

LEGISLATIVE COUNCIL BRIEF

Telecommunications Ordinance
(Chapter 106)

Mid-term Review of the Sound Broadcasting Licences of Hong Kong Commercial Broadcasting Company Limited and Metro Broadcast Corporation Limited

INTRODUCTION

At the meeting of the Executive Council held on 14 June 2011, the Council ADVISED and the Chief Executive ORDERED that the following recommendations of the Broadcasting Authority (BA) in respect of the mid-term review of the sound broadcasting licences of Hong Kong Commercial Broadcasting Company Limited (CRHK) and Metro Broadcast Corporation Limited (Metro) be accepted to improve the services of CRHK and Metro –

- (a) CRHK and Metro be required to comply with their respective investment plans for 2010 to 2016 (paragraphs 11 and 12);
- (b) CRHK and Metro be required to submit to the BA an annual management report certifying the actual investment expenditure to facilitate the BA's monitoring of compliance by CRHK and Metro with their investment commitments (paragraph 13):
- (c) CRHK and Metro be required to commit to enhanced positive programme requirements, namely, the provision of –
 - (i) additional 30 minutes of programmes for senior citizens per week;
 - (ii) additional 30 minutes of arts and culture programmes per week, and

- (iii) at least 30 minutes of children’s programmes per week with educational value targeting children up to the age of 15 (paragraph 14);
- (d) CRHK and Metro be required to submit annual reports on compliance with their commitments in positive programmes, which will be made available to the public except for commercial confidential information expressly designated as such (paragraph 15); and
- (e) each of the licences of CRHK and Metro be amended and restated as set out at **Annex A**.

JUSTIFICATIONS

Licences of CRHK and Metro

2. The Chief Executive in Council last renewed the licences of CRHK and Metro in July 2003, with a validity period of 12 years from 26 August 2004 to 25 August 2016 (both dates inclusive). Section 13D of the Telecommunications Ordinance (TO) (Cap.106) stipulates that a licence is subject to renewal within its period of validity on such dates as may be specified in the licence. Condition 6.2 of the respective licences of CRHK and Metro provides that “pursuant to section 13D of the TO, the licence is subject to review by the Chief Executive in Council on such date or dates after 26 August 2010 as the Chief Executive may determine by order.

3. The Chief Executive ordered on 3 September 2010 that the licences of CRHK and Metro should be reviewed from 16 September 2010 (the Review). In accordance with established procedure and practices, the BA has carried out a comprehensive assessment on the performance of the two licensees in the past six years (i.e. from 2004 to 2010). In particular, the BA has considered the following aspects in the assessment –

- (a) the two licensees’ compliance with the statutory requirements, licence conditions and codes of practice promulgated by the BA;
- (b) their investment commitments¹; and
- (c) the public expectation on the two licensees’ performance in the provision of sound broadcasting services.

¹ The two licensees had submitted their investment plans for 2004 to 2010 in 2002.

As requested by the BA, the two licensees have drawn up their investment plans for the remaining validity period under their licences (2010 – 2016).

Public Consultation Conducted by the BA

4. To gauge public views on the services provided by the two licensees, the BA conducted a public consultation exercise in 2010, including a territory-wide household survey, two public hearings and two discussion sessions with members of the Television and Radio Consultation Groups (TRCG)². The BA received 101 written submissions from members of the public during the Review. The BA also attended a special meeting of the Information Technology and Broadcasting Panel of the Legislative Council on 19 November 2010 to receive public depositions.

5. The survey covered 2 171 respondents and showed that both licensees largely met the aspirations of the community. The majority of listeners were satisfied with the licensees' broadcasting services. Less than 3% expressed dissatisfaction with programme quality or programme variety. About 10% were dissatisfied with the amount of specific programme types. Views collected through the public hearings, discussion sessions and written submissions tended to be more in-depth and focused. There were concerns about the licensees' cost-cutting measures, and there were suggestions that –

- (a) there should be greater programme variety, specifically covering current affairs programmes, arts and culture programmes, programmes for children and senior citizens; and
- (b) the BA should seek public views on the licensees' performance annually.

Details of the views collected can be found in the BA's report on the public consultation exercise, which has been uploaded onto the BA website (<http://www.hkba.hk/en/>).

BA's Assessment

6. Based on the assessment of the performance of the two licensees and the public views collected in the Review, the BA has recommended

² TRCG is a consultative scheme administered by the Television and Entertainment Licensing Authority to gauge public opinions on television and radio broadcasting standards. Members join the scheme on a voluntary basis. The TRCG currently comprises about 540 members, who were recruited largely on the basis of the population characteristics of the 18 districts supplied by the Census and Statistics Department.

proposed amendments to the licences of CRHK and Metro at **Annex B** with a view to addressing public views and improving the services to be provided by the two licensees³. The recommendations cover, among others, the licensees' investment plans for 2010 to 2016 and new programming requirements to be imposed.

(A) Compliance with Regulatory Requirements

7. The BA examined the records of the licensees' compliance with the various regulatory requirements under the TO, the licence conditions and the codes of practices over the past six years (from 26 August 2004 to 31 July 2010). These included compliance with the corporate requirements such as disqualified persons and residence requirements, technical and coverage requirements, and requirements on programme and advertising standards. The BA noted that there were lapses on several occasions and the licensees were sanctioned by the BA, as follows –

Sanction Station	Apology	Financial Penalty ⁴	Serious Warning	Warning	Strong Advice	Advice	Total
CRHK	1	3	0	1	6	7	18
Metro	0	4	1	0	0	4	9
Total	1	7	1	1	6	11	27

The BA was satisfied with Metro's performance but noted that CRHK had a few major non-compliance cases (details in footnote 4 below). Given

³ Apart from the licence amendments arising from the assessment, an opportunity is also taken to improve the textual presentation of the licence and (to the extent applicable) align it with the sound broadcasting licences for providing digital audio broadcasting service granted by the Chief Executive in Council in March 2011.

⁴ The three financial penalties on CRHK involved the broadcast of the programmes "So Fab" (架勢堂) and "Night Rider 18" (十八仝人愛落區) and the advertisement for "March for Universal Suffrage" (普選大聯盟).

- (a) The programme hosts of "So Fab" asked listeners to vote for the female artistes they most wanted to indecently assault. In light of the seriousness of the case and the public concern, the BA imposed a financial penalty of \$140,000 on CRHK and also directed the licensee to broadcast an apology.
- (b) "Night Rider 18" was found to constitute an advertisement of a political nature and was broadcast without the approval of the BA. The BA imposed a financial penalty of \$30,000 on CRHK.
- (c) The advertisement for "March for Universal Suffrage" was found to constitute an advertisement of a political nature and was broadcast without the prior approval of the BA. The BA imposed a financial penalty of \$30,000 on CRHK for this case.

Of the four financial penalties on Metro, two of them involved the licensee's failure to broadcast half-hourly news and to comply with the requirement on the designated language of broadcast on the English channel. The remaining two financial penalties involved Metro's failure to broadcast 240 APIs for the period from 12 April to 30 July 2004 and 13 APIs on 12 December 2005 respectively.

the length of the service period and the number of broadcast hours⁵ over the period, the lapses were relatively infrequent.

(B) Investment Commitments

8. For the period from 2004 to 2010, the original investment commitments of CRHK and Metro are shown as follows -

	CRHK	Metro
Programming investment	\$1,072 million	\$555 million
Capital investment	\$17 million	\$12 million
Total:	\$1,089 million	\$567 million

9. CRHK's projected actual expenditure⁶ for 2004 to 2010 is 26% less than the original investment commitment. CRHK attributed the shortfall to a number of factors, including the charging of expenditure on development of website and multi-media applications to the accounts of Commercial Radio Interactive (an affiliate of CRHK established to carry out such development work) instead of CRHK's own accounts; reduced overall spending by advertisers on sponsored events; savings from not signing exclusive contracts with a number of popular programme hosts; and expenditure cuts amidst the economic downturns during the reporting period. CRHK submitted that despite the reduction in expenditure, CRHK remained focused on getting more from less and it had consistently been rated the most listened-to station during the period. The BA was not unsympathetic to the need for CRHK to adjust its investment plans during the reporting period. However, the BA was concerned that CRHK, as a licensee, should have taken its investment commitments seriously and should have sought the BA's prior exemption a lot earlier (CRHK informed the BA about the shortfall in early 2010 only upon being prompted by Television and Entertainment Licensing Authority (TELA)). The BA considered CRHK's oversight a serious lapse by its management and issued a warning to CRHK for the breach. As for Metro, its projected actual expenditure⁶ for 2004 to 2010 exceeds the original investment commitment, and the BA considered this satisfactory.

⁵ The total number of broadcast hours of the two licensees from August 2004 to July 2010 is approximately 312,000 hours.

⁶ The actual expenditures for 2004 to 2010 are projected figures because both CRHK and Metro had not yet provided the audited expenditures for the year 2010. CRHK's financial year begins on 1 April and ends on 31 March in the following year whereas Metro's financial year begins on 1 January and ends on 31 December in the same year.

10. For the period from 2010 to 2016, the investment plans submitted by CRHK and Metro are summarised as follows –

Original proposal	CRHK	Metro
Programming investment	\$796 million	\$641 million
Capital investment	\$17 million	\$36 million
Total:	\$813 million	\$677 million ⁷

CRHK's investment plan for 2010 to 2016 represents a 25% decrease when compared to its commitment for 2004 to 2010. The decrease is solely attributed to a drop in the proposed investment on programming. CRHK submitted that it had taken a conservative approach in preparing its proposed investment on programming due to economic uncertainty following the recent economic downturn and the likelihood of increasing competition in the radio and the multi-media sectors in the next six years. The BA consulted the public on the proposed investment plans and received opinions expressing considerable concerns that the licensees' cost-cutting measures might affect the quality of programmes. The BA considered it necessary to discuss and review the proposed investment plan on programming with CRHK and the BA's proposals are set out in paragraphs 11 and 12 below. On the other hand, the investment plan of Metro for 2010 to 2016 represents a 19% increase as compared with its original commitment for 2004 to 2010, in spite of an anticipated increase in competition in the sound broadcasting market with the development of new digital audio broadcasting (DAB) service⁸.

BA's Recommendations

(A) Investment Commitments

11. As the BA considered Metro's investment plan on both capital and programming expenditure acceptable, it had focussed its discussion with CRHK on its investment plan. While the BA had no difficulty with CRHK's capital expenditure, it noted that CRHK's proposed programming investment for 2010 to 2016 (\$796 million) was only comparable to its

⁷ Metro has confirmed that the investment commitment is solely for the development of its analogue sound broadcasting service and does not overlap with its commitment made under its licence for the provision of digital audio broadcasting service.

⁸ On 22 March 2011, the Chief Executive in Council granted three sound broadcasting licences for DAB to Digital Broadcasting Corporation Hong Kong Limited, Metro Broadcast Corporation Limited and Phoenix U Radio Limited respectively. RTHK, as the public service broadcaster, will also provide its DAB service. The four DAB operators will provide a total of 18 DAB programme channels.

projected actual programming expenditure in the previous six years, which was incurred in a period during which Hong Kong had experienced economic downturn. The BA considered it necessary to address the public concerns that the reduced programming investment might compromise the quality of CRHK's service for the coming six years.

12. After discussions with the BA, CRHK agreed in April 2011 to increase its programming investment for 2010 to 2016 from \$796 million as originally proposed to \$806 million, and the capital investment for 2010 to 2016 from \$17 million as originally proposed to \$21 million respectively. The revised investment plans of CRHK and the investment plan of Metro for 2010 to 2016 are as follows -

Revised proposal	CRHK	Metro
Programming investment	\$806 million <i>[from \$796 million]</i>	\$641 million
Capital investment	\$21 million <i>[from \$17 million]</i>	\$36 million
Total:	\$827 million <i>[from \$813 million]</i>	\$677 million

The BA accepted that it would not be in a position to impose investment decisions on licensees. On balance, the BA recommended accepting CRHK's revised proposal, along with Metro's proposal.

13. In view of CRHK's failure to meet its investment commitment for the past six years, the BA considered it necessary to tighten the monitoring of the licensees' compliance. In this connection, the BA recommended imposing a new licence condition to require the licensees to provide a management report certifying the actual annual investment expenditure within three months from the anniversary date of their licences. If the actual annual investment expenditure deviates from the investment commitment significantly, the BA will ask the licensee to provide explanation and, if appropriate, make up for the shortfall. CRHK and Metro have both accepted this proposal.

(B) Programming Requirements

14. As the licensees are granted the use of frequency spectrum which is a valuable public asset, the current licences impose obligations on the licensees to provide a mix of programme types in the form of positive programme requirements⁹. This is to ensure that radio programmes

⁹ The positive programme requirements stipulate the minimum amount of news, weather reports, current affairs programmes, programmes for young persons, programmes for senior citizens and arts and culture programmes which a licensee has to broadcast.

provided by licensees would cater for different needs of the community. The BA's survey indicated that the majority of listeners (74%) were satisfied with the current level of programme variety. There was no strong justification to increase mandatory positive programmes substantially in light of the changing broadcasting landscape, although there may be room for further enhancement in certain programme genres. In light of public feedback, the BA proposed, and the licensees have agreed, to modify the positive programming requirements as follows –

	Existing minimum	Recommended minimum
Current affairs programmes	90 minutes per week	90 minutes per week ¹⁰
Senior citizen programmes	60 minutes per week	90 minutes per week
Arts and culture programmes	60 minutes per week	90 minutes per week
Children's programmes	-	30 minutes per week

(C) Submission of Reports

15. The BA recommended introducing a new requirement for licensees to submit annual reports on compliance with the positive programme requirements and that the reports should be made available to the public (except for commercial confidential information expressly designated as such). CRHK and Metro have both accepted this proposal.

(D) Licence Amendments and Period of Validity

16. Based on the assessment set out above, the BA recommended that the licences of CRHK and Metro be amended and that their respective validity period should remain the same (i.e. from 26 August 2004 until 25 August 2016). The proposed amendments recommended by the BA to reflect its recommendations in paragraphs 11 to 15 above are at **Annex B**.

IMPLICATIONS OF THE PROPOSAL

17. The recommendations have no financial implications on revenue. The additional workload and resource requirements arising from the recommendations of the BA including the amendments to the licences will be absorbed within the existing resources of the Commerce and Economic

¹⁰ Metro had in the context of the Review committed to broadcast a minimum of 600 minutes per week of current affairs programmes. As for CRHK, it already broadcast an average of nearly 600 minutes per week current affairs programmes during the first six years of the licence.

Development Bureau and TELA. The recommendations also have no significant economic, productivity, environmental or sustainability implications. The recommendations are in conformity with the Basic Law, including the provisions concerning human rights.

PUBLIC CONSULTATION

18. As explained in paragraphs 4 and 5 above, the BA has conducted a public consultation exercise to collect public opinion. The views gathered, where appropriate, have been taken into account in the formulation of the BA's recommendations. The Administration and representatives of the BA also attended a special meeting of the Legislative Council Panel on Information Technology and Broadcasting in November 2010 to receive deputations from the public.

PUBLICITY

19. We will issue a press release on 17 June 2011. We will also brief the Legislative Council Panel on Information Technology and Broadcasting. A spokesman will be available to answer media and public enquiries.

ENQUIRY

20. Enquiries about this brief can be directed to Mr Aaron Liu, Principal Assistant Secretary for Commerce and Economic Development (Communications and Technology)A, at 2189 2236 or aaronliu@cedb.gov.hk.

**Commerce and Economic Development Bureau
June 2011**

Annex A

No. 2 of THREE ORIGINALS

Sound Broadcasting Licence

Telecommunications Ordinance (Chapter 106)

**Metro Broadcast Corporation Limited /
Hong Kong Commercial Broadcasting Company Limited**

Amended and Restated Licence

The Hong Kong Special Administrative Region

INDEX

CONDITION

HEADING

1	Amendment and Restatement of Licence
2	Interpretation
3	Authorisation
4	Licence granted, renewed, amended and restated subject to
5	Indemnity
6	Period and review
7	Notice of intent
8	Principles of broadcasting
9	Reservation
10	The Relevant Authority
11	Licence fee
12	Non-assignment
13	Revocation
14	Suspension of Licence
15	Station identification
16	Intellectual property rights
17	Language of books and accounts
18	Number of Sound Broadcasting Service channels, language and hours of service
19	Residential requirement of directors
20	Licensee to formulate general guidelines
21	Discipline and training
22	Comments and complaints
23	News programmes and weather reports
24	Weather-related information
25	Current affairs programmes
26	Programmes for young persons, senior citizens and children
27	Arts and culture programmes
27A	Annual reports
28	Announcement in the public interest
29	Publicity material of the Broadcasting Authority
30	Advertising
31	Restriction on advertising
31A	Management of the Licensee
32	Programme development and capital investment
33	Notices or directions given to the Licensee
34	Purchase of lands, buildings, etc.

35	Licensee to submit audited accounts
36	Licensee to submit returns
37	Non-compliance due to acts of God
38	Liability of Licensee for contraventions
39	Saving of rights granted
40	Statements made on application binding on the Licensee
41	Free competition
42	Publication of Licence
42A	Disclosure of information
43	Other requirements

SCHEDULE: Transmission plan and technical requirements

Background

- (A) On [30 April 1991 (for Metro) / 25 July 1989 (for CRHK)], in the exercise of the powers conferred on him under the Telecommunications Ordinance (Cap. 106) and all the powers enabling him in that behalf, the Chief Executive in Council granted a broadcasting licence to [Metro Broadcast Corporation Limited / Hong Kong Commercial Broadcasting Company Limited] (“the Licensee”), a company formed and registered in Hong Kong under the Companies Ordinance (Cap. 32), whose registered office is situated at [22nd Floor, Hutchison House, 10 Harcourt Road, Hong Kong (for Metro) / No. 3 Broadcast Drive, Kowloon, Hong Kong (for CRHK)].
- (B) The licence referred in (A) was amended, renewed or extended, as the case may be, on [26 February 2002 and 22 July 2003 (for Metro) / 22 August 1989, 9 January 2001 and 22 July 2003 (for CRHK)].
- (C) Pursuant to Condition 6.2 of the licence referred to in (A) (as it was subsequently amended, renewed and extended), a review of the licence has recently been conducted. As a result of the review, the licence is to be further amended and restated as set out herein.

1. Amendment and Restatement of Licence

In exercise of the powers conferred by the Telecommunications Ordinance (Cap. 106) and all the powers enabling him in that behalf, the Chief Executive in Council hereby amends and restates this Licence as follows.

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:-

“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).

“Commencement Date”

means the date on which the period of validity of this Licence commences.

“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.

“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 letters dated [12 April 2011 and 27 May 2011 (for Metro) / 26 May 2011 (for CRHK)] and the Six-year Investment Plan.

“Period of Validity”

means a continuous period of 12 years from 26 August 2004 to 25 August 2016, both dates inclusive.

“Principal officer”

means, in relation to 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.

“Six-year Investment Plan”

means an investment plan as approved by the Broadcasting Authority relating to the capital investment and programming investment of the Licensee for the period from 26 August 2010 to 25 August 2016 for establishing and maintaining the Sound Broadcasting Service, apparatus and services referred to in Conditions 3(b), and businesses referred to in Condition 3(c), which is contained in the letters dated [26 April 2011 (for Metro) / 10 March 2011 and 27 April 2011 (for CRHK)] to the Broadcasting Authority, and as may be subsequently revised or modified pursuant to the directions or approval of the Broadcasting Authority.

“Sound Broadcasting Service”

means the provision of a service by the Licensee in accordance with this Licence and any law and Ordinance for transmitting sound (otherwise than as part of a television broadcast) for general reception by means of radio waves.

“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.

“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, Code of Practice, this Licence, and 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 Schedule 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**

This Licence authorises the Licensee:-

- (a) to establish and maintain Sound Broadcasting Service;
- (b) to establish and maintain such associated telecommunication apparatus and services incidental to the operation of the Sound Broadcasting Service as may be authorised by the Telecommunications Authority; and
- (c) to carry on such types of business which are in the opinion of the Broadcasting Authority directly connected or associated with the foregoing.

4. **Licence granted, renewed, amended and restated subject to**

This Licence has been granted, amended and renewed, and is amended and restated, 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;
- (b) the terms and conditions set out in this Licence; and
- (c) the performance and observance of the several terms and conditions contained in the licence from time to time in force before the Period of Validity (“the Previous Licence”) and on the Licensee’s part to be performed and observed, and of 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 during the term of the Previous Licence.

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 the said terms and conditions subject to which this Licence is granted, renewed, amended and restated.

6. Period and Review

6.1 Subject to the terms and conditions set out in this Licence and any law or Ordinance, this Licence shall be valid for the Period of Validity and shall be subject to review by the Chief Executive in Council from time to time as the Chief Executive may determine by order.

6.2 For the purposes of or in connection with the review referred to in Condition 6.1, 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.

6.3 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 6.1.

7. Notice of intent

The Licensee shall indicate in writing its interest (if any) in applying for

renewal of this Licence 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; and
 - (c) apply up-to-date technology to perfect the sounds that it broadcasts.

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 Commencement Date 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,

- (i) subject to Condition 11.2, $X = \text{HK}\$3,348,800$

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 =

$$\frac{\text{Forecast Government Consumption Expenditure for Year N}}{\text{Preliminary Estimates for Year (N-1)}} - 1$$

(1+Forecast Growth Rate of Government Consumption Expenditure in Real Terms for Year N)

- 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 Commencement Date of this Licence, the number of occasions on which, since the Commencement Date, 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;

and 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 Commencement Date of this Licence, the number of occasions on which, since the Commencement Date, 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 Telecommunications 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 Sound 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

- 18.1 The Licensee shall broadcast not fewer than three Sound Broadcasting Service channels, using a specific range of transmission frequencies as determined or approved by the Telecommunications Authority.
- 18.2 The Licensee shall broadcast at least one Sound Broadcasting Service channel in which at least 80 per cent of the time during which broadcasting takes place on any one day shall be conducted in the English language ("the English language service").

- 18.3 The Licensee shall broadcast at least one Sound Broadcasting Service channel in which at least 80 per cent of the time during which broadcasting takes place on any one day shall be conducted in Cantonese (“the Chinese language service”).
- 18.4 Upon application in writing by the Licensee, the Broadcasting Authority may approve arrangements for languages of service different from those in Conditions 18.2 and 18.3.
- 18.5 The Licensee shall broadcast for at least 10 hours each day in respect of each Sound Broadcasting Service channel.

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 of 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 the 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 broadcast 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 of 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 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.

23. News programmes and weather reports

23.1 Subject to such alternative arrangements as may be approved from time to time by the Broadcasting Authority, the Licensee shall broadcast:-

(a) in any one Sound Broadcasting Service channel each day:

(i) a minimum of two programmes consisting of comprehensive news bulletins of not less than 10 minutes

each between the hours of 12:00 noon and 12:00 midnight;
and

- (ii) half-hourly news and weather reports between the hours of 6:00 a.m. and 12:00 midnight and hourly news and weather reports for the remaining hours of broadcasting unless to do so would cause unreasonable interruption of its broadcast programmes;

- (b) in the remaining two Sound Broadcasting Service channels:

hourly news and weather reports throughout the day during which broadcasting takes place.

- 23.2 In broadcasting any news programmes or reports, the Licensee shall ensure that international and local affairs are treated impartially and broadcast accurately.

24. Weather-related information

- 24.1 Subject to Condition 24.2, the Licensee may broadcast 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, broadcast 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. Current affairs programmes

- 25.1 The Licensee shall broadcast in its Sound Broadcasting Service a minimum of 90 minutes in total of current affairs programmes each week between the hours of 8:00 a.m. and 12:00 midnight.
- 25.2 Upon application in writing by the Licensee, the Broadcasting Authority may approve arrangements for broadcasting current affairs programmes different from those in Condition 25.1.

26. Programmes for young persons, senior citizens and children

26.1 Subject to any directions issued by the Broadcasting Authority:-

- (a) the Licensee shall broadcast in each week between the hours of 8:00 a.m. and 12:00 midnight and in the Chinese language service, a minimum of one half-hour programme which is intended and suitable for the education and proper development of young people in Hong Kong aged 16 years to 24 years (inclusive) (“Young Persons”);
- (b) the Licensee shall broadcast in one or two of its Sound Broadcasting Service channels (one of which must be the Chinese language service) and for no fewer than 90 minutes in aggregate each week between the hours of 8:00 a.m. and 12:00 midnight, programmes which is intended and suitable for the particular requirements, including but not limited to the health, financial position or recreation, of senior citizens in Hong Kong over the age of 60 years (“Senior Citizens”); and
- (c) the Licensee shall broadcast in one or two of its Sound Broadcasting Service channels (one of which must be the Chinese language service) and for no fewer than 30 minutes in aggregate each week between the hours of 9:00 a.m. and 10:00 p.m., programmes with educational values intended and suitable for children in Hong Kong up to and including the age of 15 years (“Children”).

26.2 Upon application in writing by the Licensee, the Broadcasting Authority may approve arrangements for broadcasting programmes for Young Persons or Senior Citizens or Children, or all, different from those in Condition 26.1.

27. Arts and culture programmes

27.1 Subject to any directions issued by the Broadcasting Authority, the Licensee shall broadcast in each of any two of its Sound Broadcasting Service channels (one of which must be the Chinese language service), and for no fewer than 45 minutes in aggregate each week between 8:00 a.m. and 12:00 midnight, programmes intended and suitable for promoting the development and appreciation of the literary, performing and visual arts and other topics or activities of cultural value.

27.2 Upon application in writing by the Licensee, the Broadcasting Authority may approve arrangements for broadcasting arts and culture programmes different from those in Condition 27.1.

27A. Annual reports

27A.1 The Licensee shall submit reports, and such information as the Broadcasting Authority may reasonably require, to the Broadcasting Authority on or before 31 March each year on how each of the requirements under Conditions 25, 26 and 27 has been complied with in the previous calendar year ending on 31 December.

27A.2 The Broadcasting Authority may publish in such manner as it considers fit any information (other than any commercial confidential information expressly designated as such) submitted by the Licensee pursuant to Condition 27A.1.

28. Announcement in the public interest

The Licensee shall broadcast in 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 in 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 in 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 in each of its Sound Broadcasting Service channels.

30. Advertising

The Licensee shall monitor and ensure strict compliance with the Codes of Practice relating to Advertising Standards issued by the Broadcasting Authority.

31. Restriction on advertising

For each of its Sound Broadcasting Service channels under this Licence, the Licensee shall ensure that the aggregate advertising time on any day shall not exceed 12% of the total broadcast time of that day.

31A. 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.

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 Commencement 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 Sound

Broadcasting Service, apparatus and services referred to Conditions 3(b), and businesses referred to in Condition 3(c), 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 this 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 this 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 acquired.

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 Commencement 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 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 by the auditor of the Licensee 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 by the auditor of the Licensee 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 said 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 said change or addition.

36.4 The Licensee shall submit to the Broadcasting Authority on demand such other information as it may reasonably requires 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 Sound Broadcasting Service 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 the 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, Sound Broadcasting Service 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 Sound Broadcasting 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 any statements (including statements of intention) and representations made by or on its behalf in its application for 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 Sound Broadcasting Service, apparatus and services referred to in Conditions 3(b), and business referred to in Condition 3(c).

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.

42A. Disclosure of information

42A.1 Nothing in this Licence shall be construed as prohibiting disclosure of any information (including any commercial confidential information) –

- (a) with a view to the institution of or otherwise for the purposes of any criminal proceedings or any investigation in connection therewith in Hong Kong;
- (b) in connection with civil proceedings to which the Chief Executive in Council, the Chief Executive, the Government, the Broadcasting Authority or the Telecommunications Authority (each a “Relevant Recipient”) is a party;
- (c) which facilitates a Relevant Recipient investigating or determining a complaint that the Licensee is engaging in conduct that contravenes a provision of this Licence, the Telecommunications Ordinance, the Broadcasting Authority Ordinance or any Code of Practice;
- (d) which the Relevant Recipient considers it is in the public interest to disclose;
- (e) which a Relevant Recipient can reasonably demonstrate is in the public domain through no fault of his own;
- (f) which is required to be disclosed by law, pursuant to a court order or by a regulatory body; or
- (g) to any adviser of a Relevant Recipient in confidence for the purpose of giving or obtaining advice or assistance in connection

with his powers, rights or obligations pursuant to this Licence.

42A.2 A Relevant Recipient shall give the person supplying the commercial confidential information a reasonable opportunity to make representations on a proposed disclosure of the information under Condition 42A.1(c), (d) or (e), and shall consider all representations made before the Relevant Recipient makes a final decision to disclose the information.

43. Other requirements

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, maintenance, operation and provision of the Sound Broadcasting Service.

SCHEDULE**Transmission Plan and Technical requirements**

<u>CONDITION</u>	<u>HEADING</u>
1	Broadcasting coverage requirement
2	Transmission plan
3	Radio signals
4	Combined transmitting equipment
5	Interference with other services
6	Compliance with international conventions
7	Common facilities
8	Station power supplies
9	Standard equipment
10	Sufficient spare parts
11	Test equipment

1. Broadcasting coverage requirement

- 1.1 The Licensee shall broadcast to those parts of Hong Kong as specified by the Broadcasting Authority and construct such additional relay stations within such period of time as directed from time to time by the Broadcasting Authority.
- 1.2 For the purpose of Condition 1.1 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.
- 1.3 The field strength produced by the transmission of each Sound Broadcasting Service channel operated by the Licensee shall be such that equal facility for the reception of the service 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 operated by the Licensee shall be required to maintain minimum field strengths specified by the Telecommunications Authority within the areas to be served.

2. Transmission plan

- 2.1 The Licensee shall be required to transmit its programmes in accordance with the transmission plan specified by the Telecommunications Authority.
- 2.2 The transmission plan referred to in Condition 2.1 of this Schedule may be amended from time to time by the Telecommunications Authority.
- 2.3 The Licensee shall not activate any additional transmitter or associated equipment established after the Commencement Date 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.

3. Radio signals

The transmission system operated by the Licensee shall transmit radio signals in accordance with the characteristics specified in the appropriate Codes of Practice issued by the Broadcasting Authority.

4. Combined transmitting equipment

- 4.1 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 Commencement 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.
- 4.2 Each of the combined transmitting antenna systems referred to in Condition 4.1 of this Schedule shall comply with technical specifications provided by the Telecommunications Authority.
- 4.3 All costs involved in providing any combined transmitting antenna system shall be shared equally between the Licensee and any other licensee or person (including RTHK).

5. Interference with other services

- 5.1 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 Sound Broadcasting Service, or apparatus operating in or outside Hong Kong.
- 5.2 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. 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.

7. Common facilities

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

7.2 The common facilities referred to in Condition 7.1 of this Schedule shall include the transmitting antenna system, tower, building, standby generator and other site amenities as specified by the Telecommunications Authority.

7.3 The Telecommunications Authority may appoint the Licensee, or another licensee or person to maintain the common facilities referred to in Condition 7.1 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.

7.4 All costs involved in the provision and maintenance of the common facilities referred to in Condition 7.1 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.

8. Station power supplies

8.1 The Licensee shall provide a standby power supply at each transmitter and relay stations that is used by the Licensee to ensure compliance of each transmitter and relay station with Condition 8.2 of this Schedule.

8.2 The standby power supply referred to in Condition 8.1 of this Schedule shall be able to restart proper function of each relevant transmitter or relay station, such that uninterrupted transmission of the Licensee's Sound Broadcasting Service is resumed within one minute after

disconnection of the public electricity supply to such transmitter or relay station and such uninterrupted transmission of Sound Broadcasting Service is maintained for at least 48 hours after the restart.

9. Standby equipment

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

10. 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.

11. Test equipment

The Licensee shall maintain and provide such test equipment, 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.

Granted on [30 April 1991 (for Metro) / 25 July 1989 (for CRHK)]
[Amended and extended on 26 February 2002 (for Metro) /
Amended on 22 August 1989 and 9 January 2001 (for CRHK)]
Renewed this 22nd day of July 2003
Amended and Restated on [Issue date of the amended and restated licence]

Clerk to the Executive Council

COUNCIL CHAMBER

Accepted by:.....

Signature:.....

Capacity:.....

Date:.....

**Key Proposed Amendments to
the Sound Broadcasting Licences of CRHK and Metro**

	Item	Licence Condition	Proposed Amendments	Justifications
1.	Six-year investment plan	2.1	<p>The definition of “Six-Year Investment Plan” to be replaced by the following (with changes highlighted in bold):</p> <p><i>“Six-year Investment Plan” means an investment plan as approved by the Broadcasting Authority relating to the capital investment and programming investment of the Licensee for the period from 26 August 2010 to 25 August 2016 for establishing and maintaining the Sound Broadcasting Service, apparatus and services referred to in Conditions 3(b) and businesses referred to in Condition 3(c), which is contained in the letters dated [26 April 2011 (for Metro) / 10 March 2011 and 27 April 2011 (for CRHK)] to the Broadcasting Authority, and as may be subsequently revised or modified pursuant to the directions or approval of the Broadcasting Authority.</i></p>	<p>The first six-year investment plan for 2004 – 2010 has expired and should be replaced by new provisions committing the licensees to their new six-year plans for 2010 – 2016 as approved by the BA.</p>
2.	Programmes for young persons, senior citizens and children	26.1 and 26.2	<p>Conditions 26.1 and 26.2 to be amended as follows (with changes highlighted in bold):</p> <p><i>26. Programmes for young persons, senior citizens and children</i></p> <p><i>26.1</i> <i>(b) the Licensee shall broadcast in one or two of its Sound Broadcasting Services channels (one of which must be the Chinese language service) and for no fewer than 90 minutes in aggregate each week between the hours of 8:00 a.m. and 12:00 midnight, programmes which is intended and suitable for the particular requirements, including but not limited to the health, financial position or recreation, of senior citizens in Hong Kong over the age of 60 years (“Senior Citizens”);</i></p>	<p>The BA proposes to increase the minimum amount of programmes for senior citizens per week from 60 minutes to 90 minutes. The requirement that such programmes must be two half-hour programmes will however be dispensed with to allow licensees more flexibility in programme scheduling.</p>

	Item	Licence Condition	Proposed Amendments	Justifications
			<p><i>and</i></p> <p><i>(c) the Licensee shall broadcast in one or two of its Sound Broadcasting Service channels (one of which must be the Chinese language service) and for no fewer than 30 minutes in aggregate each week between the hours of 9:00 a.m. and 10:00 p.m., programmes with educational values intended and suitable for children in Hong Kong up to and including the age of 15 years (“Children”).</i></p> <p><i>26.2 Upon application in writing by the Licensee, the Broadcasting Authority may approve arrangements for broadcasting programmes for Young Persons, Senior Citizens or Children, or all, different from those in Condition 26.1.</i></p>	<p>The BA proposes to add a new licence condition to require the licensees to broadcast at least 30 minutes of children’s programmes each week.</p> <p>Textual amendment consequential to Condition 26.1.</p>
3.	Arts and culture programmes	27.1	<p>Condition 27.1 to be amended by the following (with material changes highlighted in bold):</p> <p><i>Subject to any directions issued by the Broadcasting Authority, the Licensee shall broadcast in each of any two of its Sound Broadcasting Service channels (one of which must be the Chinese language service) for no fewer than 45 minutes each week between 8:00 a.m. and 12:00 midnight, programmes intended and suitable for promoting the development and appreciation of the literary, performing and visual arts and other topics or activities of cultural value.</i></p>	<p>The BA proposes to require the licensees to increase the minimum amount of arts and culture programmes per week by 30 minutes to 90 minutes.</p>
4.	Annual reports	27A	<p>New Conditions 27A.1 and 27A.2 to be added as follows (with changes highlighted in bold):</p> <p><i>27A.1 The Licensee shall submit reports, and such information as the Broadcasting Authority may reasonably require, to the Broadcasting</i></p>	<p>The BA proposes to add new licence conditions to require the licensees to submit annual reports on how the positive programme requirements and objectives have been met. The reports will be</p>

	Item	Licence Condition	Proposed Amendments	Justifications
			<p><i>Authority on or before 31 March each year on how each of the requirements under Conditions 25, 26 and 27 has been complied with in the previous calendar year ending on 31 December.</i></p> <p><i>27A.2 The Broadcasting Authority may publish in such manner as it considers fit any information (other than any commercial confidential information expressly designated as such) submitted by the Licensee pursuant to Condition 27A.1.</i></p>	<p>made available to the public by the BA as it thinks fit except for commercial confidential information expressly designated as such.</p>
5.	Programme development and capital investment	32.3	<p>New Condition 32.3 to be added as follows (with changes highlighted in bold):</p> <p><i>32.3 Within three months from each anniversary of Commencement 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 Sound Broadcasting Service, apparatus and services referred to in Conditions 3(b), and business referred to in Condition 3(c), 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.</i></p>	<p>To tighten monitoring of the licensees' compliance and in line with digital audio broadcasting (DAB) licence, the BA proposes that the licensees should be required to submit to the BA a management report certifying the actual annual investment expenditure within three months from the anniversary date.</p>

	Item	Licence Condition	Proposed Amendments	Justifications
6.	Licensee to submit audited accounts	35.1	<p>Condition 35.1 to be amended by the following (with changes highlighted in bold):</p> <p><i>The Licensee shall submit to the Broadcasting Authority, not later than 6 months after the end of its accounting year, audited accounts prepared by the auditor of the Licensee 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.</i></p>	<p>Amendment consequential to item 5. In line with DAB licence, the licensees should be required to include a reconciliation statement in its audited account to certify the annual investment expenditure contained in the management report by the licensees.</p>