

LEGISLATIVE COUNCIL BRIEF

Broadcasting Ordinance
(Chapter 562)

Application for Domestic Free Television Programme Service Licence of Fantastic Television Limited

INTRODUCTION

At the meeting of the Executive Council on 31 May 2016, the Council ADVISED and the Chief Executive (CE) ORDERED that –

- (a) having regard to the recommendations of the Communications Authority (CA) submitted under section 9(2) of the Broadcasting Ordinance (Cap. 562) (BO), Fantastic Television Limited (Fantastic TV)'s application for a domestic free television programme (free TV) service licence (Application) be **approved**;
- (b) the draft free TV licence at **Annex A** be **approved** and granted to Fantastic TV under sections 8(1) and 10(1) of the BO for a term of 12 years from the date of the decision in (a) above;
- (c) the draft gazette notice service at **Annex B** specifying the period of validity of Fantastic TV's free TV service licence and the period within which its licence shall be subject to review be **approved**; and
- (d) under section 35 of the Prevention of Bribery Ordinance (Cap. 201) (POBO), the Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2016 at **Annex C** be made to specify Fantastic TV as a public body.

JUSTIFICATIONS

Processing of the Application under the Statutory Framework

2. Sections 8 to 10 of the BO set out the licensing regime for free TV service. In brief, any interested party may apply to the CA for a free TV service licence at any time. Once an application for a free TV service licence is received, the CA shall consider such an application and make recommendations thereon to the CE in Council. Having considered the CA's recommendations, the CE in Council

may grant a free TV service licence to the applicant subject to such conditions as he thinks fit.

3. Fantastic TV submitted the Application on 15 January 2010. After considering the Application alongside with two other free TV service licence applications received from HK Television Entertainment Company Limited (HKTVE) and Hong Kong Television Network Limited in March 2010 and December 2009 respectively, the CE in Council decided on 15 October 2013, under the approach to introduce competition into the free TV service market in a gradual and orderly manner, to grant approval-in-principle (AIP) to the Application and another one by HKTVE, but the formal licence grant is subject to the CE in Council's further review and final determination under the BO at the second stage (Second Stage)¹. Details of the CA's follow-up work at the Second Stage are set out in paragraphs 15 – 18 below.

CA's Assessment at the Second Stage

4. The CA has considered the following factors in its assessment –
- (a) compliance with statutory requirements under the BO;
 - (b) the assessment criteria set out in Part V of the CA's Guidance Note for Those Interested in Applying for Domestic Free Television Programme Service Licences in Hong Kong (Guidance Note);
 - (c) additional commitments ordered by the CE in Council;
 - (d) public opinions received: these include the unsolicited public views collected since the announcement of the CE in Council's decision to grant an AIP to the Application; and
 - (e) likelihood that Fantastic TV would comply with the proposed licence conditions to be imposed.

In addition to the above assessment, the CA has also taken into account the relevant policy considerations of Government bureaux/departments on the regulatory approach when making recommendations to the CE in Council.

(A) Compliance with Statutory Requirements under the BO

¹ This means the later stage when the CE in Council is invited to consider whether or not to formally grant a free TV service licence under sections 8(1) and 10(1) of the BO to HKTVE and Fantastic TV respectively.

5. The CA has examined the updated Application of Fantastic TV from October 2013 to January 2015 (updated Application) in respect of its compliance with statutory requirements under the BO. The CA's final assessment is as follows –

(a) *Non-subsidiary requirement (section 8(3) of the BO and section 2 of Schedule 4 to the BO)*

Under section 8(3) of the BO and section 2 of Schedule 4 to the BO, a free TV service licence shall not be granted to or held by a company which is a subsidiary of a corporation. When it submitted its original Application in January 2010, Fantastic TV was a subsidiary of i-CABLE Communications Limited (i-CABLE). Prior to the grant of the AIP, Fantastic TV had undertaken that, within 30 days of grant of the CE in Council's AIP and prior to the formal grant of a free TV service licence, it would implement the proposed corporate restructuring so that it would cease to be a subsidiary of a corporation. The proposed corporate restructuring would involve the transfer of 85.1% of the voting shares in Fantastic TV held by i-CABLE to two discretionary trustees in equal shares, and i-CABLE would retain 14.9% of the voting shares (and 100% of the non-voting shares) in Fantastic TV.

On 11 March 2016, Fantastic TV confirmed that it had completed the proposed corporate restructuring, and submitted relevant documents including undertakings, statutory declarations, declarations of trust, trust service agreements and independent legal opinions for the CA's verification of its corporate status. The CA notes that while Fantastic TV's completed corporate restructuring is the same as the one proposed in its original Application, there is one major change, viz. the original trustees have been replaced by two new ones. After the completion of the proposed corporate restructuring, its two new discretionary trustees, namely Great Vision PTC Limited (Great Vision) and HKTC PTC Limited (HKTC PTC) each holds 42.55% of Fantastic TV's voting shares while i-CABLE retains 14.9% of the voting shares (and 100% of the non-voting shares) in Fantastic TV.

On the basis of the information provided by Fantastic TV, the CA is satisfied that Fantastic TV complies with the non-subsidiary requirement under the BO.

(b) *Company registration requirement² (sections 8(1) and 8(4)(c) of the BO)*

² Section 8(4)(c) of the BO stipulates that a licensee should be empowered under its articles of association to comply fully with the provisions of the BO and its licence conditions.

Fantastic TV has submitted that it is a company registered and incorporated in Hong Kong under the Companies Ordinance (Cap. 622) and is empowered under its Articles of Association to comply fully with the provisions of the BO and the terms and conditions of its free TV service licence.

(c) *Residence requirement (section 8(4)(a) of the BO)*

Fantastic TV has submitted that the company and its directors and principal officer comply with the residence requirement³.

(d) *Fit and proper person requirement (section 21 of the BO)*

Fantastic TV has submitted that Fantastic TV and all persons exercising control⁴ of it meet the criteria for being fit and proper persons⁵.

³ Section 8(4)(a) of the BO provides that, to comply with the residence requirement, an applicant has to show that –

- (a) the licensee complies with the definition of “ordinarily resident in Hong Kong” (section 8(4)(a)(i)). This means that –
 - (i) the majority of its directors (assuming there are over two directors) must be individuals for the time being ordinarily resident in Hong Kong and have been so resident for at least one continuous period of not less than seven years; and
 - (ii) its control and management is bona fide exercised in Hong Kong; and
- (b) the majority of its directors and principal officers, including the principal officer in charge of the selection, production or scheduling of the programmes, are ordinarily residents in Hong Kong and have been so resident for at least one continuous period of not less than seven years (section 8(4)(a)(iv) of the BO).

“Ordinarily resident in Hong Kong” in respect of an individual means residence in Hong Kong for not less than 180 days in any calendar year, or residence in Hong Kong for not less than 300 days in any two consecutive calendar years.

⁴ In accordance with section 1(6) of Schedule 1 to the BO, a person exercises control of a corporation if he is –

- (a) a director or principal officer of the corporation;
- (b) the beneficial owner of more than 15% of the voting shares in the corporation;
- (c) a voting controller of more than 15% of the voting shares in the corporation; or
- (d) a person who has the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating that corporation or any other corporation, to ensure that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person.

⁵ Section 21(1) of the BO requires that a licensee and any person exercising control of the licensee shall be and remain a fit and proper person. Section 21(4) of the BO provides that in determining whether a licensee or a person exercising control over the licensee is a fit and proper person, account shall be taken of –

- (a) the business record of the licensee or person;
- (b) the record of the licensee or person in situations requiring trust and candour;
- (c) the criminal record in Hong Kong of the licensee or person in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonesty; and
- (d) the criminal record in places outside Hong Kong of the licensee or person in respect of conduct which if, done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the licensee or person as mentioned in paragraph (c) above.

- (e) *Unqualified voting controller (UVC) restrictions*⁶ (section 20(1) of Schedule 1 to the BO)

Fantastic TV has submitted that there is no UVC holding 2% or more of the total voting control of Fantastic TV under the current shareholding structure which requires the CA's approval⁷.

- (f) *Disqualified persons (DPs) restrictions*⁸ (sections 3(1), 3(2) and 33(1) of Schedule 1 to the BO)

Fantastic TV has submitted that there are no DPs exercising control of it.

On the basis of the information provided by Fantastic TV in March 2016, the CA is satisfied that Fantastic TV and all persons exercising control of it (including directors and principal officer) are in compliance with the statutory requirements set out in subparagraphs (b) to (f) above.

- (g) *Application to the CA for a determination of whether the proposed free TV service primarily targets Hong Kong* (section 12(2) of the BO)

Fantastic TV has applied for the CA's determination under section 12(2) of the BO that its proposed service would, with reference to the factors set out in section 12(6) of the BO⁹, primarily target Hong Kong for the following reasons –

⁶ Under section 1(1) of Schedule 1 to the BO, a UVC means a voting controller who is not a “qualified voting controller”. In the case of an individual, a qualified voting controller is one who satisfies the “ordinarily resident in Hong Kong” requirement and who has been so resident for at least one continuous period of not less than seven years. In the case of a corporation, the majority of its directors have to satisfy the “ordinarily resident in Hong Kong” requirement and have been so resident for at least one continuous period of not less than seven years, and the control and management of the corporation is bona fide exercised in Hong Kong. A person may also qualify as a “qualified voting controller” by virtue of holding a position listed in section 1(1) of Schedule 1 to the BO.

⁷ Without the prior approval of the CA, a UVC shall not hold, acquire, or exercise or cause or permit to be exercised, 2% or more, in the aggregate, of the total voting control of a free TV licensee (section 20 of Schedule 1 to the BO).

⁸ Under Schedule 1 to the BO, DPs are persons or companies engaged in or associated with certain types of businesses who are not allowed to hold a free TV service licence or exercise control of such a licensee unless the CE in Council, on application by the concerned licensee, is satisfied that public interest so requires and approves otherwise. The following DPs are prohibited from exercising control of a domestic free television programme service licensee –

- (a) another television programme service licensee (section 4 of Schedule 1);
- (b) a sound broadcasting licensee (section 5 of Schedule 1);
- (c) an advertising agency (section 6 of Schedule 1);
- (d) a proprietor of a newspaper (including magazine) printed or produced in Hong Kong (section 7 of Schedule 1);
- (e) persons exercising control of (a) to (d) above (sections 4 – 7 of Schedule 1); and
- (f) the associates of (a) to (e) above (section 8 of Schedule 1).

⁹ In determining whether or not a television programme service primarily targets Hong Kong, account shall be taken of, but not limited to, the following matters –

- (i) service coverage – the proposed service would be delivered via fixed network, which covers Hong Kong;
- (ii) revenue – the sources of its advertising revenue would principally be derived from Hong Kong;
- (iii) language – the proposed service would be broadcast in Cantonese and English; and
- (iv) marketing – Fantastic TV would actively market its service to viewers in Hong Kong.

On the basis of the information submitted by Fantastic TV, the CA is satisfied that the proposed free TV service of Fantastic TV would primarily target Hong Kong.

(B) Consideration Based on the Criteria in the CA’s Guidance Note

6. Eight broad criteria are specified in the Guidance Note, and the CA’s assessment of Fantastic TV’s updated Application vis-à-vis each of the criteria is set out below –

(a) *The applicant’s financial soundness*

Financial soundness

Fantastic TV has submitted that i-CABLE, a publicly listed company with a market capitalisation of HK\$1,187 million as at 6 May 2016, would provide full financial support to fund its operations. i-CABLE has provided to the CA a deed of undertaking confirming that it would support the operations of Fantastic TV financially.

The CA is satisfied with the financial soundness of Fantastic TV.

Amount of investment

Following the grant of the AIP, Fantastic TV has proposed to make a cumulative investment of HK\$1,176 million for the first six years of operations.

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- (a) whether the service covers Hong Kong;
 - (b) whether the sources of advertising and subscription revenues, where applicable, of the service are derived principally from Hong Kong;
 - (c) the language of the service and the nature and size of the audiences targeted by the service; and
 - (d) whether the service is actively marketed in Hong Kong by the licensee or by a third party on its behalf.

The CA considers that Fantastic TV's investment proposal is commensurate with the scope and scale of its proposed free TV service and is acceptable, though it is comparatively lower than the level of investment of Asia Television Limited (ATV) and Television Broadcasts Limited (TVB) have proposed to make in 2016 to 2021.

(b) *Commitment to investment*

Fantastic TV has proposed a performance bond of HK\$20 million which is tied to milestones on service roll-out, premises passed in its transmission network and investment expenditure.

The CA considers that Fantastic TV's proposed performance bond is acceptable.

(c) *Whether the applicant has the necessary technical expertise and the relevant managerial skill to operate the proposed broadcasting service*

The board of directors and the principal officer of Fantastic TV have the necessary technical expertise and the relevant managerial skill to operate Fantastic TV's proposed broadcasting service.

(d) *The variety, quantity and quality of programmes to be provided*

Fantastic TV has submitted the following in respect of the variety and quality of its proposed programmes –

(i) *Integrated Cantonese and English channels*

Fantastic TV has committed to providing an integrated Cantonese channel (Cantonese channel) and an integrated English channel (English channel) within 12 months and 24 months respectively after the grant of a free TV service licence. Both channels would provide round-the-clock services.

(ii) *Positive programme requirements (PPRs)*

Fantastic TV has agreed to meet the following PPRs –

- (1) news programmes (30 minutes daily on each of the Cantonese and English channels);
- (2) documentary programmes (60 minutes per week on each of the Cantonese and English channels, of which 30 minutes per week of such programmes on the Cantonese channel are wholly of

Hong Kong origin¹⁰);

- (3) current affairs programmes (60 minutes per week on each of the Cantonese and English channels, of which 30 minutes per week of such programmes on each of the Cantonese and English channels are wholly of Hong Kong origin);
- (4) children’s programmes (60 minutes daily on each of the Cantonese and English channels, of which 30 minutes daily of such programmes on the Cantonese channel are wholly of Hong Kong origin; on the English channel, at least two hours of programmes per week with educational values targeting teenagers);
- (5) programmes for young persons (30 minutes per week on the Cantonese channel only);
- (6) programmes for senior citizens (60 minutes per week on the Cantonese channel only); and
- (7) arts and culture programmes (60 minutes per week on the Cantonese channel only, of which 15 minutes per week of such programmes are wholly of Hong Kong origin).

To provide more flexibility for new free TV service licensees, the CA considers that the new licensees should be allowed to gradually increase the broadcast of positive programmes that are to be “wholly of Hong Kong origin” as follows –

- (a) the “wholly of Hong Kong origin” requirement will be applicable to the Cantonese channel within 24 months (as opposed to the original commitment of 12 months) after service commencement; and

¹⁰ “Wholly of Hong Kong origin” means –

- (a) the programme is produced
 - (i) in substance and in form in Hong Kong; or
 - (ii) by the licensee, by any employee of the licensee, by any company which is a subsidiary of the licensee within the meaning of section 2(1) of the BO (Licensee’s Subsidiary), or by any employee of the Licensee’s Subsidiary, or by any other independent production company engaged by the licensee in or outside Hong Kong; and
- (b) the CA is satisfied that it is produced primarily for the Hong Kong market.

- (b) the “wholly of Hong Kong origin” requirement will be applicable to the English channel within 36 months (as opposed to the original commitment of 24 months) after service commencement.
- (iii) Requirement to carry the programmes of Radio Television Hong Kong (RTHK)¹¹ and the programmes for schools (ETV programmes)¹²

After considering the views of Secretary for Commerce and Economic Development (SCED) and Education Bureau on the provision of RTHK programmes and ETV programmes, the CA agrees that –

RTHK programmes

- (1) the programmes provided by RTHK have been serving as an important complement to commercial broadcasting services. It would be in the public interest for such programmes to reach out to the largest possible audience. Given its use of fixed network for transmission of service and its achievement of territory-wide coverage on a step-by-step basis, Fantastic TV would not be able to meet such capability in the first few years of operations. Any requirement for Fantastic TV to carry RTHK programmes in the coming few years would unlikely provide any significant gain in the household reach capability of RTHK programmes;
- (2) in order to provide the prospective free TV licensees with more scheduling flexibility, Fantastic TV should be allowed to choose whether to air RTHK programmes on its platform until the mid-term review of its free TV service licence, if granted, so long as the current broadcasting arrangements with ATV and TVB continue¹³;

¹¹ Currently, TVB is directed by the CA to provide a minimum of 3.5 hours per week of RTHK programmes. Upon the CA’s approval of HKTVE’s application for using spectrum as an additional means of transmission on top of fixed network, HKTVE is directed to provide a minimum of 2.5 hours per week of RTHK programmes with effect from 1 April 2017.

¹² The CA has directed TVB to broadcast one hour of ETV programmes for each school day. On the other hand, RTHK has taken up ATV’s broadcast of ETV programmes (one hour per each school day) after ATV ceased its free TV service on 2 April 2016.

¹³ The views and comments set out above were given on the premises that the both ATV and TVB will have their licences renewed and will maintain the same territory-wide coverage during the renewed term, and that Fantastic TV, upon the grant of a free TV service licence, will use the fixed network to transmit the free TV service according to the agreed roll-out commitments. On 1 April 2015, the CE in Council ordered that ATV’s free TV service licence not be renewed under section 11(5) of the BO.

In January 2016, the CA approved HKTVE’s application for using spectrum, on top of fixed network, as an additional means of transmission for the delivery of its licensed free TV service on the conditions inter alia that HKTVE would be subject to largely the same set of programme requirements (including the provision

- (3) Fantastic TV's broadcast of RTHK programmes, where applicable, could be counted towards its fulfilment of its PPRs; and

ETV programmes

- (4) for the same reason as in (1) above, Fantastic TV should not be directed to broadcast ETV programmes until the mid-term review of its free TV service licence, if granted, subject to the condition that the current broadcasting arrangements with ATV and TVB continue¹⁴. The free TV service licence of Fantastic TV, however, should reflect that the CA reserves its statutory power to direct Fantastic TV to broadcast ETV programmes in the future.

Fantastic TV has taken note of the above views in respect of the provision of RTHK and ETV programmes and has not proposed any broadcasting arrangements in relation to RTHK programmes.

(iv) *Subtitling*

Fantastic TV has agreed to provide subtitling service incrementally as proposed by the former Broadcasting Authority (BA) and accepted by the CE in Council, as follows –

- (1) subtitling for all news, current affairs, weather programmes and emergency announcements would be provided within 18 months from service launch of the Cantonese and English channels;
- (2) on the Cantonese channel, Chinese subtitling would be provided for programmes shown between 7:00 p.m. and 11:00 p.m. within 24 months after service launch of the channel; and
- (3) on the English channel, two hours per week of English programmes with educational value targeting teenagers would carry English subtitles within six months from service launch of the channel.

(v) *High definition (HD) television service*

Fantastic TV has proposed to provide its Cantonese channel in HD format.

of RTHK programmes) currently apply to TVB when the proposed transmission arrangement comes into effect.

¹⁴ Please refer to footnote 13 above.

(e) *The quality and technical viability of the proposed broadcasting service*

(i) *Means of delivery*

Fantastic TV has proposed to hire the Hybrid Fibre Coaxial Network (HFC Network) operated by Hong Kong Cable Television Limited (HKCTV) to transmit its free TV service. For buildings not covered by the HFC Network, subject to the approval of the CA, Fantastic TV would employ the Microwave Multipoint Distribution System (MMDS) platform of HKCTV to deliver its free TV service.

The CA considers that the delivery of Fantastic TV's free TV service using the above networks is acceptable.

(ii) *Analogue and digital services*

Fantastic TV's free TV signals which are transmitted via in-building coaxial cable distribution systems (IBCCDS) would be presented in analogue I/PAL format or digital terrestrial television (DTT) format conforming to the National Standard GB20600-2006 which is in compliance with the Generic Code of Practice on Television Technical Standards issued by the CA.

(iii) *Use of frequency channels in IBCCDS*

Fantastic TV has proposed to use three IBCCDS channels in the Very High Frequency (VHF) band (54 – 470 MHz) for the delivery of two programme channels in analogue and digital formats. Fantastic TV has also proposed to use one IBCCDS channel in the Ultra High Frequency (UHF) band (470 – 862 MHz) for simulcasting these programme channels in digital format.

In view of Fantastic TV's updated proposal that it would like to provide the English channel in digital format only (while the Cantonese channel in both analogue and digital formats), the CA considers that Fantastic TV has a genuine need to use two IBCCDS channels in the Very High Frequency band (54 – 470 MHz) for transmission of the English channel in digital format and the Cantonese channel in both analogue and digital formats. The CA also notes that at the moment there should be sufficient spare IBCCDS channels to meet the demand of Fantastic TV's proposed free TV service. The CA will consider allocating two VHF IBCCDS channels to Fantastic TV upon formal licence grant by the CE in Council.

(iv) *Cost of equipment for reception of TV programmes from Fantastic TV*

Residents connected to the HFC Network would be able to access Fantastic TV's service in both analogue and digital formats via their existing analogue televisions and/or receivers for DTT services without having to install any additional equipment.

After the HFC Network and the building's IBCCDS are properly interconnected, building management offices/ incorporated owners would need to install a channel filter and a channel converter for the said interconnection at their own costs (around HK\$2,000 to HK\$7,500), if required. Residents would then be able to receive Fantastic TV's service in digital format via the IBCCDS.

The CA notes that viewers would be required to bear the cost of IBCCDS upgrading (at a cost of about HK\$10,000 per IBCCDS channel in a building) and equipment for reception of Fantastic TV's digital service (i.e. a DTT decoder at a cost of about HK\$500) to receive free TV signals, but the total cost to be borne by individual viewers is not high. On the whole, the CA considers that the proposed arrangement is acceptable. Despite the cost involved in procuring the reception equipment, the CA considers that Fantastic TV's proposed service would still be regarded as a free TV service.

(f) *Speed of service roll-out*

As it is not technically feasible for Fantastic TV to achieve territory-wide coverage at the initial stage of service roll-out with the use of fixed network, Fantastic TV should be allowed to achieve territory-wide coverage on a step-by-step basis. For delivery of free TV service via fixed network, Fantastic TV has committed to complying with the following coverage requirements –

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|--|--|
| Premises within ten metres of network reach ¹⁵ | Premises ready for service within 28 days ¹⁶ |
|--|--|

¹⁵ "Premises within ten metres of network reach" means premises (to be specified by the licensee and accepted by the CA) in a building, an estate or a village with a main entrance in the external wall thereof not exceeding ten metres, as measured in a straight line (or such other distance as approved by the CA), from the nearest part of the network concerned. In the event of there being more than one entrances in the external walls of a building, an estate or a village, and upon request from the CA, the licensee shall irrevocably elect by notice in writing to the CA as to which entrance it will treat as the main entrance for the purpose of this definition.

¹⁶ "Premises ready for service within 28 days" means premises (to be specified by the licensee and accepted by the CA) to which the television programme service of the licensee is capable of being provided by the licensee within 28 days after receipt of a request for the licensee's service in writing from:

- (a) the building management office, incorporated owners, or owners of the relevant building in which the specified premises are situated; and
- (b) the residents of the specified premises (where applicable),

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|---|------------------------------------|
| 1 st year: 2.2 million | 1 st year: 2.2 million |
| 6 th year: 2.4 million (150,000 of which will be achieved through MMDS) | 6 th year: 2.25 million |

The CA notes that ATV and TVB had been exempted from the territory-wide coverage requirement for their DTT services since late 2007 such that they could roll out their respective DTT networks in phases. Hence, the CA considers that Fantastic TV's phased approach in achieving territory-wide coverage is acceptable.

- (g) *Whether any construction is to be carried out and the extent of any inconvenience to the public*

Fantastic TV has proposed to hire the existing HFC network of HKCTV to transmit its free TV service and has confirmed that large-scale construction works would not be required.

The CA notes that as such, any impact on the public should be minimal.

- (h) *The benefits to the local broadcasting industry, the audience and the community as a whole*

As per the public views received prior to the Second Stage, most members of the public support opening up the free TV market and consider strongly that the grant of new licences would be in the public interest.

The CA notes that the total investment involved in the proposed free TV service of Fantastic TV amounts to HK\$1,176 million in the first six years of its operations, which would bring considerable growth to the local broadcasting industry. The launch of new free TV service would bring positive gain to the community through increased competition, increase in investment in programming and local content production, and enhanced viewers' choice.

- (i) *The applicant's proposed arrangements to ensure compliance with the provisions of the BO, any other applicable law and the terms and conditions that may be specified in the licence*

Fantastic TV has proposed to put in place internal monitoring systems to ensure compliance with the regulatory requirements.

in which an agreement is obtained from (a) and (b) (where applicable) above for access to the relevant building and the specified premises to carry out any work necessary for the provision or reception of the licensee's service, and in which the equipment necessary for receiving the licensee's service via delivery means designated by the licensee is made available by (a) or (b).

The CA considers that the proposed mechanisms, which are similar to those adopted by incumbent free TV licensees, are acceptable.

(C) Additional Commitments Ordered by the CE in Council at Grant of AIP

7. To follow up the CE in Council's requirements, the CA has proceeded to –
- (a) obtain confirmation from Fantastic TV that the proposed free TV service will not be “bundled” with any transmission or television programme service which is available only on a subscription basis (bundling restriction)¹⁷;
 - (b) obtain an undertaking from Fantastic TV that the existing viewers of the pay TV service provided by an affiliate of Fantastic TV will be entitled to view its proposed free TV service regardless of whether the viewers continue to subscribe for the pay TV service of that affiliate (entitlement to view requirement)¹⁸; and
 - (c) obtain confirmation that Fantastic TV will not act as a mere “content provider” supplying programme materials to any of its affiliates who is a pay TV service licensee (no mere content provider requirement)¹⁹.

Bundling and entitlement to view

¹⁷ Free TV services play a unique social function in informing, educating and entertaining the community. The authorities should ensure that such services are at all times be available for reception by the public free-of-charge (save for the cost incurred in procuring the reception equipment) and not to be used to attract subscription in a package with other television programme services or transmission network services. The provision of the new free TV services to members of the public should therefore not be “bundled” with, or in other words be pre-conditioned by, any form of subscription to any television programme service or transmission network service. Neither should the reception of the new free TV services be confined to subscribers of certain television programme services or transmission networks.

¹⁸ Given the unique function of free TV services, the authorities have to ensure that the proposed services to be provided are genuinely free TV services under section 2(1) of the BO and hence that the free TV services are at all times be available for reception by the public (including the current or future subscribers to the pay TV service of Fantastic TV's affiliates) free-of-charge and not to be pre-conditioned by any form of subscription to any television programme service or transmission network services.

¹⁹ The term “mere content provider” in this context refers to the situation that Fantastic TV acts nothing more than a content provider for its pay TV service affiliate. The Government's broadcasting policy objectives have all along been to broaden programme choices to the benefits of the audience-at-large. Free TV and pay TV services are two distinct television markets catering for different programme needs in the local community. There are strong local expectations for more programming initiatives and diversity as the resultant benefits following introduction of more competitions into the free TV service market. The requested confirmation serves to ensure that Fantastic TV's operations will not be auxiliary to its pay TV service affiliate's by becoming no more than production house for the latter, ending up in an arrangement that all programme materials produced by Fantastic TV are supplied to its pay TV service affiliate for first-run on the pay TV service platform before they become available on the free TV service channels. This confirmation, in effect, seeks to commit Fantastic TV to investing into self-production of sufficient and quality programmes primarily and first serving the free TV service audience. The programming investment in Fantastic TV should be turned into deliverables targeting the free TV services.

8. The CA has had several rounds of correspondence with the two AIP Applicants on the approach to give effect to the bundling restriction and the entitlement to view requirement. Having considered carefully the submissions received, the CA has come to the view that the bundling restriction and entitlement to view requirement are different variants of the same concept, and in both cases, the crux is whether it is possible for members of the public to receive Fantastic TV's proposed free TV service without having to subscribe to either a pay TV service or a transmission service provided by one of its affiliates, for which a fee is required, if they are living in premises that are ready for the free TV service as per Fantastic TV's coverage commitments.

9. After taking into account the comments of the two AIP grantees and the policy views of SCED, the CA considers that it is reasonable to adopt a pragmatic approach to combine the bundling restriction and entitlement to view requirement into a single set of requirements. The CA has sought representations from Fantastic TV on the revised set of requirements as follows –

- (a) Fantastic TV shall at all material times ensure that its free TV service is provided to, and is received by, members of the public free of charge;
- (b) there is no pre-condition or technical requirement that in effect requires a person to whom the free TV service is made available in accordance with the licence conditions to be a subscriber²⁰ to the services provided by the affiliates of Fantastic TV or to pay any fees or charges in return for the provision of the free TV service;
- (c) Fantastic TV shall provide the free TV service in such a manner so that the quality of the service received by members of the public who are not subscribers to the services provided by the affiliates of Fantastic TV –
 - (i) will not fall short of the requirements set out in the Generic Code of Practice on Television Technical Standards issued by the CA; or
 - (ii) to the extent that it is within Fantastic TV's reasonable control, will not be of such a different standard than that available to subscribers to the services provided by Fantastic TV's affiliates such that a substantial segment of members of the public would feel obliged to be subscribers in order to receive the same quality of service as that available to subscribers; and
- (d) subject to Fantastic TV's coverage and rollout commitments, Fantastic TV shall ensure that the free TV service is made available to specified

²⁰ A "subscriber" means a member of the public who either has entered into a subscription for, or at any time during the period of validity of the free TV service licence enters into a subscription for, any pay TV service provided by an affiliate of the licensee or any other arrangement according to which an affiliate of the licensee provides a broadband access line or any reception equipment.

premises²¹ that are readily serviceable by the telecommunications network provided by an affiliate of Fantastic TV within 28 days of its receipt of a request from any related parties (e.g. occupiers of a premise)²².

Fantastic TV has provided confirmation for the purpose of implementing the above requirements.

No mere content provider

10. After consulting SCED, the CA considers that it is reasonable to require Fantastic TV to commit to providing a minimum amount of first-run programmes for the purpose of the no mere content provider requirement as follows –

- (a) Fantastic TV will not act as a mere content provider supplying programme materials for the pay TV service of an affiliate;
- (b) Fantastic TV shall not be a mere production house for an affiliate so that all programme materials produced by Fantastic TV are supplied for the pay TV service of an affiliate; and
- (c) Fantastic TV shall provide at least the following “first run programmes” –
 - (i) seven hours of first-run programmes per week within 12 months from service launch of the Cantonese channel;
 - (ii) 14 hours of first-run programmes per week within 36 months from service launch of the Cantonese channel; and
 - (iii) 21 hours of first-run programmes per week within 72 months from service launch of the Cantonese channel.

For the purpose of the above, a “first-run programme” refers to a programme which has not been previously carried by the pay TV service affiliate of Fantastic TV.

Fantastic TV has provided confirmation for the purpose of implementing the above requirements.

²¹ Please refer to footnote 16 for the definition of “specified premises”.

²² Fantastic TV shall connect the specified premises to its affiliate’s network or install equipment to enable the related parties to receive the free TV service subject to –

- (a) any necessary authorisations required from the related parties;
- (b) one or more of the related parties bearing the reasonable cost of the connection from its affiliate’s network up to the specified premises;
- (c) the availability, without charge to Fantastic TV, of suitable IBCCDS channel(s) in the relevant building; and
- (d) the timely and reasonable co-operation of the related parties.

(D) Public Opinions

11. Since the announcement of the grant of the AIP on 15 October 2013, the CA has received over 400 submissions from members of the public. The major points raised are summarised as follows –

- (a) there are public calls for a greater variety of programmes to be provided by new licensee(s); and
- (b) new operator(s) should be required to provide more local productions or independent local productions in order to foster the development of the creative industry.

12. To address the public's demand for greater programme variety and choices, Fantastic TV has agreed to provide local productions²³ on an incremental basis as follows –

- (a) eight hours of local productions per week within 24 months from service launch of the Cantonese channel;
- (b) 12 hours of local productions per week within 48 months from service launch of the Cantonese channel; and
- (c) 18 hours of local productions per week within 72 months from service launch of the Cantonese channel.

In addition, Fantastic TV has agreed to provide on its Cantonese channel independent local productions²⁴ on an incremental basis from 20 hours per year by the second year of service commencement to 60 hours per year by the sixth year, which is the same as the commitments made by TVB and subsequently accepted by the CE in Council in the context of the free TV service licence renewal exercise of TVB in 2015. Fantastic TV has also agreed that repeat broadcast of the same programme would not be counted towards the fulfilment of the relevant PPRs. The CA therefore considers that Fantastic TV has satisfactorily addressed the public demand for greater programme variety and choice to be provided by a new licensee.

(E) Licence Conditions

13. After the grant of the AIP, the CA had discussed with Fantastic TV the proposed conditions of the latter's draft free TV service licence. The CA had

²³ For this purpose, "local productions" refer to programmes produced locally and appealing to local viewers, irrespective of whether they are partly or wholly station-produced, commissioned, collaborated, or joint-ventured programmes but shall not include Government-supplied programmes (e.g. RTHK programmes). The "wholly of Hong Kong origin" content in respect of the PPRs can be counted towards the fulfilment of the local production requirement.

²⁴ "Independent local productions" refer programmes produced by production companies which are independent of Fantastic TV and its affiliates.

indicated to Fantastic TV that the draft licence conditions were based upon the commitments made by Fantastic TV in its Application to which Fantastic TV had agreed at the First Stage. They were the premises upon which the former BA made its original recommendations to the CE in Council, and the same basis upon which the CE in Council granted the AIP to the Application. Fantastic TV at one stage requested that the proposed licence conditions should be linked with the assignment of broadcasting spectrum. Fantastic TV also requested that the CA should relax some licence conditions (in particular before Fantastic TV obtained spectrum).

14. The above notwithstanding, Fantastic TV submitted in May 2015 that it was committed to using its best endeavour to resolve all outstanding issues with the CA including the proposed licence conditions. Fantastic TV subsequently confirmed in August 2015 its agreement to comply with the proposed licence conditions.

CA's Follow-up works in the Second Stage

15. Since the announcement of the CE in Council's decision mentioned in paragraph 3, the CA proceeded with the follow-up work at the Second Stage. During the assessment of the updated Application, the CA sought further information and clarifications as necessary from Fantastic TV, based on which the CA reviewed Fantastic TV's updated Application in accordance with the BO and the established procedures, and submitted its recommendations to the CE in Council on 19 January 2015. In summary, the CA's then assessment of Fantastic TV's updated Application was as follows –

- (a) the CA was not in a position to confirm Fantastic TV's compliance with the non-subsidiary requirement under the BO as Fantastic TV did not see the need to complete its proposed corporate restructuring prior to the submission of the CA's recommendations to the CE in C. For the same reason, the CA was not in a position to verify Fantastic TV's compliance with a number of other statutory requirements, including those relating to company registration, residence in Hong Kong, fit and proper persons, UVCs and DPs;
- (b) Fantastic TV's position in respect of certain criteria set out in the Guidance Note (i.e. the provision of positive programmes and subtitling service) amounted to renegeing on the commitments it had made in its original Application, which formed part of the premises upon which the AIP was granted. The CA was also concerned that if it were to agree to Fantastic TV's request to relax the programme requirements, there would be an adverse effect on the variety and quality of programmes to be provided to the viewing public;
- (c) regarding the additional commitments ordered by the CE in Council in relation to the "bundling restriction", the "entitlement to view

requirement” and the “no mere content provider requirement”, the CA noted that Fantastic TV had agreed in principle to provide confirmation for the purposes of implementing requirements with regard to the “bundling restriction” and “entitlement to view requirement”. However, Fantastic TV had expressed strong views against the “no mere content provider requirement”;

- (d) the CA considered that Fantastic TV had not satisfactorily addressed the public concern over the variety and quality of the programmes to be provided by a new licensee to the viewing public, and had not committed to providing local productions/independent local productions; and
- (e) Fantastic TV had not accepted the proposed licence conditions as ordered by the CE in Council in the AIP.

On the basis of the assessment above and having taken into account Fantastic TV’s representations, the CA recommended to the CE in Council that a free TV licence should not be granted to Fantastic TV.

16. The above notwithstanding, Fantastic TV submitted in May 2015 that it was committed to using its best endeavours to resolve all outstanding issues with the CA, and it requested the CE in Council to withhold consideration of the CA’s recommendations submitted on 19 January 2015. On 12 May 2015, the CE in Council, having taken into account the CA’s recommendations submitted on 19 January 2015 and Fantastic TV’s request, decided that Fantastic TV would be given until 15 September 2015 to resolve all outstanding issues and satisfactorily address the concerns of the CA in relation to its updated Application. The CE in Council also invited the CA to resume discussion with Fantastic TV on the outstanding issues relating to the latter’s updated Application, to further consider any relevant supplementary information and confirmation as provided by Fantastic TV, and to provide the CE in Council with further recommendations on Fantastic TV’s updated Application.

17. On 16 September 2015, the CA submitted a report that four of the five major areas of outstanding issues in relation to the updated Application had been satisfactorily resolved. Fantastic TV did not, by the deadline of 15 September 2015 imposed by the CE in Council, provide the necessary information and documentation to enable the CA to verify Fantastic TV’s corporate status and its compliance and that of all persons exercising control of it, with applicable statutory requirements following the corporate restructuring. At the meeting of the Executive Council on 6 October 2015, the CE in Council decided that, taking into account Fantastic TV’s further request²⁵, Fantastic TV be further given until 1 December 2015 to resolve all

²⁵ Due to the last-minute withdrawal of one of the trustees from providing the agreed trustee services, Fantastic TV requested a ten-week time extension from the CE in Council to complete the corporate restructuring process.

outstanding issues and satisfactorily address the concerns of the CA in relation to the updated Application, including the proposed corporate restructuring. The CE in Council also invited the CA to further consider any relevant supplementary information and confirmation as provided by Fantastic TV, and to provide the CE in Council with further recommendations on Fantastic TV's updated Application. Fantastic TV stated in its letter to the Executive Council Secretariat dated 30 November 2015 that it would not be able to complete the proposed corporate restructuring by 1 December 2015²⁶. Having considered Fantastic TV's explanation, the CE in Council decided on 2 February 2016 that Fantastic TV would be further given until 18 March 2016 to resolve all the outstanding issues and satisfactorily address the concerns of the CA as regards its updated Application.

18. On 11 March 2016, Fantastic TV informed the CA that it had completed the proposed corporate restructuring and provided the confirmation and information as requested by the CA. The CA had examined the submission of Fantastic TV in respect of its compliance with the relevant statutory requirements under the BO and submitted further recommendations to the CE in C Council on 18 April 2016.

CA's Recommendations

19. Having regard to the assessment of Fantastic TV's updated Application as set out above, the CA considers that Fantastic TV has demonstrated its compliance with all the statutory requirements under the BO and the assessment criteria set out in the Guidance Note. Fantastic TV has also agreed to comply with the additional commitments and the various conditions set out in the CE in Council's AIP and satisfactorily addressed the public concern over the variety and quality of the programmes to be provided by a new licensee. Fantastic TV has also agreed to comply with the proposed licence conditions which are broadly along the lines of those ordered by the CE in Council when AIP was granted to it. On the basis of the above assessment, the CA recommends to the CE in Council that a free TV service licence should be granted to Fantastic TV.

The CE in Council's Decision

20. The CE in Council agrees with the CA's Recommendations and decides that the free TV service licence at **Annex A** be granted to Fantastic TV for 12 years from 31 May 2016, subject to a mid-term review after 31 May 2022.

²⁶ In light of an unexpected risk of the other trustee pulling out from the proposed corporate restructuring arrangement, Fantastic TV requested a time extension to complete the corporate restructuring process.

Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2016

21. Currently, free TV licensees under the BO and sound broadcasting licensees (both analogue and digital audio broadcasting) under the Telecommunications Ordinance (Cap. 106), which are regarded as being placed in a position of special trust by the Government, have been specified as public bodies under Schedule 1 to POBO. Any employee and member of an organisation specified as a public body under Schedule 1 to the POBO is defined as a “public servant” under section 2 of the POBO. Under section 35 of the POBO, the CE in Council may by order published in the Gazette amend the Schedules to the POBO. Following the grant of a free TV service licence to Fantastic TV, the CE in Council ordered that an amendment be made to Schedule 1 to the POBO to specify Fantastic TV as a public body. The draft order titled “Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2016” (with the commencement date on 16 July 2016) is at **Annex C**.

IMPLICATIONS OF THE PROPOSAL

22. The licence grant has economic, financial, civil service and sustainability implications. On economic implication, through bringing in additional investment in TV content production and increasing competition, the entry of Fantastic TV into the free TV market would help the further development of the broadcasting and creative industries. The community will also benefit from a wider choice of quality programmes and better services. On sustainability implications, Fantastic TV’s entry will create employment opportunities, promote competition and offer a wider choice of quality programmes for viewers. It is conducive to the sustainability principle of achieving a competitive and prosperous market-led economy to meet the aspirations of the public. On financial and civil service implications, introduction of any new entrants into the free TV service market is expected to attract payments of licence fees under the Broadcasting (Licence Fees) Regulation (Cap. 562A) and the Telecommunications (Carrier Licences) Regulation (Cap. 106V). There will be additional workload arising from the administration of the new licence and handling of relevant complaints. The workload will be absorbed within existing resources of the Office of the Communications Authority. It is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental, family or gender implications.

PUBLIC CONSULTATION

23. At the time of granting the AIP to the Application, the CE in Council considered all public views received by then, including those collected in the former BA’s statutory consultation during July and September 2010 and the unsolicited public views addressed to the CA and/or the Government from time to time before the grant of the AIP to the Application. Since the announcement of the grant of the AIP in October 2013, the CA has received over 400 submissions from members of

the public. The unsolicited public views addressed to the Government since October 2013 are largely similar. All the above-mentioned public views were submitted to the CE in Council for consideration.

PUBLICITY

24. The Government will announce the decision by way of a press release.

ENQUIRIES

25. For enquiries, please contact Mr Edward TO, Principal Assistant Secretary for Commerce and Economic Development (Communications and Creative Industries) A at 2810 2708.

Communications and Creative Industries Branch
Commerce and Economic Development Bureau
31 May 2016

No. of THREE ORIGINALS

Domestic Free Television Programme Service Licence

Broadcasting Ordinance (Cap.562)

Fantastic Television Limited

[Date of Licence]

**Department of Justice
The Hong Kong Special Administrative Region**

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FIRST SCHEDULE

SECOND SCHEDULE - FORM OF PERFORMANCE BOND

In exercise of the powers conferred by sections 8(1) and 10(1) of the Broadcasting Ordinance (Cap.562) and all the powers enabling him in that behalf, the Chief Executive in Council hereby grants a domestic free television programme service licence (“Licence”) to Fantastic Television Limited (“Licensee”, which expression shall include its lawful successors and assigns), a company formed and registered under the Companies Ordinance (Cap.622), whose registered office is situated at 16th Floor, Ocean Centre, Harbour City, Canton Road, Kowloon, Hong Kong on the conditions under this Licence.

Interpretation

- 1.1 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 Broadcasting 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 Broadcasting Ordinance shall prevail over that in the Interpretation and General Clauses Ordinance.
- 1.2 The headings and index used in this Licence shall not in any way vary, limit or extend the interpretation of this Licence.
- 1.3 This Licence shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of its objects according to its true intent, meaning and spirit.
- 1.4 The Schedule(s) hereto, shall form part of this Licence.
- 1.5.1 Save where the contrary intention appears expressly or by necessary implication in this Licence, the following words and expressions mean:

| | |
|----------------------------------|---|
| “auditor” | 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. |
| “Code of Practice” | a code of practice which bears the same meaning given in section 2(1) of the Broadcasting Ordinance. |
| “Commencement Date” | the date on which the period of validity of this Licence commences. |
| “day” | a period of 24 hours beginning at midnight. |
| “designated integrated channels” | integrated Chinese channel and integrated English channel. |
| “digital form” | an arrangement of signals transmitted by telecommunications and represented by digits or similar discrete form as may be authorised or approved by the Communications Authority. |
| “integrated Chinese channel” | integrated television programme service channel in the Cantonese dialect provided in accordance with Condition 17.4.1 of this Licence. |

“integrated
English
channel”

integrated television
programme service
channel in the English
language provided in
accordance with
Condition 17.4.1 of this
Licence.

“Investment
Plan”

an investment plan as
approved by the
Communications
Authority regarding the
Licensee’s commitment
of capital expenditure
and operating
expenditure (including
programming cost) to be
spent on the Service for
the period from [*] to
[*](*Note: dates to be
provided for each
licensee*), which is
contained in a letter
dated [*](*Note: date to
be provided for each
licensee*) from the
Licensee to the
Communications
Authority, and as may be
subsequently updated,
revised or modified
pursuant to the directions
or approvals of the
Communications
Authority from time to
time.

| | |
|------------------------------|---|
| “Licensee’s Proposal” | all statements and representations (including statements of intention) made to the Communications Authority and the Government by or on behalf of the Licensee in its application for this Licence, including but not limited to its application dated [*], the letters dated [*](<i>Note: dates to be provided for each licensee</i>), the Investment Plan and the updated application dated [*]. |
| “period of validity” | [31 May 2016] to [30 May 2028](<i>Note: each licensee shall, subject to the CE in Council’s final decision, be valid for a period of 12 years from the Commencement Date</i>) (both dates inclusive), being the period specified by the Chief Executive in Council in a notice in the Gazette issued pursuant to section 4 of Schedule 4 to the Broadcasting Ordinance or such period as may be renewed or extended pursuant to section 11 of the Broadcasting Ordinance. |
| “Premises Ready for Service” | premises (to be specified by the Licensee and accepted by the Communications Authority) to which the Service is capable of being provided by the Licensee within 28 days |

after receipt of a request for the Licensee's Service in writing from:

- (a) the Building Management Office, Incorporated Owners, or owner of the relevant building in which the specified premises are situated; and
- (b) the resident of the specified premises (where applicable),

in which an agreement is obtained from (a) and (b) (where applicable) above for access to the relevant building and the specified premises to carry out any work necessary for the provision or reception of the Service, and in which the equipment necessary for receiving the Service via delivery means designated by the Licensee is made available by (a) or (b).

“Premises
within Network
Reach”

premises (to be specified by the Licensee and accepted by the Communications Authority) in a building, an estate or a village with a main entrance in the external wall thereof not exceeding 10 metres, as measured in a straight line (or such other distance as approved by the Communications Authority), from the nearest part of the network concerned. In the event of there being more than one entrances in the external walls of a building, an estate or a village, and upon request from the Communications Authority, the Licensee shall irrevocably elect by notice in writing to the Communications Authority as to which entrance it will treat as the main entrance for the purpose of this definition.

“relevant Authority”

(a) the Communications Authority in connection with either a condition of this Licence in respect of which the Communications Authority is the regulator or similarly empowered under any law, Ordinance, determination, consent, notice, direction, authorisation or approval; or

(b) the Secretary for Commerce and Economic Development in connection with either a condition of this Licence in respect of which that Secretary is the regulator or similarly empowered under any law, Ordinance, determination, consent, notice, direction, authorisation or approval.

“Service” the domestic free television programme service, whether transmitted in analogue form or digital form, which the Licensee is authorised and required to provide during the period of validity in accordance with this Licence and any law or Ordinance.

“week” a continuous period of 7 days beginning on a Monday.

1.5.2 The word “person” bears the same meaning as in section 3 of the Interpretation and General Clauses Ordinance and includes “Government”.

1.5.3 The expressions “telecommunications”, “telecommunications installation”, “telecommunications line” and “telecommunications service” bear the same meaning as in the Telecommunications Ordinance (Cap.106).

1.6 In this Licence, save where the contrary intention appears expressly or by necessary implication, words and expressions:

- (a) which import one gender include the two 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.

1.7 If at any time any condition of this Licence is or becomes illegal, invalid or unenforceable in any respect, the legality, validity or enforceability of the remaining conditions shall not in any way be affected or impaired.

1.8 In this Licence, a reference to an Ordinance, whether the word is used by itself or as part of any title to an Ordinance, shall mean the Ordinance for the time being in force as well as any modification or substitution thereof, in whole or in part, and all subsidiary legislation, regulations, directions, codes of practice and instruments made thereunder and for the time being in force.

1.9 In forming an opinion or making a determination, direction or decision under this Licence, the relevant Authority shall:

- (a) only do so on reasonable grounds and having regard to relevant considerations; and
- (b) provide reasons for it in writing.

Terms of Licence

2.1 (a) This Licence authorises and requires the Licensee to provide a Service in accordance with this Licence.

- (b) The Secretary for Commerce and Economic Development may by notice served on the Licensee require the Licensee to provide the Service in digital form in the entirety from a date as specified in the notice, the date being not less than 18 months of the date of the service of the notice.

2.2 Unless the Communications Authority otherwise approves or determines, the Licensee shall commence the provision of the Service in accordance with the time schedule specified in its Licensee's Proposal or within 12 months from the Commencement Date, whichever is earlier.

2.3 The Licensee shall, as soon as practicable and in any event not less than 30 days in advance, notify the Communications Authority in writing of the date on which the Licensee will commence the provision of:

- (a) the Service on the integrated Chinese channel as authorised and required in Condition 17.4.1(a);
- (b) the Service on the integrated English channel as authorised and required in Condition 17.4.1(b); and
- (c) the Service on any television programme service channel as authorised and approved by the Communications Authority under this Licence.

2.4 This Licence is granted subject to:

- (a) the provisions from time to time in force of the Broadcasting Ordinance, the Telecommunications Ordinance, the Communications Authority Ordinance (Cap.616), the Broadcasting (Miscellaneous Provisions) Ordinance (Cap.391) and, including without limitation, any other Ordinance, and any Ordinance enacted in place or substitution in whole or in part thereof and all subsidiary legislation, regulations, technical standards, directions and codes of practice made thereunder; and
- (b) the terms and conditions set out in this Licence, and as any of them may be amended from time to time.

**Commencement
Date and period
of validity of
Licence**

3.1 Subject to the terms and conditions of this Licence and any law or Ordinance, this Licence shall be valid for the period of validity.

3.2 Pursuant to section 4(2)(b) of Schedule 4 to the Broadcasting Ordinance, this Licence shall be subject to review by the Chief Executive in Council during the period from [31 May 2022] to the date of expiry of the period of validity (*Note: date to be inserted 6 years after the Commencement Date*).

Power to amend

4.1 The Chief Executive in Council may, if he considers it is in the public interest to do so, vary this Licence in accordance with the Broadcasting Ordinance.

4.2 Without prejudice to the aforesaid, the Chief Executive in Council may vary this Licence with the prior consent in writing of the Licensee at any time and from time to time during the period of validity.

Saving of rights granted

5. This Licence shall not in any way whatsoever abrogate or interfere with any rights, whether exclusive or otherwise, granted under any law or Ordinance to any person other than the Licensee.

Publication of Licence

6.1 Subject to Condition 6.3, the Licensee shall make available for inspection by members of the general public, free of charge, a certified true copy of this Licence at:

- (a) its registered office and principal place of business; and
- (b) the principal office of the Office of the Communications Authority.

6.2 The Government or the Communications Authority may in its discretion make this Licence publicly available in any manner it thinks fit, in whole or in part.

6.3 For the purposes of Condition 6.1 and without prejudice to Condition 6.2, the Licensee's Proposal may be excluded in the Licensee's discretion.

Notification of place of business

7. The Licensee shall promptly notify the Communications Authority of any change in the address of its registered office or principal place of business, as the case may be.

Prohibition against transfer of Licence

8. This Licence or any interest in this Licence shall not in any way be transferred in whole or in part.

**Directions etc. by
the relevant Authority**

- 9.1 Where any determination, consent, notice, direction, authorisation or approval of or from the relevant Authority is required 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 the relevant Authority, that determination, 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 9.2, given before the doing of the said matter or thing in question. If a digital signature is used, it shall be supported by a recognized certificate under the Electronic Transactions Ordinance (Cap.553). For the purpose of this Condition, “digital signature” and “recognized certificate” shall bear the same meaning as in the Electronic Transactions Ordinance.
- 9.2 The relevant Authority may generally or specifically in relation to a particular matter or thing referred to in Condition 9.1 by notice in writing to the Licensee waive the requirement for its or his, as the case may be, determination, 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 the relevant Authority from withdrawing the waiver, with prospective effect, in whole or in part, or from requiring that the determination, consent, notice, direction, authorisation or approval, as the case may be, be required timeously in relation to other matters or things.
- 9.3 Without any limitation whatsoever on the rights and powers conferred by any law or Ordinance, where a relevant Authority gives any determination, consent, notice, direction, authorisation or approval to the Licensee, the same may be:

- (a) withdrawn, modified or replaced from time to time by the relevant Authority, in the same circumstances, and with the same effect, as if the withdrawal, modification or replacement were the giving of a determination, consent, notice, direction, authorisation or approval and the Licensee shall comply therewith;
- (b) given once or from time to time; and
- (c) made subject to such conditions as the relevant Authority may impose.

9.4 All references in this Licence to the doing of any matter or thing by a relevant Authority include any delegates thereof, or other agents, authorised in that regard by or under any law or Ordinance.

9.5 Unless otherwise provided by any law or Ordinance, any determination, consent, notice, direction, authorisation or approval moving from the relevant Authority to the Licensee shall be deemed validly served or given if:

- (a) it complies with the manner prescribed in section 40 of the Broadcasting Ordinance;
- (b) it is dispatched by facsimile transmission to the designated number of the Licensee; or
- (c) it is delivered by hand to the registered office or principal place of business of the Licensee.

**Licensee to
comply with
statements**

- 10.1 Subject to Condition 10.2, the Licensee shall comply at all material times with the Licensee's Proposal, including but not limited to statements and representations regarding the legal and beneficial interest in the voting control and shares in the Licensee. In the event that any part of the Licensee's Proposal is inconsistent with the conditions of this Licence, any law or Ordinance, the conditions of this Licence, the law and Ordinance shall prevail and the Licensee's Proposal shall be construed accordingly.
- 10.2 The Communications Authority may generally or specifically in relation to a particular statement or representation referred to in Condition 10.1 by notice to the Licensee waive the requirement for the Licensee to comply with the said statement or representation and the proviso referred to in Condition 9.2 shall apply thereto mutatis mutandis.
- 10.3 The Licensee represents and warrants that the Licensee has the right to make use of the information and technology described as available to it in the Licensee's Proposal.
- 10.4 Without prejudice to any statutory and other regulatory requirements regarding the legal and beneficial interest in the voting control and shares in the Licensee and without affecting the generality of Condition 10.1, the Licensee shall inform the Communications Authority about any change and series of changes:
- (a) involving 10% or more of the voting shares in the Licensee; and
 - (b) involving 1% or more of the voting shares in the Licensee of any person who holds 10% or more of the voting shares in the Licensee

within 14 days after:

- (i) the change or series of changes, as the case may be, takes place; or;
- (ii) the Licensee becomes aware of the change or series of changes,

whichever is earlier.

Waiver

11.1 Subject to any law or Ordinance and Condition 11.2, the Communications Authority may by notice to the Licensee waive the requirement for the Licensee to observe or perform any of the conditions of this Licence for such period as the Communications Authority sees fit if and so long as the Licensee satisfies the Communications Authority that the failure to observe or perform those conditions is caused by an unforeseen event which:

- (a) renders it impossible for the Licensee to observe or perform the conditions;
- (b) is not caused or contributed to by the Licensee, or any officer, employee or associate of the Licensee or any other person acting for or on behalf of the Licensee; and
- (c) in respect of which the Licensee has taken all actions as may be required, with due diligence and speed, to observe or perform the conditions of this Licence.

11.2 The Communications Authority may, if it considers that the event referred to in Condition 11.1 has ceased to render it impossible for the Licensee to observe or perform the conditions of this Licence, direct by notice that the waiver given under Condition 11.1 shall cease to have any effect from the date specified in the notice notwithstanding that the period specified in the notice given under Condition 11.1 has not expired, and the Licensee shall (and without prejudice to the Licensee's obligations under this Licence), as soon as practicable and with due diligence and speed, take all actions as may be required to observe or perform the conditions of this Licence.

Liability of Licensee for contraventions

12. The Licensee shall ensure that the officers, employees and associates of the Licensee, and any other person acting for or on behalf of the Licensee, shall not act or permit any contravention of:

- (a) any provision of the Broadcasting Ordinance, the Telecommunications Ordinance, the Communications Authority Ordinance or the Broadcasting (Miscellaneous Provisions) Ordinance;
- (b) any provision of any Code of Practice; or
- (c) any condition of this Licence,

and shall not be relieved from any liability notwithstanding that the contravention is due to the act or omission of the officers, employees or associates of the Licensee or any other person acting for or on behalf of the Licensee.

Indemnity

13. The Licensee shall indemnify and keep indemnified the Chief Executive, the Government, the Executive Council, the Communications Authority and the Secretary for Commerce and Economic Development against any and all losses, claims, charges, expenses, actions and demands whatsoever which he or it may incur or be subject to, as the case may be, as a result of or in relation to:
- (a) any breach or alleged breach of or failure or alleged failure to observe or perform any condition of this Licence by or on behalf of the Licensee; or
 - (b) any act or omission by or on behalf of the Licensee in the actual or purported operation or performance of the Service or the conditions of this Licence.

Licence fee

- 14.1 The Licensee shall pay to the Communications Authority every year during the period of validity such licence fee in advance as may be prescribed from time to time by regulation made under section 42 of the Broadcasting Ordinance and in accordance with section 13 of Schedule 4 to the Broadcasting Ordinance.
- 14.2 The Licensee shall pay such other fees and charges as may be prescribed from time to time by regulation made under section 42 of the Broadcasting Ordinance and in accordance with section 13 of Schedule 4 to the Broadcasting Ordinance.

- 14.3 In the event of a revocation, surrender or suspension of this Licence, no licence fees or other fees and charges paid or payable by the Licensee before the said revocation, surrender or suspension shall be repaid or cease to be payable, as the case may be.

Investment

- 15.1 Subject to Condition 15.2 and without affecting the generality of Condition 10.1, the Licensee shall implement the Investment Plan and comply at all material times with the statements (including statements of intention) and representations made by or on its behalf in or with reference to the Investment Plan. In the event that any part of the Investment Plan is inconsistent with the conditions of this Licence, any law or Ordinance, the conditions of this Licence, the law and Ordinance shall prevail and the Investment Plan shall be construed accordingly.
- 15.2 The Communications Authority may generally or specifically in relation to a particular statement or representation referred to in Condition 15.1 by notice to the Licensee waive the requirement for the Licensee to comply with the said statement or representation and the proviso referred to in Condition 9.2 shall apply thereto mutatis mutandis.
- 15.3 The Licensee shall submit for approval by the Communications Authority further information and updated Investment Plan, as may be directed by the Communications Authority from time to time, in relation to the provision of new television programme service channels.

- 15.4 Within 3 months from the last day of each accounting year of the Licensee, the Licensee shall submit to the Communications Authority a management report of the Licensee certifying the capital expenditure and operating expenditure (including programming cost) incurred by the Licensee in providing the Service for the preceding accounting year. The management report shall give a true and fair view of the capital expenditure and operating expenditure (including programming cost) so incurred by the Licensee, and shall be approved by the directors of the Licensee and signed on behalf of the board by the chairman of the meeting at which the management report was approved or by the secretary of the Licensee. The Licensee shall explain to the satisfaction of the Communications Authority if the actual annual expenditure deviates from the Investment Plan.
- 15.5 Unless the Communications Authority otherwise approves or determines, the minimum capital and programming expenditure to be incurred by the Licensee in providing the Service shall be as follows:
- (a) not less than HK\$168 million within 18 months from the Commencement Date;
 - (b) not less than HK\$336 million within 30 months from the Commencement Date; and
 - (c) not less than HK\$504 million within 42 months from the Commencement Date.
- 15.6 Without prejudice to any power that the Communications Authority may have, the Licensee shall, as soon as practicable within 2 months from the expiry of each of the periods specified in Conditions 15.5(a), 15.5(b) and 15.5(c), submit a certificate by an auditor certifying that the respective requirements set out in Condition 15.5 have been complied with.

Submission of reports

- 16.1 The Licensee shall submit reports to the Communications Authority on or before 31 March each year on the extent to which the programming commitments in the Licensee's Proposal have been complied with in the previous calendar year ending on 31 December.
- 16.2 The Communications Authority may in its discretion make the reports referred to in Condition 16.1 publicly available in any manner as it thinks fit, in whole or in part.

The provision of a domestic free television programme service

- 17.1 The Licensee shall:
- (a) entertain, inform and educate; and
 - (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.
- 17.2
- (a) The Licensee shall at all material times provide the Service in such manner as to enable the Service to be received throughout Hong Kong to the satisfaction of the Communications Authority.
 - (b) The Communications Authority may, by notice to the Licensee, exempt the Licensee from complying with Condition 17.2(a) in relation to any parts of Hong Kong specified in the notice and during any period specified in the notice, and the proviso referred to in Condition 9.2 shall apply thereto mutatis mutandis.

17.3 The Licensee shall at all material times provide all television programme service channels in accordance with the First Schedule to this Licence.

17.4.1 Unless the Communications Authority otherwise approves under Condition 17.4.2, the Licensee shall:

- (a) within 12 months from the Commencement Date and at all times thereafter, broadcast its Service on one 24-hour integrated Chinese channel each day; and
- (b) within 24 months from the Commencement Date and at all times thereafter, broadcast its Service on the designated integrated channels each day, comprising one 24-hour integrated Chinese channel and one 24-hour integrated English channel,

in accordance with this Licence.

17.4.2 Upon application in writing by the Licensee, the Communications Authority may approve arrangements different from those in Condition 17.4.1. Without the prior written approval of the Communications Authority obtained in accordance with this Condition 17.4.2, the Licensee shall not deviate from any of the arrangements set out in Condition 17.4.1.

17.5.1 Unless the Communications Authority otherwise approves or determines, the Licensee shall attain and maintain the following:

- (a) making its Service available for reception by not less than 1.75 million Premises within Network Reach and not less than 1.75 million Premises Ready for Service within 6 months from the Commencement Date; and
- (b) making its Service available for reception by not less than 2.15 million Premises within Network Reach and not less than 2.15 million Premises Ready for Service within 12 months from the Commencement Date.

17.5.2 The Licensee shall, within 45 days from the expiry of each of the periods specified in Conditions 17.5.1(a) and 17.5.1(b), or such other periods as may otherwise be approved or determined by the Communications Authority, submit to the Communications Authority a certificate by an auditor on the exact number and addresses of Premises within Network Reach and Premises Ready for Service attained and maintained by the Licensee as at the end of the relevant period.

17.5.3 The Licensee shall, within 45 days of each anniversary of the Commencement Date, submit to the Communications Authority a certificate by an auditor on the exact number and addresses of Premises within Network Reach and Premises Ready for Service attained and maintained by the Licensee as at each anniversary of the Commencement Date, unless the same has already been submitted for the relevant period as required under Condition 17.5.2.

- 17.5.4 The Licensee shall, on a half-yearly basis from the Commencement Date, publish the exact number and addresses of the Premises Ready for Service. The Licensee shall publish such information, free of charge, in any reasonable form and manner as the Communications Authority thinks fit.
- 17.6 The Licensee shall ensure that each television programme service channel shall have a television programme service channel identification which, in the opinion of the Communications Authority, is not confusingly similar to any existing channel identification of any television programme service licensed or deemed to be licensed under the Broadcasting Ordinance or of any sound broadcasting licensees licensed under the Telecommunications Ordinance.
- 17.7 The Licensee shall provide the Service to the public in a fair and non-discriminatory manner. The Licensee shall not unduly prefer or discriminate against any person in relation to the provision or reception of the Service, or the supply or use of any ancillary facilities or equipment necessary for the provision or reception of the Service.
- 17.8 The Licensee shall apply up-to-date technology to perfect the sounds and images that it broadcasts.

**Comments,
requests and
complaints**

- 18.1 The Licensee shall receive and consider any comment or complaint from or on behalf of any person who believes himself to have been treated unjustly or unfairly in any material on the Service, or who comments or complains about the whole or part, in substance or in form, of the content, production, service coverage, provision or reception of the Service, technical aspects, or time of viewing of the Service, including without limitation, the quality of the sounds and images that it provides, the service afforded to the complainant, or customer service. The Licensee shall also receive and consider any request from or on behalf of any person for the provision of signal connections for reception of the Service, or any fault report or complaint from or on behalf of any person in relation to such signal connections.
- 18.2 The Licensee shall implement a procedure for dealing with comments, requests and complaints from the public as may be required from time to time by the Communications Authority.
- 18.3 The Licensee shall keep a complete record, in a form and manner approved by the Communications Authority, of comments, requests and complaints received by it and submit the same to the Communications Authority on a regular basis and on demand. The record shall be retained by the Licensee for not less than 2 years.
- 18.4 The Licensee shall comply with directions as may be given by the Communications Authority to publish, in relation to the Service and within such period as may be specified by the Communications Authority in that direction, a summary of any comment, request or complaint referred to in Condition 18.1. The form and content of such summary shall be subject to approval by the Communications Authority.

18.5 The Licensee shall supply recordings of good quality of all material on the television programme service that it provided during such period, and in such form, as the Communications Authority may direct and require for examination.

Television programmes, publicity material and announcements in the public interest

19.1 The Licensee shall include in its Service such:

- (a) publicity material in order to promote knowledge and understanding of the activities and functions of the Communications Authority; and
- (b) television programmes and other material in the public interest including but not limited to weather programmes and weather forecasts provided by the Government,

as the Communications Authority may provide or direct and at such time, within such period, on such channel, within or outside such television programmes and in such language or dialect as the Communications Authority may direct.

19.2 The publicity material referred to in Condition 19.1(a) may be directed to be broadcast twice daily for a total of not more than one minute on each or any of the Licensee's television programme service channels between the hours of 6:00 p.m. and 11:00 p.m. subject to a maximum limit of 5 minutes in aggregate each week on each channel. This publicity material shall not be treated as counting towards the one minute total in Condition 19.3.

19.3 Notwithstanding Condition 19.1, the Licensee shall broadcast on each or any of the Licensee's television programme service channels such announcements as the Communications Authority shall require to be broadcast provided that such announcements shall not exceed one minute in total in any clock hour on each channel.

19.4 For the avoidance of doubt, the Licensee shall not, in the performance of its obligations under Condition 19, be:

(a) responsible for the content of the material included in the Service; and

(b) entitled to charge the Communications Authority or the Government.

**Intellectual
property rights**

20. The Licensee shall not do, or permit, any act or conduct in relation to the Service which is an infringement of any intellectual property right, including but not limited to any copyright.

Books and accounts to be in English or Chinese

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

Licensee to formulate general guidelines for employees and agents

- 22.1 The Licensee shall formulate written guidelines for all its officers, employees and agents concerned with the content of the Service stating the Licensee's principles regarding its responsibilities to the public, with particular reference to its obligations under the Codes of Practice on programme and advertising standards.
- 22.2 The Licensee shall ensure that all its officers, employees and agents are aware, and shall refresh their memory at reasonably regular intervals, of the guidelines referred to in Condition 22.1 and the Codes of Practice.
- 22.3 For the avoidance of doubt, nothing in Condition 22 shall relieve the Licensee from any obligation or liability to comply with the Codes of Practice.

Discipline and training

23. The Licensee shall ensure good discipline and training among its staff, officers, consultants and contractors, including script-writers, as regards adherence to the Codes of Practice on programme, advertising and technical standards.

Codes of Practice

24. The Licensee shall monitor and ensure strict compliance with the Codes of Practice, and technical standards and directions issued by the Communications Authority.

Interference with other services

- 25.1 The Licensee shall not use or operate any apparatus or equipment or permit or cause the same to be used or operated in any manner which causes interference with any authorised broadcasting or telecommunications services or apparatus operating in or outside Hong Kong.
- 25.2 In case of any such interference, the Licensee shall comply with all instructions given to it by the Communications Authority in respect of the use and operation of the apparatus and equipment.

Information to be provided

- 26.1 The Licensee shall provide the relevant Authority within the period specified such information as the relevant Authority may properly require.

26.2 Without prejudice to the power of the Communications Authority under Condition 26.1, the Licensee shall submit to the Communications Authority not later than 30 April in each year or upon request by the Communications Authority a certified true copy of the latest annual audited accounts of the Licensee prepared by an auditor. 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 15.4 during the accounting year and other financial information contained in the audited accounts.

Provision of testing facilities and Service for regulatory purposes

27.1 Without prejudice to section 38 of the Broadcasting Ordinance, the Communications Authority may, for the purpose of exercising its functions under this Licence, require the Licensee to demonstrate to it that in establishing, providing or operating any means of telecommunications, telecommunications installation, telecommunications line or telecommunications service, if any, or any equipment, in relation to the Service, the Licensee is not in breach of any law, Ordinance, codes of practice, directions or conditions of this Licence.

27.2 For the purpose of Condition 27.1, the Licensee shall provide adequate testing instruments and operating staff.

27.3 The relevant Authority may give notice to the Licensee requesting the Licensee to provide within 21 days thereof the Service to the person making the request in order that that person may monitor and regulate the Service, and the Licensee shall comply with the request.

27.4 Where the Service is made available to the relevant Authority under Condition 27.3, no restriction on the lawful use or application that the relevant Authority may have in relation to the material provided on the Service shall be imposed on the relevant Authority or the Government.

**Standby
equipment and
spare parts**

28. The Licensee shall provide and maintain adequate standby equipment (including but not limited to spare parts) and staff to ensure that any interruption to the Service under this Licence is avoided or minimised, and that necessary repairs or replacements are made or provided promptly.

**Use of
frequency
channels in in-
building coaxial
cable
distribution
systems**

29.1 The Licensee shall seek approval from the Communications Authority for the allocation of frequency channels in any in-building coaxial cable distribution system (“IBCCDS”) and shall comply with technical standards and directions issued by the Communications Authority.

- 29.2 Unless otherwise directed or approved by the Communications Authority, the number of frequency channels that the Licensee may apply for use in any IBCCDS pursuant to Condition 29.1 shall not exceed [*] (*Note: the number of IBCCDS channels allocated to the Licensee is subject to the approval of the CA*). The number of frequency channels that the Licensee may use in any IBCCDS for the Service shall be subject to the approval of the Communications Authority required under Condition 29.1, the limit stipulated in this Condition 29.2, the availability of vacant channels in any IBCCDS, and the choice of the building residents concerned.

Transmission of Service

30. Save where the contrary intention appears expressly or by necessary implication in this Licence, including the requirement by the Secretary for Commerce and Economic Development to provide the Service in digital form in the entirety under Condition 2.1(b), the Licensee shall employ the means of transmission and the transmission arrangements for the Service as stated in the Licensee's Proposal. The Licensee shall apply to the Communications Authority for approval for any substantial change in the means of transmission or transmission arrangements.

Management of Licensee

31. 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.

Performance bond

- 32.1 Not later than 1 month from the Commencement Date, the Licensee shall submit to the Communications Authority a duly issued performance bond in favour of the Government in the sum of HK\$20 million (“Bonded Sum”) in the form and amount specified in a notice in writing of the Chief Executive in Council given pursuant to section 2(3) of the Broadcasting Ordinance, which form is reproduced in the Second Schedule to this Licence, to secure the compliance by the Licensee with certain conditions set out in this Licence and referred to as “Milestones” and “Deadlines for Compliance” in the Annex to the Second Schedule.
- 32.2 If after submission of the duly issued performance bond under Condition 32.1, the Licensee wishes to replace that performance bond with one issued by a different bank, the Licensee shall submit full written details of the proposed replacement bank and replacement performance bond to the Secretary for Commerce and Economic Development on behalf of the Government for approval not less than 14 days before the date the change becomes effective.
- 32.3 Notwithstanding any other conditions of this Licence (including but not limited to the terms and conditions of the performance bond):
- (a) if the Licensee fails to provide or maintain a performance bond in accordance with any provisions in this Condition 32 or the performance bond, or fails to provide to the Communications Authority a certificate by an auditor in accordance with Condition 32.5, this Licence may be revoked notwithstanding that the Licensee may have embarked on its preparation and performance; and no

licence fees or other fees and charges paid or payable by the Licensee before cessation in accordance with this Condition shall be refunded or cease to be payable, as the case may be;

- (b) all rights, powers and remedies of and claims by the Government under the performance bond lodged by the Licensee pursuant to this Condition 32, including any replacement thereof, shall be without prejudice to the other rights, powers and remedies of and claims by the Government and to the rights, powers and remedies of and claims by the Chief Executive in Council, the Chief Executive, the Communications Authority and, without limitation, any other person under any laws or Ordinance; and
- (c) any replacement performance bond referred to in Condition 32.2 shall be in the form of the performance bond appearing in the Second Schedule save for:
 - (i) the change in particulars of the replacement bank; and
 - (ii) the omission therefrom of any Milestones and Deadlines for Compliance in respect of which liability has ceased by reason of either the payment in full of all calls on the performance bond prior to the date the said change of bank becomes effective or the issue of any certificate of completion by the Government in respect of the said Milestones and Deadlines for Compliance.

32.4

The Licensee shall ensure that the Surety referred to in the performance bond, including any replacement performance bond, shall be and remain irrevocably and

unconditionally bound to the Government and liable for payment of the Bonded Sum and each of the Bonded Sums Payable.

- 32.5 Without prejudice to any power that the Communications Authority may have, the Licensee shall, within 2 months upon completion of each or all of (as the case may be) the Milestones, submit to the Communications Authority a certificate by an auditor to evidence and certify completion of each or all of (as the case may be) the Milestones by the relevant Deadline(s) for Compliance. Once the Communications Authority is satisfied that the Licensee has complied with its obligations in respect of any or all of (as the case may be) the Milestones and Deadline(s) for Compliance set out in the performance bond issued in favour of the Government, the Secretary for Commerce and Economic Development on behalf of the Government shall, as soon as practicable thereafter but no more than 30 days and in response to a request in writing to that effect from the Licensee, issue in respect thereof a certificate of completion to the Licensee and to the Surety referred to in the performance bond or the replacement bank that has been approved by the Secretary for Commerce and Economic Development on behalf of the Government in accordance with Condition 32.2 (where applicable).

Other requirements

33. 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 provision of the Service.

Granted on [*] (*Note: date to be provided later*)

Clerk to the Executive Council

COUNCIL CHAMBER

Accepted by :

Signature :

Capacity :

Date :

FIRST SCHEDULE

THIS SCHEDULE GOVERNS THE DESIGNATED INTEGRATED CHANNELS OF THE LICENSEE'S SERVICE. IT SHALL FORM AND BE READ AS AN INTEGRAL PART OF THIS LICENCE.

General Provisions

1. Save where the contrary intention appears expressly or by necessary implication in this Schedule, the programme types described in this Schedule shall bear the same meaning, if any, as in the Code of Practice on programme standards and any directions issued by the Communications Authority from time to time, and in the event of any conflict or inconsistency between their meanings, the meaning in the Code of Practice on programme standards shall prevail.

Language of Broadcast

- 2.1 The Licensee shall provide its Service on the designated integrated channels in accordance with Condition 17.4.1 of the Licence.
- 2.2 The Licensee may, with the prior approval in writing of the Communications Authority and subject to such conditions as may be imposed by it, provide the whole or any part of its Service on the designated integrated channels in any other language(s) or dialect(s).
- 2.3 The Licensee may, with the prior approval in writing of the Communications Authority and subject to such conditions as may be imposed by it, provide the whole or part of its Service on the designated integrated channels using one or more accompanying sound channels in one or more language(s) or dialect(s).

Subtitling

- 3.1 The Licensee shall provide subtitling for its Service, as may be directed in writing by the Communications Authority from time to time after consultation with the Licensee.
- 3.2 The Licensee may, with the prior approval in writing of the Communications Authority and subject to such conditions as may be imposed by it, deviate from the requirements in Condition 3.1 of this Schedule.

News Programmes

- 4.1 The Licensee shall provide on each of the designated integrated channels a minimum of two comprehensive news bulletins, each of not less than 15 minutes duration, each evening between the hours of 6:00 p.m. and 12:00 midnight.
- 4.2 Upon application in writing by the Licensee, the Communications Authority may approve alternative arrangements for broadcasting news bulletins referred to in Condition 4.1 of this Schedule.

Documentary Programmes

- 5.1 The Licensee shall provide a minimum of 60 minutes of documentary programmes each week on each of the designated integrated channels between the hours of 6:00 p.m. and 12:00 midnight, of which not less than 30 minutes on the integrated Chinese channel are to be wholly of Hong Kong origin.
- 5.2 For the purposes of this Schedule, “wholly of Hong Kong origin” means programmes:
- (a) produced
 - (i) in substance and in form in Hong Kong; or
 - (ii) by the Licensee, by any employee of the Licensee, by

any company which is a subsidiary of the Licensee within the meaning of section 2(1) of the Broadcasting Ordinance (“Licensee’s Subsidiary”), or by any employee of the Licensee’s Subsidiary, or by any other independent production company engaged by the Licensee in or outside Hong Kong; and

- (b) the Communications Authority is satisfied that it is produced primarily for the Hong Kong market.

5.3 For the purposes of Condition 5.1 of this Schedule, programmes other than travelogues and such other subjects as the Communications Authority may determine, may be “documentary” if they are factual and consist wholly or substantially of real events.

5.4 Upon application in writing by the Licensee, the Communications Authority may approve alternative arrangements for broadcasting documentary programmes referred to in Condition 5.1 of this Schedule.

Current Affairs Programmes

6.1 The Licensee shall provide a minimum of 60 minutes of current affairs programmes each week on each of the designated integrated channels between the hours of 6:00 p.m. and 12:00 midnight, of which not less than 30 minutes on each of the designated integrated channels are to be wholly of Hong Kong origin.

6.2 Upon application in writing by the Licensee, the Communications Authority may approve alternative arrangements for broadcasting current affairs programmes referred to in Condition 6.1 of this Schedule.

Children’s

Programmes

- 7.1 Subject to the requirements regarding family viewing hours stipulated in the Code of Practice on programme standards and to any directions issued by the Communications Authority, the Licensee shall provide:
- (a) two blocks of programmes intended and suitable for children of different age groups in Hong Kong up to and including the age of 15 years (“children’s programmes”) of a minimum period of:
 - (i) 30 minutes daily on each of the designated integrated channels between the hours of 4:00 p.m. and 7:00 p.m., of which not less than 30 minutes on the integrated Chinese channel are to be wholly of Hong Kong origin; and
 - (ii) 30 minutes daily on each of the designated integrated channels between the hours of 9:00 a.m. and 7:00 p.m.; and
 - (b) a minimum of 2 hours of children’s programmes with educational values targeting teenagers each week on the integrated English channel between the hours of 5:00 p.m. and 7:00 p.m., which shall count towards the block of children’s programmes referred to in Condition 7.1(a)(i) above. Notwithstanding any other provisions in this Licence, English subtitles shall be provided for programmes provided pursuant to this Condition within 6 months from the date of service launch of the integrated English channel and at all times thereafter.
- 7.2 Upon application in writing by the Licensee, the Communications Authority may by a direction waive or modify the requirements specified in Condition 7.1 of this Schedule in accordance with the terms of the

direction.

- 7.3 Without prejudice to the requirements in Condition 12.2 of this Schedule, the Licensee shall repeat the provision of any or all of the children's programmes referred to in Condition 7.1(a) of this Schedule at such time as may be directed by the Communications Authority from time to time.
- 7.4 Apart from the repetitions referred to in Condition 7.3 of this Schedule, children's programmes shall not be repeated more frequently than as may be specified in the Code of Practice or directed by the Communications Authority from time to time.
- 7.5 The Licensee shall inform the Communications Authority in writing of the programme types and transmission schedules for children's programmes 1 week in advance of broadcasting. The Communications Authority may waive the requirement of notification.

Programmes for Young Persons

- 8.1 Subject to the requirements regarding family viewing hours stipulated in the Code of Practice on programme standards and to any directions issued by the Communications Authority, the Licensee shall provide a minimum of 30 minutes of programmes for young persons each week on the integrated Chinese channel between the hours of 8:00 a.m. and 12:00 midnight, which are intended and suitable for the education and proper development of young people in Hong Kong aged 16 years to 24 years (inclusive).
- 8.2 Upon application in writing by the Licensee, the Communications Authority may approve alternative arrangements for broadcasting programmes for young persons referred to in Condition 8.1 of this Schedule.

Programmes for

Senior Citizens

- 9.1 Subject to the requirements regarding family viewing hours stipulated in the Code of Practice on programme standards and to any directions issued by the Communications Authority, the Licensee shall provide a minimum of 60 minutes of programmes for senior citizens each week on the integrated Chinese channel between the hours of 8:00 a.m. and 12:00 midnight, which are intended and suitable for the particular requirements of senior citizens in Hong Kong over the age of 60 years in relation (but not necessarily limited) to their well-being.
- 9.2 Upon application in writing by the Licensee, the Communications Authority may approve alternative arrangements for broadcasting programmes for senior citizens referred to in Condition 9.1 of this Schedule.

Arts and Culture Programmes

- 10.1 The Licensee shall provide a minimum of 60 minutes of arts and culture programmes each week on the integrated Chinese channel between the hours of 8:00 a.m. and 12:00 midnight, which are intended and suitable for promoting the development and appreciation of the literary, performing and visual arts or other topics or activities of cultural value, of which not less than 15 minutes are to be wholly of Hong Kong origin.
- 10.2 Upon application in writing by the Licensee, the Communications Authority may approve alternative arrangements for broadcasting arts and culture programmes referred to in Condition 10.1 of this Schedule.

Annual Reports

- 11.1 The Licensee shall submit reports to the Communications Authority on or before 31 March each year on the extent to which the programmes provided in the previous

calendar year ending on 31 December pursuant to Conditions 7, 8, 9 and 10 of this Schedule have been able to achieve the respective objectives as set out in the aforesaid Conditions, provided that the Licensee shall not be required to submit any such reports for the year [*] (*Note: this is to exclude the year the licence is granted*).

- 11.2 The Communications Authority may in its discretion make the reports referred to in Condition 11.1 of this Schedule publicly available in any manner as it thinks fit, in whole or in part.

Obligations of Licensee

- 12.1 Unless otherwise expressly stated in this Licence or directed by the Communications Authority upon application in writing by the Licensee, the obligations and requirements imposed upon the Licensee to provide certain programmes at certain times and for certain periods pursuant to Conditions 4, 5, 6, 7, 8, 9 and 10 of this Schedule shall not be discharged or satisfied to the extent the programmes so provided comprise or include television programmes, publicity material or announcements produced, commissioned or supplied by the Government or the Communications Authority.

- 12.2 Unless otherwise directed by the Communications Authority upon application in writing by the Licensee, the obligations and requirements imposed upon the Licensee to provide certain programmes at certain times and for certain periods pursuant to Conditions 5, 6, 7, 8, 9 and 10 of this Schedule shall be fulfilled only by first-run programmes.

- 12.3 For the purposes of this Schedule, “first-run programme” means a programme that has not previously been broadcast or provided in substantially the same form and content on any of the television programme service channel(s) of the Service.

Programmes for Schools

- 13.1 Pursuant to section 19 of the Broadcasting Ordinance, the Licensee shall include in the Service such programmes for schools supplied by the Government as may be required by the Communications Authority.
- 13.2 The programmes required under Condition 13.1 of this Schedule:
- (a) shall not exceed 4 hours each day unless the Communications Authority otherwise requires by serving upon the Licensee a notice in writing of not less than 30 days; and
 - (b) may be provided as part of the Service on the integrated English channel unless the Communications Authority otherwise requires by serving upon the Licensee a notice in writing of not less than 30 days.

SECOND SCHEDULE

(Section 2(3) of the Broadcasting Ordinance and Condition 32 of the Licence)

FORM OF PERFORMANCE BOND

THIS SCHEDULE TOGETHER WITH ITS ANNEX SHALL FORM AND BE READ AS AN INTEGRAL PART OF THE LICENCE GRANTED TO THE LICENSEE TO PROVIDE A DOMESTIC FREE TELEVISION PROGRAMME SERVICE IN HONG KONG.

BY THIS BOND dated the [] day of [month] and [year] (“this Bond”)

We, Fantastic Television Limited, whose registered office is at [*address of Licensee] (“Licensee”), and [*details to be provided by the Licensee], holder of a valid banking licence issued under the Banking Ordinance (Cap.155), whose [*registered office/principal place of business] is at [*address] (“Surety”) are irrevocably and unconditionally bound to the Government of the Hong Kong Special Administrative Region (together with his successors and assigns, “Government”) up to the sum of HK\$20 million (“Bonded Sum”) subject to the terms and conditions of this Bond and in accordance with the Milestones set out in the Annex hereto (“Annex”) for payment of which sum the Licensee and the Surety bind themselves, their successors and assigns, jointly and severally, in accordance with the provisions of this Bond.

WHEREAS

Pursuant to the terms of the Licence, the Licensee agreed to obtain a surety to be bound unto the Government for the due performance of the Licence by the Licensee.

NOW THE TERMS AND CONDITIONS of this Bond are:

1. Where applicable, words and expressions used in this Bond shall have the meaning assigned to them in the Licence.

2. If, in respect of any Milestone set out in the Annex, the Licensee fails to achieve that Milestone by the Deadline for Compliance set out opposite to that Milestone in the Annex, the Surety shall upon demand made by the Government in writing and without proof or conditions satisfy and discharge the relevant amount of the Bonded Sum Payable set out opposite to that Milestone in the Annex provided that the aggregate liability of the Surety under this Bond in respect of that failure shall not exceed the Bonded Sum Payable set out opposite to the Milestone in the Annex.
3. The liability of the Surety under this Bond shall not be affected or discharged in any way by (and the Surety hereby waives any requirement to give notice in respect of):
 - (a) any suspension of the Licence, variation to or amendment of the Licence (including but without limitation to extensions of time for performance) or any concession or waiver by the Communications Authority in respect of the Licensee's obligations under the Licence. Without prejudice to the foregoing and purely on a 'for information basis', the Surety will be notified of any such suspension, variation, amendment, concession or waiver;
 - (b) the cancellation or revocation of the Licence;
 - (c) any forbearance or waiver of any right or remedy that the Government, the Chief Executive in Council, the Chief Executive, the Communications Authority or, without limitation, any other person, may have against the Licensee;
 - (d) any act or omission of the Licensee pursuant to any other arrangement with any of the persons referred to in clause 3(c) above or with the Surety; and
 - (e) subject to clause 4 below, the issue of any certificate of completion by the Secretary for Commerce and Economic Development in respect of any Milestone set out in the Annex.
4. The liability of the Surety under this Bond shall cease on whichever of the following events first occurs:
 - (a) payment by the Surety of the Bonded Sum in full to the Government; or
 - (b) issue of a certificate of completion by the Secretary for Commerce and Economic Development in respect of all of the Milestones set out in the Annex.
- 5.1 This Bond shall remain valid from the date of this Bond until the liability of the Surety under this Bond ceases pursuant to clause 4 above.
- 5.2 In the event that the Licensee wishes to replace this Bond with one issued by a different bank, and the Licensee fails to provide to the satisfaction of the Secretary for Commerce and Economic Development on behalf of the Government a replacement performance bond in the form appearing in the Second Schedule to the Licence by not

later than 14 days prior to the proposed date on which the replacement bond becomes effective, the Government shall be entitled, without limitation to any rights it may have under the Licence or any law or Ordinance, to call this Bond up to a maximum amount of the Bonded Sums Payable in respect of the Milestones which have not been performed by submitting its claim in writing at the Surety's counters prior to the proposed date on which the replacement bond becomes effective, and the Surety shall forthwith pay the amount thereof to the Government.

- 5.3 For the avoidance of doubt, the Milestones and Deadlines for Compliance with the Milestones are treated as not having been performed, unless and until a certificate of completion has been issued by the Secretary for Commerce and Economic Development in respect of the respective Milestones and Deadlines for Compliance.
6. The Government shall be entitled to assign the benefit of this Bond at any time without the consent of the Surety or the Licensee being required. Without prejudice to the foregoing and purely on a 'for information basis', the Surety will be notified by the Communications Authority within a reasonable period after any such assignment.
7. All documents arising out of or in connection with this Bond shall be served:
 - (a) upon the Government at: Commerce and Economic Development Bureau, 22/F, West Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong and marked for the attention of "Secretary for Commerce and Economic Development"
 - (b) upon the Communications Authority at: 20th floor, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong and marked for the attention of "Assistant Director (Broadcasting)"
 - (c) upon the Surety at: *[Note 1]*
8. The Government, the Communications Authority and the Surety may change their respective nominated addresses for service of documents to another address in Hong Kong but only by 7 days' prior written notice to each other. All demands and notices must be in writing.
9. This Bond shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region. The Licensee and the Surety agree to submit to the non-exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region.

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

THE COMMON SEAL OF [))
Name of the Surety] was hereunto))
affixed in the presence of:))

Witness

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

Authorised Signatory:

Signature No.:

THE COMMON SEAL OF))
[() Limited]^[Note 3]))
was hereunto affixed))
in the presence of:])

Witness

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

Authorised Signatory:

Signature No.:

Notes : [for preparation of but not inclusion in the engrossment of this performance bond]

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

Annex to the Second Schedule

| <u>Milestones</u> | <u>Deadlines for Compliance</u> | <u>Bonded Sums Payable</u> |
|---|---|----------------------------|
| <u>Required roll-out of the Service (Condition 17.4.1 of the Licence)</u> | | |
| 1(a) The Licensee shall broadcast its Service on one 24-hour integrated Chinese channel each day. | Unless the Communications Authority otherwise approves or determines, within 12 months from the Commencement Date | HK\$3.34 million |
| 1(b) The Licensee shall broadcast its Service on the designated integrated channels each day, comprising one 24-hour integrated Chinese channel and one 24-hour integrated English channel. | Unless the Communications Authority otherwise approves or determines, within 24 months from the Commencement Date | HK\$3.33 million |
| <u>Required Premises within Network Reach and Premises Ready for Service (Condition 17.5.1 of the Licence)</u> | | |
| 2(a) The Service shall be made available for reception by not less than 1.75 million Premises within Network Reach and not less than 1.75 million Premises Ready for Service. | Unless the Communications Authority otherwise approves or determines, within 6 months from the Commencement Date | HK\$3.34 million |
| 2(b) The Service shall be made available for reception by not less than 2.15 million Premises within Network Reach and not less than 2.15 million Premises Ready for Service. | Unless the Communications Authority otherwise approves or determines, within 12 months from the Commencement Date | HK\$3.33 million |
| <u>Required capital and programming expenditure (Condition 15.5 of the Licence)</u> | | |
| 3(a) The Licensee shall incur not less than HK\$168 million as the capital and programming expenditure for providing the Service. | Unless the Communications Authority otherwise approves or determines, within 18 months from the Commencement Date | HK\$2.22 million |
| 3(b) The Licensee shall incur not | Unless the Communications | HK\$2.22 million |

| | <u>Milestones</u> | <u>Deadlines for Compliance</u> | <u>Bonded Sums Payable</u> |
|------|---|---|----------------------------|
| | less than HK\$336 million as the cumulative capital and programming expenditure for providing the Service. | Authority otherwise approves or determines, within 30 months from the Commencement Date | |
| 3(c) | The Licensee shall incur not less than HK\$504 million as the cumulative capital and programming expenditure for providing the Service. | Unless the Communications Authority otherwise approves or determines, within 42 months from the Commencement Date | HK\$2.22 million |

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

G.N.

BROADCASTING ORDINANCE (Chapter 562)

Pursuant to section 4(1)(a) of Schedule 4 to the Broadcasting Ordinance, notice is hereby given that the Chief Executive in Council has decided that a domestic free television programme service licence be granted to Fantastic Television Limited on 31 May 2016 and the period of validity of such a licence shall be 12 years from 31 May 2016 to 30 May 2028 (both dates inclusive) (“Period of Validity”). The Chief Executive in Council hereby also orders that pursuant to section 4(1)(b) of Schedule 4 to the Broadcasting Ordinance, such a licence shall be subject to review during the period from 31 May 2022 to the date of expiry of the Period of Validity.

Council Chamber
[*] 2016

WONG Kit-ye, *Kinnie Clerk to the Executive Council*

**Prevention of Bribery Ordinance (Amendment of
Schedule 1) Order 2016**

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

1. **Commencement**
This Order comes into operation on 16 July 2016.
2. **Prevention of Bribery Ordinance amended**
The Prevention of Bribery Ordinance (Cap. 201) is amended as set
out in section 3.
3. **Schedule 1 amended (public bodies)**
Schedule 1—
Add
“131. Fantastic Television Limited.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2016

Explanatory Note

This Order amends Schedule 1 to the Prevention of Bribery
Ordinance (Cap. 201) to specify “Fantastic Television Limited” as a
public body for the purposes of the Ordinance.