

**AUCTION OF  
1800 MHz SPECTRUM RIGHT**

**APPENDIX 3 – BANK GUARANTEE**

17 December 2008

(Updated on 31 December 2008)

INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY

REPUBLIC OF SINGAPORE

# BANK GUARANTEE

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To: Info-communications Development Authority of Singapore (**IDA**)  
8 Temasek Boulevard  
#14-00 Suntec Tower Three  
Singapore 038988  
Fax: (65) 211 2238  
Attention: Mr Andrew J. Haire  
Deputy Director-General (Telecoms)

1. **THIS DEED OF GUARANTEE** (the **Guarantee**) is made on \_\_\_\_\_ 2009 by [*insert name of bank*] having its registered address at [*insert registered address*] [*insert fax no.*] (**the Bank**) in favour of IDA.

## DEFINITIONS

2. In this Guarantee, the following terms shall have the following meanings:

**Application Date** means 14 January 2009 or such later date as IDA may otherwise announce;

**Auction** means the procedure for granting an 1800 MHz spectrum right specified in the Auction Rules;

**Auction Rules** means the rules published by IDA relating to the procedures by which IDA may allocate a 1800 MHz spectrum lot and/or grant a 1800 MHz spectrum right, issued by IDA in connection with the auction of 1800 MHz spectrum rights dated 17 December 2008, all as amended or varied by IDA from time to time;

**Bidder** means [*insert name of Bidder*] having its registered address at [*insert registered address*];

**Business Day** means any day of the week (excluding Saturdays, Sundays and public holidays in Singapore) on which banks are generally open in Singapore for the transaction of normal banking business;

**Guaranteed Amount** means Singapore Dollars \_\_\_\_\_ (SGD \_\_\_\_\_);

**Initial Offer** means a legally binding offer made by the Bidder to acquire one 1800 MHz Spectrum Lot in accordance with the Auction Rules;

**Liabilities** means:

(a) all amounts owing to IDA by the Bidder under the Auction Rules; and

(b) all costs and expenses whatsoever incurred by IDA in connection with IDA protecting or enforcing its rights under this Guarantee and/or the Auction Rules, on a full indemnity basis.

## **GUARANTEE**

3.1 In consideration of IDA permitting the Bidder to participate in the Auction and for other valuable consideration (receipt whereof the Bank hereby acknowledges), the Bank hereby unconditionally and irrevocably:

- (a) guarantees to IDA the payment of the Liabilities to IDA when due; and
- (b) as principal debtor and not merely as surety, undertakes to IDA that, if and each time that the Bidder does not make payment of any of the Liabilities to IDA when due, it will in each case pay to IDA the amounts not so paid, upon first written demand by IDA,

without any notice, reference or further enquiry from the Bidder or any other party and without requiring or obtaining any evidence or proof (other than the first written demand) that IDA is entitled to any such payment of the Liabilities.

3.2 The Bank's liability under this Guarantee shall not exceed the aggregate of the principal sum of an amount equal to the Guaranteed Amount and all interests under clause 12 and all expenses (including banking and other charges and fees) whatsoever incurred by IDA in connection with IDA protecting its rights under this Guarantee or seeking to recover or enforce any of the amounts owing to IDA by the Bidder under the Auction Rules, on a full indemnity basis.

## **INDEMNITY**

4. As a separate, additional, continuing and primary obligation, the Bank hereby unconditionally and irrevocably undertakes with IDA that, should the Liabilities not be recoverable from the Bank under clauses 3.1 – 3.2 for any reason then, notwithstanding that it may have been known to the Bank or IDA, the Bank shall, upon first written demand by IDA under clause 3.1, make payment of the Liabilities to IDA by way of a full indemnity and shall indemnify IDA against all losses, claims, costs, charges and expenses to which it may be subject or which it may incur under or in connection with this Guarantee.

## **CONTINUING GUARANTEE**

5. The guarantee constituted by this Guarantee shall be continuing and shall extend to the ultimate balance of the Liabilities, regardless of any intermediate payment or discharge in whole or in part or performance in part and irrespective of the exercise, variation, renewal, waiver, release or enforcement of any rights or remedies against the Bidder.

## **DISCHARGE AND RELEASE**

6.1 The Bank may not terminate this Guarantee by notice to IDA, the Bidder or otherwise.

6.2 Subject to clauses 6.1, 6.3 and 6.4, and provided the Liabilities have been irrevocably paid in full, IDA may discharge or release the Bank by written instrument signed by IDA.

6.3 Any discharge or release referred to in clause 6.2 and any composition or arrangement which the Bank may effect with IDA shall be deemed to be made subject to the condition that it will be void if any payment, performance or security which IDA has received or may receive from any person in respect of the Liabilities is set aside, refunded or reduced under any applicable law or proves to have been invalid. If such condition is satisfied, IDA shall be entitled to recover from the Bank on demand the value of such security or the amount of any such payment as if such discharge, release, composition or arrangement had not been effected.

6.4 This Guarantee shall remain valid until the expiry of a five-month period commencing on the Application Date.

## **WAIVER OF DEFENCES**

7.1 The liabilities and obligations of the Bank under this Guarantee shall remain in force notwithstanding any act, omission, neglect, event or matter whatsoever whether or not known to the Bank, IDA or the Bidder (other than the irrevocable payment of the Liabilities) and the foregoing shall apply, without limitation, in relation to:

- (a) anything which would have discharged the Bank (wholly or in part) whether as surety, co-obligor or otherwise or which would have afforded the Bank any legal or equitable defence;
- (b) any winding up, dissolution, reconstruction or reorganisation, legal limitation, disability, incapacity or lack of corporate power or authority or other circumstances of, or any change in the constitution or corporate identity or loss of corporate identity by, the Bidder or the Bank;
- (c) anything which renders the Bidder's obligations in respect of the Liabilities invalid or unenforceable and any defence or counterclaim which the Bidder may be able to assert against any of the Bank and/or IDA; and
- (d) any difference between IDA and the Bidder or any dispute pending before any court, tribunal, arbitrator or any other authority.

7.2 Without limiting clause 7.1, none of the liabilities or obligations of the Bank under this Guarantee shall be impaired by IDA:

- (a) varying, amending or departing (however substantial or material) from the Auction Rules or waiving any provision of the Auction Rules (whether in respect of the Bidder or any third party) so that any such variation, amendment, departure or waiver (including any which may have been made before the signing of this Guarantee) shall, whatever its nature, be binding upon the Bidder in all circumstances, notwithstanding that it may increase or otherwise affect the liability of the Bank;
- (b) releasing or granting any time or any indulgence of any kind to the Bidder or any third party, or entering into any transaction or arrangements whatsoever with or in relation to the Bidder and/or any third party; or
- (c) claiming, proving for, accepting or transferring any payment in respect of the Liabilities in any composition by, or winding up of, the Bidder and/or any third party or abstaining from so claiming, proving for, accepting or transferring.

7.3 This Guarantee shall be additional to any other security which IDA may hold now or at any time hereafter from the Bank or the Bidder or from any other person in respect of the Liabilities, and shall not merge with or prejudice or otherwise affect such other security or any contractual or legal rights of IDA. This Guarantee and the obligations of, the Bank hereunder shall not be affected by the invalidity or unenforceability of, or any defect, irregularity or informality of any other security held by IDA in respect of, the Liabilities.

#### **WARRANTY**

8. The Bank warrants that this Guarantee constitutes its legally binding obligations enforceable in accordance with its terms (subject to insolvency laws and creditors' rights generally and principles of equity) and does not conflict with any law, regulation or instrument binding on or relating to the Bank and that this Guarantee is within its powers, has been duly authorised by it and all acts, conditions and things required to have been done, fulfilled and performed by it in order to ensure its proper authorisation and issue of this Guarantee and to ensure that its obligations under this Guarantee are legal, valid and binding on it and to ensure that this Guarantee is admissible in evidence in Singapore, have been done, fulfilled and performed.

#### **UNDERTAKING**

9. The Bank undertakes with IDA, from the date of this Guarantee until all Liabilities have been unconditionally and irrevocably paid and discharged in full to the satisfaction of IDA, that the Bank shall not claim as a creditor of the Bidder or any co-surety in competition with IDA.

## **IMMEDIATE RECOURSE**

10. IDA shall not be bound first to enforce any rights against the Bidder (including, without limitation, making any demand on the Bidder) or any other person or any guarantee, collateral or other security before enforcing this Guarantee.

## **NO DEDUCTIONS AND TAXES**

11.1 All sums payable under this Guarantee shall be paid in full without set-off or counter-claim and free and clear of and without deduction of or withholding for or on account of any present or future taxes, duties or other charges. If any such payment shall be subject to any such tax or if the Bank shall be required by law to make any such deduction on withholding, the Bank will pay such tax and will pay to IDA such additional amounts as will result in IDA receiving a net amount equal to the full amount which it would have received had no such payment, deduction or withholding been required.

11.2 The Bank will pay all stamp duties and other documentary taxes payable, if any, in connection with this Guarantee and will keep IDA indemnified against failure to pay the same.

## **DEFAULT INTEREST**

12. If the Bank fails to pay any amount due under this Guarantee, the Bank shall pay interest in Singapore dollars on that amount from the date of demand up to the time of actual payment in full, compounded quarterly (as well after as before judgment) at the rate of five per cent per annum over DBS Bank's prevailing base rate. Such interest shall be payable on demand and accrue from day to day on the basis of the number of days elapsed and a 365-day year.

## **SUSPENSE ACCOUNT**

13. IDA may, at any and for such time as it thinks fit, place and keep any amounts received, recovered or realised under this Guarantee, to the credit of an account of IDA or of such other person (if any) as IDA thinks fit (without liability to pay interest thereon), and IDA is not obliged to pay any amount so received in or towards the discharge of the Liabilities.

## **CERTIFICATES**

14. A certificate of IDA (referred in clause 3.1 as the "first written demand") setting forth the amount of any Liabilities not then paid by the Bidder shall be conclusive evidence of such amount against the Bank in the absence of any manifest error.

## **REMEDIES AND WAIVERS**

15. No delay or omission of IDA in exercising any right, power or remedy under this Guarantee shall impair such right, power or remedy or constitute a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or any other right or remedy. The rights, powers and remedies provided in this Guarantee are cumulative and not exclusive of any rights, powers or remedies which IDA would otherwise have (whether under law or otherwise).

## **ASSIGNMENT**

16.1 It is acknowledged and agreed by the Bank that IDA may at any time transfer rights under this Guarantee to any third party. Accordingly, the Bank agrees that the benefit of this Guarantee may be assigned (in whole or in part) by IDA without the consent of the Bank to, and may be enforced by, any third party to whom the benefit of the Guarantee is assigned (in whole or in part) as if such third party were IDA under this Guarantee.

16.2 Immediately after any assignment in accordance with clause 16.1 – 16.3, IDA will give notice of the assignment to the Bank containing details of the assignment including the identity of the assignor and assignee.

16.3 Save as provided in clause 16.1 to 16.2, neither IDA nor the Bank shall purport to assign, transfer, charge or otherwise deal with all or any of its rights under this Guarantee nor grant, declare, create or dispose of any right or interest in it without the prior written consent of the other party.

## **NOTICES**

17.1 Any notice, demand or communication given or sent to IDA or the Bank in connection with this Guarantee shall be given in writing addressed to the recipient at its address stated in this Guarantee or at such other address as may be notified by a party to the other, from time to time, for that purpose.

17.2 Any notice, demand or communication sent to IDA or the Bank as provided in this clause:

- (a) delivered by hand, will be deemed received when delivered;
- (b) sent by fax, will be deemed received at the time of transmission (provided instantaneous confirmation of transmission is received by the sender),

provided that where delivery occurs after 6.00 pm on a Business Day or on a day which is not a Business Day, receipt will be deemed to occur at 9.00 am on the following Business Day.

**INVALIDITY**

18. If any provision of this Guarantee becomes invalid, illegal or unenforceable in any respect of any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**CHOICE OF LAW**

19. This Guarantee is governed by, and shall be construed in accordance with, Singapore law.

**JURISDICTION**

20. All the parties agree that the courts of Singapore are to have exclusive jurisdiction to settle any disputes (including claims for set-off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, this Guarantee or otherwise arising in connection with this Guarantee and for such purpose irrevocably submit to the jurisdiction of the Singapore courts.

This Guarantee has been duly executed and delivered as a deed on the date first above written.

[EXECUTED as a DEED by )  
[ ] )  
for and on behalf of )  
[insert name of Bank] )  
in the presence of : )

Witness: .....

Name:.....