

No. ____ of TWO ORIGINALS

Non-domestic Television Programme Service Licence

Broadcasting Ordinance (Cap. 562)

Auspicious Colour Limited

Licence

17 September 2005

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In exercise of the powers conferred by section 8(2) of the Broadcasting Ordinance (Cap.562) and all the powers enabling him in that behalf, the Broadcasting Authority hereby grants a non-exclusive non-domestic television programme service licence (“this Licence”) to Auspicious Colour 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 17/F, The Lee Gardens, 33 Hysan Avenue, Causeway 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 in Condition 3 or such period as may be renewed or extended pursuant to section 11 of the Broadcasting Ordinance. |
| “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 non-domestic television programme service which the Licensee is authorised and required to provide, including the Subscription Service that may be approved by the Broadcasting Authority, in accordance with this Licence and any law or Ordinance.

“Subscription Service” a television programme service as may be permitted by the Broadcasting Authority to be provided by the Licensee where a subscription is required to be paid for viewing the television programme service in Hong Kong.

“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 20 June 2005, and the letters dated 9 and 15 August 2005, and 1, 6, 9 and 13 September 2005.

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 a period of 12 years from 17 September 2005 to 16 September 2017, both dates inclusive.

Power to amend

- 4.1 The Broadcasting Authority 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 Broadcasting Authority 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 and the Broadcasting Authority may in their discretion make this Licence publicly available in any manner they think 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.

The Service

- 15.1 Subject to the terms and conditions of this Licence, the Service may contain television programme service channels and programmes of the description and type stated in the Licensee's Proposal and accepted by the Broadcasting Authority.
- 15.2 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. The Licensee shall also notify the Broadcasting Authority forthwith as soon as practicable of any cancellation of channels comprised in the Service or material changes to the content or predominant language or general reception of the Service or any part thereof.
- 15.3 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.

Reception outside Hong Kong

16. The Licensee shall take all reasonable steps to ensure the acceptability of the Service in, and to comply with the laws and programme and advertising standards stipulated by the relevant

authorities of, recipient countries and places.

Comments and complaints

- 17.1 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.
- 17.2 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.
- 17.3 The Licensee shall keep a complete record, in a form and manner approved by the Broadcasting Authority, of comments and complaints received by it and submit the same to the Broadcasting Authority on demand. The record shall be retained by the Licensee for not less than 3 months.
- 17.4 The Licensee shall comply with directions as may be given by the Broadcasting Authority to publish and broadcast, in relation to the Licensee's non-domestic 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 17.1. The form and content of such summary shall be subject to approval by the Broadcasting Authority.
- 17.5 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. The Broadcasting Authority may waive the requirement where such recordings for these services already exist in the recipient countries or in the countries where the services originated and the Licensee is able to supply recordings of such material to the Broadcasting Authority when the need arises.

Intellectual property rights

18. 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

19. 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

- 20.1 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.
- 20.2 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 20.1 and the Codes of Practice.
- 20.3 For the avoidance of doubt, nothing in Condition 20 shall relieve the Licensee from any obligation or liability to comply with the Codes of Practice.

Discipline and training

21. 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

22. 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

- 23.1 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.
- 23.2 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

- 24.1 The Licensee shall provide the relevant Authority within the period specified such information as the relevant Authority may properly require.
- 24.2 Without prejudice to the power that the relevant Authority may have under Condition 24.1, the Licensee shall submit to the Broadcasting Authority a certificate by the auditor of the Licensee on the number of subscribers to the Subscription Service, if any, as at each anniversary date of the commencement date of this Licence within 30 days of each such anniversary.
- 24.3 The Licensee shall submit to the Broadcasting Authority information on the coverage of the Service, the sources of advertising and subscription revenues, the language of the Service, and the nature and size of the audiences targeted by the Service and any marketing plans launched by the Licensee or on its behalf, and any other relevant information as may be required by the Broadcasting Authority to facilitate the Broadcasting Authority to review its determination on whether the Service primarily targets Hong Kong under section 12 of the Broadcasting Ordinance.

Provision of testing facilities

- 25.1 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.
- 25.2 For the purpose of Condition 25.1, the Licensee shall provide adequate testing instruments and operating staff.

Standby equipment and spare parts

26. 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.

Transmission of Service

27. 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

28. 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.

Subscription Service

29. Notwithstanding anything contained in the Licensee's Proposal or in this Licence, the Licensee shall not provide any "Subscription Service" without the approval of the Broadcasting Authority.

Obligation to provide free television programme service for regulatory purposes

- 30.1 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.
- 30.2 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.
- 30.3 Where the Service is made available to the Broadcasting Authority, the Telecommunications Authority or the Secretary for Commerce, Industry and Technology under Condition 30.2,
- (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.

Customer service etc.

- 31.1 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 or 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.
- 31.2 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.
- 31.3 The rates, and terms and conditions of agreement of the Licensee referred to in Condition 31.2 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**

- 32.1 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.

32.2 The relevant data or information referred to in Condition 32.1 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.

Granted this 17th day of September 2005

(Daniel R. Fung)
Chairman
Broadcasting Authority

Accepted by :

Signature :

Capacity :

Date :

In the presence of
(witness) :