

Review of Licence Conditions in Carrier Licences Issued under the Telecommunications Ordinance (Cap. 106)

Consultation Paper

5 September 2014

INTRODUCTION

Various types of carrier licences containing both general conditions (“GCs”) and special conditions (“SCs”) have been issued for the provision of local fixed, external fixed and/or mobile services in Hong Kong. Under section 7(2) of the Telecommunications Ordinance (Cap. 106) (the “Ordinance”), the authority to prescribe, by regulations, the GCs for a carrier licence is vested on the Secretary for Commerce and Economic Development (“SCED”). Under section 7A of the Ordinance, the Communications Authority (“CA”) may attach SCs, consistent with the Ordinance and not inconsistent with the prescribed GCs, to a licence that it is empowered to issue, including SCs of a carrier licence. Set out below is an account of the evolution of our carrier licensing regime over the past two decades or so.

2. Before 1995, there was only one fixed network operator (the “Incumbent”) in Hong Kong and it held an exclusive franchise for the provision of local fixed telecommunications services to the Hong Kong community. In 1995, with the de-regulation of the local fixed telecommunications market, Fixed Telecommunications Network Services (“FTNS”) licences were issued to the Incumbent and each of the three new entrants for the establishment and maintenance of telecommunications networks in Hong Kong for the provision of public local fixed telecommunications services.

3. As to the external fixed telecommunications market, it was liberalised in January 1999, with services-based competition introduced on 1 January 1999 and facilities-based competition introduced on 1 January 2000. The FTNS licences held by the Incumbent and the three new entrants were amended to also cover the provision of external fixed services and facilities with effect from January 1999 and January 2000 respectively.

4. In 2001, Fixed Carrier Licence (“FCL”) and Fixed Carrier (Restricted) Licence (“FCRL”) as well as Mobile Carrier Licence (“MCL”) and Mobile Carrier (Restricted) Licence (“MCRL”) were introduced to license

the operation of fixed (local and/or external) and mobile services respectively, and since then FTNS licence was no longer issued. With the emergence of fixed-mobile convergence, Unified Carrier Licence (“UCL”) was created in 2008 as a single vehicle for licensing local fixed, external fixed, mobile and converged services. Since then, FCL, FCRL, MCL and MCRL were no longer issued.

5. Other than the above carrier licences which concern the provision of local and/or external fixed services and mobile services, there is another type of carrier licence, namely the Space Station Carrier Licence (“SSCL”), which allows the licensee to establish, possess, maintain, use and operate a space station or earth station for telemetry, tracking, control and monitoring of a space object and for space radiocommunications.¹

6. As at 31 August 2014, 67 carrier licences are in force, including one FTNS licence, 19 FCLs, one each of FCRL, MCL and MCRL, 37 UCLs and 7 SSCLs.

7. Alongside the evolution of the carrier licensing regime in the past years, cross-sectoral legislation or regulation on specific matters covered in the carrier licences and enhancements to those cross-sectoral regulatory regimes have come on stream, which, as times go by, have served to supersede, or render the sector-specific controls imposed under the telecommunications licensing regime increasingly inappropriate, inconsistent and unnecessary. While there have been ongoing reviews and updates of the GCs and SCs to reflect the latest developments of the telecommunications regulatory regime in general, no review has been embarked upon to specifically address those licence conditions imposing requirements which duplicate with or have been superseded by the cross-sectoral legislation or regulation, e.g. licence conditions governing road opening works. In view of the anomaly of subjecting carrier licensees to both the sectoral and cross-sectoral regulatory regimes on particular matters, the SCED and the CA consider it opportune to conduct a review of these licence conditions of carrier licences. The review is now completed.

¹ Prior to the enactment of the Telecommunication (Amendment) Ordinance 2000 and the Telecommunications (Carrier Licences) Regulation (Cap. 106V), the establishment and operation of space station or earth station for telemetry, tracking, control and monitoring of a space object and for space radiocommunications was licensed and regulated under the Space Radiocommunication Telemetry, Tracking, Control and Monitoring Station Licence (“TTC&M Licence”) which was granted by the Chief Executive in Council under the Ordinance. Since the introduction of SSCL, TTC&M Licence was no longer issued. At present, there are six TTC&M Licences which will remain valid until they expire. The review in this consultation paper does not cover TTC&M Licences.

8. This consultation paper sets out the findings of the review and the preliminary consideration of the SCED and the CA, and solicits views on the way forward with the identified licence conditions in the carrier licences. In this regard, under section 7(3) of the Ordinance, the SCED has published a notice in the gazette on 5 September 2014 inviting representations in relation to the proposal to remove the GC as discussed in paragraphs 23 to 27 below. Paragraphs 14 to 22 below explain the CA's proposals to remove certain SCs from the carrier licensing regime, on which views are also invited from the industry and interested parties.

9. For the avoidance of doubt, all the views expressed in this consultation paper are for the purpose of consultation only. Nothing in this consultation paper represents or constitutes any decision made by the SCED or the CA. The review and the recommendations proposed in this consultation paper is without prejudice to the exercise of powers by the SCED or the CA under the Ordinance or any subsidiary legislation.

SCOPE OF THE REVIEW

10. The review covers all types of carrier licences still in force, namely UCL, FCL, FCRL, FTNS licence, MCL, MCRL and SSCL (hereinafter collectively referred to as "Carrier Licences"), targeting GCs and SCs that meet the following criteria -

- (a) the policy or operational premise for imposing the licence condition extends beyond or falls outside the purview of the SCED and the CA;
- (b) cross-sectoral legislation or regulation is in place to regulate the same/similar activity/breach, the enforcement authority of which as enshrined in the relevant statute is a competent authority other than the CA;
- (c) there is no justification from the telecommunications policy or operational perspective to subject the carrier licensees to additional controls in the telecommunications licensing regime pertaining to such activity or matter, on top of the cross-sectoral legislation or regulation which applies across the board to all sectors including the telecommunications sector; and
- (d) the CA and the Office of the Communications Authority

(“OFCA”) do not have the statutory authority or the necessary expertise to determine compliance or otherwise with the requirements imposed in such licence conditions. Enforcement by the CA of those licence conditions would essentially rely upon other competent authorities with the statutory jurisdiction in determining whether there is a breach or not of the requirements in the relevant licence condition.

11. The SCED and the CA have identified the GCs and SCs in Carrier Licences that meet the criteria (“Identified Licence Conditions”) and they are set out in Table 1 below.

Table 1: The Identified Licence Conditions

Item	Subject Matter	UCL	FCL	FCRL	MCL	MCRL	FTNS Licence	SSCL
(a)	Network Location	SC 14.1 SC 14.3 SC 14.4	SC 15.1 SC 15.3 SC 15.4	--	--	--	GC 28(1) GC 28(3) GC 28(4)	--
(b)	Requirements of Installation of Lines or Cables	SC 17	SC 18	--	--	--	GC 32	--
(c)	Works in Public Streets	SC 18	SC 19	--	--	--	GC 34	--
(d)	Interference with Works of Others	SC 19	SC 20	--	--	--	GC 35	--
(e)	Licensee to Alter Network on Notice	SC 20	SC 21	--	--	--	GC 37	--
(f)	Restrictions on Attachment to Public Buildings and Trees	GC 10	GC 10	GC 10	GC 10	GC 10	GC 33	GC 10

12. Items (a) to (e) in Table 1 above concern road opening works in public streets and unleased Government land for network rollout. The full text of the relevant SCs of the UCL is given at **Annex A**.

13. Item (f) in Table 1 above concerns the restrictions on attachment to public buildings and trees. The full text of GC 10 of the UCL is given at **Annex B**.

CONSIDERATIONS OF THE SCED AND THE CA ON THE IDENTIFIED LICENCE CONDITIONS

I. The Identified Licence Conditions on Road Opening Works

14. Requirements concerning road opening works were introduced into the telecommunications regulatory regime as early as in 1925 when the Telephone Ordinance (No. 9 of 1925) (the “1925 Ordinance”) was enacted for regulating the Incumbent. At that time, there was no cross-sectoral control on road opening works and it was justified to introduce such sector-specific control under the telecommunications regulatory regime. That said, it should be noted that the road opening provisions in the 1925 Ordinance were enforced by the Director of Public Works rather than the telecommunications regulator. The 1925 Ordinance was later repealed and replaced by the Telephone Ordinance (Cap. 269) (the “Telephone Ordinance”) in 1951, and the road opening provisions were transplanted from the 1925 Ordinance to the Telephone Ordinance, with the enforcement agency subsequently changed to the Director of Highways (“DHy”), who remains to be the key enforcement agency of such provisions concerning road opening works.

15. In the early 1990s, the Government decided that network-based competition should be introduced in the local fixed market when the Incumbent’s franchise expired in 1995. As a result, multiple operators would be allowed to open roads for network rollout. Since the Telephone Ordinance applied to the Incumbent only, there was a need to issue FTNS licences with appropriate licence conditions to regulate the operations of both the Incumbent and the new entrants. Provisions in respect of road opening works for network rollout as well as other provisions were transplanted from the Telephone Ordinance to the FTNS licences to preserve the regulatory powers of the relevant authorities and ensure a fair regulatory treatment on the Incumbent and the new entrants. Most of the provisions in the Telephone Ordinance, including those in respect of road opening works for network rollout, were then repealed in 1995 when the FTNS licences were issued.² Table 2 below shows that the majority of these Identified Licence Conditions originated from the Telephone Ordinance and the 1925 Ordinance.³

² The remaining provisions of the Telephone Ordinance were repealed in 2000 when the Ordinance was amended.

³ GC 28(3) and GC 32(2) of the FTNS licence originated from Clauses 56.2 and 55.3 of the Subscription Television Licence issued to Wharf Cable Limited in 1993.

Table 2: The Origin of the Identified Licence Conditions on Road Opening Works

	UCL	FCL	FTNS Licence	Telephone Ordinance	1925 Ordinance
Network Location	SC 14.1	SC 15.1	GC 28(1)	--	--
	SC 14.3	SC 15.3	GC 28(3)	--	--
	SC 14.4	SC 15.4	GC 28(4)	section 13(2)	section 16(5)
Requirements of Installation of Lines or Cables	SC 17.1	SC 18.1	GC 32(1)	section 9	section 11
	SC 17.2	SC 18.2	GC 32(2)	--	--
Works in Public Streets	SC 18.1	SC 19.1	GC 34(1)	section 16	section 22
	SC 18.2	SC 19.2	GC 34(2)	section 16	section 22
Interference with Works of Others	SC 19.1	SC 20.1	GC 35(1)	section 17	section 23
	SC 19.2	SC 20.2	GC 35(2)	section 17	section 23
Licensee to Alter Network on Notice	SC 20.1	SC 21.1	GC 37(1)	section 20	section 27
	SC 20.2	SC 21.2	GC 37(2)	section 20	section 27

16. The statutory control by DHy and the Director of Lands (“DL”)⁴ on road opening works under the excavation permit (“XP”) regime was put in place since the enactment of the Crown Land Ordinance (Cap. 28) (“CrownLO”) in 1972, and applies to all road openers across the board including telecommunications licensees and utilities alike. CrownLO was renamed as the Lands (Miscellaneous Provisions) Ordinance (Cap. 28) (“LMPO”) in 1997. The LMPO was amended in 2004 to strengthen the regulatory control on road opening works in public streets and unleased Government land by inter-alia empowering DHy/DL to enforce the XP conditions against permittees and their contractors engaged to carry out excavations, to require permittees and their contractors to adopt the necessary safety precautions, and to increase the level of fine for breach.

17. The requirements as stipulated in the Identified Licence Conditions concerning road opening works are by and large enshrined in the LMPO, the excavation permit issued by the Highways Department (“XP(HyD)”), the excavation permit issued by the Lands Department (“XP(LD)”) or other legislation, and a commonality among them is that the CA is not the responsible regulatory or enforcement authority.

18. Rather, under section 10A(1) of the LMPO, it is the DHy and DL

⁴ DHy and DL have been the enforcement agencies of CrownLO concerning excavation works since its enactment in 1972. The division of labour between them has been changing over time. Currently, DHy is the statutory authority in the case of unleased land which is a public street, while DL is the statutory authority in the case of unleased Government land other than public streets.

which are empowered to attach conditions as they think fit to the XP. The conditions of XP have been amended over time to enhance the control on road opening works. For example, HyD has revised the XP 15 times since April 2004, reflecting that the XP is a dynamic tool which evolves from time to time to effectively regulate road opening works. These legislation and legal instruments provide more comprehensive and effective controls on road opening works and apply to all road openers including telecommunications licensees and utilities alike. Moreover, the breach of most of the relevant clauses of these legislation and legal instruments would constitute criminal offence. The relevant clauses of the other legislation or legal instruments that govern the same/similar activity/breach as the Identified Licence Conditions on road opening works, and whether the breach of these relevant clauses would constitute criminal offence are given at **Annex C**.

19. It is clear from the above account that the need to impose controls on road opening works in public streets and unleased Government land stems from the policy and operational considerations which fall outside, and indeed extend beyond the telecommunications perspectives. It is not the intention of the telecommunications policy to subject telecommunications licensees to both the sectoral and cross-sectoral regulatory regimes in relation to road opening works. In point of fact, the cross-sectoral regulatory regime which applies to all road openers is more stringent than similar activity/breach governed by the Identified Licence Conditions on road opening works, in that, as mentioned above, a breach of most of the relevant clauses of the cross-sectoral legislation or legal instruments may constitute a criminal offence (see **Annex C** for more details). Also, DHy, DL or other authorities may consider initiating amendments to the cross-sectoral legislation or legal instruments under which they are the responsible regulatory or enforcement authority to further enhance control across the board as they think fit. The CA does not see any justification from the telecommunications perspective or operational considerations for maintaining the Identified Licence Conditions on road opening works in the Carrier Licences to co-exist with the cross-sectoral controls. In addition, if a sanction has been imposed on a telecommunications licensee under the cross-sectoral regime, further sanction to be imposed by the CA under the telecommunications licensing regime for the same breach may give rise to the concern of double jeopardy and possible allegation of abuse of the process of civil (regulatory) proceedings in light of the overlapping framework under the LMPO and the telecommunications licensing regime governing the road opening works.

20. Also on a practical level, neither the CA nor OFCA has the statutory authority or the necessary expertise to determine compliance or

otherwise with the requirements in the Identified Licence Conditions on road opening works. For example –

- (a) Under SC 14.3 of the UCL, the licensee is required to consult DHy/DL, not the CA, on the map scale for drawing the route plans.
- (b) Under SC 17.1 of the UCL, the network installed in any public street or unleased Government land shall be at the depth, course, route and position as determined by DHy/DL, not the CA.
- (c) Under SC 18.1(d) of the UCL, the licensee shall reinstate the street after the completion of works to the satisfaction of DHy/DL, not the CA.
- (d) Under SC 18.2 of the UCL, the licensee shall reimburse the Government any such sum as certified by DHy/DL, not the CA.
- (e) Under SC 20.1 of the UCL, the licensee shall alter the network within such reasonable time and in such manner as directed by DHy/DL, not the CA.

Clearly, it is DHy/DL which has the statutory authority to determine compliance with the requirements of these Identified Licence Conditions, not the CA.

21. Based on the above considerations, it is proposed that the Identified Licence Conditions on road opening works, which concern the manner in which road opening works are conducted, should be removed from the Carrier Licences.

22. The CA has assumed the role in coordinating road opening works among telecommunications licensees since the deregulation of the fixed telecommunications market. Under SC 16.1 of the UCL (and its equivalence in other Carrier Licences),⁵ licensees are required to coordinate and cooperate with other carrier licensees in respect of road openings and to comply with any guidelines issued by the CA in that regard. For the purpose of setting out the principles and criteria of the CA on granting road opening authorisation as well as the coordination procedures for road opening to be followed by authorised carriers, the CA issued the “Guidelines for Application of Road Opening Authorisation and Procedure for Road Opening Works”.⁶ For the avoidance of doubt, the proposed removal of the Identified Licence Conditions on road opening works will not prejudice the CA’s power in enforcing SC 16.1

⁵ The equivalence is SC 17.1 of the FCL and GC 30 of the FTNS licence.

⁶ The guidelines are available at <http://www.coms-auth.hk/filemanager/statement/en/upload/151/gn442012e.pdf>.

of the UCL (and its equivalence in other Carrier Licences) as well as the relevant guidelines in relation to road opening coordination. It should also be pointed out that the CA in granting the authorisation mainly focuses on whether the licensee has a genuine need to conduct road opening works. More importantly, the authorisation granted by the CA does not confer any road opening right on the licensee. Under section 14(1)(a) of the Ordinance, a licensee authorised by the CA is still required to obtain consent from DL for laying telecommunications lines in unleased Government land.

Question 1: Do you agree to the removal of the Identified Licence Conditions on road opening works from the Carrier Licences?

Question 2: If you disagree, please state with justifications whether you consider that:

- (a) the Identified Licence Conditions on road opening works should remain in the Carrier Licences without any amendments; or***
- (b) the Identified Licence Conditions on road opening works should remain in the Carrier Licences with certain amendments, in which case, please propose the amendments that are required.***

II. The Identified Licence Condition on Restrictions on Attachment to Public Buildings and Trees

23. Similar to the Identified Licence Conditions on road opening works, the requirement in the Identified Licence Condition on restrictions on attachment to public buildings and trees originates from the Telephone Ordinance. Table 3 below shows the origin of this Identified Licence Condition.

Table 3: The Origin of the Identified Licence Condition on Restrictions on Attachment to Public Buildings and Trees

	UCL/FCL/FCRL/ MCL/MCRL/SSCL	FTNS Licence	Telephone Ordinance	1925 Ordinance
Restrictions on Attachment to Public Buildings and Trees	GC 10	GC 33	section 12	section 15

24. GC 10 of the UCL (and its equivalence in other Carrier Licences) requires the licensee to seek prior consent from the relevant authorities for attachment to public buildings and trees. However, the authority to grant approval of attachment to public buildings and trees rests with the Government Property Administrator, the Director of Agriculture, Fisheries and Conservation, or the Director of Leisure and Cultural Services as the case may be, not the CA.

25. Restrictions on attachment to any tree on any Government land are already covered in section 21 of the Forests and Countryside Ordinance (Cap. 96),⁷ a breach of which may constitute a criminal offence. It is the Director of Agriculture, Fisheries and Conservation who may under section 23 of the Forests and Countryside Ordinance issue special permit to any person for the act prohibited under section 21. Restrictions on attachment to Government buildings are protected by property and tort laws. In general, if any person wants to place an attachment to a property or building, including a Government building, it is subject to negotiations with the property owner, who may grant permission for the attachment in various forms, such as lease, contract, or letter of consent. Such restrictions apply not only to the attachment by telecommunications licensees but also to the attachment by other entities.

26. As to protection of forests, trees and plants, as well as government buildings from possible damage, it falls outside, and indeed extends beyond the telecommunications perspectives. The reason of introducing such restriction in the telecommunications regulatory regime under the 1925 Ordinance was that there was no cross-sectoral restriction at that time. The predecessor of the Forests and Countryside Ordinance, viz. the Forestry Ordinance, was not enacted until 1937. Same as the transplant of the road opening provisions from the Telephone Ordinance, the transplant of the provision restricting attachment to public buildings and trees from the Telephone Ordinance to the FTNS licences also aimed at preserving the regulatory powers of the relevant authorities. It is not the intention of the telecommunications policy to subject telecommunications licensees to both the sectoral and cross-sectoral regulatory regimes in relation to attachment to public buildings and trees. The SCED and the CA do not see any justification

⁷ According to section 21 of the Forests and Countryside Ordinance, trespass in any forest and plantation without lawful authority is prohibited and is a criminal offence. Forest means any area of Government land covered with selfgrown trees, and plantation means any area of Government land which has been planted with trees or shrubs or sown with the seeds of trees or shrubs. Attachment to trees on any Government land without proper consent is covered by this provision.

relating to the telecommunications policy or operational consideration for maintaining the Identified Licence Condition on restrictions on attachment to public buildings and trees in the Carrier Licences to co-exist with the cross-sectoral regime.

27. Based on the above considerations, it is proposed that the Identified Licence Condition on restrictions on attachment to public buildings and trees should be removed from the Carrier Licences.

Question 3: Do you agree to the removal of the Identified Licence Condition on restrictions on attachment to public buildings and trees from the Carrier Licences?

Question 4: If you disagree, please state with justifications whether you consider that:

(a) this licence condition should remain in the Carrier Licences without any amendments; or

(b) this licence condition should remain in the Carrier Licences with certain amendments, in which case, please propose the amendments that are required.

IMPLEMENTATION

28. After due consideration of the submissions received, the SCED and the CA will issue a joint statement setting out their final views on the way forward with the Identified Licence Conditions. Subject to the outcome of the consultation, the SCED will proceed to prepare the amendment regulation under section 7(2) of the Ordinance to remove GC 10 from Schedule 1 to the Telecommunications (Carrier Licences) Regulation (Cap. 106V) and table before the Legislative Council for vetting.

29. Following the amendment of the subsidiary legislation, the finalised set of licence conditions will apply to newly issued Carrier Licences, including UCLs and SSCLs. As for the existing UCLs, FCLs, FCRL, MCL, MCRL and SSCLs, the CA will issue a circular letter to invite the licence holders to return their licences for effecting the corresponding changes in the licence conditions. For the avoidance of doubt, the licence holders who do not return their licences for amendment will continue to be subject to all the licence conditions as contained in their existing licences until the expiry of

those licences or the replacement with new UCLs.

30. For the one FTNS licence remaining, it is going to expire and will be replaced with a UCL in February 2015. The changes to the Identified Licence Conditions will be effective when the new UCL is issued or subsequently returned for amendment, as appropriate.

INVITATION FOR COMMENTS

31. The SCED and the CA invite views and comments on the issues and questions raised in this consultation paper. Any person wishing to submit to the SCED and the CA views and comments on this consultation paper should do so in writing, preferably in electronic form, on or before **6 October 2014**. The SCED and the CA may publish all or any parts of the views and comments received, and disclose the identity of the source in such matter as they see fit. Any part of the submission that is considered commercially confidential should be marked. The SCED and the CA would take such markings into account in making their decision as to whether to disclose such information or not. Submissions should be sent to:

By post: Office of the Communications Authority
29/F, Wu Chung House
213 Queen's Road East
Wan Chai, Hong Kong
(Attention: Head, Regulatory 3)

By fax: 2803 5112

By e-mail: review_lc@ofca.gov.hk

**Commerce and Economic Development Bureau
(Communications and Technology Branch) and
Office of the Communications Authority
5 September 2014**

**Full Text of the Identified Licence Conditions on
Road Opening Works**

SC 14.1, SC 14.3 and SC 14.4 of UCL (equivalent to SC 15.1, SC 15.3 and SC 15.4 of FCL and GC 28(1), GC 28(3) and GC 28(4) of FTNS licence)

14 NETWORK LOCATION

- 14.1 The licensee shall obtain the consent in writing of the Director of Lands before the commencement of any installation works for its network under, in, over or upon any unleased Government land.
- 14.3 The licensee shall record the information referred to under Special Condition 14.2 on route plans drawn on an Ordnance Survey Map background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.
- 14.4 The licensee shall, at the request of the Director of Highways, the Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the network and who is authorized to do so by the Director of Highways, the Director of Lands or the Authority, provide free of charge information about the location of the network in diagrammatic or other form. The licensee shall make trained staff available on site to indicate the location and nature of the network to the Director of Highways, the Director of Lands, the Authority or any person authorized by the Director of Highways, the Director of Lands or the Authority.

SC 17 of UCL (equivalent to SC 18 of FCL and GC 32 of FTNS licence)

17 REQUIREMENTS OF INSTALLATION OF LINES OR CABLES

- 17.1 The network, or any part of it, if installed under, in, over or upon any

public street or other unleased Government land, shall be at such depth, course, route and position as may be determined by the Director of Lands or the Director of Highways.

17.2 Without prejudice and in addition to the provisions of any law or Ordinance, in the course of providing, establishing, operating, adjusting, altering, replacing, removing or maintaining the network for the purposes of this licence, or any part of it, the licensee shall –

- (a) exercise all reasonable care, and cause as little inconvenience as possible to the public and as little damage to property as possible; and
- (b) make good any physical damage caused to any person having a lawful interest in the land or being lawfully thereon and reinstate the land within a reasonable time in good and workmanlike manner. When it is not practicable to make good any damage or to reinstate the land to the condition in which it existed prior to the damage, the licensee shall pay, promptly and fully, compensation for any damage caused to any person having an interest or right in the land affected.

SC 18 of UCL (equivalent to SC 19 of FCL and GC 34 of FTNS licence)

18 WORKS IN PUBLIC STREETS

18.1 Where in the course of installing or maintaining the network the licensee needs to open or break up any public street the licensee shall –

- (a) apply to the Director of Highways or the Director of Lands for permission to open or break up the public streets;
- (b) complete the works for which the licensee has opened or broken up the public street with all due speed and diligence, fill in the ground and remove all construction related refuse caused by its works;
- (c) maintain the site of the works in a safe manner including the fencing of the site and the installation of adequate warning lighting at night; and

- (d) reinstate the street immediately after the completion of the works to the satisfaction of the Director of Highways or the Director of Lands.
- 18.2 If the licensee fails, within any period specified by the Director of Highways or the Director of Lands, to observe any of the requirements of Special Condition 18.1, the Director of Highways or the Director of Lands may take action to remedy the failure. The licensee shall reimburse the Government any such sum as may be certified by the Director of Highways or the Director of Lands to be reasonable cost for executing any works under the terms of this Special Condition 18.2.

SC 19 of UCL (equivalent to SC 20 of FCL and GC 35 of FTNS licence)

19 INTERFERENCE WITH WORKS OF OTHERS

- 19.1 Where in the course of installing or maintaining the network, the licensee after obtaining the approval of the Director of Highways breaks up or opens any public street it shall not remove, displace or interfere with any telecommunications line, any gas pipe or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current and ancillary installations installed by any other person without that other person's consent.
- 19.2 In the case where the other person holds a licence under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), any consent referred to in Special Condition 19.1 is refused, or cannot be obtained for any reason, the licensee may request the consent to proceed from the relevant authority in accordance with the terms of any licence issued to such other person under the Land (Miscellaneous Provisions) Ordinance, if any.

SC 20 of UCL (equivalent to SC 21 of FCL and GC 37 of FTNS licence)

20 LICENSEE TO ALTER NETWORK ON NOTICE

- 20.1 The licensee shall, within such reasonable time and in such manner as may be directed by notice in writing by the Director of Highways or the Director of Lands, and at its own expense, alter the course, depth, position or mode of attachment of any apparatus forming part of the network.
- 20.2 Where the Director of Highways or the Director of Lands gives a direction under Special Condition 20.1, Special Condition 18 shall apply as if such alteration were part of the installation or maintenance of the network.

**Full Text of the Identified Licence Condition on
Restrictions on Attachment to Public Buildings and Trees**

GC 10 of UCL (equivalent to GC 10 of FCL, FCRL, MCL, MCRL and SSCL as well as GC 33 of FTNS licence)

**10 RESTRICTIONS ON ATTACHMENT TO PUBLIC BUILDINGS
AND TREES**

- 10.1 No part of the network shall be attached to any Government building except with the prior written consent of the Government Property Administrator, or to any tree on any Government land except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, or the Director of Leisure and Cultural Services.

Legislation or legal instruments⁸ governing the same/similar activity/breach as the Identified Licence Conditions on road opening works of UCL (and their equivalence in other Carrier Licences), and whether the breach would constitute criminal offence

Identified Licence Conditions of UCL	Legislation or legal instruments governing the same/similar activity/breach as the Identified Licence Conditions of UCL	Whether a breach of the relevant clauses in the legislation or legal instruments would constitute criminal offence
SC 14.1	Section 10(1) of LMPO	Yes , a fine at level 5 and imprisonment for 6 months
SC 14.3	Condition 13 of XP(HyD) ⁹	Yes , a fine at level 5 ¹⁰
SC 14.4	Condition 12(A) and Condition 20(B)(I) of XP(HyD) ¹¹	Yes , a fine at level 5

⁸ The latest as well as the previous 15 versions of XP(HyD) are available at: http://www.hyd.gov.hk/en/publications_and_publicity/publications/technical_document/xppm/condition/index.html.

According to LD, conditions of XP(LD) are not available to the public. As such, the relevant clauses of XP(LD) are not included in this Annex.

⁹ According to the Excavation Permit Administration Procedure issued by HyD, applicants for XP(HyD) are required to provide details of the proposed excavation works including the alignment of trench or excavation where the XP is to cover in form of a digital format through the Excavation Permit Management System managed by HyD, or a softcopy of a 1:1000 sketch in their applications. Similarly, according to the application form of XP(LD), applicants for XP(LD) are required to provide details of the proposed excavation works, including the indication of location of the proposed excavation on a survey plan of 1:1000 scale.

¹⁰ Under section 10(3) of the LMPO, breach of conditions of XP is a criminal offence.

¹¹ Under SC 14.4, the licensee may be required to provide network location information to DHy, DL, the CA or any person who intends to undertake works in the vicinity of the licensee's network. The requirement for a road opener, be it a telecommunications licensee or other utility, to provide information on its excavation work on unleased Government land to DHy, DL and other parties as determined by DHy or DL is regulated under the XP regime enforced by DHy/DL. While SC 14.4 also empowers DHy and DL to require the licensee to provide network location information on areas other than unleased Government land, the CA does not see a justification to mandate the licensee to provide network location information in areas that fall outside the jurisdiction of DHy/DL. While the licensee may be required by the CA under SC 14.4 to provide information about its network location, it should be noted that the CA can rely on other conditions in the UCL to request such information from the licensee. For example, the CA is empowered under GC 8 of UCL to require the licensee to provide network information, including but not limited to overall network plans and cable route maps; SC 6 of the UCL to require the licensee to provide information, including technical information, as the CA may reasonably require in order to perform its functions under the Ordinance and the UCL; and section 7I of the Ordinance to require the licensee to provide information that the CA may reasonably require in order to ensure the licensee's compliance with the Ordinance, licence conditions, and the determinations and directions of the CA, applicable to the licensee.

Identified Licence Conditions of UCL	Legislation or legal instruments governing the same/similar activity/breach as the Identified Licence Conditions of UCL	Whether a breach of the relevant clauses in the legislation or legal instruments would constitute criminal offence
SC 17.1	Conditions 10 and 18(A) of XP(HyD)	Yes , a fine at level 5
SC 17.2	Section 10T(1) of LMPO	Yes , a fine of \$200,000
	Section 10Q(1) of LMPO	No
	Section 60(1) of the Crimes Ordinance (Cap. 200) ¹²	Yes , imprisonment for 10 years
	Conditions 11(B), 20(G), 33(A) and 39 to 45 of XP(HyD)	Yes , a fine at level 5
	Persons having interests in private land are also protected under civil laws such as Tort Law and Contract Law ¹³	
SC 18.1	Section 10(1) of LMPO	Yes , a fine at level 5 and imprisonment for 6 months
	Section 10A(3) of LMPO, Schedule 3 of Land (Miscellaneous Provisions) Regulations ¹⁴	No
	Section 10T(1) of LMPO	Yes , a fine of \$200,000
	Section 10Q(1) of LMPO	No
	Conditions 26(A) and 38 to 45 of XP(HyD)	Yes , a fine at level 5

¹² Section 60(1) of the Crimes Ordinance prohibits destroying or damaging of property.

¹³ The remedies available in civil laws include damages, injunction, specific performance, rescission of contract, etc.

¹⁴ Extension of validity period of an XP would be subject to fees as prescribed under Part 1 of Schedule 3 of the Land (Miscellaneous Provisions) Regulations. The prescribed fees include a component called economic cost. The economic cost for each extended day for a strategic street, a sensitive street and the remaining street would be HK\$18,000, HK\$7,000 and HK\$1,500 respectively. This provides an effective measure to ensure that road openers would complete their works within the specified period.

Identified Licence Conditions of UCL	Legislation or legal instruments governing the same/similar activity/breach as the Identified Licence Conditions of UCL	Whether a breach of the relevant clauses in the legislation or legal instruments would constitute criminal offence
SC 18.2	Section 10S of LMPO	No
	Section 10Q (2) and (3) of LMPO	No
SC 19.1¹⁵	Condition 20(A) of XP(HyD)	Yes , a fine at level 5
	Regulation 23A of Gas Safety (Gas Supply) Regulations (Cap. 51B)	Yes , <ul style="list-style-type: none"> - for breach of Reg 23A(1), a fine at level 4 and imprisonment for 6 months; - for breach of Reg 23A(2), a fine of \$200,000 and imprisonment for 12 months; and a daily penalty of \$10,000 in the case of a continuing offence
	Regulation 10(1)&(2) of Electricity Supply Lines (Protection) Regulation (Cap. 406H)	Yes , a fine at level 4 and imprisonment for 6 months
	Section 31 of Waterworks Ordinance (Cap. 102)	Yes , a fine at level 4
	Section 27(1) of Land Drainage Ordinance (Cap. 446)	Yes , a fine not exceeding \$50,000
SC 19.2	This SC is not an obligation to licensees	Not applicable

¹⁵ While SC 19.1 requires the licensee not to remove, displace or interfere with any telecommunications line installed by any other person without that other person's consent, similar requirement is also imposed under section 18 of the Ordinance, which requires any person who proposes to carry out any work that may affect a telecommunications line or radiocommunications installation to give notification to the CA or a licensee who maintains such line or installation; and take all reasonable precautions in carrying out the work to prevent damage to such line or installation. It allows the affected party to recover from the person who carries out the work any expenses incurred in making good any damage to such line or installation caused by a failure to take such precautions.

Identified Licence Conditions of UCL	Legislation or legal instruments governing the same/similar activity/breach as the Identified Licence Conditions of UCL	Whether a breach of the relevant clauses in the legislation or legal instruments would constitute criminal offence
SC 20.1	Conditions 10 & 18(C) of XP(HyD)	Yes , a fine at level 5
SC 20.2	Sections 10(1), 10T(1), 10Q(1)(2)(3) and 10S of LMPO, and Conditions 26(A) and 38 to 45 of XP(HyD)	Yes <ul style="list-style-type: none"> - for breach of section 10(1), a fine at level 5 and imprisonment for 6 months - for breach of section 10T(1), a fine of \$200,000 - for breach of conditions of XP, a fine at level 5 <p>Breach of section 10Q or 10S is not a criminal offence</p>