- (a) upon the expiry of this Licence after notice of a decision not to renew;
 - (b) where this Licence is revoked or surrendered, when the revocation or surrender (as the case may be) takes effect or when a price is offered by The Financial Secretary Incorporated, whichever is the later, and thereupon all rights in such property on the part of the Licensee shall cease and determine.
- 34.7 Nothing in this Condition 34 shall confer on the Licensee any right to require The Financial Secretary Incorporated to acquire any part of its lands, installations, plant or equipment.
- 34.8 The Licensee shall notify the Broadcasting Authority:-
- (a) of all land in respect of which the Licensee has right, title or interest (as the case may be) as at the Grant Date, within 14 days thereafter and within 14 days after the date of each binding agreement entered into by or on behalf of the Licensee to acquire such right, title or interest;

- (b) of all land and interests in land which it uses or ceases to use for the purposes of this Licence within 14 days after the commencement of the use or cessation to use; and
- (c) of all land and interests in land which the Licensee has ceased to have a right, title or interest (as the case may be) within 14 days after the date the Licensee ceased to have such right, title or interest.

35. Licensee to submit audited accounts

- 35.1 The Licensee shall submit to the Broadcasting Authority, not later than 6 months after the end of its accounting year, audited accounts prepared in such manner and containing such details as may be approved and required by the Broadcasting Authority. The audited accounts to be submitted for an accounting year shall include, without limitation, a reconciliation statement as at the end of the accounting year on the management report submitted by the Licensee under Condition 32.3 during the accounting year and other financial information contained in the audited accounts.
- 35.2 Where a company is a subsidiary company of the Licensee, the Licensee shall, not later than 6 months after the end of an accounting year of the company, submit, or cause to be submitted, to the Broadcasting Authority a copy of the company's audited accounts for that year.

36. Licensee to submit returns

- 36.1 The Licensee shall submit to the Broadcasting Authority not later than the end of the month of April each year a return in a form specified by it showing the name of each director, whether he is ordinarily resident in Hong Kong and has been so ordinarily resident for a continuous period of at least seven years, together with such supporting details and evidence as the Broadcasting Authority may reasonably require.
- 36.2 Without prejudice to Condition 36.1, the Licensee shall submit to the Broadcasting Authority in a form specified by it a return showing:-
 - (a) particulars of every change of or addition to the persons who are directors;

- (b) whether following the change or addition, each of the directors is ordinarily resident in Hong Kong and has been so for a continuous period of at least seven years; and
- (c) such details and evidence in support of the foregoing as the Broadcasting Authority may reasonably require.

36.3 Unless otherwise approved by the Broadcasting Authority, the return referred to in Condition 36.2 shall be submitted to the Broadcasting Authority not later than 14 days after the change or addition.

36.4 The Licensee shall submit to the Broadcasting Authority on demand such other information as it may reasonably require for the purposes of exercising its functions under the Broadcasting Authority Ordinance.

37. Non-compliance due to acts of God

37.1 Subject to Condition 37.2, the Licensee shall be exonerated from observing or performing the terms and conditions of this Licence if and so long as the failure to observe or perform those terms and conditions shall be directly attributable to any act of God, any riot, civil commotion or disturbance, the restraint of any ruler, any strike, combination of workmen or lockout, any fire, explosion, typhoon, storm, flooding, landslide, subsidence of ground or other catastrophe, any war, blockade or embargo, any breakdown of plant, machinery or equipment not due to the negligence or want of reasonable maintenance on the part of the Licensee, its servants or agents, any commandeering or requisitioning of the Licensee's installations, equipment or facilities or any other interference or circumstance wholly beyond the control of the Licensee.

37.2 The Licensee shall, with all due diligence and speed, repair, rebuild, restore, reinstate and take all such actions as may be required to repair, rebuild, restore and reinstate in all respects the Services in accordance with the terms and conditions of this Licence and resume observing and performing those terms and conditions.

38. Liability of Licensee for contraventions

The Licensee shall be liable for the contravention of:-

- (a) any provision of the Telecommunications Ordinance, the Broadcasting Authority Ordinance, any other Ordinance, subsidiary legislation, regulation, direction, Code of Practice or any provision thereof; and
- (b) subject to Condition 37, any term or condition of this Licence,

where the contravention is due to any act or omission of any director, officer, staff or agent of the Licensee acting for or on behalf of the Licensee.

39. Saving of rights granted

- 39.1 Notwithstanding anything contained in this Licence, the Licensee shall not in any way whatsoever abrogate or interfere with any of the telecommunications services or off-air broadcasts authorised under the Telecommunications Ordinance or Broadcasting Ordinance.
- 39.2 Nothing in this Licence shall prejudice or affect the right of the Government to establish, extend, maintain, operate or provide any telecommunications, broadcasting or communications services or systems, or to receive, distribute or broadcast any matter or to enter into any agreements or grant any licences for the establishment, extension, maintenance, operation or provision of any such services or systems.

40. Statements made on application binding on the Licensee

Unless otherwise approved by the Broadcasting Authority, the Licensee shall comply at all times with the statements (including statements of intention) and representations made by or on its behalf in its application for the grant of this Licence submitted by it except in so far as such statements and representations are no longer applicable due to amendment of the laws of Hong Kong relating to the establishment, maintenance, operation and provision of broadcasting services.

41. Free competition

- 41.1 The Licensee shall not,

- (a) enter into any agreement or arrangement with, or offer any inducement (whether financial or otherwise) to, any person; or
- (b) enforce by way of legal proceedings, arbitration, forfeiture of liquidated damages, adjustment or rebate of charges or otherwise, any term or condition; or
- (c) solicit or permit another to do, or refrain from doing, anything; or
- (d) otherwise engage in conduct,

which has the effect or purpose of restricting, impeding or restraining competition in relation to the establishment, maintenance, operation or provision of any service or network for telecommunications in Hong Kong, or broadcasting in Hong Kong of any television programme service licensee or sound broadcasting licensee.

41.2 The Licensee shall not be regarded to have contravened Condition 41.1 if it satisfies the Broadcasting Authority that any aforesaid restriction, impediment or restraint is one that is and remains fair and reasonable in reference to the interests of the public in Hong Kong including without limitation the preservation of the freedom from restriction, impediment or restraint of competition protected by that Condition and having regard to the interests of licensees referred to therein and of the Licensee.

41.3 Condition 41.1 shall not apply in respect of any aforesaid restriction, impediment or restraint on:-

- (a) broadcasting any programme material acquired or produced by or for the Licensee and broadcast by it under this Licence;
- (b) any person from:-
 - (i) disclosing or using any proprietary right vested in the Licensee or other person (including without limitation the disclosure of any information in respect of which there is such a proprietary right);
 - (ii) using or exploiting his artistic talent or ability;
- (c) any employee or former employee of the Licensee who has or had access to information in which the Licensee has a proprietary right from engaging in any business, or being employed by any person,

in competition with the Licensee during the period of his employment and for a reasonable period not exceeding 6 months from the date of termination of his employment,

provided that the said restriction, impediment or restraint is not void or unenforceable under any law or Ordinance or would not be void or unenforceable if the proper law governing the restriction, impediment or restraint were that of Hong Kong.

- 41.4 For the purposes of this Condition 41, without prejudice to the other rights, power and duties of the Broadcasting Authority, that Authority may consult with and seek the views of any person.

42. Publication of Licence

- 42.1 The Licensee shall make available for inspection by members of the public, free of charge, a true copy of this Licence (other than the Licensee's Proposal) at:-

- (a) its registered office or principal place of business; and
- (b) the head office of the Television and Entertainment Licensing Authority.

- 42.2 The Government may at its own discretion make the terms and conditions of this Licence (other than any commercial confidential information expressly designated as such) publicly available in any manner it thinks fit.

43. Performance bond

- 43.1 Not later than one month from the Grant Date, the Licensee shall submit to the Broadcasting Authority a duly issued performance bond in favour of the Government in the sum of HK\$2 million ("the Bonded Sum") in the form and on the terms specified in Schedule 1, to secure the compliance by the Licensee with the condition that the Licensee shall establish and maintain a broadcasting service as authorised and required in Condition 18.1(a) of this Licence within 18 months after the Grant Date.

- 43.2 If after submission of the duly issued performance bond under Condition 43.1, the Licensee wishes to replace that performance bond with one issued by a different bank, the Licensee shall submit full written details of the proposed replacement bank and replacement performance bond to the Secretary for Commerce and Economic Development on behalf of the Government for approval not less than 14 days before the date the change becomes effective.
- 43.3 Notwithstanding any other conditions of this Licence (including but not limited to the terms and conditions of the performance bond):
- (a) if the Licensee fails to provide or maintain a performance bond in accordance with the foregoing provisions of this Condition, this Licence may be revoked notwithstanding that the Licensee may have embarked on its preparation and performance; and no licence fees or other fees and charges paid or payable by the Licensee before cessation in accordance with this Condition shall be refunded, or cease to be payable, as the case may be;
 - (b) all rights, powers and remedies of and claims by the Government under the performance bond lodged by the Licensee pursuant to this Condition, including any replacement thereof, shall be without prejudice to the other rights, powers and remedies of and claims by the Government and to the rights, powers and remedies of and claims by the Chief Executive in Council, the Chief Executive, the Broadcasting Authority, the Telecommunications Authority and, without limitation, any other person under any laws or Ordinance; and
 - (c) any replacement performance bond referred to in Condition 43.2 shall be in the form and on the terms of the performance bond appearing in Schedule 1 save for:
 - (i) the change in particulars of the replacement bank; and
 - (ii) the omission therefrom of any Milestone and Deadline for Compliance in respect of which liability has ceased by reason of either the payment in full of all calls on the performance bond prior to the date the said change of bank becomes effective or the issue of any certificate of completion by the Government in respect of the said Milestone and Deadline for Compliance.

- 43.4 The Licensee shall ensure that the Surety referred to in the performance bond, including any replacement performance bond, shall be and remain irrevocably and unconditionally bound to the Government and liable for payment of the Bonded Sum Payable.
- 43.5 Once the Broadcasting Authority is satisfied that the Licensee has complied with its obligations in respect of the Milestone and Deadline for Compliance set out in the performance bond submitted to the Government, the Secretary for Commerce and Economic Development on behalf of the Government shall, as soon as practicable thereafter but no more than 30 days and in response to a request in writing to that effect from the Licensee, issue in respect thereof a certificate of completion to the Licensee and to the Surety referred to in the performance bond under this Licence or replacement bank referred to in Condition 43.2.

44. Commencement of service and soft launch

- 44.1 Unless the Broadcasting Authority otherwise approves or determines, the Licensee shall within 18 months after the Grant Date establish and maintain a Sound Broadcasting Service as authorized and required in Condition 18.1(a).
- 44.2 The Licensee shall, as soon as practicable and in any event not fewer than 30 days in advance, notify the Broadcasting Authority in writing of the date on which the Licensee will commence to provide the Sound Broadcasting Service as authorized and required in Condition 18.1(a).

[The following Condition 44.3 is applicable to Metro and Phoenix U only:]

- 44.3 Prior to the date on which Condition 18.1(a) is complied with, the Licensee may provide –
- (a) a Sound Broadcasting Service on a daily basis comprising no more than three sound broadcasting service channels; and
 - (b) an Ancillary Visual Service.

[The following Condition 44.3 is applicable to DBC only:]

- 44.3 Prior to the date on which Condition 18.1(a) is complied with, the Licensee may provide –
- (a) a Sound Broadcasting Service on a daily basis comprising no more than seven sound broadcasting service channels; and
 - (b) an Ancillary Visual Service.
- 44.4 Save for Conditions 18.3, 24.2, 25, 28 and 29, the terms and conditions set out in this Licence shall apply to the Licensee during the period in which the Services are provided by the Licensee pursuant to Condition 44.3.
- 44.5 Unless the Broadcasting Authority otherwise approves or determines, the Licensee shall ensure that Services provided pursuant to Condition 44.3 shall remain available on a daily basis from the Soft Launch Date until the date on which Condition 18.1(a) is complied with.
- 44.6 The Licensee shall as soon as practicable notify the Broadcasting Authority in writing of the date on which the Licensee will commence to provide the Services as authorized and required in Condition 44.3.

45. Other requirements

- 45.1 For the avoidance of doubt, the Licensee shall apply for such other licences, permissions, approvals, agreements or grants as may be required under any law or Ordinance if any such licence, permission, approval, agreement or grant is or becomes necessary for or in connection with the establishment and maintenance of the broadcasting service as authorized and required under this Licence.

SCHEDULE 1**FORM OF PERFORMANCE BOND**

BY THIS BOND dated the [] day of [month] and [year]
We, [*Digital Broadcasting Corporation Hong Kong Limited / Metro Broadcast Corporation Limited / Phoenix U Radio Limited], whose registered office is at [*Unit 306, L3, Cyberport 3, 100 Cyberport Road, Pokfulam, Hong Kong (for DBC) / 22nd Floor, Hutchison House, 10 Harcourt Road, Hong Kong (for Metro) / No. 2-6 Dai King Street, Tai Po Industrial Estate, Tai Po, N.T., Hong Kong (for Phoenix U)] ("the Licensee") and [], whose registered office is at [] ("the Surety") are irrevocably and unconditionally bound to the Government (together with his successors and assigns) up to the sum of HK\$2,000,000.00 (Hong Kong Dollars Two Million Only) subject to the terms and conditions of this Bond and with the Milestone set out in the Annex hereto ("the Annex") for payment of which sum 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, the Licensee agreed to obtain a surety to be bound unto the Government 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. If, in respect of any Milestone set out in the Annex, the Licensee fails to achieve that Milestone by the Deadline for Compliance set out opposite to that Milestone in the Annex, the Surety shall upon demand made by the Government in writing and without proof or conditions satisfy and discharge the relevant amount of bonded sum (as set out in the Annex) ("the Bonded Sum") provided that the aggregate liability of the Surety under this Bond in respect of that failure shall not exceed the Bonded Sum set out opposite to that Milestone in the Annex.

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 but not limited to extensions of time for performance) or any concession or waiver by the Broadcasting 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;
 - (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 Broadcasting 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 Broadcasting Authority, the Government of the Hong Kong Special Administrative Region, the Chief Executive in Council or the Chief Executive, or with the Surety; and
 - (e) subject to clause 4 below, the issue of any certificate of completion by the Secretary for Commerce and Economic Development in respect of any Milestone set out in the Annex.
4. The liability of the Surety under this Bond shall cease on whichever of the following events first occurs:
 - (a) payment by the Surety of the Bonded Sum in full to the Government; or
 - (b) issue of a certificate of completion by the Secretary for Commerce and Economic Development in respect of all the Milestones set out in the Annex.

5. The Government 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 Broadcasting Authority within a reasonable period after any such assignment.
6. All documents arising out of or in connection with this Bond shall be served:
 - (a) upon the Government, at 2/F Murray Building, Garden Road, Hong Kong marked for the attention Assistant Secretary for Commerce and Economic Development (Communications and Technology) A1;
 - (b) upon the Broadcasting Authority, at 39/F, Revenue Tower, Gloucester Road, Wanchai, Hong Kong marked for the attention Assistant Commissioner for Television and Entertainment Licensing (Broadcasting);
 - (c) upon the Surety, at [] Hong Kong. (Note 1) for the attention – [] Department.
7. The Government, the Broadcasting Authority and the Surety may change their respective nominated addresses for service of documents to another address in Hong Kong but only by 7 days' prior written notice to each other. All demands and notices must be in writing.
8. This Bond shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region. The Licensee and the Surety agree to submit to the non-exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region.

Signed, sealed and delivered (Note 2) by)
as attorney)
and agent for and on behalf)
of [Name of the Licensee]
pursuant to a Power of Attorney)
dated given)
by [Name of the Licensee]
under its Common Seal)

Authorised Signatory
Signature No.:

[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.]

Annex to Schedule 1

<i>Milestone</i>	<i>Deadline for Compliance</i>	<i>Bonded Sum Payable</i>
Establishing and maintaining a broadcasting service as authorised and required in Condition 18.1(a) of this Licence	Unless the Broadcasting Authority otherwise approves or determines, 18 months after the Grant Date	HK\$ 2.0 Million

This Annex shall be read in conjunction with the terms and conditions of the Licence.

SCHEDULE 2**Transmission Plan and technical requirements**

<u>CONDITION</u>	<u>HEADING</u>
1	Telecommunications network for digital audio broadcasting
2	Broadcasting coverage requirement
3	Transmission plan
4	Radio signals
5	Combined transmitting equipment
6	Interference with other services
7	Compliance with international conventions
8	Common facilities
9	Station power supplies
10	Standby equipment
11	Sufficient spare parts
12	Test equipment
13	Minimum capacity for provision of audio programmes
14	Network location

1. **Telecommunications network for digital audio broadcasting**
- 1.1 Unless otherwise directed or approved by the Telecommunications Authority, the Licensee shall use the Multiplex on a non-exclusive basis for providing the Services.
- 1.2 The Licensee shall comply with such Technical Specifications and take such measures as may be required by the Telecommunications Authority (including but not limited to specifications and measures regarding system configuration, capacity, redundancy and provision of standby equipment) in relation to the use of the Multiplex and the establishment, operation and maintenance of all means of telecommunications for the provision of the Services.
- 1.3 Unless otherwise directed or approved by the Telecommunications Authority, the Licensee shall, in establishing, operating, maintaining, or sharing the use of any means of telecommunications for the provision of the Services, coordinate and cooperate with RTHK and other licensees and all other persons authorised and required under a sound broadcasting licence or otherwise to use the Multiplex. All costs involved in the establishment, operation and maintenance of any means of telecommunications to be used jointly with any person, licensee or RTHK shall be shared on an equitable and reasonable basis between the Licensee and that person.
- 1.4 Where the Licensee is unable to agree within a reasonable time with any person, licensee or RTHK on the establishment, operation, maintenance or sharing of the use of any means of telecommunications pursuant to Condition 1.3, the Telecommunications Authority may upon request or on its own initiative intervene and determine the matter.
- 1.5 A determination referred to in Condition 1.4 may require the Licensee to use (whether on a sharing basis or otherwise) either the telecommunications network operated or to be operated by RTHK or any existing telecommunications network or telecommunications network to be established with any others, and may include terms and conditions providing for sharing of the relevant reasonable costs attributable to the establishment, operation, maintenance, provision or use of the telecommunications network.
- 1.6 The Licensee shall pay to the Telecommunications Authority, as the Telecommunications Authority may require, any costs, expenses or financial liabilities incurred by the Telecommunications Authority,

including without limitation, staff costs and expenses in respect of such a determination or the determination process.

- 1.7 In this Schedule, “telecommunications network” includes transmitting antenna systems, transmitters, ensemble multiplexers, microwave links, relay stations and transmitting facilities for carrying of broadcasting signals for the provision of the Services.

2. Broadcasting coverage requirement

- 2.1 The Licensee shall broadcast to those parts of Hong Kong as specified by the Broadcasting Authority and establish such additional relay stations within such period of time as directed from time to time by the Broadcasting Authority.

- 2.2 For the purpose of Condition 2.1 of this Schedule, “broadcast” means broadcasting in such a manner as to enable the Licensee’s transmissions to be received to the satisfaction of the Broadcasting Authority.

- 2.3 The field strength produced by the transmission of each sound broadcasting service channel or the Services operated by the Licensee shall be such that equal facility for the reception of the Services operated by any licensees (including the Licensee) in a given area is available to any audience using a suitable receiver and aerial. All transmitters and relay stations used or hired by the Licensee, whether exclusively or jointly with any others, shall be required to maintain minimum field strengths specified by the Telecommunications Authority within the areas to be served.

3. Transmission plan

- 3.1 Unless otherwise directed or approved by the Broadcasting Authority or the Telecommunications Authority, the Licensee shall be required to transmit its service in accordance with the Transmission Plan specified in the Annex to this Schedule.

- 3.2 Without prejudice to any powers, rights, duties or remedies that the Broadcasting Authority or the Telecommunications Authority may have pursuant to this Licence or otherwise, the Transmission Plan referred to in Condition 3.1 of this Schedule may be amended in whole or in part from time to time by the Telecommunications Authority.

- 3.3 The Licensee shall not activate any additional transmitter or associated equipment established after the Soft Launch Date or modify any telecommunications network without the approval of the Telecommunications Authority and shall observe such conditions as may be imposed by the Telecommunications Authority regarding the testing and operation of the said equipment.

4. Radio signals

The transmission system used or hired by the Licensee, whether exclusively or jointly with any others, shall transmit radio signals in accordance with the characteristics specified in the relevant Codes of Practice.

5. Combined transmitting equipment

- 5.1 If required by the Telecommunications Authority, the Licensee shall use, in co-operation with any other licensee or person (including RTHK) designated by the Telecommunications Authority, combined transmitting antenna systems for all transmitter and relay stations from the Soft Launch Date or at a later date specified by the Telecommunications Authority and thereafter shall continue the use without interruption throughout the Period of Validity of this Licence.
- 5.2 Each of the combined transmitting antenna systems referred to in Condition 5.1 of this Schedule shall comply with Technical Specifications provided by the Telecommunications Authority.
- 5.3 All costs involved in providing any combined transmitting antenna system shall be shared on an equitable and reasonable basis between the Licensee and such other licensee or person (including RTHK), in such manner as may be determined or approved by the Telecommunications Authority.

6. Interference with other services

- 6.1 The Licensee shall use all of its apparatus and equipment in such a manner as not to cause interference with any authorised or permitted

telecommunications, broadcasting or communications services or apparatus operating in or outside Hong Kong.

- 6.2 In order to avoid or remedy any such interference, the Licensee shall comply with all instructions given to it by the Telecommunications Authority in respect of the operation and use of its apparatus and equipment. Pending the implementation by the Licensee to the satisfaction of the Telecommunications Authority of any measures to avoid or remedy any such interference instructed by the Telecommunications Authority, the Telecommunications Authority may, if he reasonably considers that such interference is likely to cause injury (including death), loss or damage, order the cessation of the Licensee's transmissions for such a period as the Telecommunications Authority considers necessary.
- 6.3 Without prejudice to the generality of Conditions 6.1 and 6.2 of this Schedule, the Licensee shall coordinate with such other licensee or person (including RTHK) as may be specified by the Telecommunications Authority, for any provision, installation and maintenance of additional facilities at any digital broadcasting transmitting stations to avoid interference with any existing telecommunications or broadcasting service to the satisfaction of the Telecommunications Authority.
- 6.4 The Licensee shall share the cost on an equitable and reasonable basis as may be determined or approved by the Telecommunications Authority for the provision, installation and maintenance of the additional facilities in Condition 6.3 of this Schedule.
- 6.5 The Licensee shall liaise in good faith with all the existing sound broadcasting or telecommunications service operators for timely implementation of all engineering work and to avoid any service interruption to the existing telecommunications or broadcasting services. The Licensee shall not commence or implement any engineering work unless it has satisfied the Broadcasting Authority or the Telecommunications Authority, as the case may be, that such work shall not cause any service interruption to the existing telecommunications or broadcasting services.

7. Compliance with international conventions

The Licensee shall to the extent required by the Telecommunications Authority perform and observe the requirements of all international telecommunications conventions and agreements relevant to broadcasting or telecommunications which may from time to time be acceded to by or applied to Hong Kong.

8. Common facilities

8.1 The Licensee shall allow other licensees and persons (including RTHK) to use jointly with it such common facilities of or at a transmitter or relay station as specified by the Telecommunications Authority.

8.2 The common facilities referred to in Condition 8.1 of this Schedule shall include the transmitting antenna system, tower, building, standby generator and other site amenities as specified by the Telecommunications Authority.

8.3 The Telecommunications Authority may appoint the Licensee, or another licensee or person to maintain the common facilities referred to in Condition 8.1 of this Schedule, and the person so appointed shall ensure that no licensee (including the Licensee) or other person shall have any operational advantages over any other licensee or person.

8.4 All costs involved in the provision and maintenance of the common facilities referred to in Condition 8.1 of this Schedule shall be shared on an equitable and reasonable basis between the Licensee and the other licensee or person (including RTHK), in such manner as may be determined or approved by the Telecommunications Authority.

9. Station power supplies

9.1 The Licensee shall provide a standby power supply at each transmitter and relay station that is used by the Licensee for the provision of the Services to ensure compliance of each transmitter and relay station with Condition 9.2 of this Schedule.

9.2 The standby power supply referred to in Condition 9.1 of this Schedule shall be able to restart proper function of each relevant transmitter or relay station, such that uninterrupted transmission of the Services is

resumed within one minute after disconnection of the public electricity supply to such transmitter or relay station and such uninterrupted transmission of the Services is maintained for at least 48 hours thereafter.

10. Standby equipment

The Licensee shall provide and maintain standby transmitters with automatic changeover devices at each transmitter and relay station.

11. Sufficient spare parts

The Licensee shall maintain sufficient spare parts in Hong Kong to ensure that interruption of transmission due to equipment fault shall be avoided or minimised as far as reasonably possible.

12. Test equipment

The Licensee shall maintain and provide such test equipment and operating staff and other assistance as may be required by the Telecommunications Authority for the purpose of the Telecommunications Authority performing his functions under this Licence in order to ensure the Licensee's compliance with the terms and conditions of this Licence.

13. Minimum capacity for provision of audio programmes

13.1 Unless the Broadcasting Authority otherwise directs or approves, the Licensee shall use –

- (a) a capacity of no less than 32 kilobits per second for transmission of non-music programmes; and
- (b) a capacity of no less than 48 kilobits per second for transmission of music programmes.

13.2 For the purpose of Condition 13.1 of this Schedule, the minimum capacity shall apply to each sound broadcasting service channel that is required to be operated by the Licensee under this Licence.

14. Network location

The Licensee shall obtain the consent in writing of the Director of Lands before commencing any installation work for any network under, in, over or upon any unleased Government land.

Annex to Schedule 2

Transmission plan

Unless the Telecommunications Authority otherwise directs, the Multiplex referred to in this Licence shall have the following specifications:

- (i) Transmission frequency: 220.352 MHz
- (ii) Bandwidth: 1.536 MHz
(i.e. 219.584 to 221.120MHz inclusive)
- (iii) Class of emission: G7W
- (iv) Antenna polarisation: Vertical
- (v) Transmission signal format: Compliant with EN 300 401 v1.4.1 (2006-06) – Radio Broadcasting Systems; Digital Audio Broadcasting to mobile, portable and fixed receivers

No. of sound broadcasting service channels on the Multiplex to be operated by the Licensee:

[7 (for DBC)
3 (for Phoenix U Radio)
3 (for Metro Radio)]

Capacity of the Multiplex allocated to the Licensee out of a total of 1,152 kbps per multiplex:

[448kbps (for DBC)
192kbps (for Phoenix U Radio)
192kbps (for Metro Radio)]

Particulars of transmitting stations and transmitting power:

Locations of transmitting stations	Effective Radiated Power	In-Service Date
Mount Gough	3000W	Within 18 months after the Grant Date
Cloudy Hill	500W	Within 36 months after the Grant Date
Castle Peak	700W	
Golden Hill	100W	
Lamma Island	500W	
Beacon Hill	1800W	
Kowloon Hill	1000W	

Granted on 22 March 2011

Clerk to the Executive Council
COUNCIL CHAMBER

Accepted by:.....

Signature:.....

Capacity:.....

Date:.....

(#1108293v2)

Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2011

(Made by the Chief Executive in Council under section 35 of the Prevention
of Bribery Ordinance (Cap. 201))

1. Commencement

This Order comes into operation on 27 May 2011.

2. Prevention of Bribery Ordinance amended

The Prevention of Bribery Ordinance (Cap. 201) is amended as set
out in section 3.

3. Schedule 1 amended (Public bodies)

(1) Schedule 1, item 112—

Repeal

“Wave Media Limited.”

Substitute

“Digital Broadcasting Corporation Hong Kong Limited.”.

(2) At the end of Schedule 1—

Add

“115. Phoenix U Radio Limited.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2011

Explanatory Note

“Wave Media Limited” is specified as a public body in Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201). This Order amends that Schedule to substitute the Company’s former name with its new name “Digital Broadcasting Corporation Hong Kong Limited”. The Order also amends that Schedule to specify “Phoenix U Radio Limited” as a public body for the purposes of the Ordinance.

ECONOMIC IMPLICATIONS

The introduction of new players will increase competition in the sound broadcasting market and enhance the development of the industry. The associated increase in capital investment and activities will help the industry to develop new broadcasting technology and nurture more broadcasting talents. The community will benefit from a wider choice of higher quality programmes as well as enhancement of service quality.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

2. Each new licensee will have to pay an annual licence fee based on the number of channels it operates. The licence period is 12 years which straddles over the possible reorganisation of the Broadcasting Division from TELA to the future Office of the Communications Authority Trading Fund (OFCATF). The OFCATF will be established upon enactment of the Communications Authority Bill introduced into the Legislative Council merging the Broadcasting Authority with the Telecommunications Authority to form the Communications Authority (CA). The CA after its establishment would review the fees under its purview.

3. The estimated capital investment for the DAB transmitting facilities will be in the range of \$40 - 50 million. The three prospective DAB licensees and RTHK (which will also provide DAB services using the same multiplex as the three prospective licensees) have agreed to share the use of common DAB transmitting facilities at fair and equitable costs. RTHK, as the manager of hilltop sites accommodating the transmitting facilities, will also be responsible for the maintenance of the common DAB transmitting facilities, and the concerned costs (including costs for technology upgrade) will be shared by the three prospective licensees and RTHK. The three prospective licensees and RTHK will enter into an agreement on the above arrangements. RTHK will meet the additional resources required for the purpose from within the existing allocation.

4. There will be additional workload arising from the administration of the new licences and handling of relevant complaints.

Such workload will be absorbed by the Office of the Telecommunications Authority and the Television and Entertainment Licensing Authority.

SUSTAINABILITY IMPLICATIONS

5. The proposal will bring about positive gain to the broadcasting industry of Hong Kong by promoting competition and increasing the programme choices of the audience. It is conducive to the sustainability principle of achieving a competitive and prosperous market-based economy to meet the aspirations of the public.

ENVIRONMENTAL IMPLICATIONS

6. The licensees will install new DAB networks at the existing FM hilltop transmission stations. Civil engineering works at these hilltop sites, if any, will be of a small-scale and confined within the site boundary of existing FM infrastructure. Nevertheless, these activities may pose some potential impacts to the environment (such as producing construction waste) and the licensees shall follow the relevant statutory requirements including those under the Environmental Impact Assessment Ordinance (Cap. 499).