

## **Domestic Pay Television Programme Service Licence of PCCW VOD Limited**

In exercise of the powers conferred by section 8(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 pay television programme service licence (“this Licence”) to PCCW VOD Limited (“the Licensee”, which expression shall include its lawful successors and assigns), a company formed and registered under the Companies Ordinance (Cap.32), whose registered office is situated at 39<sup>th</sup> Floor, PCCW Tower, Taikoo Place, Quarry Bay, Hong Kong, on the following conditions.

### **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.
- 1.4.1 Save where the contrary intention appears expressly or by necessary implication in this Licence, the following words and expressions mean:
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|----------------------|---|
| “auditor”            | a professional accountant registered and holding a practising certificate under the Professional Accountants Ordinance (Cap. 50).   |
| “commencement date”  | the date on which the period of validity commences.   |
| “day”                | a period of 24 hours beginning at midnight.   |
| “period of validity” | 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 passed by the Service”	the specified premises to which the Service is, in the opinion of the Broadcasting Authority, capable of being provided within 28 days after receipt by the Licensee of a request from the Broadcasting Authority or a subscriber to that Service.
“relevant Authority”	(a) the Broadcasting Authority in connection with either a condition of this Licence in respect of which the Broadcasting Authority is the regulator or similarly empowered under any law, Ordinance, determination, consent, notice, direction, authorisation or approval;  (b) the Telecommunications Authority in connection with either a condition of this Licence in respect of which the Telecommunications Authority is the regulator or similarly empowered under any law, Ordinance, determination, consent, notice, direction, authorisation or approval; or  (c) the Secretary for Commerce, Industry and Technology 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 pay television programme service which the Licensee is authorised and required to provide in accordance with this Licence and any law or Ordinance.
“the Licensee’s Proposal”	all statements and representations made to the Broadcasting Authority and the Government by or on behalf of the Licensee in its application for this Licence, including but not limited to the application dated 5 May 2003, the letters dated 5 May 2003, 27 May 2003, 3 June 2003, 9 June 2003, 10 June 2003 and 16 June 2003, and the material presented to the Broadcasting Authority on 14 June 2003.

1.4.2

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

- 1.4.3 The expressions “telecommunications”, “telecommunications installation”, “telecommunications line” and “telecommunications service” bear the same meaning as in the Telecommunications Ordinance (Cap.106).
- 1.5 In this Licence, save where the contrary intention appears expressly or by necessary implication, words and expressions:
- (a) which import one gender include the 2 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.
- 1.6 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.
- 1.7 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.
- 1.8 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 This Licence authorises and requires the Licensee to provide a Service.
- 2.2 This Licence is granted subject to the provisions of the Broadcasting Ordinance, the Telecommunications Ordinance, the Broadcasting Authority Ordinance (Cap. 391) and, without limitation, any other Ordinance.

**Commencement date  
and period of validity  
of Licence**

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

**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 Television and Entertainment Licensing Authority.
- 6.2 The Government 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 Broadcasting Authority of any change in the address of its registered office or principal place of business, as the case may be.

**Prohibition on  
assignment of Licence**

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

**Directions etc. by the  
Broadcasting  
Authority and  
Telecommunications  
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 Broadcasting Authority, the Telecommunications Authority or the Secretary for Commerce, Industry and Technology, 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 recognised certificate under the Electronic Transactions Ordinance (Cap. 553). For the purpose of this Condition, "digital signature" 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, approval or authorisation 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 delegate 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 statements (including statements of intention) and representations made by or on its behalf in 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 Broadcasting 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.

### **Waiver**

11.1 Subject to any law or Ordinance and Condition 11.2, the Broadcasting 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 Broadcasting Authority sees fit if and so long as the Licensee satisfies the Broadcasting 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 Broadcasting 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 or the Broadcasting Authority 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 Broadcasting Authority and the Telecommunications Authority 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 Government 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 and 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 and 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.

### **Performance bond**

- 15.1 Not later than one month from the commencement date, the Licensee shall submit to the Broadcasting Authority a duly issued performance bond in favour of Government in the sum of HK\$20 million (“the Bonded Sum”) in the form specified in a notice of the Chief Executive in Council given pursuant to section 2(3) of the Broadcasting Ordinance, which form is hereby reproduced in Schedule 1, to secure the compliance by the Licensee with conditions described in this Licence and referred to as “Milestones” and “Deadlines for Compliance” in the Annexe to Schedule 1.
- 15.2 Within 14 days of each and every call on the performance bond, the Licensee shall provide evidence satisfactory to the Broadcasting Authority that the performance bond has been replenished and is or remains, as the case may be, valid and good for payment, not exceeding HK\$20 million, of the aggregate of all uncalled amounts referred to in the Annexe to Schedule 1 as “Bonded Sums Payable.”
- 15.3 If the Licensee shall wish to change to a different bank for the purpose of the performance bond under this Licence, the Licensee shall give notice with full written details of the proposed replacement bank and replacement performance bond to the Secretary for Commerce, Industry and Technology on behalf of Government not less than 14 days before the date the change becomes effective.
- 15.4 Notwithstanding any other conditions of this Licence (including but not limited to the terms and conditions of the performance bond):

- (a) upon failure by the Licensee to provide or maintain a performance bond in accordance with the foregoing provisions of this Condition, or to provide evidence satisfactory to the Broadcasting Authority under Condition 15.2, 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 repaid, or cease to be payable, as the case may be;
- (b) all rights, powers and remedies of and claims by Government under the performance bond lodged by the Licensee pursuant to this Condition, including any replacement thereof, shall be without prejudice to the other rights, powers and remedies of and claims by Government and to the rights, powers and remedies of and claims by the Chief Executive in Council, the Chief Executive, the Broadcasting Authority, the Telecommunications Authority and, without limitation, any other person under any laws or Ordinance; and
- (c) any replacement performance bond referred to in Condition 15.3 shall be in the form of the performance bond appearing in Schedule 1 save for:
  - (i) the change in particulars of the replacement bank; and
  - (ii) the omission therefrom of any 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 Government in respect of the said Milestones and Deadlines for Compliance.

15.5

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 Government and liable for payment of the Bonded Sum and Bonded Sums Payable.

- 15.6 Once the Broadcasting Authority is satisfied that the Licensee has complied with all its obligations in respect of any one or more of the Milestones and Deadlines for Compliance, the Secretary for Commerce, Industry and Technology on behalf of Government shall, as soon as practicable thereafter but no more than 30 days and in response to a request in writing to that effect from the Licensee, issue in respect thereof a certificate of completion to the Licensee and to the Surety referred to in the performance bond under this Licence or replacement bank referred to in Condition 15.3.

**The Provision of a  
Domestic Pay  
Television  
Programme  
Service**

- 16.1 Unless the Broadcasting Authority otherwise approves or determines, the Licensee shall:
- (a) within 6 months of the commencement date, and at all times thereafter, provide a Service of not fewer than 5 television programme service channels (with 3 channels each of 24 viewing hours per day and 2 channels each of not fewer than 3 viewing hours per day);
  - (b) within 12 months of the commencement date, and at all times thereafter, provide a Service of not fewer than 10 television programme service channels (with 6 channels each of 24 viewing hours per day and 4 channels each of not fewer than 3 viewing hours per day); and
  - (c) within 24 months of the commencement date, and at all times thereafter, provide a Service of not fewer than 15 television programme service channels (with 10 channels each of 24 viewing hours per day and 5 channels each of not fewer than 3 viewing hours per day).
- 16.2.1 Unless the Broadcasting Authority otherwise approves or determines, the Licensee shall attain and maintain:
- (a) not fewer than 500,000 premises passed by the Service within 6 months of the commencement date;
  - (b) not fewer than 1,000,000 premises passed by the Service within 12 months of the commencement date; and thereafter

- (c) not fewer than 1,400,000 premises passed by the Service within 24 months of the commencement date.

16.2.2 The Licensee shall within 45 days from the expiry of each of the periods specified, or such other periods as may otherwise be approved or determined by the Broadcasting Authority, in Conditions 16.2.1(a), 16.2.1(b) and 16.2.1(c) submit to the Broadcasting Authority a certificate by the auditor of the Licensee on the exact number and addresses of premises passed by the Service.

16.2.3 The Licensee shall submit to the Broadcasting Authority on an annual basis within 45 days of each anniversary of the commencement date a certificate by the auditor of the Licensee on the exact number of premises passed by the Service attained and maintained by the Licensee as at each anniversary of the commencement date, and the addresses thereof, unless the same has already been submitted as required under another condition of this Licence for the relevant period.

16.3.1 Unless the Broadcasting Authority otherwise approves, the minimum cumulative capital expenditure to be incurred by the Licensee in providing the Service from time to time shall be as follows:

- (a) not less than HK\$20 million within 12 months of the commencement date;
- (b) not less than HK\$32 million within 24 months of the commencement date; and
- (c) not less than HK\$42 million within 36 months of the commencement date.

16.3.2 Without prejudice to any power that the Broadcasting Authority may have, the Licensee shall submit a certificate by the auditor of the Licensee that the requirements set out in Condition 16.3.1 are complied with as soon as practicable within 2 months from the expiry of each of the periods specified in Conditions 16.3.1(a), 16.3.1(b) and 16.3.1(c).

16.4 The Licensee shall ensure that each television programme service channel shall have a television programme service channel identification which, in the opinion of the Broadcasting 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.

**Obligation to  
provide free  
television programme  
service for  
regulatory  
purposes**

- 17.1 The Licensee shall notify the Broadcasting Authority of the exact date that the Licensee shall first begin to provide the Service as soon as practicable and in any event not less than 30 days in advance of such date.
- 17.2 The Broadcasting Authority, the Telecommunications Authority and the Secretary for Commerce, Industry and Technology may each 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.
- 17.3 Where the Service is made available to the Broadcasting Authority, the Telecommunications Authority or the Secretary for Commerce, Industry and Technology under Condition 17.2,
- (a) no charge or subscription shall be raised or levied;
  - (b) no restriction on the lawful use or application that those authorities and the Government may have in relation to the material provided on the Service shall be imposed on those Authorities or the Government; and
  - (c) except in the case of the Broadcasting Authority, the Licensee shall not be required to provide the Service to more than two addresses for the Telecommunications Authority and more than one address for the Government as may be notified by them to the Licensee.
- 17.4 The Licensee shall, in respect of any on-demand service, provide the Broadcasting Authority, at such times and in such forms as the Broadcasting Authority may after consultation with the Licensee determine, with an index with such appropriate details of the material that the Licensee is providing or is proposing to provide on the Service.
- 17.5 The Licensee shall notify the Broadcasting Authority as soon as practicable of each and every change that the Licensee proposes to introduce to the line-up of channels.

**Customer service etc.**

18.1 The Licensee shall, after consultation with the Broadcasting Authority and the Telecommunications Authority, prepare and keep updated at all times the several terms and conditions of a code of practice on customer service, a copy of which, with any amendments thereto, shall be lodged from time to time without delay, with the Broadcasting Authority and supplied free of charge to any member of the public on demand. This code of practice on customer service shall state the obligations that the Licensee will enter into with customers of the Licensee and others who pay or are liable to pay a subscription to view the Service, including but not limited to the following:

- (a) the response time of the Licensee in ordinary as well as emergency situations in supplying, reinstating and resuming the normal provision of the Service;
- (b) the telephone numbers of persons in the employ of the Licensee who will be able to give assistance in the circumstances at (a) above; and
- (c) a listed 24-hour telephone service to accept inquiries and requests for assistance in the circumstances at (a) above.

18.2 The Licensee shall make available upon request and free of charge to any person its current rates, and terms and conditions of agreement on which it provides the Service.

18.3 The rates, and terms and conditions of agreement of the Licensee referred to in Condition 18.2 and the commercial rates quoted or offered to or agreed with advertisers and programme suppliers shall not apply, or be applied, in favour of or discriminate against any person or groups of persons on the grounds of him being an associate of the Licensee or a disqualified person or on the grounds of race, sex, religion or nationality or by reason of the right, title or interest of any person, in or over, any residential or other premises.

**Confidentiality for  
Subscriber  
information**

19.1 Without prejudice and in addition to the obligations on the Licensee under the Personal Data (Privacy) Ordinance (Cap. 486), the Licensee shall take such steps as are necessary to ensure that any relevant data or information obtained by the Licensee in the course of providing the Service shall not be disclosed to any other person without the prior approval in writing of the person to

whom the relevant data or information relates, except for the prevention or detection of crime, the apprehension or prosecution of offenders, or as may be authorised by or under any law or Ordinance.

- 19.2 The relevant data or information referred to in Condition 19.1 is any electronic or other data and any information, in whatever form or media whatsoever, obtained by the Licensee, at any time, concerning or relating to, without limitation, the name, address, income and financial resources, or viewing patterns, preferences and dislikes of persons who pay or are liable to pay a subscription to view the Service or who may be interested in subscribing to or viewing the Service.

### **Comments and Complaints**

- 20.1 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, technical aspects or time of viewing of the Service, without limitation, the quality of the sounds and images that it provides, the service afforded the complainant, or customer service.
- 20.2 The Licensee shall implement a procedure for dealing with comments and complaints from the public as may be required from time to time by the Broadcasting Authority.
- 20.3 The Licensee shall keep a complete record, in a form and manner approved by the Broadcasting Authority, of complaints received by it and submit the same to the Broadcasting Authority on a regular basis and on demand. The record shall be retained by the Licensee for not less than 2 years.
- 20.4 The Licensee shall comply with directions as may be given by the Broadcasting Authority to publish and broadcast, in relation to the Licensee's domestic pay television programme service and within such period as may be specified by the Broadcasting Authority in that direction, a summary of any comment or complaint referred to in Condition 20.1. The form and content of such summary shall be subject to approval by the Broadcasting Authority.
- 20.5 The Licensee shall supply recordings of good quality of all material on the Service provided during such period, and in such form, as the Broadcasting Authority may direct and require for examination.

**Publicity  
material and  
announcements  
in the  
public interest**

21. 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 Broadcasting Authority; and
- (b) material in the public interest including but not limited to weather programmes and weather forecasts provided by the Government,

as the Broadcasting Authority may provide or direct and at such time, within such period, on such channel, within or without such programme and in such language or dialect as the Broadcasting Authority may direct.

For the avoidance of doubt, the Licensee shall not, in the performance of this Condition, be:

- (i) responsible for the contents of the material included in the Service; and
- (ii) entitled to charge the Broadcasting Authority or the Government.

**Intellectual property  
rights**

22. 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**

23. 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**

- 24.1 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 relating to programme and advertising standards.
- 24.2 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 24.1 and the Codes of Practice.
- 24.3 For the avoidance of doubt, nothing in Condition 24 shall relieve the Licensee from any obligation or liability to comply with the Codes of Practice.

**Discipline and  
training**

25. 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 relating to programme, advertising and technical standards.

**Codes of practice**

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

**Interference  
with other  
services**

- 27.1 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.

- 27.2 In case of any such interference, the Licensee shall comply with all instructions given to it by the relevant Authority in respect of the use and operation of the apparatus and equipment.

**Information to be provided**

- 28.1 The Licensee shall provide the relevant Authority within the period specified such information as the relevant Authority may properly require.
- 28.2 Without prejudice to the power that the relevant Authority may have under Condition 28.1, the Licensee shall submit to the Broadcasting Authority a certificate by the auditor of the Licensee on the number of subscribers to the Service as at each anniversary date of the commencement date of this Licence within 30 days of each such anniversary.

**Provision of testing facilities**

- 29.1 Without prejudice to section 38 of the Broadcasting Ordinance, the Telecommunications Authority may, for the purpose of exercising his functions under this Licence, require the Licensee to demonstrate to him 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.
- 29.2 For the purpose of Condition 29.1, the Licensee shall provide adequate testing instruments and operating staff.

**Standby equipment and spare parts**

30. The Licensee shall provide and maintain adequate standby equipment 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**

31. Unless otherwise directed or approved by the Telecommunications Authority, the Licensee shall not use any frequency channels in any in-building coaxial cable distribution system for the Service. The Licensee shall comply with technical standards and directions issued by the Telecommunications Authority.

**Transmission of Service**

32. The Licensee may 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 Broadcasting Authority for approval for any substantial change in the means of transmission or transmission arrangements.

**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.

## SCHEDULE 1

(Section 2(3) of the  
Broadcasting Ordinance  
and Condition 15)

<b>FORM OF PERFORMANCE BOND</b>
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THIS SCHEDULE TOGETHER WITH ITS ANNEXE SHALL FORM AND BE READ AS AN INTEGRAL PART OF THE LICENCE GRANTED TO THE LICENSEE TO PROVIDE A DOMESTIC PAY TELEVISION PROGRAMME SERVICE IN HONG KONG.

BY THIS BOND dated \_\_\_\_\_ 2003.

We, PCCW VOD Limited, whose registered office is situated at 39<sup>th</sup> Floor, PCCW Tower, Taikoo Place, Quarry Bay, Hong Kong (“the 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] (“the Surety”) hereby agree to the terms of this Performance Bond and the Annexe hereto (“the Annexe”). The Surety is irrevocably and unconditionally bound to the Government of the Hong Kong Special Administrative Region (together with its successors and assigns, “Government”) in the sums HK\$20 million and with the Milestones set out in the Annexe for payment of which sums the Surety hereby binds itself, its successors and assigns, jointly and severally, in accordance with the provisions of this Bond.

### WHEREAS

Pursuant to the terms of the domestic pay television programme service licence granted to the Licensee for the period of 12 years beginning on the commencement date and as amended from time to time (“the licence”), the Licensee agreed to obtain and ensure a surety to be bound unto Government for the due performance of conditions of the licence by the Licensee.

NOW THE TERMS AND CONDITIONS of this Bond are:-

1. Where applicable, words and expressions used in this Bond shall have the meaning assigned to them in the licence.
2. In the event of each and every breach, non performance or default by the Licensee in respect of the Milestones or Deadlines for Compliance with the Milestones as set out in the Annexe, the Surety shall upon demand made in writing by the Secretary for

Commerce, Industry and Technology on behalf of Government and without proof or conditions satisfy and discharge the Bonded Sums Payable in respect thereof.

3. The liability of the Surety under this Bond shall not be affected or discharged in any way by and the Surety hereby waives notice of:
  - (a) any suspension, amendment or variation of the licence (including but not limited to extensions of time for compliance or performance) or any forbearance or waiver by Government, the Chief Executive in Council, the Chief Executive, the Broadcasting Authority, the Telecommunications Authority or, without limitation, any other person, in respect of the Licensee's obligations under the licence;
  - (b) the revocation of the licence;
  - (c) any forbearance or waiver of any right, power or remedy that Government, the Chief Executive in Council, the Chief Executive, the Broadcasting Authority, the Telecommunications Authority or, without limitation, any other person, may have against the Licensee; or
  - (d) any act or omission of the Licensee pursuant to any other arrangement with the persons referred to in (c) above or with the Surety.
  
4. The liability of the Surety under this Bond shall cease on whichever of the following events first occurs:
  - (a) payment by the Surety in full of all Bonded Sums Payable to the Secretary for Commerce, Industry and Technology on behalf of Government; or
  - (b) issue by the Secretary for Commerce, Industry and Technology on behalf of Government of all certificates of completion in respect of all of the Milestones, other than those in respect of which all Bonded Sums Payable have been paid to Government.
  
- 5.1 Subject to 5.2, this Bond shall remain valid for one year from the date herein and shall be renewed annually with effect from its anniversary date for an additional year and thereafter on each anniversary date from year to year until the liability of the Surety under this Bond shall cease pursuant to 4 above.
  
- 5.2 If not less than 45 days prior to any anniversary date referred to in 5.1, Government receives notice in writing from the Surety that it elects not to renew this Bond, this Bond shall pursuant to this provision cease on that anniversary date but not otherwise.

- 5.3 In the event that the Surety elects not to renew this Bond on an anniversary date pursuant to 5.2 (but not otherwise), and the Licensee fails to provide a replacement Bond in the form appearing in Schedule 1 to the licence by not later than 14 days prior to that anniversary date, 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 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 that anniversary date and the Surety shall forthwith pay the amount thereof to Government.
- 5.4 Until the liability of the Surety under this Bond shall cease pursuant to 4 above, the Milestones or Deadlines for Compliance with the Milestones have not been performed irrespective of whether there has been:
- (a) any default by the Licensee in respect of the Deadlines for Compliance set out in the Annexe; or
  - (b) any breach or non-performance by the Licensee in respect of the Milestones set out in the Annexe.
- 5.5 In the event that Government makes a call on this Bond pursuant to 5.3 and subsequently the Secretary for Commerce, Industry and Technology on behalf of Government issues a certificate of completion in respect of one or more Milestones which had not been performed for the purpose of 5.3, Government shall, as soon as practicable, pay to the Licensee without interest the amount called under this Bond pursuant to 5.3 less the maximum of all Bonded Sums Payable in respect of the Milestones which have not been performed.
6. 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.
7. All documents arising out of or in connection with this Bond shall be served:
- (a) upon Government at : Communications and Technology Branch,  
Commerce, Industry and Technology Bureau,  
1/F-2/F Murray Building,  
Garden Road,  
Central,  
Hong Kong  
and marked for the attention of  
“The Secretary for Commerce, Industry and  
Technology”
  - (b) upon the Surety at : *[Note 1]*
  - (c) upon the Licensee at : *[Note 1]*
8. Government, the Surety and the Licensee may change their respective nominated addresses for service of documents to another address in Hong Kong but only by prior

written notice to each other. All demands and notices must be in writing.

- 9. This Bond shall be governed by and construed according to the laws for the time being in force in Hong Kong. The Surety and the Licensee hereby agree to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

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

THE COMMON SEAL OF ]  
 ( ) ]  
 was affixed hereto ]  
 in the presence of ]

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

**OR**

SIGNED, SEALED AND DELIVERED<sup>[Note 2]</sup> ]  
 for and on behalf of and as lawful attorney of ]  
 ( ) ]  
 under power of attorney dated ( ) ]  
 in the presence of ]

\_\_\_\_\_

Name :

Occupation :

THE COMMON SEAL OF ]  
( ) Limited ]  
("the Licensee")<sup>[Note 3]</sup> was affixed hereto ]  
in the presence of ]

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

**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 Surety, whether a firm or limited company, executes through an attorney.**
- 3. The Licensee as well as the Surety must execute the performance bond.**



<b>THE ANNEXE TO THE PERFORMANCE BOND</b>
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<u>Milestones</u>	<u>Deadlines for Compliance</u>	<u>Bonded Sums</u> <u>Payable</u> <u>(HK\$)</u>
<u>Required service rollout</u>		
1(a). The Licensee shall make available not fewer than 5 television programme service channels (with 3 channels each of 24 viewing hours per day and 2 channels each of not fewer than 3 viewing hours per day) in the Service.	Unless the Broadcasting Authority otherwise approves or determines, within 6 months of the commencement date.	4 million
1(b). The Licensee shall make available not fewer than 10 television programme service channels (with 6 channels each of 24 viewing hours per day and 4 channels each of not fewer than 3 viewing hours per day) in the Service.	Unless the Broadcasting Authority otherwise approves or determines, within 12 months of the commencement date.	4 million
1(c). The Licensee shall make available not fewer than 15 television programme service channels (with 10 channels each of 24 viewing hours per day and 5 channels each of not fewer than 3 viewing hours per day) in the Service.	Unless the Broadcasting Authority otherwise approves or determines, within 24 months of the commencement date.	2 million

<u>Milestones</u>	<u>Deadlines for Compliance</u>	<u>Bonded Sums Payable (HK\$)</u>
<u>Required premises passed by the Service</u>		
2(a). The premises passed by the Service shall not be fewer than 500,000.	Unless the Broadcasting Authority otherwise approves or determines, within 6 months of the commencement date.	2 million
2(b). The premises passed by the Service shall not be fewer than 1,000,000.	Unless the Broadcasting Authority otherwise approves or determines, within 12 months of the commencement date.	2 million
2(c). The premises passed by the Service shall not be fewer than 1,400,000.	Unless the Broadcasting Authority otherwise approves or determines, within 24 months of the commencement date.	1 million
<u>Required capital expenditure</u>		
3(a). Not less than HK\$20 million shall have been incurred by the Licensee as the capital expenditure for providing the Service.	Unless the Broadcasting Authority otherwise approves, within 12 months of the commencement date.	2 million
3(b). Not less than HK\$32 million shall have been incurred by the Licensee as the cumulative capital expenditure for providing the Service.	Unless the Broadcasting Authority otherwise approves, within 24 months of the commencement date.	2 million
3(c). Not less than HK\$42 million shall have been incurred by the Licensee as the cumulative capital expenditure for providing the Service.	Unless the Broadcasting Authority otherwise approves, within 36 months of the commencement date.	1 million

Granted this 23rd day of September 2003

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Clerk to the Executive Council

COUNCIL CHAMBER

Accepted by :

Signature :

Capacity :

Date :