



**Request for Applications  
to participate in a tender process for  
twenty year licenses together with the  
acquisition of the businesses of  
two existing mobile network  
operators**

**Issued by the  
Telecommunications Regulatory Authority  
and the  
Higher Council for Privatization  
of the Lebanese Republic  
on 26 October 2007**

## 1. INTRODUCTION

The Republic of Lebanon, acting through the Higher Council for Privatization (the “**HCP**”), and the Telecommunications Regulatory Authority (the “**TRA**”), is offering interested parties an opportunity to participate in a tender process leading to the acquisition of the subscribers, and certain of the related assets and liabilities and contracts, of each of the two existing state-owned mobile telecommunications operators, together, in each case, with the award of a 20-year license to build, own and operate a mobile telecommunications network and provide mobile telecommunications services in Lebanon.

This Request for Applications sets out the rules and instructions for interested parties to participate in the tender process.

For further information, interested parties should consult the materials now or subsequently made available by the HCP and the TRA as set forth herein.

The table set out on the following page sets out the key dates in respect of the tender process. Interested parties should consult the remainder of this Request for Applications for further details. These dates may be changed.

<u>Date</u>	<u>Event</u>
26/10/07	RFA published
30/10/07	Access to online data room for Eligible Parties
15/11/07	Draft License and Acquisition Documents made available
30/11/07*	Deadline for submitting questions
27/12/07**	Responses to questions published
07/01/08	License and Acquisition Documents finalized
10/01/08	Council of Ministers meeting to confirm the timetable for the opening of the sealed pre-Auction bids and for the Auction
11/01/08	Last day for submission of expressions of interest
18/01/08	Applications due date; online data room closes
04/02/08	Qualifying Applicants announced and pre-Auction bids of non-qualifying Applicants destroyed
07/02/08	Pre-Auction bids of Qualifying Applicants opened, amount of revenue share announced and Auctions conducted
12/02/08	Minister of Telecommunications recommendation issued
28/02/08	Council of Ministers meeting to approve/disapprove sales
≤ 3 days after the sale decree	Confirmation letter sent to each Winning Bidder
≤ 14 days after the confirmation letter	Performance bond of 10% of Winning Bid Amount to be posted
≤ 30 days after the confirmation letter	All relevant details regarding each intended Licensee entity to be provided to the HCP and the TRA, including the form of bylaws and the proposed capital structure
≤ 15 days of receipt of details regarding each Licensee entity	The HCP and the TRA to provide each Winning Bidder with comments and amendments (if any) to the form of bylaws and other documents provided by the Winning Bidder
≤ 15 days of agreement on the bylaws	Winning Bidders to incorporate each prospective Licensee entity
≤ 7 days following the incorporation and registration of each Licensee entity	40% of Winning Bid Amount (less credit for value of shares delivered to the Republic of Lebanon or its designee) due and shares representing 1/3 of the capital of each prospective Licensee entity delivered to the Republic of Lebanon or its designee
Upon satisfaction of remaining conditions precedent	Simultaneous closing: payment of remaining 60% of Winning Bid, delivery of control and ownership of assets and issuance of License

\* The HCP and the TRA may, in their absolute discretion, allow for the submission of further questions after this date.

\*\* Responses may be published after this date if additional questions are permitted by the HCP and the TRA.

## 2. DEFINITIONS

The following words and expressions will have the meanings assigned to them below, unless the context requires otherwise:

**“0% Revenue Share Bid”** has the meaning set forth in Clause 4.6.

**“10% Revenue Share Bid”** has the meaning set forth in Clause 4.6.

**“Acquisition Documents”** means the proposed sale and purchase agreements and other documents to be entered into between the Republic of Lebanon, the HCP, the TRA and/or other Officials on the one hand and Licensee 1 or Licensee 2 on the other hand to provide for the acquisition by such Licensee of the Subscribers and certain assets and contracts, and the assumption by such Licensee of the relevant liabilities, of Business 1 in the case of Licensee 1 or Business 2 in the case of Licensee 2.

**“Affiliate”** in relation to any Person means another Person who controls, is controlled by or is under common control with such Person.

**“Applicant”** means each Person that submits an Application.

**“Application”** means an application submitted by an Applicant in response to this RFA.

**“Auction”** means the public auction of each Combination to be conducted by the HCP and the TRA in connection with the Tender Process.

**“Auction Committee”** means a special committee composed of the Secretary General of the HCP, the Chairman of the TRA, and two individuals from each of the HCP and the TRA,. The Auction Committee may invite one representative of the Republic of Lebanon’s legal counsel in respect of the Tender Process to be present at its meetings.

**“Auction Officials”** means two individuals authorized by the HCP and the TRA to conduct the live Auctions in accordance with Clause 3.4.

**“Business 1”** means the Subscriber and other contracts, network and certain other assets and liabilities of Mobile Interim Company 1 S.A.L. (**“MIC 1”**), a Lebanese joint-stock company established on behalf of the Republic of Lebanon to own or lease certain network assets, and assume the related contracts, previously owned and operated pursuant to a build, operate and transfer contract. Business 1 is currently operated by Consortium Detecon International GmbH, Fal Holdings Arabia Co. Ltd. and Detecon Al Saudia Co. Ltd.

**“Business 2”** means the Subscriber and other contracts, network and certain other assets and liabilities of Mobile Interim Company 2 S.A.L. (**“MIC 2”**), a Lebanese joint-stock company established on behalf of the Republic of Lebanon to own or lease certain network assets, and assume the related contracts, previously owned and operated pursuant to a build, operate and transfer contract. Business 2 is currently operated by Mobile Telecommunications Company.

**“Businesses”** means Business 1 and Business 2 and **“Business”** means either one of them.

**“Combination”** means a combined Business and License, and **“Combination 1”** means Business 1 and License 1, and **“Combination 2”** means Business 2 and License 2.

**“Consortium”** means a group of Persons forming a single Applicant.

**“Eligible Party”** has the meaning set forth in Clause 3.1(b).

**“HCP”** means the Higher Council for Privatization of the Republic of Lebanon.

**“Information Memorandum”** means the Information Memorandum to be issued and made available in the online data room by the HCP and the TRA in connection with the Tender Process and which provides an overview and description of the Lebanese Republic, the Lebanese telecommunications market, the Businesses, the Lebanese telecommunications regulatory environment, and the financial and other obligations of the Licensees, pursuant to the Licenses and otherwise.

**“Initial IPO Period”** has the meaning given in Clause 3.6.

**“IPO”** has the meaning given in Clause 3.6.

**“Lapse Date”** means, with respect to a Combination, the earlier of (i) the date on which the Republic of Lebanon ceases to be a shareholder of the relevant Licensee, (ii) the date falling 60 days after completion of the IPO or (iii) the first anniversary of the date of the relevant Licensee’s incorporation, whichever occurs earlier.

**“License”** means a license issued by the TRA, and approved in a decree issued by the Council of Ministers of Lebanon, to build, own and operate a Mobile Network and provide Mobile Services in Lebanon in the form set forth in the Information Memorandum, and **“License 1”** is the License to be awarded to Licensee 1 and **“License 2”** is the License to be awarded to Licensee 2.

**“Licensee”** means the holder of a License, and **“Licensee 1”** means the Licensee that acquires Business 1 and **“Licensee 2”** means the Licensee that acquires Business 2.

**“MNO”** means a Person who owns and operates one or more Mobile Networks and provides Mobile Services over such Mobile Networks.

**“Mobile Network”** means a terrestrial (but not satellite) digital cellular radio communications network for the provision of Mobile Services to the public, including, without limitation, a network of radio base station sites, a core network and a network of transmission links, configured so as to permit full mobility of user terminals (radio stations) and allow a Subscriber to receive and transmit communications from a user terminal located anywhere in the coverage area of the network.

**“Mobile Services”** means the provision of telecommunications services to the public over a Mobile Network.

**“Official Gazette”** means the official gazette published in the Republic of Lebanon.

**“Officials”** means the HCP, the TRA and any other government agency or official of the Republic of Lebanon, and their respective boards, members, officials, officers, representatives, agents, advisers, staff, and consultants and any employee of the foregoing.

**“Person”** means any individual, corporation, company, partnership, trust or other entity, including a Consortium, but excludes any Official.

**“Prospective Winning Bidder”** has the meaning given in Clause 3.4(d).

**“Qualifying Applicants”** has the meaning set forth in Clause 3.1(j).

**“Qualified Bank”** means a bank (a) established under the laws of the Republic of Lebanon with minimum assets, as at the date of the last audited balance sheet of US\$[3 billion] or its equivalent in Lebanese pounds, or (b) an international bank, acceptable to the HCP, with minimum assets, as at the date of the last audited balance sheet, of US\$10 billion and possessing a current credit rating of A or higher from Standard and Poor’s or Fitch IBCA or A1 or higher from Moody’s.

**“RFA”** means this Request for Applications.

**“Subscriber”** means any Person that is a party to a contract or other similar arrangement (which may be on a pre-paid basis) that is in force with a service provider for the supply of Mobile Services by the service provider to such Person.

**“Tender Process”** means the tender process for the Businesses and Licenses as set out in this RFA, the Information Memorandum and other applicable documents and communications, as the same may be modified, supplemented or withdrawn from time to time.

**“Tender Website”** means the website maintained jointly by the HCP and the TRA at [www.lebanonmobileauction.com](http://www.lebanonmobileauction.com) .

**“TRA”** means the Telecommunications Regulatory Authority of the Republic of Lebanon.

**“Winning Bid Amount”** means, in respect of either Combination, the all-cash winning bid for the purchase (expressed in US dollars) of 100% of such Combination as selected and announced by the Council of Ministers.

**“Winning Bidder”** means, in respect of either Combination, the winning bidder as selected and announced by the Council of Ministers .

### **3. TENDER PROCESS**

#### **3.1 Events and Other Requirements**

Subject to revisions and amendments which may hereafter be made at any time by the Council of Ministers, the HCP and the TRA\_(or, where duly authorized by the Council of Ministers, the HCP and the TRA), the Tender Process is expected to consist of the following order of events and other requirements:

- (a) The HCP and the TRA published this RFA by posting the same on the Tender Website on 26 October 2007.
- (b) Any Person interested in participating in the Tender Process may, at any time from 26 October 2007 through 11 January 2008, submit an expression of interest in the form attached as **Appendix 3.1(b)** and pay to the TRA a non-refundable entry fee of US\$50,000 (each such Person being an “**Eligible Party**”). Within three business days after submission of such expressions of interest and payment of such entry fee, the HCP and the TRA will jointly provide confirmation to such Persons that they have satisfied the aforementioned conditions and so are Eligible Parties.
- (c) Eligible Parties who execute and deliver to the HCP a non-disclosure agreement in the form attached hereto as **Appendix 3.1(c-1)** and an acknowledgement of the data room rules and procedures attached hereto as **Appendix 3.1(c-2)** will be permitted to conduct due diligence by accessing an online data room at any time from 30 October 2007 (or, if later, the time that they submit the non-disclosure agreement and the acknowledgement of the data room rules and procedures) until 18 January 2008. The HCP will provide such Eligible Parties with instructions for access to the online data room within three business days of submission of their non-disclosure agreements.
- (d) The HCP and the TRA intend, from time to time, to issue and make available for review by Eligible Parties in the online data room the Information Memorandum, the Acquisition Documents (in draft form) and other materials relevant to the Tender Process.
- (e) Eligible Parties may submit questions regarding the RFA, the Information Memorandum, the Acquisition Documents, the materials that they review in the due diligence process, or otherwise in respect of the Tender Process and the Auctions at any time before 5:00 p.m. Beirut time on 30 November 2007
- (f) Questions must be submitted in Microsoft Word® format by email sent to the addresses of both the HCP and the TRA set forth in Clause 6.8(a) of this RFA. To ensure responsive answers, Eligible Parties should ensure that all questions are clear and concise and each question should refer the HCP and the TRA to the relevant document, if any, and the relevant clause thereof as to which the question pertains.
- (g) The HCP and the TRA will review and assess all timely questions received from Eligible Parties. The HCP and the TRA may, but are not obligated to, publish responses to the questions by posting the same on the Tender Website and/or on the online data room on or before 27 December 2007.
- (h) The Council of Ministers is expected to meet on or around the 10 January 2008 in order to confirm the timetable for the opening of the sealed pre-Auction bids and for the Auction.
- (i) Applicants may submit Applications (which will contain the sealed pre-Auction bids) in accordance with Clauses 4 and 5 of this RFA between 9:00 a.m. and

5:00 p.m. Beirut time on 18 January 2008 but neither before nor after such time window. Applicants are not required to have submitted expressions of interest nor are they required to qualify as Eligible Parties or include previously qualified Eligible Parties in their Consortium. However, Applicants who have not previously qualified as Eligible Parties or who do not include any previously qualified Eligible Parties in their Consortium must submit the US\$50,000 non-refundable entry fee payable to the TRA with their Application. Only one US\$50,000 entry fee is required per Consortium, but no credit or refund will be provided for a Consortium that includes more than one Eligible Party which previously paid a US\$50,000 entry fee.

- (j) The HCP and the TRA will review and assess all timely Applications received for compliance with the requirements of this RFA and otherwise as specified by the HCP and the TRA.
- (k) The HCP and the TRA will jointly announce the qualifying Applicants (such Applicants being the “**Qualifying Applicants**”) on the Tender Website by 4 February 2008, as well as whether any Qualifying Applicant has been excluded from one or other (or both) of the Auctions pursuant to Clause 3.3 of this RFA. At the same time, the HCP and the TRA will jointly announce the date (currently expected to be 7 February 2008) on which the pre-Auction bids will be opened, the decision on revenue share will be made by the Council of Ministers and announced, and the Auctions will be conducted. Immediately upon announcing the Qualifying Applicants, the HCP and the TRA will destroy (without opening) the sealed pre-Auction bids of all Applicants that are not designated as Qualifying Applicants.
- (l) The pre-Auction bids of Qualifying Applicants will remain sealed after the HCP and the TRA have announced which Applicants will be designated as Qualifying Applicants. On the day of the Auctions, the Auction Committee will open and review the sealed pre-Auction bids submitted by Qualifying Applicants with their Applications. The Auction Committee will then compile a table of the amounts of the 0% Revenue Share Bids and the 10% Revenue Share Bids submitted by the Qualifying Applicants (but without identifying the Qualifying Applicant who submitted each such bid) and forward such table to the Council of Ministers for a determination of whether a 0% or a 10% revenue share will be payable by each Licensee to the Republic of Lebanon. The Auction Committee will also determine whether any Qualifying Applicant is to be excluded from either Auction in accordance with Clause 3.3 of this RFA.
- (m) On the same day as it receives the amounts of the revenue share bids, the Council of Ministers will announce its decision whether the Licensees will be required to pay a 0% revenue share or a 10% revenue share. Both Licensees will be subject to the same revenue share percentage.
- (n) On the same day as the Council of Ministers announces its decision regarding the revenue share, the HCP and the TRA will conduct the Auctions of the Combinations in accordance with Clause 3.4 of this RFA.
- (o) On the same day as and immediately after the Auctions, the Chairman of the TRA and the Secretary General of the HCP will jointly notify the Council of

Ministers (through the Minister of Telecommunications), of the identity and bid amount of the Prospective Winning Bidder for each of Combination 1 and Combination 2. Their notification may include a recommendation regarding the sale of the Combinations to the Prospective Winning Bidders for the amount of their respective bids.

- (p) Within three business days thereafter, the Minister of Telecommunications will send a written recommendation to the Council of Ministers with respect to the sale of the Combinations to the highest bidders (or otherwise as provided in Clause 3.4(e)).
- (q) Within two weeks after receiving the recommendation of the Minister of Telecommunications, the Council of Ministers may, in its absolute discretion, issue a decree designating the Prospective Winning Bidders as Winning Bidders and approving the sale of the Combinations to them (or otherwise as provided in Clause 3.4(e)) for the amounts of their respective bids in accordance with the recommendations received. In the event that the Council of Ministers issues such decree, it will publish it in the Official Gazette and the HCP and the TRA will publish it on the Tender Website. The Council of Ministers must either approve, or decline to approve, the sale of both Combinations (i.e. the Council of Ministers may not approve the sale of only one Combination).
- (r) Within three days after the publication of the decree of the Council of Ministers in the Official Gazette, if such decision is favorable, the HCP and the TRA will jointly send to the Winning Bidders the confirmation letter referred to in Clause 3.5(a).
- (s) Thereafter, the provisions set out in Clause 3.5 will apply in respect of the sale of the Combinations.

### **3.2 Criteria for Evaluating Applications**

As a condition to an Applicant being designated by the HCP and the TRA as a Qualifying Applicant, its Application must demonstrate, to the satisfaction of the HCP and the TRA, the following regarding the Applicant, its business plan and its technical plan (and the determination of the HCP and the TRA as to whether or not an Applicant or an Application satisfies these criteria will be final and binding):

- (a) The Applicant must satisfy the following criteria:
  - (1) The Applicant, and, if it is a Consortium, all members of the Consortium, must be fit and proper Persons and must satisfy all requirements applicable to them as set forth in this RFA.
  - (2) The Applicant must be an MNO or its Affiliate or, if the Applicant is a Consortium, the Consortium must include as a member an MNO or its Affiliate that will enter into a management agreement for a five year period with the Licensee in accordance with Clause 4.4 (and subject to Clause 4.4(b)), and

- (A) the MNO or its Affiliates must have at least three years of experience in owning and operating Mobile Networks and providing Mobile Services;
  - (B) the MNO or its Affiliates must provide Mobile Services over one or more Mobile Networks owned and operated by such MNO and its Affiliates to at least 1,000,000 Subscribers of which at least 500,000 are in a single market; and
  - (C) the MNO and its Affiliates must be in good standing with all regulators of their Mobile Networks and Mobile Services and neither the MNO nor any of its Affiliates may have suffered, at any time, the revocation of a significant GSM or UMTS license for a material failure to perform
- (3) The Applicant must state in its Application that it agrees to, and the Licenses will include, the following ownership and lock-up restrictions:
- (A) the members of the Consortium will become founder shareholders of the Licensee and (other than the MNO) thereafter may not sell, transfer or otherwise divest part or all of their shareholdings in the Licensee until the third anniversary of the issuance of the License (but the TRA may, in its discretion, remove such lock-up restriction at any time prior to such third anniversary if the Licensee has satisfied the network upgrade, rollout and coverage requirements set forth in the License); and
  - (B) the MNO or its Affiliate will subscribe for and own at least 15% of the equity of the Licensee as a founder shareholder on a fully diluted basis and will maintain such minimum 15% ownership for at least five years from the issuance of the License, subject to dilution resulting from any equity issuance by the Licensee after the third anniversary of the issuance of the License where such issuance is approved by the TRA, such approval not to be unreasonably withheld.
- (4) The proposed role of the MNO in the ownership and/or management of the Licensee must be for a period of at least five years from the issuance of the License, and must give it sufficient influence over the management, affairs and policies of the Licensee.
- (5) The Consortium structure and documents must satisfy all other applicable requirements set forth in this RFA, including, without limitation, commitments to satisfy the requirements in Clause 3.5 of this RFA.
- (6) No Person or its Affiliates may be a member of more than one Consortium and/or be involved with more than one Applicant.
- (b) The Applicant's business plan must be viable and realistic and the Applicant must demonstrate that the Licensee will have adequate financial resources,

based on its committed equity funding and its ability to attract debt financing, to meet its capital needs during the first five years of operations.

- (c) The Applicant's technical plan must demonstrate that it has a competent plan for operating and developing a high quality Mobile Network and providing high quality and innovative Mobile Services in the Republic of Lebanon in accordance with the terms and conditions of the License.

### **3.3 Exclusion of certain low pre-Auction bids**

If one or more Qualifying Applicants submit pre-Auction bids for a Combination (whether for the 0% or 10% revenue share) that are less than 50% of the average of all pre-Auction bids (for such 0% or 10% revenue share) submitted by Qualifying Applicants for such Combination, then

- (1) unless less than five Qualifying Applicants would remain in the Auction in respect of such Combination, the Qualifying Applicant submitting the lowest such bid (or if more than one Qualifying Applicant submitted the same lowest such bid, then all such lowest bidding Qualifying Applicants) will be excluded from participation in such Auction; but
- (2) such excluded Qualifying Applicant(s) will be permitted to participate in the Auction of the other Combination if its (their) pre-Auction bid was not similarly disqualified as too low for such other Combination.

### **3.4 Auction Rules**

- (a) Each Qualifying Applicant may participate in each Auction of a Combination for which it submitted a pre-Auction bid and from which it was not excluded pursuant to Clause 3.3. Qualifying Applicants that submit pre-Auction bids for only one Combination will not be permitted to participate in the Auction for the other Combination.
- (b) All bids submitted by Qualifying Applicants in the Auctions will be recorded.
- (c) Applicants who are not designated as Qualifying Applicants will not be permitted to participate in the Auctions.
- (d) The bidding process for the Auctions of Combination 1 and Combination 2 will be conducted as follows
  - (1) The Auctions will take place in a live public session (with media and television invited) in Beirut on a single day on the same day that, and immediately after, the Council of Ministers announces its decision regarding the 0% or 10% revenue share. The HCP and the TRA will jointly inform Qualifying Applicants of the time and place that such announcement will be made and where the Auctions will take place. The HCP and the TRA may also indicate at that time the number of individuals who are permitted to be present from each Qualifying Applicant.

- (2) Prior to commencement of the Auctions, each Qualifying Applicant must deliver to the Auction Officials evidence of the due authorization of the individual(s) who will submit bids on its behalf during the Auctions. If a Qualifying Applicant is a Consortium, such individual(s) must be authorized by or on behalf of each member of the Consortium.
- (3) The Auctions will be conducted by the Auction Officials in accordance with the provisions of this RFA. The determinations of the Auction Officials regarding the conduct of the Auctions will be final and binding. Qualifying Applicants will have the opportunity before the Auctions commence to ask the Auction Officials questions about the conduct of the Auctions.
- (4) The bidding will take place on the basis of an all-cash bid for each Combination. The highest pre-Auction bid submitted by a Qualifying Applicant for each Combination (based on the revenue share percentage designated by the Council of Ministers) will be the opening bid for such Combination in the relevant Auction. At the outset of the Auctions, the Auction Officials will publicly announce the amount of each such bid and the highest bidder.
- (5) Further bidding will be conducted in rounds, alternating between Combination 1 and Combination 2 unless otherwise jointly determined by the HCP and the TRA
- (6) The Auction Officials will, round by round, announce the time at which the Qualifying Applicants must submit their bids in the next round. Reasonable breaks may be provided between rounds.
- (7) In each bidding round for each Combination, each Qualifying Applicant bidding for such Combination may submit a single bid in writing on a form to be provided by the Auction Officials and to be signed by the authorized representative of the Qualifying Applicant. The form will specify the identity of the Qualifying Bidder, the Combination to which the bid relates, the amount of the bid and the time at which it is signed.
- (8) All bids must be a multiple of US\$5 million.
- (9) Following the submission of all bids in any given round, the Auction Officials will open such bids in the presence of the bidders and will announce the identity of each bidder and the amount of its bid.
- (10) The highest bid submitted by any Qualifying Applicant in a round will automatically be the opening bid in the next round for such Combination. In such next round, such Qualifying Applicant will be permitted, but will not be required, to submit a bid that is higher than this opening bid.

- (11) In each bidding round for each Combination, Qualifying Applicants who elect to participate must submit a bid that is at least US\$25 million more than the opening bid in that round. Qualifying Applicants who do not bid in a round will not thereafter be permitted to participate in further rounds of bidding for such Combination. The Auction Officials will keep a record of which Qualifying Applicants continue to be permitted to participate.
  - (12) Subject to paragraph (11) above, Qualifying Applicants will be permitted to participate in each round of bidding regardless of the amount of their bids in previous rounds.
  - (13) Without prejudice to the right of the Auction Committee to designate the upcoming round as being the final round, the first bidding round for each Combination in which no bid other than the opening bid is submitted will close the bidding for such Combination. The Auction Committee will designate the Qualifying Applicant that submitted such bid as the “**Prospective Winning Bidder**” on the basis of such bid.
  - (14) If the Prospective Winning Bidder for one Combination would also be the Prospective Winning Bidder for the other, then the Auction Committee will designate it as the Prospective Winning Bidder of the Combination which is the subject of the highest bid of the two Combinations. If both bids were the same amount, then the Auction Officials will designate it the Prospective Winning Bidder of the first Combination for which it bid such amount. The Qualifying Applicant who has submitted the second highest bid in respect of the other Combination will then be designated as the Prospective Winning Bidder in respect of that Combination.
- (e) If the Prospective Winning Bidder for the relevant Combination is later disqualified from purchasing such Combination (whether by failing to timely perform its post-Auction requirements under this RFA or the Acquisition Documents or by being found by the HCP and the TRA, based on subsequent information, not to be in compliance with the criteria in this RFA for being a Qualifying Applicant, or otherwise), then the HCP and the TRA may, but will not be required to, recommend to the Council of Ministers that it approves the sale of such Combination to the next highest bidder. If such next highest bidder for such Combination has already been designated as the Winning Bidder for the other Combination, then the HCP and the TRA may recommend to the Council of Ministers that the next again highest bidder for such Combination be offered the opportunity to replace the disqualified bidder. This process may be repeated by the HCP, the TRA and the Council of Ministers, as necessary, until the Council of Ministers has approved the sale of the relevant Combination to a Qualifying Applicant.
- (f) In order to provide for potential replacements of the Winning Bidders as contemplated in Clause 3.4(e), the next highest bid after that of the Prospective Winning Bidder for each Combination and such bidder’s associated Application and Bid Bond will remain valid and binding until the earlier of (i) the

date falling 180 days after the date of submission of Applications, (ii) the closing of the sale to the original Prospective Winning Bidder referred to in Clause 3.5(c) of this RFA, and (iii) in the case of the replacement bidder's Bid Bond, the date on which it delivers its Performance Bond.

### **3.5 Establishment and Ownership of the Licensee; Sale of the Businesses and Issuance of the Licenses**

(a) Within three days after publication of the decree referred to in Clause 3.1(p), the HCP and the TRA will jointly issue a confirmation letter to each Winning Bidder that it has been selected as the purchaser of the relevant Combination.

(b) Following the receipt of such confirmation letter:

(1) Within 14 days after the issuance of the confirmation letter, each Winning Bidder must post a performance bond in the form attached as **Appendix 3.5(b)** in an amount equal to 10% of such Winning Bidder's total bid amount. Following receipt of the duly issued performance bond, the HCP will arrange for the cancellation and return of the bid bond to the relevant Winning Bidder.

(2) Within 30 days after the issuance of the confirmation letter, each Winning Bidder must provide the HCP and the TRA with all relevant details regarding the joint stock company which must be established under the laws of the Republic of Lebanon to own and operate the Business and to be issued the License, including the form of bylaws and the proposed capital structure. The proposed bylaws must provide that:

(A) as long as the Republic of Lebanon or its designee owns at least [5]% of the shares of the Licensee, the Republic of Lebanon or its designee as shareholder will have the right to nominate and appoint one director of the Licensee, and such director will have access to all information relating to the Licensee as reasonably required to prepare and coordinate the IPO, but such director must not have any conflicts of interest, such as those arising from being a director, executive, employee, or shareholder of any other telecommunications service provider in Lebanon; and

(B) until the Lapse Date, no dividends or other distributions to shareholders may be made without the consent of the director representing the Republic of Lebanon or its designee or of the Republic of Lebanon (or its designee) as a shareholder.

The proposed bylaws must otherwise be in form and substance acceptable to the HCP and the TRA as contemplated in paragraph (3) below and, until the Lapse Date, the objects of the prospective Licensee entity must be initially limited to the ownership, development and operation of the relevant Combination, the holding of the License, the financing of the foregoing and activities

related or incidental thereto. The capital structure, legal form and other matters related to the Licensee must otherwise comply with all applicable requirements of Lebanese law and this RFA and be consistent with the structure and information set out in the Application; these requirements include that a majority of the Licensee's board of directors and the chairman thereof must be Lebanese nationals. The HCP and the TRA may, but will not be obligated to, prepare and circulate to the Applicants a form of bylaws of the proposed Licensees.

- (3) Within 15 days after receipt of the information requested to be provided pursuant to Clause 3.5(b)(2) above, the HCP and the TRA will jointly provide the Winning Bidder with any comments and amendments to the form of bylaws (unless they were prepared by the HCP and the TRA) and other documents provided by the Winning Bidder, such comments to be limited to verifying compliance with applicable requirements of Lebanese law and this RFA (provided that neither the HCP nor the TRA nor the Republic of Lebanon or any of its agencies makes any representations or will have any liability vis-à-vis the Winning Bidder and the Licensee for compliance or failure to comply with applicable requirements of Lebanese Law and this RFA).
- (4) Within 15 days after agreement between the HCP, the TRA and the Winning Bidder on the bylaws and other documents relating to the establishment of the proposed Licensee entity, the Winning Bidder will take all steps necessary to form and register, and will cause the proposed Licensee entity to be formed and registered, as a joint stock company under the laws of the Republic of Lebanon, in compliance with the terms hereof.
- (5) Within 7 days after the establishment of the prospective Licensee entity and its registration in the Registry of Commerce of Beirut,
  - (A) an amount equal to 40% of the Winning Bid Amount (subject to paragraph (d) below) must be paid into an account designated by the HCP in immediately available US dollar funds; and
  - (B) the prospective Licensee entity will execute and deliver the Acquisition Documents in the form circulated by the HCP and the TRA prior to the commencement of the Auction, subject to insertion of missing information, such as the purchase price.
- (c) Upon satisfaction of the conditions precedent set forth in Clauses 3.5(a) and (b) of this RFA, and any other conditions precedent to the issuance of the License, the HCP and the TRA, together with each prospective Licensee entity, are expected to close the acquisition of the relevant Combination. At each such closing:

- (1) 60% of the Winning Bid Amount (subject to paragraph (d) below) must be paid into the account designated by the HCP in immediately available US dollar funds;
  - (2) the TRA will issue the relevant License to the prospective Licensee entity;
  - (3) the HCP will deliver or cause the delivery to the Licensee of possession and ownership of the acquired assets and assumed liabilities and contracts of the relevant Business pursuant to the terms of the Acquisition Documents, but the transfer of the title to and possession of the acquired assets may take place within two weeks following the relevant closing, if the HCP and the TRA deem such delay to be conducive to a smooth handover of the Business from the relevant current operator to the Licensee; and
  - (4) the parties will enter into such further transactions, sign such further documents, and make such further deliveries as may be necessary or appropriate to give effect to the intent and purposes of this RFA.
- (d) The Republic of Lebanon or its designee will receive free and clear title to fully paid shares of the prospective Licensee entity representing one-third of all of the issued and outstanding share capital of the Licensee. The payments of the Winning Bid Amount will be subject to setoff, credit or similar arrangement as required to ensure that the Republic of Lebanon receives funds equal to the Winning Bid Amount less the economic value of the shares in the prospective Licensee entity delivered to the Government. .. The HCP and the TRA will jointly provide the details of the timing and mechanics of the payments and delivery of shares under paragraphs (b) and (c) above.
- (e) Until the Lapse Date, the Licensee will be obligated to maintain a Debt to equity ratio not exceeding 60:40 (so that Debt will not exceed 150% of equity) unless otherwise agreed by the director representing the Republic of Lebanon or its designee or by the Republic of Lebanon (or its designee) as a shareholder.

### **3.6 Initial Public Offering**

- (a) All of the shares to be held by the Republic of Lebanon or its designee in each of the prospective Licensee entities are intended to be sold in an initial public offering of such shares (“**IPO**”) to be conducted by the HCP on the Beirut Stock Exchange prior to the date of issuance of the License (if market and other conditions permit) or otherwise on or before the first anniversary of the date of incorporation of the relevant Licensee. If the IPO takes place at any time during the period between the date of incorporation of the prospective Licensee entity and the date which is 30 days following the date of issuance of the relevant License (the “**Initial IPO Period**”), the price at which the shares are expected to be offered must be equal to the price paid for similar shares by the Winning Bidder, less sales commissions. Following expiration of the Initial IPO Period, the Republic of Lebanon will be free to set the offer price of the shares as it deems appropriate, but not below the price paid for similar shares by the Winning Bidder, less sales commissions. The Republic of Lebanon

reserves the right in its sole discretion to amend these provisions relating to the offer price for the shares to be sold in any IPO, without any liability of the relevant Winning Bidder, the Licensee or any other party. . It is expected that the initial placement and ownership of these shares will be restricted to Lebanese nationals in compliance with Article 78 of the Lebanese Code of Commerce, which mandates that one-third of the share capital of any entity engaged in the provision of a public service in the Republic of Lebanon must be held by Lebanese nationals.

- (b) The Winning Bidder and the Licensee will be obligated to provide all necessary support for the IPO, including but not limited to:
  - (1) preparing or assisting in the preparation of an information memorandum and any additional offering materials setting out information regarding the Licensee and its shareholders, including prospective plans, as may be necessary or appropriate to market the shares and comply with legal requirements and applicable market standards;
  - (2) taking responsibility for such information vis-à-vis the managers of the IPO and prospective investors, as required by applicable rules and regulations and market standards;
  - (3) refraining from conducting any direct or indirect public offering of securities in the Licensee or which may otherwise compete or interfere with the success of the IPO, as determined by the Republic of Lebanon and the managers of the IPO; and
  - (4) otherwise provide any assistance and take any other action as may be reasonably required by the Republic of Lebanon or the managers of the IPO for the success of the IPO.
- (c) The expenses of the IPO will be borne by the Republic of Lebanon, except for the direct expenses of the Winning Bidder and the Licensee in assisting the Republic of Lebanon (which will be borne by the Winning Bidder and the Licensee).
- (d) To the extent required, the Republic of Lebanon, as an initial shareholder in the two prospective Licensee entities, may provide non-interference assurances to the commercial independence of each such prospective Licensee entity, without prejudice to the Republic of Lebanon's rights as a minority shareholder.

#### **4. INSTRUCTIONS FOR APPLICATIONS**

##### **4.1 Cover Letter**

Each Application must be prefaced by a duly completed cover letter in the form of **Appendix 4.1(a)** to this RFA, dated and signed by an authorized signatory of the Applicant if it is a separate legal Person and each Consortium member if the Applicant is a Consortium.

## 4.2 Information about the Applicant

Each Application must include the following information about the Applicant:

- (a) the Applicant's name and, unless the Applicant is an unincorporated Consortium with no separate legal existence, type of Person, jurisdiction of incorporation or residence, registered office and registered agent, principal business address, nature of business and other relevant information;
- (b) if the Applicant is a Consortium, the identity of all Consortium members, including name, type of Person, jurisdiction of incorporation or residence, registered office and registered agent, principal business address, nature of business and other relevant information;
- (c) the identity of all individuals who are duly authorised to act as representatives of the Applicant, and, if it is a Consortium, each Consortium member, to sign and deliver the Application, submit bids in the Auctions and otherwise act on behalf of the relevant Person in connection with the Tender Process, including relevant documentation to demonstrate the authority of each such individual;
- (d) a chart showing the identity and other information of the type described in Clauses 4.2(a) and (b) of the Person that is the ultimate parent, and of all intermediate entities, of the Applicant and, if the Applicant is a Consortium, each Consortium member, where "ultimate parent" means any Person that controls another Person whether by ownership of equity, contract or otherwise but is not itself controlled by any other Person, and an "intermediate entity" of two Persons means a Person that controls one of the two Persons and is controlled by the other Person;
- (e) identification of whether the Applicant itself is an MNO or, if the Applicant is a Consortium, the identity of the MNO or its Affiliate that is a member of the Consortium, and details of the network implementation and operations experience of the MNO and its Affiliates such as length and breadth of experience with similar technologies, rollouts and operations, scope of Mobile Services provided, and number and type of Subscribers by segment and market, including market share achieved, and evidence of good standing of the MNO with the regulatory authority(ies) in the market(s) it uses to demonstrate its other qualifications (such evidence should be a certificate from such regulatory authority(ies), failing which a certificate of the MNO or its Affiliates certifying as to such good standing);
- (f) financial statements, including balance sheet, income statement and cash flow statement, for the Applicant, unless the Applicant is an unincorporated association with no separate legal existence, and otherwise for all Consortium members, in each case for the previous two fiscal years or such shorter period of time as the relevant Person may have been in existence, which statements must have been prepared in accordance with generally accepted accounting principles consistently applied and must have been audited by a reputable firm of auditors for the most recent period submitted (and a Consortium member may for any reason, for example if it is a special purpose vehicle, also submit financial statements of an Affiliate and evidence of such Affiliate's commitment

to fund such Consortium member's obligations related to this Tender Process and the Licensee);

- (g) a copy of all agreements between and among the Consortium members and their Affiliates in respect of the Application, the Tender Process, the Auctions and/or subject matter of this RFA, including any "side letters" or other such ancillary agreements;
- (h) any other documentation required to demonstrate that the Consortium and its members satisfy the requirements set forth in Clause 3.2 of this RFA; and
- (i) a certificate that all material agreements and documents regarding the Consortium and the bid have been disclosed and that there are no other facts the omission of which would make the information disclosed inaccurate or incomplete.

#### **4.3 Information about the Proposed Licensee**

Each Application must include the following information about the proposed Licensee:

- (a) details of the proposed ownership structure of the Licensee, including, if the Applicant is a Consortium, the proposed percentage equity ownership in the Licensee of each Consortium member (after giving effect to the equity required to be transferred to the Republic of Lebanon or its designee pursuant to this RFA);
- (b) draft organisational documents for the Licensee, such as articles of incorporation, bylaws, shareholders agreements or other documents of similar import depending on the proposed type of legal Person of the Licensee; and
- (c) the proposed capital of the Licensee.

#### **4.4 Management Agreement**

- (a) Subject to Clause 4.4(b) of this RFA, each Applicant must submit a copy of the draft management agreement pursuant to which the Licensee will be provided with access to the technology, professional know-how, and operational and management experience of the MNO required to operate the Mobile Network and provide Mobile Services. The management agreement should address the organisational structure of the proposed Licensee, emphasising project management, system design, technical support, implementation, marketing, sales, operations and maintenance, and the functions and responsibilities of the MNO or its Affiliate relating thereto. The management agreement must have a term of at least five years. After the Application has been submitted, the Applicant may not make any material change in the management agreement without the prior approval of the TRA.
- (b) An Applicant whose MNO or its Affiliate has committed to own at least 50% of the equity of the Licensee for at least five years is not required to submit a draft management agreement.

#### 4.5 Information about the Proposed Business and Mobile Network Operations

Applicants should provide information regarding their proposed business and technical plans, including the following information:

- (a) high level corporate strategy, including sales and marketing plan, and how it would contribute to Lebanon's telecommunications market;
- (b) a financial summary using the pro-forma financial summary form attached as **Appendix 4.5(b)**, and a detailed financial plan for the first five years after the acquisition of the Combination, including projected revenues, profits and losses, cash flows and balance sheets, a detailed set of key assumptions driving the revenues model as well as a bottom up analysis of capital and operating costs for the services and supporting networks and systems, but which should exclude any pre-Auction bid amount and assume for all purposes in the financial summary and financial plan that the bid price is zero and that the revenue share is 10%;
- (c) technical plans including the following information:
  - (1) network upgrades, coverage and rollout commitments, including types of services and their roll-out plan, technical quality of services commitments per phase, the roll-out plan for each of the first five years of operation which will meet or exceed the minimum requirements set forth in the License as specified in the Information Memorandum, and the proposed launch dates for new or upgraded service offerings; and
  - (2) operations plans and technical plans, including
    - (A) network and component hierarchy;
    - (B) network capacity in terms of the number of Subscribers capable of being supported and relevant metrics per Subscriber;
    - (C) the expected usage, if any, of facilities of current telecommunication service providers (e.g. radio infrastructure, leased lines etc.);
    - (D) radio frequency requirements for transmission links (including information concerning the frequency bands, number of channels and the anticipated use);
    - (E) any plans the Applicant may have to establish an IP-based network for backhaul and a description of the proposed network infrastructure;
    - (F) an international access plan;
    - (G) a description of the technique to be used for optimal spectrum utilization;

- (H) a description of the technology to be employed and the applicable network standards (including any geographic restrictions to availability of enhanced services);
- (I) the extent to which technical evolution is planned over a five-year period, including an outline of how the migration from initial to subsequent technologies will be managed (if applicable);
- (J) a description of the proposed approach to the operation of the Mobile Services in Lebanon;
- (K) mobile number portability plans;
- (L) a description of proposed methods for addressing national security and other security issues, including collection and use of location-based information and other methods; and
- (M) the proposed quality standards and reporting arrangements for network performance monitoring, call metering and billing, maintenance procedures and systems, and customer care and after sales support.

#### **4.6 Pre-Auction Bids**

Each Application must include, in a separate sealed envelope, two pre-Auction bids for each Combination for which the Applicant intends to bid in the Auction. Specifically, for each such Combination, each Applicant must submit one pre-Auction bid (the “**0% Revenue Share Bid**”) that assumes the Licensee will not be required to pay a revenue share to the Republic of Lebanon and another pre-Auction bid (the “**10% Revenue Share Bid**”) that assumes the Licensee will be required to pay a 10% revenue share to the Republic of Lebanon. The 0% Revenue Share Bid and the 10% Revenue Share Bid must be on the forms set forth as **Appendices 4.6(a)** and **4.6(b)** of this RFA.

#### **4.7 Bid Bond**

Each Application must include a bid bond in the face amount of US\$50,000,000, in the form of **Appendix 4.7** to this RFA and issued by Qualified Bank.

### **5. PROCEDURE FOR FILING AN APPLICATION**

- 5.1** The first and final pages of the original Application must be signed by an authorised signatory of the Applicant or, if it is a Consortium, each Consortium member. Each of the other pages must be stamped and/or initialed by each such authorised signatory.
- 5.2** An original and five paper copies of the Application, together with electronic copies as required under Clause 5.6, must be packaged together in one or more boxes. Each such box must be sealed, packed and closed, so that it is not possible to open it without visual evidence. Improperly marked or sealed packages may be rejected.

- 5.3** Each of the original and five copies of the Application packaged together in the boxes must be submitted in separate sealed envelopes clearly marked "Application for License to provide a Mobile Network and Mobile Services." The original and each of the five copies must be respectively marked as "original" and "copy." In the event of any discrepancy between the original and the copies, the original will prevail. Envelopes must be sealed so that it is not possible to open them without visual evidence.
- 5.4** Applicants should submit Applications that are complete but concise. The size of an Application should not be greater than 100 pages of A4 in type no less than 10 points (other than smaller type fonts on photocopies of documents required to be provided with an Application but not prepared for purposes of the Application). Supporting documentation, such as agreements among Consortium members and financial statements of Consortium members for example, are not included in the page limit. All pages of an Application must be numbered.
- 5.5** Applicants must also submit electronic versions of their Applications, including financial plans in the form of Microsoft Excel® spreadsheets, containing any embedded formulas that enable search capabilities of the Application in non-rewritable CD-ROM format (Adobe Acrobat®, Microsoft Word®, Microsoft PowerPoint®, Microsoft Excel® or HTML) in each of the original and the five copies of their Applications.
- 5.6** Applicants must deliver the boxes by hand or by courier to the TRA at the address set out in Clause 6.8(a)(2) below.
- 5.7** The original and all copies of the Application must be typed or written in indelible ink.
- 5.8** Applications must contain no interlineations, erasures or overwriting except as necessary to correct errors made by the Applicant, in which case the Person or Persons signing the Application should initial each correction.
- 5.9** Failure by any Applicant to provide all of the information required in the Application or any additional information required by the HCP and the TRA may lead to the rejection of such Application in its entirety. Incomplete Applications may be disqualified, although the HCP and the TRA reserve the right, in their sole discretion, to notify the relevant Applicant and offer an opportunity to correct any technical deficiencies.

## **6. GENERAL PROVISIONS**

### **6.1 Confidentiality of Applications**

- (a) Except as otherwise provided, the HCP and the TRA will treat all Applications received in relation to this RFA as confidential during the period before the award of Licenses but Applications will not be returned to Applicants.
- (b) Claims of confidentiality and the treatment of any information for which confidentiality is claimed are subject to applicable laws, regulations, decrees and orders.

- (c) No Official will be liable in any respect whatsoever to any Applicant or any of its members or representatives for damages or harm resulting from a failure to maintain such confidentiality.

## **6.2 HCP and TRA Use of Applications**

Subject to applicable patent, copyright, trade secret, trademark and similar laws, and subject to the requirement to destroy certain pre-Auction bids as set forth in this RFA, the HCP and the TRA will have the right to use or reproduce ideas and information contained in an Application without notice or compensation of any kind to the Applicant. Applicants are advised to indicate clearly in their Applications any intellectual property rights that they assert to be applicable to the contents thereof with specific reference to the relevant contents

## **6.3 Fees and Costs of Applications, Proposals and Tender Process**

All fees paid to the TRA by Applicants are non-refundable, regardless of whether the Applicant continues in the Tender Process and regardless of the outcome of the Tender Process. Each Applicant will bear all costs associated with the preparation and filing of its Application. No Official will be responsible for these costs, regardless of the conduct or outcome of the Tender Process.

## **6.4 Reservation of Rights**

- (a) This RFA and certain other information are and will be available to all interested parties on the Tender Website. The Information Memorandum, the Acquisition Documents and other information not supplied on the Tender Website will be available in the online data room to Eligible Parties who enter into a non-disclosure agreement and acknowledgement of the data room rules and procedures. All such information is provided to Applicants on the terms and conditions set out in this RFA and, if applicable, the non-disclosure agreement and the data room rules and procedures.
- (b) Except for the Acquisition Documents if and when executed and delivered and the Licenses if and when awarded, in each case to the Winning Bidders as set forth herein, neither this RFA nor the Information Memorandum nor other document published on the Tender Website, made available in the online data room or otherwise made available to Applicants or other Persons in connection with the Tender Process constitutes a binding agreement or offer by the TRA, the HCP or any other Official to any other Person. This RFA does not purport to contain all the information each Applicant may require. It is not the role of any Official to consider the investment objectives, financial situation or particular needs of any Applicant. No representation or warranty, expressed or implied, is made by any Official as to the accuracy, reliability or completeness of the information provided and no Official will have any liability whatsoever to any Applicant or, where applicable, to any of its Consortium members, owners or shareholders or any other Person resulting from use of or reliance on any of the information so provided. Each Applicant should conduct its own investigations and analysis and should verify the accuracy, reliability and completeness of the information set out in this RFA, the Information

Memorandum, the online data room and otherwise, and should obtain independent advice from appropriate sources prior to use of or reliance on such information.

- (c) Notwithstanding any other provisions in this RFA, for whatever reason and without incurring any costs or liabilities or any obligation to inform the Applicants of the reasons for its actions, the Republic of Lebanon, the HCP and the TRA reserve the absolute and unfettered right, in their sole discretion:
  - (1) to take any action, including amending, updating and supplementing this RFA and the Information Memorandum and any other relevant documents, as they consider necessary;
  - (2) to modify the Tender Process set out in this RFA and any other relevant documents;
  - (3) to accept or reject any Application for any reason and to waive any informalities or defects in Applications received;
  - (4) to annul, postpone and/or terminate the Tender Process or revoke the sale of a Combination at any time before the same is completed; and
  - (5) to qualify or fail to qualify any one or more Applicants who have filed an Application to proceed to the next stage of the Tender Process or otherwise to be eligible to participate in the process for the acquisition of a Combination.
- (d) Neither the Republic of Lebanon nor the HCP or the TRA are legally obliged to sell either Combination to any Applicant.
- (e) Neither the Republic of Lebanon nor any Official nor any of their respective external advisers will incur any liability whatsoever to any Applicant or, where applicable, to any of its Consortium members, owners or shareholders or any other Person by reason of any decision made or not made or action taken or not taken by any Official or any other Person in connection with changes to this RFA and related documents, the evaluation and selection of an Applicant, the carrying out or termination of the Tender Process, and the IPOs.

## **6.5 Other Provisions**

- (a) Each member of a Consortium which submits an Application will be deemed to have committed that it is not, and will not become or seek to become, involved with any other Applicant Consortium at any time during the Tender Process.
- (b) The TRA and HCP may refuse to accept or evaluate Applicants and remove them from further consideration for any reason, including but not limited to those reasons set out below:
  - (1) failure to comply with any of the procedures or other requirements established by this RFA;

- (2) illegal conduct by or on behalf of the Applicant or any of its Consortium members related to the Tender Process;
  - (3) any attempts by or on behalf of the Applicant or any of its Consortium members to influence the evaluation of Applications;
  - (4) any corrupt practice by or on behalf of the Applicant or any of its Consortium members, including the offering, giving, receiving or soliciting of any thing of value to influence the action of an Official in relation to the Tender Process;
  - (5) any fraudulent practice by or on behalf of the Applicant or any of its Consortium members, including misrepresentations of fact or intention, and collusive practices, prior to or after submission of Applications, designed to undermine the integrity of the Tender Process or the competitiveness of the Auctions; or
  - (6) any other reason they deem appropriate.
- (c) Applicants, their Consortium members, and their respective employees, agents and advisers, are not allowed to contact any Official in any way whatsoever in order to seek clarifications or other information regarding this RFA document other than by the means given in this RFA. Any breach of this requirement will result in the disqualification of the Applicant.
- (d) If at any time the HCP or the TRA learns that any of the activities referred to in Clause 6.5(b) or (c) of this RFA has occurred, then the HCP may rescind the sale of the relevant Business and the TRA may revoke the relevant License without compensation. The provisions of this Clause are in addition to any criminal or civil legal action that may be available to or taken by any government entity or regulatory authority, including the TRA.

## **6.6 Actions and Payments to be made**

- (a) In respect of all actions to be taken by the HCP hereunder, the HCP shall be represented by its Secretary General and in respect of all actions to be taken by the TRA hereunder, the TRA shall be represented by its Chairman.
- (b) Except for the payments to be made pursuant to Clauses 3.1(b) and 3.1(h), all payments to be made hereunder shall be to an account of the Republic of Lebanon designated by the HCP in immediately available and freely transferable US dollars free and clear of and without any deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

## **6.7 Legal and Formal Requirements**

- (a) This RFA and the Licenses to be issued in connection herewith shall be governed by and construed in accordance with the laws of the Republic of Lebanon.

- (b) The competent courts of Lebanon will have exclusive jurisdiction in respect of any dispute arising out of or in connection with this RFA.
- (c) All Applications and associated documentation must be filed in the English language, and all proceedings and communications relating to this RFA and the Tender Process will be in the English language.
- (d) All currency amounts in this RFA are expressed in US dollars and all currency amounts in the Application must also be expressed in US dollars.
- (e) All dates and time period used in this RFA and in the Tender Process will be according to the Gregorian calendar unless otherwise specified.

#### **6.8 Communications in Connection with the Licensing Process**

- (a) All correspondence with the HCP and the TRA, other than the filing of the Application, must be submitted to either of the following addresses:

- (1) To the HCP:

By email to:

hcp@hcp.gov.lb

By hand or courier to:

Mr. Ziad Hayek  
Secretary General  
The Higher Council for Privatization of Lebanon (HCP)  
*Grand Sérail* -Beirut Central District  
Beirut-Lebanon

- (2) To the TRA:

By email to:

mobile\_licensing\_2007@tra.gov.lb

By hand or by courier to:

Dr. Kamal Shehadi  
Chairman and CEO  
Telecommunications Regulatory Authority, Lebanon  
Marfaa 200 Building  
Beirut Central District  
Beirut-Lebanon

- (b) All correspondence should contain the name, address, fax number and email address of the sender for the dispatch of any written response.

**APPENDIX 3.1(b)**  
**FORM OF EXPRESSION OF INTEREST**

*(To be prepared on the stationery of the interested party submitting it)*

Attention:

Dr. Kamal Shehadi  
Chairman and CEO  
Telecommunications Regulatory Authority of Lebanon (TRA)  
Marfaa 200 Building  
Beirut Central District  
Beirut-Lebanon

Mr. Ziad Hayek  
Secretary General  
The Higher Council for Privatization of Lebanon (HCP)  
*Grand Sérail* -Beirut Central District  
Beirut-Lebanon

Dear Sirs:

We refer to the Request for Applications published by the HCP and the TRA in connection with the tender process for the businesses of two mobile network operators and related 20-year Licenses.

We wish to express formally our interest in conducting due diligence on such businesses and/or submitting questions to the HCP and the TRA pursuant to Clause 3.1(b) of the RFA.

We understand that this expression of interest is not legally binding and does not oblige the HCP or the TRA in any manner towards our company in connection with the tender process.

We enclose a bank check in the amount of US\$50,000 in favour of the TRA.

The name and email address of the individual (who we may change by written notice to you) who we have authorised to send and receive all communications regarding any matter relating to the tender process are as follows:

[insert name and email address of authorised individual]

Date:

Submitted by:

[Name]  
[Title]  
[Company]  
[Address]  
[Tel/Fax No.]  
[e-mail address]

**APPENDIX 3.1(c-1)**  
**FORM OF NON-DISCLOSURE AGREEMENT**

**APPENDIX 3.1(c-2)**  
**DATA ROOM RULES AND PROCEDURES**

**APPENDIX 3.5(b)**  
**FORM OF PERFORMANCE BOND**

**THIS PERFORMANCE BOND** is made on \_\_\_\_\_, 2007.

**BY:**

- (1) [Bank], a [joint stock company (*société anonyme libanaise*)] [banking corporation] incorporated in [the Republic of Lebanon] [ ] whose registered office/principal place of business [in the Republic of Lebanon] is at [ ] or insert name and jurisdiction of incorporation and address of the international Qualified Bank (the "Bank"),

**IN FAVOUR OF:**

- (2) The Higher Council for Privatization of the Lebanese Republic (the "HCP").

**WHEREAS:**

Pursuant to the Request for Applications, it is an obligation of the Winning Bidder and a condition precedent to the acquisition of a Combination that this Performance Bond be issued by a Qualified Bank in favor of the HCP.

**1. INTERPRETATION**

**1.1 Definitions**

In this Performance Bond:

"Acquisition Documents" means the sale and purchase agreement and other documents to be entered into between the Republic and the Winning Bidder regarding the sale and purchase of the Business;

"Auction" means the public auction of each Business and License combination to be conducted by the HCP and the TRA in connection with the Tender Process;

"Bonded Sum" means 10% of the Winning Bid Amount;

"Business Day" means a day other than a Saturday or Sunday on which banks in Lebanon are open for general business;

"Business" means the subscriber contracts, mobile network and certain other assets and liabilities of [Mobile Interim Company 1 S.A.L.] [Mobile Interim Company 2 S.A.L.], a Lebanese joint-stock company established on behalf of the Republic of Lebanon to own or lease certain mobile network assets, and assume the related contracts, previously owned and operated pursuant to two build, operate and transfer contracts;

"Combination" means the combined Business and License;

"Council of Ministers" means the Council of Ministers of the Lebanese Republic;

"Law No.431" means Law No. 431 of the Lebanese Republic which was enacted on July 22, 2007, published in the Official Gazette No.41 dated July 23, 2007, and its implementing decrees and decisions, including Decree No. 13944, dated January 4, 2005, Decree No. 14264, dated March 4, 2005, Decree No. 1, dated February 8, 2007 and Decision of the Council of Ministers No. [●], dated [●] regarding the conduct of the Auction;

"License" means a license issued by the TRA, and approved in a decree to be issued by the Council of Ministers, to build, own and operate a mobile network and provide mobile services in Lebanon;

"Qualified Bank" means (a) a bank established under the laws of the Republic of Lebanon with minimum assets, as at the date of the last audited balance sheet of US\$3 billion or its equivalent in Lebanese Pounds; or (b) an international bank, acceptable to the HCP, with minimum assets, as at the date of the last audited balance sheet, of US\$10 billion and possessing a current credit rating of A or higher from Standard and Poor's or Fitch IBCA or A1 or higher from Moody's;

"Republic" means the Republic of Lebanon acting through an authorized representative or body;

"Request for Applications" or "RFA" means the rules and procedures dated October 15, 2007, as amended from time to time, governing the Auction, issued by the HCP and the TRA, a copy of which has been published by the HCP and the TRA;

"Tender Process" means the tender process for the Combinations as set out in this RFA, the Information Memorandum (as defined in the RFA) and other applicable documents and communications, as the same may be modified, supplemented or withdrawn from time to time;

"TRA" means the Telecommunications Regulatory Authority of the Lebanese Republic;

"Winning Bid Amount" means, in respect of the Combination, the all-cash winning bid for the purchase (expressed in US dollars) of 100% of such Combination as selected and announced by the Council of Ministers;

a "Winning Bidder" means in respect of either Combination, the winning bidder as selected and announced by the Council of Ministers; and

the "Winning Bidder" means [●].

## 1.2 **Construction**

In this Performance Bond, unless the contrary intention appears, a reference to:

- (i) any document shall include that document as it may be amended, novated or supplemented from time to time;

- (ii) a Clause is a reference to a Clause of this Performance Bond;
- (iii) a person includes its successors and assigns; and
- (iv) headings are for convenience only and are to be ignored in construing this Performance Bond.

## 2. **PERFORMANCE BOND**

### 2.1 On the occurrence of any of the following events:

- (i) any failure by the Winning Bidder to pay any portion of the Winning Bid Amount or any other amount due to the Republic pursuant to the RFA, the Acquisition Documents or otherwise in respect of the Auction or the Tender Process;
- (ii) any failure by the Winning Bidder to perform any of its obligations under the RFA, including the failure to establish and incorporate the Licensee pursuant to the laws of the Republic, the failure to issue shares in the Licensee and the failure to deliver shares of the Licensee to the Republic or its designee representing one-third of all of the issued and outstanding share capital of the Licensee; or
- (iii) any other failure by the Winning Bidder or the Licensee to comply fully with any other obligations and undertakings provided for in the RFA, the Acquisition Documents or otherwise in respect of the Auction or the Tender Process,

the Bank undertakes to the HCP that it will, upon first written demand by the HCP, notwithstanding any objection which may be made by the Winning Bidder or any other person and without requiring or obtaining any evidence or proof that the relevant events have in fact occurred, pay, satisfy and discharge without any delay the Bonded Sum.

- 2.2 The obligations under this Performance Bond constitute direct primary, irrevocable and unconditional obligations of the Bank.
- 2.3 This Performance Bond shall continue in full force and effect until either payment by the Bank to the HCP of the Bonded Sum in full, in accordance with sub-Clause 2.1, and of the aggregate of all sums payable under Clauses 5 and 8, or the release of this Performance Bond by the HCP in accordance with sub-Clause 2.4.
- 2.4 This Performance Bond shall be released by the HCP on the later of the date of closing pursuant to the Acquisition Documents and the date of issuance of the License, provided always that this Performance Bond is released no later than 12 months from the date hereof.

## 3. **INDEMNITY**

As a separate, additional, continuing, primary and direct obligation, the Bank hereby unconditionally and irrevocably undertakes to the HCP that, should the

Bonded Sum not be recoverable from the Bank under Clause 2 for any reason, then, notwithstanding that the reason may have been known to the Bank or the HCP, the Bank shall, upon first written demand by the HCP, indemnify the HCP 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 Performance Bond.

**4. MAXIMUM LIMIT**

The maximum amount for which the Bank shall be liable under this Performance Bond shall not exceed the aggregate of:

- (i) the Bonded Sum; and
- (ii) the aggregate of all sums payable under Clauses 5 and 8.

**5. INTEREST AND COSTS**

The Bank shall pay interest on the Bonded Sum from the date of demand to the date of payment in full (both dates inclusive) compounded quarterly (both before and after any arbitral award) at 10 per cent. per annum. The interest shall be payable on demand and shall accrue from day to day on the basis of the number of days elapsed and a 360 day year.

**6. WAIVER OF NOTICES ETC.**

The Bank hereby unconditionally waives, to the fullest extent permitted by applicable law:

- (i) any and all notices which may be required by statute, rule of law or otherwise to preserve intact any rights of the HCP against the Winning Bidder, including, without limitation, any demand, presentment, protest or notice of acceptance, notice of any liability to which this Performance Bond may apply or proof of notice of non-payment;
- (ii) promptness, diligence and any right to the enforcement, assertion or exercise by the HCP of any right, power, privilege or remedy;
- (iii) any amendment, supplement or modification of the RFA, the Acquisition Documents, the License or any other document related thereto;
- (iv) any requirement that the HCP or any other person exhaust any right, power, privilege or remedy, or mitigate any damages resulting from a default, in respect of the Bonded Sum, or proceed or take any action against the HCP or any other person under or in respect of the Bonded Sum, or protect, secure, perfect or ensure any lien or security interest on any property at any time constituting collateral security for the Bonded Sum;
- (v) any rights of discussion or divisibility it may have under Lebanese law; and
- (vi) the liquidation, administration, dissolution, lack of capacity or authority, or any change in the name or consultation of the Winning Bidder or the Bank.

7. **ADDITIONAL SECURITY**

This Performance Bond is in addition to and not in substitution for or prejudiced by any present and future guarantee, lien or other security held by the HCP as security for the obligations of the Winning Bidder. The rights, powers and remedies of the HCP under this Performance Bond are in addition to and not exclusive of those provided by law.

8. **NO DEDUCTIONS AND TAXES**

All sums payable by the Bank under this Performance Bond shall be paid in full in immediately available and freely transferable US dollars 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, levies, imposts, duties, fees or other charges of any nature whatsoever and by whomsoever imposed. If any payment is subject to any tax, duty or charge, or if the Bank is required by law to make any deduction or withholding, the Bank shall pay the tax, duty or charge and shall pay to the HCP any additional amounts as shall result in the HCP receiving a net amount equal to the full amount which it would have received had no payment, deduction or withholding been required.

9. **REPRESENTATIONS AND WARRANTIES**

The Bank hereby represents and warrants to the HCP as follows:

- (i) that this Performance Bond constitutes its legally binding obligation enforceable in accordance with its terms and does not conflict with any law, regulation or instrument binding on or relating to the Bank and that this Performance Bond is within its powers and has been duly authorised by it;
- (ii) that it is a Qualified Bank; and
- (iii) that the payment obligations of the Bank under this Performance Bond will constitute the direct, general, unconditional, unsubordinated and unsecured obligations of the Bank and will at all times rank at least *pari passu* in priority of payment with all other present and future unsecured and unsubordinated indebtedness of the Bank, except for any obligations that may be preferred by provisions of law that are both mandatory and of general application.

10. **UNDERTAKING**

The Bank undertakes with the HCP that, from the date of this Performance Bond until the Bonded Sum has been released to the Winning Bidder, it will not claim as a creditor of the Winning Bidder or any co-surety in competition with the HCP.

11. **INFORMATION AND CONSENTS**

- 11.1 The Bank shall supply the HCP with publicly available information as to itself and (if applicable) its subsidiaries as the HCP may reasonably request.

11.2 The Bank warrants that all consents, licenses and authorizations required or desirable under existing law for the entry into and performance by the Bank of its obligations under this Performance Bond have been obtained.

## 12. **NOTICES**

12.1 All notices, requests, demands or other communications arising out of or in connection with this Performance Bond shall be delivered in writing:

- (i) to the HCP at its address stated in the RFA;
- (ii) to the Bank, at its address stated in this Performance Bond.

12.2 The HCP and the Bank may change their respective nominated addresses for service of documents to another address in Lebanon by giving not less than five Business Days' prior written notice to each other. All notices, demands and communications must be in writing.

12.3 Any notice, demand or communication sent to the HCP or the Bank as provided in this Clause shall be deemed to have been given, if sent by post, two Business Days after posting (and in proving delivery it shall be sufficient to provide that the notice, demand or communication was properly addressed and put in the post), if delivered by hand, at the time of delivery or, if sent by facsimile, at the time of dispatch.

## 13. **ASSIGNMENTS**

The Bank shall not assign, transfer, novate or dispose of any of its rights and obligations under this Performance Bond. The HCP may assign all or any part of its rights and benefits under this Performance Bond at any time without the consent of the Winning Bidder or the Bank.

## 14. **REMEDIES AND WAIVERS**

No delay or omission of the HCP in exercising any right, power or remedy under this Performance Bond shall impair that right, power or remedy or constitute a waiver of it nor shall any single or partial exercise of any right, power or remedy preclude any other or farther exercise of it or the exercise of any other right, power or remedy. The rights, powers and remedies provided in this Performance Bond are cumulative and not exclusive of any rights, powers or remedies which the HCP would otherwise have.

## 15. **VALIDITY**

This Performance Bond shall not be valid with respect to any written notice received by the Bank after the date which is 12 months from the date of this Performance Bond and shall thereafter be null and void. When the validity of this Performance Bond has expired it must be returned to the Bank for cancellation but the Bank shall be released from any obligation hereunder even if, in breach of this provision, such return has not taken place.

16. **GOVERNING LAW**

This Performance Bond shall be governed by and construed in accordance with the laws of the Lebanese Republic.

17. **DISPUTE RESOLUTION**

The competent courts of the Lebanese Republic shall have exclusive jurisdiction in respect of any dispute arising out of or in connection with this Performance Bond.

**IN WITNESS** of which this Performance Bond has been signed on behalf of the Bank on the date which appears first on page 1.

[Bank]

By: \_\_\_\_\_  
Name:  
Title:  
Address:

**APPENDIX 4.1(a)**

**FORM OF COVER LETTER**

*(To be prepared on the stationery of the Applicant or submitting Consortium member.)*

Attention:

Dr. Kamal Shehadi  
Chairman and CEO  
Telecommunications Regulatory Authority of Lebanon (TRA)  
Marfaa 200 Building  
Beirut Central District  
Beirut-Lebanon

Mr. Ziad Hayek  
Secretary General  
The Higher Council for Privatization of Lebanon (HCP)  
*Grand Sérail* -Beirut Central District  
Beirut-Lebanon

[Insert Date]

Name of Applicant:

Dear Sirs:

**Re: Request for Applications to participate in the tender process for the businesses of two existing mobile network operators together with 20-year licenses in Lebanon**

1. Having examined the Request for Applications (“**RFA**”) issued by the HCP and the TRA, we the undersigned hereby submit an Application to acquire a Business and be awarded a License to build, own and operate a Mobile Network and provide Mobile Services in the Republic of Lebanon.
2. We have duly completed this letter and enclose herewith:
  - a. our Application including all the elements required under the RFA;
  - b. a bid bond (using the bid bond form attached as **Appendix 4.7** to the RFA).
3. We confirm our agreement to the terms, conditions and provisions of the RFA and associated documents.
4. We agree that, in the event of a discrepancy between this cover letter and the RFA, the RFA will prevail.
5. We confirm that all information provided in our Application and all associated documentation is complete, true and accurate in every detail and by virtue of

having submitted an Application, we are bound by the undertakings (but not the forecasts and financial projections) made by us.

6. For the avoidance of doubt:
  - a. In this letter and in our Application, words and expressions will have the same meanings as are respectively assigned to them in the RFA unless otherwise defined; and
  - b. This letter and all other documents comprising our Application will be governed by and construed in accordance with the laws of the Republic of Lebanon.
7. We undertake that, if we become a Qualified Applicant and the highest bidder in respect of one of the Combinations, we will:
  - a. Pay all required fees and amounts stipulated in the RFA, the Acquisition Documents and the Licenses;
  - b. Execute the Acquisition Documents in the form provided by the HCP on [●] (after consideration of comments received), subject only to completion by inserting of the missing information, including the Winning Bid Amount; and
  - c. Perform all other obligations required by and comply with all undertakings provided in the RFA and under applicable laws and regulations, as described in the Information Memorandum and as otherwise applicable.
8. We undertake that if we become the next highest bidder after the Prospective Winning Bidder in respect of one of the Combinations, our Application and our bids submitted in respect of such Combination will be open for acceptance by the Republic of Lebanon until and including that date which is 180 days from the deadline for submission of Applications.

Yours faithfully,

[Signature of Authorised Signatory(ies) of each Consortium member]

[Name of Authorised Signatory(ies) of each Consortium member]

[Name of Applicant / each Consortium member]

[Date]

**APPENDIX 4.5(b)**  
**FORM OF PRO-FORMA FINANCIAL SUMMARY**

Name of Applicant: .....

**Re: Request for Applications for the Licensing of Mobile Telecommunications Network and Services License in Lebanon.**

	Unit	Years after commercial launch				
		Year 1	Year 2	Year 3	Year 4	Year 5
<b><i>Operating Metrics</i></b>						
% Population Coverage	%					
Number of Base Stations	[●]					
Total Minutes of Usage	Millions					
Outgoing	Millions					
Incoming	Millions					
Number of Employees	00					
<b><i>Market/Revenue Assumptions</i></b>						
Population	Millions					
% Growth	%					
% Addressable Market	%					
Addressable Market	Millions					
Penetration	%					
Market Share	%					
Market Share of Gross Adds	%					
Market Churn	%					
Average Number of Subscribers	Millions					
% PostPaid Subscribers	%					
PostPaid ARPU	US\$					
Voice ARPU	US\$					
Data ARPU	US\$					
PrePaid ARPU	US\$					
Voice ARPU	US\$					
Data ARPU	US\$					
Average ARPU (PostPaid and Prepaid)	US\$					
Domestic Voice ARPU	US\$					
International Voice ARPU	US\$					
Data ARPU	US\$					
% Roaming Revenue	%					
Customer Roaming Revenue	US\$M					
Non Customer Roaming Revenue	US\$M					
Network Revenue	US\$M					
Equipment Revenue	US\$M					
Interconnect Revenue	US\$M					
Other Operating Revenue	US\$M					
<b>Revenue</b>	<b>US\$M</b>					
<b><i>Cost Structure</i></b>						
Average Acquisition Cost per Subscriber	US\$					
Marketing Cost per Subscriber	US\$					
Total Subscriber Acquisition Cost	US\$M					

<i>% of Revenue</i>	%
Average Administration Cost per Subscriber	US\$
Total Administration Cost	US\$M
<i>% of Revenue</i>	%
National Roaming Costs	US\$M
Interconnect Expenses	US\$M
Other Operating Expenses	US\$M
<b>Total Costs</b>	<b>US\$M</b>
<i>% of Revenue</i>	
<b>EBITDA</b>	<b>US\$M</b>
<i>% of Revenue</i>	
<b>EBIT</b>	<b>US\$M</b>
<i>% of Revenue</i>	
<b>Net Income</b>	<b>US\$M</b>
<i>% of Revenue</i>	
<b>Cash Flow Items</b>	
<b>Capital Expenditure</b>	<b>US\$M</b>
<i>% of Revenue %</i>	
<b>Cash Flow from Operations</b>	<b>US\$M</b>
<i>% of Revenue %</i>	
<b>Cash Flow from Financing</b>	<b>US\$M</b>
<i>% of Revenue %</i>	
<b>Net Cash Flow</b>	<b>US\$M</b>
<b>Financing Plan</b>	
Cash and cash equivalents	US\$M
Debt	US\$M
Equity	US\$M
<b>Total Sources of Financing (Debt and Equity)</b>	<b>US\$M</b>

[Signature of Authorised Signatory(ies) of each Consortium member]

[Name of Authorised Signatory(ies) of each Consortium member]

[Name of Applicant / each Consortium member]

[Date]

**APPENDIX 4.6 (a)**  
**FORM FOR 0% REVENUE SHARE PRE-AUCTION BID**  
**FOR [BUSINESS 1 AND LICENSE 1 / BUSINESS 2 AND LICENSE 2]**

We hereby submit a pre-Auction bid for [Business 1 and License 1 / Business 2 and License 2], assuming [0%] revenue share, in the amount of:

\_\_\_\_\_ DOLLARS

(US\$ \_\_\_\_\_)

subject to the terms and conditions set forth in the Request for Applications to participate in a Tender Process for the businesses of two existing mobile network operators together with 20-year Licenses.

Date:

For and on behalf of

[Signature of Authorised Signatory(ies) of each Consortium member]

[Name of Authorised Signatory(ies) of each Consortium member]

[Name of Applicant / each Consortium member]

[Date]

By:

Name:

Title

Address:

Tel/Fax No.:

e-mail address

**APPENDIX 4.6(b)**  
**FORM FOR 10% REVENUE SHARE PRE-AUCTION BID**  
**FOR [BUSINESS 1 AND LICENSE 1 / BUSINESS 2 AND LICENSE 2]**

We hereby submit a pre-Auction bid for [Business 1 and License 1 / Business 2 and License 2], assuming a [10%] revenue share, in the amount of:

US DOLLARS

(US\$ \_\_\_\_\_)

subject to the terms and conditions set forth in the Request for Applications to participate in a Tender Process for the businesses of two existing mobile network operators together with 20-year Licenses.

Date:

For and on behalf of

[Signature of Authorised Signatory(ies) of each Consortium member]  
[Name of Authorised Signatory(ies) of each Consortium member]  
[Name of Applicant / each Consortium member]  
[Date]

By:  
Name:  
Title  
Address:  
Tel/Fax No.:  
e-mail address

**APPENDIX 4.7  
FORM OF BID BOND**

Mr. Ziad Hayek  
Secretary General  
The Higher Council for Privatization of Lebanon (HCP)  
*Grand Sérail* -Beirut Central District  
Beirut-Lebanon

[INSERT DATE]

Dear Sirs:

Whereas our client, [Name of the Applicant] (referred to hereinafter as the "Applicant") is participating in a tender process leading to the acquisition of the subscribers, and certain of the related assets and liabilities, of each of the two existing state-owned mobile telecommunications operators, together, in each case, with the award of a 20-year license to build, own and operate a mobile telecommunications network and provide mobile telecommunications services in Lebanon;

And whereas the Request for Applications to participate in the tender process for the acquisition of the businesses of two existing mobile network operators together with 20-year licenses (the "RFA") provides that the Applicant must provide a Bid Bond;

We, [Name of Qualified Bank], hereby irrevocably and unconditionally undertake that, forthwith upon our receiving written notice from you stating that in your sole and absolute judgment the Applicant has failed to observe or perform any of the terms, conditions or provisions of the RFA on its part to be observed or performed, we will, notwithstanding any objection which may be made by the Applicant, pay to you or as you may direct such an amount as you may in such notice require not exceeding (when aggregated with any such amount(s) previously so paid) the amount of this Bond namely fifty million US Dollars (US\$ 50,000,000).

Our obligations hereunder constitute direct primary, irrevocable and unconditional obligations.

**VALIDITY OF THE BOND**

This Bond shall be valid from the date hereof and shall continue to be so valid with respect to any such written notice to us referred to above as is received by us not later than [●] or, if it be earlier and the Applicant's bid has been accepted, the date of delivery to you of the Performance Bond (as defined in the RFA). This Bond shall not be valid with respect to any written notice received by us after such date (or earlier date) and shall thereafter be null and void. When the validity of this Bond has expired it must be returned to us for cancellation but we shall be released from any obligation hereunder even if, in breach of this provision, such return has not taken place.

## **INDEMNITY**

As a separate, additional, continuing, primary and direct obligation, we hereby unconditionally and irrevocably undertake that, should the amount of this Bond not be recoverable from us for any reason, then, notwithstanding that the reason may have been known to us or you, we shall, upon first written demand by you, indemnify you 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 Bond.

## **INTEREST AND COSTS**

We shall pay interest on the amount of this Bond from the date of demand to the date of payment in full (both dates inclusive) compounded quarterly (both before and after any arbitral award) at 10 per cent. per annum. The interest shall be payable on demand and shall accrue from day to day on the basis of the number of days elapsed and a 360 day year.

## **WAIVER OF NOTICES ETC.**

We hereby unconditionally waive, to the fullest extent permitted by applicable law:

- (i) any and all notices which may be required by statute, rule of law or otherwise to preserve intact any rights of you against the Applicant, including, without limitation, any demand, presentment, protest or notice of acceptance, notice of any liability to which this Bond may apply or proof of notice of non-payment;
- (ii) promptness, diligence and any right to the enforcement, assertion or exercise by you of any right, power, privilege or remedy;
- (iii) any amendment, supplement or modification of the RFA, the Acquisition Documents, the License (as such terms are defined in the RFA) or any other document related thereto;
- (iv) any requirement that you or any other person exhaust any right, power, privilege or remedy, or mitigate any damages resulting from a default, in respect of the amount of this Bond, or proceed or take any action against you or any other person under or in respect of the amount of this Bond, or protect, secure, perfect or ensure any lien or security interest on any property at any time constituting collateral security for the amount of this Bond;
- (v) any rights of discussion or divisibility it may have under Lebanese law; and
- (vi) the liquidation, administration, dissolution, lack of capacity or authority, or any change in the name or consultation of the Applicant or us.

## **ADDITIONAL SECURITY**

This Bond is in addition to and not in substitution for or prejudiced by any present and future guarantee, lien or other security held by you as security for the obligations of the Applicant. Your rights, powers and remedies under this Bond are in addition to and not exclusive of those provided by law.

## **NO DEDUCTIONS AND TAXES**

All sums payable by us under this Bond shall be paid in full in immediately available and freely transferable US dollars 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, levies, imposts, duties, fees or other charges of any nature whatsoever and by whomsoever imposed. If any payment is subject to any tax, duty or charge, or if we are required by law to make any deduction or withholding, we shall pay the tax, duty or charge and shall pay to you any additional amounts as shall result in you receiving a net amount equal to the full amount which you would have received had no payment, deduction or withholding been required.

## **REPRESENTATIONS AND WARRANTIES**

We hereby represent and warrant that:

- (i) this Bond constitutes its legally binding obligation enforceable in accordance with its terms and does not conflict with any law, regulation or instrument binding on or relating to us and that this Bond is within its powers and has been duly authorised by it;
- (ii) we are a Qualified Bank (as such term is defined in the RFA); and
- (iii) our payment obligations under this Bond will constitute the direct, general, unconditional, unsubordinated and unsecured obligations and will at all times rank at least *pari passu* in priority of payment with all our other present and future unsecured and unsubordinated indebtedness, except for any obligations that may be preferred by provisions of law that are both mandatory and of general application.

## **UNDERTAKING**

We undertake that, from the date of this Bond until the amount of this Bond has been released to the Applicant, we will not claim as a creditor of the Applicant or any co-surety in competition with you.

## **NOTICES**

All notices, requests, demands or other communications arising out of or in connection with this Bond shall be delivered in writing:

- (i) to you at your address stated in the RFA;
- (ii) to us, at our address stated in this Bond.

We may each change our respective nominated addresses for service of documents to another address in Lebanon by giving not less than five business days' prior written notice to each other. All notices, demands and communications must be in writing.

Any notice, demand or communication sent to you or to us as provided herein shall be deemed to have been given, if sent by post, two business days after posting (and in

proving delivery it shall be sufficient to provide that the notice, demand or communication was properly addressed and put in the post), if delivered by hand, at the time of delivery or, if sent by facsimile, at the time of dispatch.

## **ASSIGNMENTS**

We shall not assign, transfer, novate or dispose of any of our rights and obligations under this Bond. You may assign all or any part of your rights and benefits under this Bond at any time without the consent of the Applicant or ours.

## **REMEDIES AND WAIVERS**

No delay or omission in exercising any of your rights, powers or remedies under this Bond shall impair such rights, powers or remedies or constitute a waiver of them nor shall any single or partial exercise of any of your rights, powers or remedies preclude any other or further exercise of them or the exercise of any other rights, powers or remedies. The rights, powers and remedies provided in this Bond are cumulative and not exclusive of any rights, powers or remedies which you would otherwise have.

## **VALIDITY**

This Bond shall not be valid with respect to any written notice received by us after the date which is 12 months from the date of this Bond and shall thereafter be null and void. When the validity of this Bond has expired it must be returned to us for cancellation but we shall be released from any obligation hereunder even if, in breach of this provision, such return has not taken place.

## **GOVERNING LAW**

This Bond shall be governed by and construed in accordance with the laws of the Lebanese Republic.

## **DISPUTE RESOLUTION**

The competent courts of the Lebanese Republic shall have exclusive jurisdiction in respect of any dispute arising out of or in connection with this Bond.

Yours faithfully,

[Bank]

By: \_\_\_\_\_

Name:

Title:

Address: