

Annex

Consultancy Brief

**Consultancy Study in relation to the
Impacts on Service Quality and Customers of Adopting a Hybrid between
Administratively-assigned and Market-based Approach in Re-assigning
the Spectrum in the 1.9 – 2.2 GHz Band**

Purpose

The Government of the Hong Kong Special Administrative Region (the “Government”) represented by the Office of the Communications Authority (“OFCA”) wishes to appoint a suitably qualified consultant (“the Consultant”) to provide –

- (a) an objective quantitative assessment on the impacts on service quality and customers if the Government decides to adopt Option 3 (please see paragraph 5 below for details) in re-assigning the frequency spectrum in the 1.9 – 2.2 GHz band; and
- (b) assistance and advice to the Government in the analysis of the submissions to the “Second Consultation Paper on Arrangements for the Frequency Spectrum in the 1.9 – 2.2 GHz Band upon Expiry of the Existing Frequency Assignments for 3G Mobile Services” (“Second Consultation Paper”),¹ on matters in relation to the impacts on service quality and customers (hereinafter collectively referred to as the “Study”).

Background

2. Hong Kong has five mobile network operators (“MNOs”). They deploy frequency spectrum in the 800 - 900 MHz, 1800 MHz, 1.9 – 2.2 GHz, 2.3 GHz and 2.5 – 2.6 GHz bands to provide public mobile services.

¹ The Second Consultation Paper is available at <http://www.coms-auth.hk/filemanager/en/share/cp20121228.pdf>.

Frequency spectrum in the 1.9 – 2.2 GHz band was assigned through auction to four MNOs for the provision of third generation (“3G”) mobile services in October 2001 for a tenure of 15 years (hereinafter referred to as “3G Spectrum”). The 3G Spectrum assignments will expire on 21 October 2016. The four incumbent 3G operators are CSL Limited (“CSL”), Hong Kong Telecommunications (HKT) Limited (“HKT”), Hutchison Telephone Company Limited (“Hutchison”) and SmarTone Mobile Communications Limited (“SmarTone”). Another MNO, China Mobile Hong Kong Company Limited (“China Mobile”), has not been assigned with any spectrum in this frequency band. It is currently providing 3G services under commercial agreements with some of the incumbent 3G operators by deploying the latter’s 3G network capacities.

3. Under the technology-neutral principle, some incumbent 3G operators have deployed frequency bands other than the 1.9 – 2.2 GHz band, such as 850 MHz and 900 MHz, for provision of 3G services. For the avoidance of doubt, the term “3G Spectrum” in this consultancy brief refers only to the frequency spectrum in the 1.9 – 2.2 GHz band assigned through auction to four MNOs in October 2001 for provision of 3G services, but not other frequency bands deployed by the incumbent operators for provision of 3G services.

4. According to Spectrum Policy Framework issued in April 2007,² there is no legitimate expectation that there will be any right of renewal or right of first refusal of any licence or spectrum assignment upon the expiry of a licence or spectrum assignment under the Telecommunications Ordinance. The decision whether a new spectrum assignment, with the same or varied radio frequencies, should be given to the spectrum assignee would be made and notified to the spectrum assignee within a reasonable time before the expiry of its spectrum assignment, after taking into account the policy objectives set out in the Framework as well as all other relevant factors. According to the statement issued by the former Telecommunications Authority (“TA”)³ in January 2008 on minimum notice periods for variation or withdrawal of

² The Spectrum Policy Framework is available at <http://www.cedb.gov.hk/ctb/eng/legco/pdf/spectrum.pdf>.

³ Pursuant to the Communications Authority Ordinance (Cap 616), with effect from 1 April 2012, all duties and powers of the Telecommunications Authority are conferred on the Communications Authority, and all duties and powers of the Office of the Telecommunications Authority are conferred on OFCA, the executive arm of the CA.

spectrum assignments upon and before their expiry,⁴ insofar as it is practicable in the circumstances, the decision of the Communications Authority (“CA”) on whether to renew the frequency assignments with different frequencies assigned, or not to renew the assignments at all upon their expiry, should be notified to the incumbent operators at least three years in advance, i.e. by October 2013 at the latest for the 3G Spectrum re-assignment exercise.

5. The Secretary for Commerce and Economic Development (“SCED”) and the former TA jointly issued the first consultation paper entitled “Arrangements for the Frequency Spectrum in the 1.9 – 2.2 GHz Band upon Expiry of the Existing Frequency Assignments for 3G Mobile Services” (“First Consultation Paper”) in March 2012 to solicit views and comments of the industry and interested parties on the arrangements for re-assignment of the 3G Spectrum upon expiry of the existing assignments.⁵ The following three options were proposed in the First Consultation Paper –

Option 1: An administratively-assigned approach – right of first refusal to be offered to the incumbent 3G operators;

Option 2: A full-fledged market-based approach – re-auctioning all the spectrum; and

Option 3: A hybrid between administratively-assigned and market-based approach – each of the four incumbent 3G operators will be offered the right of first refusal for two-thirds of their existing 3G Spectrum (“RFR Spectrum”), while the remaining one-third of the 3G Spectrum will be returned to the CA for re-auction (“Re-auctioned Spectrum”). If any incumbent 3G operator decides not to exercise the right of first refusal, the spectrum that it relinquishes will be pooled together with the Re-auctioned Spectrum and put to auction.

6. Having carefully considered the views and comments received in

⁴ The TA Statement is available at http://tel_archives.ofca.gov.hk/en/tas/others/ta20080131.pdf.

⁵ The First Consultation Paper is available at http://www.coms-auth.hk/filemanager/common/policies_regulations/consultations/papers/cp20120330.pdf.

response to the First Consultation Paper, the SCED and the CA conducted the second round of consultation and issued the Second Consultation Paper, in which the SCED considered that Option 3 should be adopted for further consultation. Under Option 3, all the five existing MNOs and new entrants are allowed to participate in the auction to bid for any of the four paired blocks of Re-auctioned Spectrum.

Scope of the Study

7. If Option 3 is adopted, the spectrum re-assignment scenarios after the auction of the Re-auctioned Spectrum may range from status quo for all incumbent 3G operators in one extreme, to each of the incumbent 3G operators losing one block of 2 x 5 MHz of 3G Spectrum in the other extreme, assuming that all incumbent 3G operators will exercise the right of first refusal and no RFR will be relinquished. In addition to these two scenarios, there may be other scenarios. For example, some incumbent MNOs will acquire more than three blocks of 3G Spectrum. Or some MNOs will manage to retain three blocks of 3G Spectrum but the block which they acquire in the auction would fall in a frequency range different from their original assignments.

8. According to OFCA's assessment, the loss of spectrum by an incumbent 3G operator would result in degradation of service quality of that particular operator in terms of slower data download speed, more drop calls, and weakening or complete loss of indoor mobile coverage for 3G services. This would occur after the handover of spectrum in October 2016 and continue to exist during a transitional period after the spectrum changeover, until the affected incumbent 3G operator(s) have implemented measures to alleviate the service degradation and/or the affected customers have eventually migrated to the operators which possess more spectrum.

9. Against the purpose and background mentioned above, the Consultant is required to conduct the Study, which shall include proper quantitative analyses and assessment of the impacts on service quality and customers of adopting Option 3 in re-assigning the 3G Spectrum for the following three scenarios –

(a) status quo where there is no change of spectrum assignment of all the

four incumbent 3G operators (the **base case**);

- (b) the scenario where one, two or three incumbents fail to acquire any of the Re-auctioned Spectrum;
- (c) the scenario where all the four incumbents fail to acquire any of the Re-auctioned Spectrum and all the Re-auctioned Spectrum is acquired by the existing MNO that has not been assigned with any 3G spectrum (i.e. China Mobile);
- (d) the scenario where all the four incumbents fail to acquire any of the Re-auctioned Spectrum, and all the Re-auctioned Spectrum is acquired by one or more new entrants, i.e. parties that have not established any base stations or other mobile network infrastructure in Hong Kong;
- (e) scenarios (c) and (d) combined; and
- (f) the scenario that the Consultant considers would likely occur. The Consultant may envisage more than one such scenario. In all cases, the Consultant is required to provide full and detailed justifications to support why such scenario(s) would likely occur under Option 3.

Specific Tasks of the Consultant

10. The Consultant is required to conduct proper quantitative analyses and assessment of the impacts on service quality and customers after the re-assignment of the 3G Spectrum for each of the spectrum re-assignment scenarios as specified in paragraph 9 above. In making the assessment, the Consultant is required to answer the following questions for each of the scenarios –

- (a) What would be the impacts on the quality of territory-wide service and customers of each of the incumbent 3G operators in October 2016 after the spectrum changeover, as compared to the base case?
- (b) What would be the **overall** impacts on the quality of territory-wide service and users of the mobile data service market **as a whole** in

October 2016 after the spectrum changeover, as compared to the base case?

- (c) What would be the impacts on the quality of mobile service and customers of each of the incumbent 3G operators at popular hotspots where data traffic is much heavier than the average and/or subject to limitation of capacity expansion (such as the MTR lines and stations, airport terminals, Hong Kong Convention and Exhibition Centre, Asia World Expo and major shopping malls) in October 2016 after the spectrum changeover, as compared to the base case?
- (d) What would be the **overall** impacts on the quality of mobile service and users of the mobile data service market **as a whole** at popular hotspots where data traffic is much heavier than the average and/or subject to limitation of capacity expansion (such as the MTR lines and stations, airport terminals, Hong Kong Convention and Exhibition Centre, Asia World Expo and major shopping malls) in October 2016 after the spectrum changeover, as compared to the base case?
- (e) What cost-effective measures should be adopted by the affected incumbent 3G operators with a view to alleviating in a timely manner the adverse impacts identified in (a) – (d) above?
- (f) What is the estimated time required for the implementation of measures recommended in (e) above?

11. In answering the questions listed in paragraph 10 above, the Consultant is required to take into account the following factors –

- (a) spectrum held and deployed by each MNO (including the incumbent 3G operators) for provision of mobile services;
- (b) the supply of spectrum for provision of mobile services, making reference to the Spectrum Release Plan which the CA has published in February 2013;
- (c) the availability of additional spectrum for provision of 3G and 4G mobile services by refarming spectrum in other frequency bands;

- (d) projection of mobile data traffic – the Consultant is required to make a forecast of mobile data traffic growth in Hong Kong from 2013 to 2016 as well as during the transitional period mentioned in paragraph 10(f) above, with detailed justifications;
- (e) technology developments such as evolutions of 3G and 4G technologies, deploying multiple-input and multiple-output (“MIMO”) technology, uses of femtocell and super Wi-Fi;
- (f) increase of network capacity of individual MNOs due to additional investment on network infrastructure, e.g. additional installation of base stations;
- (g) the massive reconfiguration work required for existing integrated radio systems installed for the provision of 3G services indoors;
- (h) the time required for a new entrant to establish from scratch the mobile network infrastructure including indoor base stations for provision of territory-wide mobile services in Hong Kong; and
- (i) any other factors that the Consultant considers would be relevant to the analyses and assessment of impacts on service quality and customers.

12. In conducting the Study, the Consultant is required to take into account all factors which they consider are relevant to local context. By way of example, the Consultant is required to considered –

- (a) the First Consultation Paper and all submissions received;
- (b) the consultancy report jointly submitted by the four incumbent 3G operators to OFCA in December 2012 – the incumbent 3G operators have commissioned a consultant to assess the re-assignment options of the 3G Spectrum as proposed in the First Consultation Paper, and the report was submitted to OFCA in December 2012;
- (c) the Second Consultation Paper, including OFCA’s assessment on average data download speed given in Annex 2 of the Second

Consultation Paper;

- (d) all submissions in response to the Second Consultation Paper, including but not limited to consultancy/technical reports as well as assessment models submitted by the respondents; and
- (e) any other reference of the Consultant's own resources.

Methodology

13. The methodology (including but not limited to that adopted for collecting, processing, validating, analysing and presenting information for each aspect of the Study) and work plan used by the Consultant for each aspect of the Study shall be described in detail in the deliverables to be submitted to the Government. All the sources of information shall be identified. If any model is constructed as part of the Study, the model together with the model description with sufficient details for OFCA to understand and drive the model shall be included as part of the deliverables. All assumptions and forecasts to be made by the Consultant shall be supported by detailed justification.

Key Deliverables and Time Frame of the Study

14. The key deliverables to be completed by the Consultant shall include but are not limited to those set out below. Unless otherwise agreed by the Government, the Consultant shall deliver the reports including the model for impact assessment, attend the meetings and give the presentation described below within the period set out therein –

- (a) maintaining close liaison with OFCA throughout the Study including but not limited to providing updates on the progress achieved towards the deliverables on a weekly basis, including summary notes and working papers as necessary and an updated programme for the remainder of the consultancy;
- (b) attending a kick-off meeting to brief the representatives of the Government about the plan and approach of the Study upon the

signing of the Consultancy Agreement, and other working meetings at the request of OFCA. If required by OFCA, the advice, explanation and recommendations made by the Consultant in meetings shall be provided in writing;

- (c) submitting a preliminary report, including the model for impact assessment, in English in one (1) hardcopy and one (1) softcopy (in editable Microsoft format) to be delivered to OFCA within **three (3) weeks** from the signing of the Consultancy Agreement;
- (d) attending review meetings to be held between the Consultant and OFCA on the preliminary report including the model for impact assessment submitted under sub-paragraph 14(c) above within **one (1) week** after submission of such report to OFCA (the actual time and venue of the meeting to be specified by OFCA);
- (e) The draft final report including the model for impact assessment shall be submitted within **six (6) weeks** from the signing of the Consultancy Agreement to OFCA, which reserves the right to circulate it to relevant institutions and organisations and within the Government for comments. The Consultant may be required to present its findings to OFCA and any other party to be determined by OFCA; and shall be required to submit replies to comments received and to take comments received into consideration before finalising the report; and
- (f) submitting a final report in English including the model for impact assessment and other necessary materials in three (3) hardcopy and one (1) softcopy (in editable Microsoft format) (with an executive summary) to OFCA, taking into account all the comments by the Government on the draft report, for publication purpose, within **eight (8) weeks** from the signing of the Consultancy Agreement. The final report shall provide a full, comprehensive and detailed description of the findings, conclusions and assessment of the Consultant; and shall include among other things, justifications for assumptions used, sources for any data used, descriptions of methodologies used, and factors and alternatives considered in assessing the impacts, etc. For the avoidance of doubt, the Government reserves the right to publish or disclose the final report, the executive summary and any other

deliverables, in whole or in part, to the Legislative Council and any other persons, without any further reference to the Consultant.

15. The Consultant warrants and undertakes to the Government that –
 - (a) the Study shall be performed and the services under the Study (“Consultancy Services”) completed in an impartial, timely, diligent, professional and competent manner, and that the Consultant, each member of the Consulting Team (defined in paragraph 19 below) and any and every person employed, used or engaged by the Consultant shall use all the experience, skill, care and diligence in the performance of the Consultancy Services and in the discharge of all its duties and obligations under the Consultancy Agreement as may be expected from a person who is an expert in providing services of a kind similar to the Consultancy Services;
 - (b) the Consultant, the Consulting Team and any sub-contractor(s), agent(s), expert(s) and/or advisor(s) of the Consultant have all the necessary skills and experience to provide the Consultancy Services on the terms and conditions stated in this Consultancy Brief and in the Consultancy Agreement.

Duration

16. Unless otherwise agreed by the Government, the Consultant is expected to complete the Study and other related tasks within **eight (8) weeks** from the signing of the Consultancy Agreement and submit all the deliverables in accordance with the time frame stated in paragraph 14 above.

17. The Consultant shall not be regarded as having completed the Study until all the tasks and the Consultancy Services have been completed to the satisfaction of the Government, including but not limited to the submission of all the deliverables required.

Requisite Qualifications and Expertise of the Consultant and the Consulting Team

18. Parties who wish to be considered for appointment as Consultant of

the Study (“Proponents”) may form consortia in making a proposal if they so wish (please refer to the requirements stipulated in paragraph 38 below).

19. Each Proponent is required to nominate a consulting team (the “Consulting Team”) which shall comprise of one (1) or more full-time members, as well as other part-time members and/or approved sub-contractor(s), if any. Members of the Consulting Team shall have the relevant experience and expertise in giving advice on subject matters. There shall be one (1) member in the Consulting Team assuming the role of the project leader, who shall also be the main liaison officer. The project leader shall have the authority to represent the Consultant, to make decisions and to do things that bind the Consultant, as well as the support from professional, technical and administrative staff to ensure satisfactory progress and completion of the Study. No staff or administrative support from the Government will be provided by the Government to the Consultant. The project leader is expected to be a full-time member in the Consulting Team. If a Proponent nominates a part-time member as the project leader, the scores that may be awarded to its technical proposal will be adversely affected.

20. Members of the Consulting Team may be from any country or territory, but they shall have ready access to relevant information both locally and overseas necessary for completion of the Study. During the entire course of the Study, the project leader shall be readily contactable via email or telephone.

21. The Consulting Team and any members thereof to be assigned to the Study from time to time must be acceptable to the Government. The Government reserves the right to require a replacement of any member of the Consulting Team nominated by the Consultant at any time before completion of the Study. Any proposed change in membership of the Consulting Team by the Consultant requires the Government’s prior written approval and must be supported with full curriculum vitae of the proposed new member, whom shall also be subject to the Government’s written approval, and be substantiated with good reasons.

Proposals by the Proponents

22. Proponents are required to submit, in English, a technical proposal pursuant to the requirements as stipulated in paragraphs 23 and 24 below and a

separate fee proposal as stipulated in paragraphs 25 and 26 below, together with a duly completed and executed “Consent to Disclosure” form in the form given in the Appendix. The technical proposal and the fee proposal shall be submitted in separate sealed envelopes with words “Technical Proposal” or “Fee Proposal” clearly marked on the outside of the envelopes for hardcopy and in separate files with file names “Technical Proposal” or “Fee Proposal” for softcopy.

23. The technical proposal shall be submitted in one (1) hardcopy and one (1) softcopy, each of which will consist of no more than 50 A4 size pages with font size not smaller than 11 and shall include an executive summary and any appendices or attachments. **Technical proposal not complying with any of the requirements on page number, page size and font size may not be considered.** The technical proposal shall include:-

- (a) a description of the approach and methodology for conducting the Study, the Proponent’s understanding of the Study and the key issues to be addressed, the work plan and any foreseeable constraints;
- (b) a description of the types of information required to be supplied by the Government or the stakeholders;
- (c) the proposed consultancy timetable and work programme, with details on tasks and duration (having regard to the time frame and duration stipulated in paragraphs 14 and 16 above);
- (d) the composition of the proposed Consulting Team, with a description of the academic and professional qualifications, relevant experience and expertise of each member, the proposed time to be spent by each on the Study (in terms of man-day) and division of responsibilities among them;
- (e) the Proponent’s resources in performing the Study in order to cover the scope of work and deliverables, and indications of inputs, assistance and participation expected from the Government during the Study, noting that the Consultant should conduct the Study independently and with limited assistance from the Government;

- (f) an outline of the Proponent’s organisational structure, relevant experience and expertise, as well as the information on the back-up support such as supervision, quality assurance and research support;
- (g) the capacity in which the Proponent proposes to enter into the Consultancy Agreement with the Government (see paragraph 38 below);
- (h) a “Consent to Disclosure” in the form given in the Appendix; and
- (i) any other information that may assist in the evaluation of the proposal.

24. It shall also be specified in the technical proposal any litigation, proceeding, inquiry, claim or allegation whatsoever, actual or threatened, against or involving the Proponent or any sub-contractor proposed by it, the existence of any breach or default, or alleged breach or default, of any agreement, order or award binding upon the Proponent or any sub-contractor proposed by it, and any other matters which may materially affect the ability of the Proponent or sub-contractor proposed by it to conduct the Study or its role as the Consultant or which may lead to justifiable criticism or embarrassment of the Government for selecting it. The Proponent is required to declare in the technical proposal (and forthwith in writing to the Government as and when it arises after the submission of the proposals) all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the Proponent or its associates, associated persons, or any of its sub-contractors or any member of the Consulting Team or their associates or associated persons, conflict or compete, or may conflict or compete, with the Proponent’s duties to the Government under the Study.

25. The fee proposal shall also be submitted in one (1) hardcopy and one (1) softcopy (in Microsoft Excel format), each of which will consist of no more than 10 A4 size pages with font size not smaller than 11. **Fee proposal not complying with any of the requirements on page number, page size and font size may not be considered.** The total fee payable to the Consultant for the entire Study (“Consultancy Fee”) shall be expressed in a lump sum in Hong Kong dollars and shall include –

- (a) fees of each member in the Consulting Team, with an itemised breakdown of unit rates shown against each member in the Consulting Team for staff costs and all other costs and expenses; and
- (b) costs, expenses and disbursements for the purposes of conducting and completing the Study, including but not limited to, the fees, costs and expenses for hiring sub-contractor(s), agent(s), expert(s) and/or advisor(s), the costs and expenses incidental to the attendance of meetings, the giving of presentations and briefings, preparation of all the key deliverables, other out-of-pocket expenses such as travelling expenses, air passages, local subsistence allowances for expatriates and others, postage, international telephone calls, facsimile and telex expenses, office and hotel accommodation, secretarial support, copying and printing charges, computer facilities that may be incurred by the Consultant in conducting the Study.

26. The fee proposal shall take into account the factors of inflation and price adjustment. For the avoidance of doubt, the Consultancy Fee shall be inclusive of all fees, costs and disbursements incurred by the Consultant in completing the Study. The Consultancy Fee is also inclusive of any and all fees, costs, expenses and disbursements that may be incurred by the sub-contractor(s), agent(s), expert(s) and/or advisor(s) of the Consultant that have been approved by the Government. The Consultant is not entitled to the reimbursement of any other expenses on top of the all-inclusive sum of Consultancy Fee quoted, and no other costs, charges or expenses in addition to the Consultancy Fee will be reimbursed by the Government.

27. Subject to other provisions, the Government is entitled, at any time during the entire course of the Study, by fourteen (14) days' written notice to the Consultant, to make such changes as are reasonable in all the circumstances to the scope of the Study to be carried out. The Consultant shall be ready, willing and able, should the Government decide that there is a need, to provide additional services. Any fees payable to the Consultant by reason of any change in the scope of the Study requested by the Government should be mutually agreed between the Consultant and the Government, with reference to and on the basis of the breakdown of costs and fees quoted in the fee proposal submitted by the Consultant in accordance with paragraphs 25 and 26 above.

If the Government and the Consultant are unable to agree on the costs of the modification, the Government may nevertheless direct the Consultant in writing to proceed with the changes with reference to and on the basis of the breakdown of costs and fees quoted in the fee proposal and the Consultant shall act accordingly.

Assessment of Proposals

28. An assessment panel comprising of OFCA's officers in various disciplines will assess the proposals received. The Proponents will be assessed on the merits of their proposals. On the technical proposals, the Proponents will be assessed according to the information required under paragraph 23 above and the main criteria include without limitation –

- (a) the proposed approach and methodology;
- (b) the proposed work plan and deliverables;
- (c) the composition, qualifications, relevant experience and expertise of the Consulting Team assigned to the Study, in particular in giving advice on the subject matters;
- (d) the organisational structure, relevant experience and expertise, and back-up support such as supervision, quality assurance and research support of the Proponent; and
- (e) the proposed timetable.

A Proponent is expected to submit a proposed timetable that aligns with the time frame and duration stipulated in paragraphs 14 and 16 above. If a Proponent submits a timetable that provides for completion of deliverables beyond the time limits set out in paragraphs 14 and 16 above, the scores that may be awarded to its technical proposal will be adversely affected.

29. On the fee proposals, the Proponents will be assessed according to the lump sum Consultancy Fee proposed.

30. Proponents may be invited to make written clarifications and/or give

presentations to the assessment panel to elaborate on and/or clarify specific points mentioned in the proposals and give the assessment panel an opportunity to meet the project leader and the members of the Consulting Team proposed for the Study, before the assessment panel makes its decision. The Proponents shall prepare, attend and give such presentation at their own costs or expenses. The Government shall not be held responsible for any costs or expenses incurred by the Proponents in preparing, making and/or giving the required presentations or clarifications.

Engagement of Sub-Contractors, Agents, Experts, Advisors

31. The Consultant shall not, without the prior written consent of the Government, sub-contract, assign or otherwise dispose of the whole or any part(s) of the Study to any person whatsoever, or purport to do so. The Consultancy Fee shall include any fees, costs, charges and expenses incurred by any such permitted sub-contractor(s), agent(s), expert(s) and/or advisor(s) appointed or engaged by the Consultant to perform any part(s) of the Study in accordance with the Consultancy Agreement or to advise or assist in relation thereto. The Consultant shall provide all specialist, advisory and consultancy services required for the satisfactory completion of the Study. No additional fees or expenses for the provision of such services rendered locally and overseas shall be payable by the Government. If any part of the Study is sub-contracted, assigned or disposed of to any person, the Consultant shall remain liable for any act or omission of such person as if such act or omission were its own.

Management of the Study

32. A representative from OFCA will be appointed as Government liaison officer between the Consultant and the Government in relation to the day-to-day operation of the Study. During the course of the Study, the Consultant shall report directly to the Government liaison officer, who may designate other Government official(s) to liaise and discuss with the Consultant on his/her behalf from time to time. The Consultant shall comply with such reasonable guidance and direction as the Government may give in relation to the Study from time to time, in so far as the same does not substantially affect or vary the scope of the Study and the manner in which the duties of the Consultant are to be performed.

33. The Consultant is required to make regular progress reports, give briefings or presentations, provide prompt written response to comments or requests or otherwise as specified by the Government liaison officer, and for this purpose the project leader and the members of the Consulting Team must be readily contactable via email or telephone. The Consultant shall comply with all reasonable comments and requests of the Government, and shall use its best endeavours to promote the interests of the Government in relation to the conduct of the Study.

Consultancy Agreement

34. The selected Consultant shall enter into a written agreement with the Government (the “Consultancy Agreement”). The Consultancy Agreement will be prepared and approved by the Government and will contain all the terms and conditions of the Study, including without limitation the matters, terms and conditions referred to in this Consultancy Brief, which shall be incorporated into the Consultancy Agreement as expanded and modified as necessary; and other matters such as remuneration, details of the Consulting Team, intellectual property rights, conflict of interest and confidentiality.

35. The Consultant shall indemnify and keep indemnified the Government against: (a) all or any claims (whether or not successful, compromised or settled) actions, investigations, liabilities, demands, proceedings or judgements, joint or several, threatened, brought or established against the Government; and (b) all liabilities, losses, damages, costs, charges or expenses (including all costs, charges and expenses which the Government may pay or incur in disputing any such claim or defending any such action or proceedings instituted against the Government), and which in any case arise directly or indirectly in connection with or out of, or which relate in any way to –

- (i) a breach of any provisions of the Consultancy Agreement by the Consultant;
- (ii) the negligence, recklessness or wilful misconduct of the Consultant, its employees, agents or sub-contractors in the provision of the Consultancy Services; or

- (iii) any unauthorized act or omission of the Consultant, its employees, agents or sub-contractors.

The Government will NOT under any circumstances provide any indemnity. The obligations and liabilities imposed on the Consultant under this paragraph as well as paragraphs 41 to 55 and 57 to 67 below are not subject to any negotiation or counter-proposal. Any counter-proposal in contravention of this paragraph shall be disregarded.

36. Counter-proposal(s) for any terms and conditions of the Consultancy Brief other than paragraphs 35, 41 to 55 and 57 to 67 below may render the respective proposal(s) non-compliant in the absolute discretion of the Government. Subject to paragraph 35 of this Consultancy Brief, the Government reserves the right to negotiate with any Proponents on the terms of their proposals. For the avoidance of doubt, until and unless a formal written Consultancy Agreement has been duly executed by the Government and the selected Proponent, there is no legally binding contractual relationship between the Government and the selected Proponent.

Nature of Consultancy Agreement

37. In the Consultancy Agreement, the Consultant shall be engaged by the Government as an independent contractor, and not as a partner, employee or agent of the Government or as a trustee for others.

Business Structure of the Consultant

38. Each Proponent shall indicate in its technical proposal which one of the following three (3) capacities the Proponent proposes to enter into the Consultancy Agreement with the Government –

- (a) an incorporated joint venture (“JV”) effected through the medium of a company incorporated under the Companies Ordinance (Cap. 32), with each participating party as a shareholder of the company. Each shareholder of the JV will be required to execute in favour of the Government a guarantee to guarantee the due and faithful performance of the Consultant’s obligations under the Consultancy Agreement. The guarantee will be on terms prepared and approved

by the Government and it shall remain in force from the date of the signing of the Consultancy Agreement until the date upon which all of the Consultant's obligations shall have been performed and discharged to the satisfaction of the Government. Depending on the circumstances, the Government may require other parties to provide guarantees or impose other conditions on the JV. Compliance with all the requirements mentioned in this sub-paragraph shall be a condition precedent to the appointment of the Consultant;

- (b) two or more contractual parties, in which case each of the parties will be jointly and severally liable for the due performance of the Consultancy Services. Each representation, warranty, declaration, agreement, undertaking and covenant by and the obligations of the parties under or pursuant to the Consultancy Agreement shall be joint and several and shall be binding on the parties jointly and severally; or
- (c) one contractual party who will be held responsible for the due and faithful performance of the Consultancy Services, in which case the party may, subject to the prior written approval of the Government, nominate one or more sub-contractors to perform part of the Study.

39. The Government reserves the right whether to accept the selected Proponent's proposal and to enter into the Consultancy Agreement with the selected Proponent in any one of the above capacities.

Payment of Consultancy Fee

40. Subject to satisfactory performance of the Consultancy Services by the Consultant and the provisions of the Consultancy Agreement, the Consultancy Fee will be payable by the Government to the Consultant in accordance with the Consultancy Agreement. The Consultancy Fee will be inclusive of all fees, costs, charges and disbursements incurred by the Consultant for the purpose of the Study. The Consultant shall be entitled to issue invoices to the Government according to the following schedule –

Date of Issuance of Invoice	Maximum Amount Payable
Upon acceptance in writing by	20% of the lump sum Consultancy Fee

the Government of the preliminary report of all the matters under the Study including the model for impact assessment (i.e. the report referred to in sub-paragraph 14(c) above)	referred to in paragraph 25 above
Upon acceptance in writing by the Government of the draft final report including the model for impact assessment (i.e. the report referred to in sub-paragraph 14(e) above)	40% of the lump sum Consultancy Fee referred to in paragraph 25 above
Upon full and satisfactory completion of the entire Study	40% of the lump sum Consultancy Fee referred to in paragraph 25 above

Conflict of Interest

41. The Consultant shall during the term of the Consultancy Agreement and for six (6) months thereafter –

- (a) ensure that it (including its associates and associated persons, each member of the Consulting Team and each sub-contractor and their associates and associated persons) shall not undertake any service, task or job or do anything whatsoever for or on behalf of any third party (other than in the performance of the Consultancy Agreement) which conflicts, or which may be seen to conflict, with the Consultant's duties to the Government under the Consultancy Agreement; and
- (b) forthwith notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the Consultant or its associates or associated persons, or any member of the Consulting Team or any one of the Consultant's sub-contractors, or their associates and associated persons, conflict or compete, or may conflict or compete, with the Consultant's duties to the Government under the Consultancy Agreement.

42. The Consultant shall provide the Consultancy Services to the Government on an impartial basis without giving favour to any particular product, service or equipment in which the Consultant has a commercial interest. The Consultant shall notify the Government in writing immediately upon knowing of any actual or potential financial, professional, commercial, personal or other interests that the Consultant or its associates or associated persons, or any of its sub-contractors or any member of the Consulting Team or their associates or associated persons may have in, or of any association or connection which the Consultant or the aforesaid persons may have with, any product, service or equipment proposed or recommended by the Consultant under the Consultancy Agreement.

43. The Consultant shall procure its sub-contractors, each member of the Consulting Team and its professional advisers, directors, officers, employees and agents who are involved in the provision of the Consultancy Services under the Study to execute a legally binding written undertaking in favour of the Consultant and the Government jointly and severally in a form prescribed by the Government agreeing to observe paragraphs 41 and 42 above and the Consultant shall provide the originals or certified true copies of all such undertakings to the Government as may be required by the Government. The Consultant further agrees that, if so required by the Government, it shall take all such steps as are lawful and necessary to enforce such undertakings or to co-operate with the Government in their enforcement.

44. The Consultant shall ensure that its associates and associated persons, each of its sub-contractors and each member of the Consulting Team and their associates and associated persons shall keep themselves informed and shall inform the Consultant and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of such persons, conflict or compete, or may conflict or compete, with the Consultant's duties to the Government under the Consultancy Agreement.

45. Notwithstanding the expiry or termination of the Consultancy Agreement, the Consultant shall ensure that it (including its associates and associated persons, each member of the Consulting Team and each of its sub-contractors and their associates and associated persons who are involved in the performance of the Consultant's obligations pursuant to the Consultancy

Agreement) shall not (whether on its own or in joint venture with others), submit any bid in any competitive bidding process or accept any appointment as consultant for, or otherwise be interested in or involved in any manner in any subsequent exercise for the procurement of any goods and/or services arising out of or in relation to the Study.

46. Subject to compliance with the provisions of the Consultancy Agreement, including in particular (but not limited to) prevention of conflict of interests and prohibition of disclosure of confidential information, the Consultant is NOT prevented from providing advisory services to any third parties.

Intellectual Property and Moral Rights

47. The Intellectual Property Rights (defined in paragraph 55 below) subsisting in the Materials (defined in paragraph 55 below) shall vest in and be the exclusive property of the Government absolutely and immediately upon creation.

48. In the event and to the extent that any of the Intellectual Property Rights in the Materials is deemed for any reason not to vest in the Government pursuant to paragraph 47 above, then, upon request by the Government, the Consultant shall forthwith, free of charge to the Government, assign or otherwise transfer or cause to be assigned or otherwise transferred the same to the Government free of any encumbrance or compensation to the Consultant.

49. The provisions of paragraph 47 above shall not apply to any Licensed Property (defined in paragraph 55 below). The Consultant shall keep the Government informed in writing of any of the Materials that are subject matter(s) of the Licensed Property or any pre-existing Intellectual Property Rights and any restrictions whatsoever affecting the use thereof. The Consultant undertakes to acquire all the requisite consents and licenses, free of charge to the Government, for the benefit of the Government for the use and reproduction of the Licensed Property incorporated in the Materials for any purposes for which the Government may in its absolute discretion use the Materials.

50. Upon request by the Government, and in the event of the expiration or

termination of the Consultancy Agreement, the Consultant shall at its expense promptly deliver to the Government all the Materials and all copies of the Materials (save for the deliverables already submitted), then in the Consultant's custody, control or possession.

51. The Consultant shall warrant that no Intellectual Property Rights of any third party have been or will be infringed in the course of and as a result of the Study and/or the provision of the Consultancy Services and shall indemnify the Government against any loss or damage which the Government may sustain or incur as a result of any allegation of or claim for infringement of the Intellectual Property Rights of any party arising from or in any way related to the conduct of the Study or the use or possession of the Materials by the Government at any time whether before or after the execution of the Consultancy Agreement. Where third party Intellectual Property Rights are used for the purpose of the Study, the Consultant shall obtain the necessary licences and permission from the owners of such third party Intellectual Property Rights for the benefit of the Government.

52. The Consultant shall waive and undertake to procure at its own cost and expenses all the authors concerned to waive all moral rights as referred to in the Copyright Ordinance (Cap. 528) subsisting in the Materials and the Licensed Property in relation to the Study. Such waivers shall be made by instruments in writing signed by the persons giving up the moral rights in accordance with section 98(2) of the Copyright Ordinance (Cap. 528), and shall operate in favour of the Government, its licensees, assigns and successors in title and to have effect upon the vesting of Intellectual Property Rights or the grant of the licence (as the case may be).

53. With regard to paragraphs 47, 51 and 52 above, the Consultant shall at its own cost and expenses do such other things or execute any further documents (or procure that the same to be done or executed) as may be required by the Government to give full effect to such licences, permission and waivers. The Consultant shall provide the Government with all necessary supporting documents relating to such licences, permission and waiver by the Consultant and other relevant parties within fourteen (14) days from the date of the Government's written request or such longer period as may be approved by the Government in writing.

54. At the request of the Government, the Consultant shall, free of charge to the Government, do all such things and sign all such documents and instruments as may be reasonably necessary in the opinion of the Government to enable the Government to obtain, defend and enforce its rights in the Materials.

55. In this Consultancy Brief –

“Intellectual Property Rights” means patents, copyright, design rights, trademarks, service marks, trade names, domain names, database rights, rights in know-how, new inventions, designs or process and other intellectual property rights (of whatever nature and wherever arising, whether now known or hereafter created) and in each case whether registered or unregistered and including applications for the grant of any such rights.

“Licensed Property” means property which is available publicly or generally within the business of a kind similar to that to be provided by the Consultant under the Consultancy Agreement or which is or was specifically produced or created solely and exclusively in relation to services, other than services provided or to be provided to the Government under the Consultancy Agreement, and which is incorporated or used in the Materials or otherwise used by the Consultant in the performance of the Consultancy Agreement.

“Materials” includes but is not limited to all the deliverables, reports, computer records, software programmes, works of authorship, summaries, briefings, presentations, diagrams, drawings, charts, tables, graphs, pictures, photographs, questionnaires, plans, models, analyses, work programmes, technical notes, information papers, opinions, comments, specifications, formulae, data, information, documents and materials (and their drafts and uncompleted versions) collected, compiled, developed, produced, created or procured by or on behalf of the Consultant, the Consulting Team or the directors, officers, employees, agents or sub-contractors at all tiers of the Consultant, agents or sub-contractors (whether individually or jointly with the Government) in relation to and/or in the course of the conducting the Study or for the purpose of the Consultancy Agreement including but without limitation, the pre-contractual and contractual documents thereof which are recorded or stored by whatever means in whatever form or media and the drafts of any of the above items.

Resolution of Disputes

56. Any dispute or difference between the parties which touches, concerns or affects the Study shall first be resolved by informal means and if no settlement is reached within twenty-eight (28) days, the dispute shall be referred for arbitration in Hong Kong to a single arbitrator nominated jointly by the parties, failing which such arbitrator shall be nominated by the Hong Kong International Arbitration Centre. The arbitrator's decision shall be final and binding on the parties. Unless otherwise agreed, the Consultant shall continue to provide the Consultancy Services in accordance with the Consultancy Agreement during resolution of the dispute.

Confidentiality of Information

57. All materials, data, information, drawings, specifications, documents, contracts and design materials furnished by or on behalf of the Government in connection with the Consultancy Agreement, Materials created or produced during the Study, and the terms and conditions of the Consultancy Agreement shall be treated as confidential information ("Confidential Information"). The Consultant shall take all practicable steps to ensure that the Confidential Information is protected against unauthorized or accidental access, processing, erasure or other use. The Consultant shall not, during the continuance of the Consultancy Agreement or at any time thereafter, disclose to any person (including without limitation any associates or associated persons, directors, officers, employees or agents of the Consultant who are not members of the Consulting Team, except to the senior management, legal and compliance personnel and auditors of the Consultant and then only on a need-to-know basis) any Confidential Information, provided that the restrictions on disclosure contained in this paragraph shall not apply –

- (a) to the disclosure of any information to any members of the Consulting Team in circumstances where such disclosure is necessary for the performance of the Consultant's duties and obligations under the Consultancy Agreement;
- (b) to the disclosure of any information already known to the recipient other than as a result of disclosure by a breach of the confidentiality

obligation of the Consultant, its associates or associated persons, directors, officers, employees, agents or any member of the Consulting Team or its sub-contractors including without limitation professional advisers;

- (c) to the disclosure of any information which is or becomes public knowledge other than as a result of disclosure by a breach of the confidentiality obligation of the Consultant, its associates or associated persons, directors, officers, employees, agents or any member of the Consulting Team or its sub-contractors including without limitation professional advisers;
- (d) to the disclosure of any information in circumstances where such disclosure is required pursuant to any law, regulation, rule of any relevant stock exchange, or order of a court or arbitral authority of competent jurisdiction;
- (e) to the disclosure of any information to the Consultant's sub-contractors, professional advisers, directors, officers, employees or agents where such disclosure is necessary for the performance of the Consultant's duties and obligations under the Consultancy Agreement; or
- (f) to the disclosure of any information with the prior written consent of the Government.

58. The Government shall have the right to determine in good faith at any time whether any information is within that described in sub-paragraph 57(a), (b), (c) or (e) above and the Consultant shall comply with that determination. For the purpose of sub-paragraph 57(e) above, if at the time the Government discloses the information to the Consultant, the Government does not expressly state that the information cannot be distributed to the persons named in sub-paragraph 57(e) above, the Government shall be deemed to have consented to the disclosure of that information to those persons but such disclosure shall be strictly limited to the performance of the Consultant's duties and obligations under the Consultancy Agreement.

59. Any disclosure permitted under paragraph 57 above shall be in strict

confidence and shall extend only so far as may be necessary for the purpose specified in paragraph 57 above and the Consultant shall ensure the confidentiality of any such disclosure by taking all appropriate action to restrain or restrict any further disclosure.

60. The Consultant shall not make use of or reproduce any information, report, chart, document, plan, software, data or other particulars or information whatsoever relating to the Consultancy Agreement furnished by or on behalf of the Government other than in the performance of its obligations under the Consultancy Agreement and shall not make use of the deliverables or any Materials or computer models produced or created in relation to the performance of its obligations under the Consultancy Agreement other than in the performance of its obligations under the Consultancy Agreement or with the prior written consent of the Government.

61. The Consultant shall not without the prior written consent of the Government publish, either alone or in conjunction with any other person, in any newspaper, magazine, periodical, film, video or other medium, any Confidential Information relating to the Study (including without limitation the advice provided by it or the duties undertaken by it under the Consultancy Agreement).

62. The Consultant shall inform every person to whom any information, report, chart, document, plan, software, data or other particulars or information relating to the Consultancy Agreement is disclosed pursuant to the terms and conditions of the Consultancy Agreement of the restrictions on reproduction and disclosure attaching to such information and the Consultant shall require such a person to notify the same restrictions to any other person to whom it makes any such disclosure.

63. The Consultant shall procure its sub-contractors, each member of the Consulting Team and its professional advisers, directors, officers, employees and agents referred to in sub-paragraph 57(e) above to execute a legally binding written undertaking in favour of the Consultant and the Government jointly and severally in a form prescribed by the Government agreeing not to disclose any such Confidential Information and the Consultant shall provide the originals or certified true copies of all such undertakings to the Government as may be required by the Government. The Consultant further agrees that, if so

required by the Government, it shall take all such steps as are lawful and necessary to enforce such undertakings or to co-operate with the Government in their enforcement.

64. If the Consultant becomes aware of any breach of confidence by any of its employees, agents, associates, associated person, sub-contractors or any members of the Consulting Team, it shall promptly notify the Government and give the Government all reasonable assistance in connection with any proceedings which the Government may institute against any such persons.

65. All Confidential Information shall be and remain the property of the Government, and the Consultant shall upon request immediately return all such Confidential Information, and all copies of whatever form or nature, reproductions, duplicates or notes thereof, to the Government. The Consultant shall upon request immediately destroy any papers, together with any copies, and shall expunge all Confidential Information from any computer, word processor or other device containing any of them and the Consultant shall confirm compliance with the above in writing to the Government.

66. The Government expressly disclaims any liability for representations, expressed or implied, contained in, or for omission from the Confidential Information, or any other written or oral communication transmitted to the Consultant in the course of the discussions or negotiations. The Government shall not be liable for any damages arising in contract, tort or otherwise from the use of or from any action or decision taken as a result of using the Confidential Information.

67. The Consultant shall agree and undertake to indemnify and keep indemnified the Government from any damage, loss, cost or liability (including legal costs and the costs of enforcing this indemnity on a full indemnity basis) directly or indirectly arising out of or resulting from any breach of the Consultancy Agreement or any unauthorised use or disclosure of the Confidential Information or any breach of confidence (whether under the Consultancy Agreement or general law) by the Consultant, its associates and associated persons, sub-contractors, members of the Consulting Team, its professional advisers, directors, officers, employees and agents, and any other persons engaged in any work in connection with the Consultancy Agreement.

The Government's Right to Disclosure

68. In addition to any right, power and remedy that the Government may have under the Study or otherwise and notwithstanding any provisions in this Consultancy Brief, the Government shall have the right to disclose to any person, without any further reference to the Consultant, whenever it considers appropriate or upon request by any third party (written or otherwise), and in such form and manner as it deems fit –

- (a) any or all of the deliverables (including without limitation any information papers, drawings, data, executive summaries, progress reports, interim reports, final reports and comments) submitted by or on behalf of the Consultant to the Government pursuant to the Study;
- (b) the fee, costs and expenses payable by the Government for engaging the selected Consultant; and
- (c) the fee proposal submitted by the selected Consultant.

69. For the purpose of paragraph 68 above, the Proponents shall complete and deliver to the Government a “Consent to Disclosure” in the form given in the Appendix together with its technical proposal in respect of this Study.

Disclosure of Information for Proponents Bidding in Different Capacities for the Same Study

70. The Government has no objection –

- (a) to Proponents or their associates or associated persons lodging one proposal and also acting as sub-consultants to another Proponent in this exercise; or
- (b) to different and unconnected Proponents proposing to engage the same sub-consultant or their associates or associated persons in this exercise.

provided that –

- (i) all the relevant circumstances are disclosed in the proposal;
and
- (ii) the Proponent confirms in the proposal that no confidential information, confidentiality restrictions or restraints of trade or business have been contravened in lodging the proposal in which the Proponent and/or its sub-consultant are in common or associated with the Proponent and/or its sub-consultant of another proposal.

Termination of the Consultancy Agreement

71. The Government may by written notice immediately terminate the Consultancy Agreement –

- (a) in the case of a breach of any terms or conditions of the Consultancy Agreement which is capable of being remedied, and such breach shall not have been remedied by the Consultant within seven (7) days of receipt of a notice to remedy from the Government; or
- (b) in the case of a breach of any terms or conditions which is not capable of being remedied but is fundamental to the Consultancy Agreement.

72. The Government may at its option and without cause suspend or terminate the Consultancy Agreement by giving the Consultant seven (7) days' written notice of such suspension or termination at any time prior to the completion of the Study by the Consultant.

73. The suspension or termination of the Consultancy Agreement shall not prejudice or affect any rights of action or other remedies, which may have accrued, to the Government or the Consultant prior to the date of suspension or termination.

74. Payment will be made for the Consultancy Services performed to the satisfaction of the Government up to the date of suspension or termination. The Consultant shall not be entitled to compensation on any remaining services which have not been performed.

Governing Law

75. The governing law of the Consultancy Agreement shall be the laws of the Hong Kong Special Administrative Region.

Withholding Tax

76. Where the Consultant is a non-resident, the Government shall withhold a percentage equivalent to the prevailing Hong Kong profits tax applicable to unincorporated and incorporated business or profession, as may be applicable to the Consultant, of any fee payable to the Consultant by way of lump sum, instalments, or discounted payments (exclusive of any reimbursement of expenses, if any) in respect of the Consultancy Services provided in Hong Kong by the non-resident Consultant for the settlement of such profit tax chargeable on the fee. Any balance representing the excess of the fee so withheld in the basis period of the year of assessment over the Consultant's tax liability for that year will be returned to the Consultant without interest within a reasonable time upon final determination and settlement of such liabilities.

Other Conditions

77. The Government reserves the right, in its absolute discretion, not to accept the lowest fee proposal or any proposal, or not to appoint any of the Proponents, which have submitted proposals in response to this Consultancy Brief, for the whole or any part of the Study. Submission of a proposal should be made on the understanding that the Government will not be liable to pay any costs arising out of or incidental to its preparation, submission or clarification. The Government is also under no obligation to discuss the proposals and the assessment result of the proposals with the Proponents.

78. The Government reserves the right to employ or appoint any other consultant(s) to carry out studies in relation to the matters referred to in the Study at its own discretion. Such appointment will not affect or prejudice any other rights of the Government.

79. After submission of the technical proposals and the fee proposals, the Proponents shall not attempt to initiate any further contact, whether direct or indirect, with the Government on their respective proposals or on this

Consultancy Brief. The Government shall have the sole right to initiate any such further contact and such contacts and any replies of Proponents thereto shall be in writing or formally documented in writing.

80. Should the Proponent be awarded the consultancy to conduct the Study, its subsequent performance shall be monitored and may be taken into account when its future bids for other Government consultancy works are evaluated. A consultant may be suspended from bidding for any new Government consultancy works if its performance in previous consultancy work is unsatisfactory.

Submission of Proposal

81. Both the technical proposal and the fee proposal must reach the following postal address or designated fax number no later than **2 April 2013 (by 10:00 a.m. Hong Kong time)**.

Office of the Communications Authority
29th Floor, Wu Chung House
213 Queen's Road East
Wan Chai, Hong Kong
(Attention: Ms. Kaylina Tsang, Accounting Officer I)

Fax : +852 2180 7004

82. OFCA will strictly enforce the above deadline for submission of proposals. Late submissions will not be considered.

84. Clarifications on this Consultancy Brief can be directed to –
Mr. Michael Chan
Tel: +852 2961 6314
Fax: +852 2834 1501
Email: michaelchan@ofca.gov.hk

Office of the Communications Authority
14 March 2013

CONSENT TO DISCLOSURE

To: The Government of the Hong Kong Special Administrative Region

Re: Appointment of Consultant for Conducting a Study in relation to the Impact of Adopting the Administratively Assigned cum Market Based Approach in Re-assigning the Frequency Spectrum in the 1.9 – 2.2 GHz Band

We, [insert the name of the Proponent], hereby irrevocably authorize, consent and agree that if the Government of the Hong Kong Special Administrative Region (the “Government”) agrees to engage us to carry out the captioned Study, the Government may, whenever it considers appropriate or upon request by any person (written or otherwise) and without any further reference to us, disclose to any person in such form and manner as the Government deems fit –

- (a) the deliverables (including without limitation any information papers, drawings, data, executive summaries, progress reports, interim reports, final reports and comments) submitted by or on behalf of the Consultant to the Government pursuant to the Study;
(b) the fees, costs and expenses payable by the Government for engaging us; and
(c) the fee proposal submitted by us on [insert the relevant date].

We hereby waive and forego our right, if any, to make any claims against the Government for any losses, damages, costs, charges, liabilities, demands, proceedings and actions that may arise out of or in consequence of such disclosure by the Government.

Dated this day of

*SEALED with the Common Seal of [insert the name of the company] and SIGNED by [insert the name of the signatory], the director of the company in the presence of:-

Signature of Witness:

* To be adopted if the consultant is a limited company.

Name of Witness:

Occupation:

Address: