

**AUCTION OF
2.1 GHZ SPECTRUM RIGHTS (2022) FOR
5G STANDALONE (SA) NETWORK
ARCHITECTURE**

**APPENDIX 3 – BANK GUARANTEE AND
DECLARATION OF SUBMISSION OF BANK
GUARANTEE**

4 AUGUST 2021

(UPDATED ON 18 OCTOBER 2021)

INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY
REPUBLIC OF SINGAPORE

BANK GUARANTEE

To: Info-communications Media Development Authority (**IMDA**)
10 Pasir Panjang Road
#03-01 Mapletree Business City
Singapore 117438

Attention: Ms Aileen Chia
Director-General (Telecoms and Post)
Deputy Chief Executive, Connectivity Development & Regulation

1. **THIS DEED OF GUARANTEE** (*this Guarantee*) is made on _____ 2021 by [*insert name of bank*] having its registered address at [*insert registered address*] (**Bank**) in favour of IMDA.

DEFINITIONS

2.1 In this Guarantee, the following terms shall have the following meanings:

Initial Offer means, in relation to a 2.1 GHz Spectrum Lot, a legally binding offer made by a Bidder in its Initial Offer Document to acquire that 2.1 GHz Spectrum Lot in accordance with the Auction Rules.

2.1 GHz Spectrum Auction means the auction conducted by IMDA pursuant to its regulatory powers under the Telecommunications Act (Cap. 323) and the Telecommunications (Radio-communication) Regulations for the grant of 2.1 GHz Spectrum Rights (2022) in respect of the twelve (12) 2.1 GHz Spectrum Lots, as respectively specified in Annex 1 of the Auction Rules.

Auction Rules means the rules published by IMDA relating to the procedures by which IMDA may allocate the 2.1 GHz Spectrum Lots, and/or grant 2.1 GHz Spectrum Rights (2022) in respect of the respective 2.1 GHz Spectrum Lots, as amended or varied by IMDA from time to time in accordance with these rules.

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

Business Day means a day excluding Saturdays, Sundays and Singapore public holidays.

Guaranteed Amount means Singapore Dollars _____ (SGD_____).

2.2 Capitalised terms used in this Guarantee and not otherwise defined herein shall bear the same meanings as those set out in the Auction Rules.

GUARANTEE

3.1 Pursuant to Sections 2.3.1 to 2.3.6 of the Auction Rules, the Bidder is required to provide a bank guarantee for the Guaranteed Amount in accordance with the requirements of the Auction Rules for participation in the 2.1 GHz Spectrum Auction.

3.2 At the request of the Bidder, the Bank hereby unconditionally and irrevocably guarantees and undertakes to make payment as a primary obligor to IMDA of any sum demanded by IMDA up to the Guaranteed Amount on IMDA's first demand in writing (***Demanded Sum(s)***), without any notice or reference to or further enquiry from the Bidder or any other party and without requiring any condition or obtaining any evidence or proof (other than the first written demand) that IMDA is entitled to any such payment. Such demand from IMDA shall be final and conclusive evidence that the Guaranteed Amount, or part thereof demanded, is due to IMDA under this Guarantee.

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

INDEMNITY

4. As a separate, additional, continuing and primary obligation, the Bank hereby unconditionally and irrevocably undertakes to IMDA that, should the amounts payable under clause 3 not be paid by the Bank to IMDA for any reason then, notwithstanding that it may have been known to the Bank or IMDA, the Bank shall, upon first written demand by IMDA under clause 3, make such payment of the Demanded Sum(s) to IMDA by way of a full indemnity and shall indemnify IMDA against all losses, claims, costs, charges and expenses to which it may be subject or which it may incur under or in connection with this Guarantee.

CONTINUING GUARANTEE

5. Subject to clause 6.4, the guarantee constituted by this Guarantee shall be continuing, regardless of any intermediate payment or discharge in whole or in part or performance in part and irrespective of the exercise, variation, renewal, waiver, release or enforcement of any rights or remedies against the Bidder.

DISCHARGE AND RELEASE

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

6.2 Subject to clauses 6.1, 6.3 and 6.4, and provided the Demanded Sum(s) have been irrevocably paid in full, IMDA may discharge or release the Bank by written instrument signed by IMDA.

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

6.4 This Guarantee shall remain valid until 31 December 2021 (***Guarantee Validity Period***). IMDA shall have the right to extend the Guarantee Validity Period under this Guarantee to a period no later than six (6) months from 31 December 2021. For the avoidance of doubt, IMDA has reserved its right to require the Bidder to provide a new Guarantee to be issued under such terms and conditions as IMDA deems fit in its sole and absolute discretion at any time before the expiry of the extended Guarantee Validity Period under this Guarantee. Any demand by IMDA under this Guarantee, if any, must be received by the Bank on or before the date falling four (4) months after the Guarantee Validity Period which shall include the period of any extension by IMDA.

6.5 The Bank shall be obliged to effect the payment required under such a demand within seven (7) Business Days of receipt. The Bank shall be under no duty to inquire into the reasons, circumstances or authenticity of the grounds for such demand and shall be entitled to rely upon any written notice thereof from IMDA as may be received by the Bank (within the period specified in clause 6.4 hereof) as final and conclusive.

WAIVER OF DEFENCES

7.1 The Bank's obligations under this Guarantee are that of a primary obligor and not merely as surety, and the liabilities and obligations of the Bank under this Guarantee shall remain in force notwithstanding any act, omission, neglect, event or matter whatsoever whether or not known to the Bank, IMDA or the Bidder (other than the irrevocable payment of the Demanded Sum(s)) and the foregoing shall apply, without limitation, in relation to:

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

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

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

7.3 This Guarantee shall be additional to any other security which IMDA may hold now or at any time hereafter from the Bank or the Bidder or from any other person in respect of the Bidder's participation in the 2.1 GHz Spectrum Auction, and shall not merge with or prejudice or otherwise affect such other security or any contractual or legal rights of IMDA. This Guarantee and the obligations of, the Bank hereunder shall not be affected by the invalidity or unenforceability of, or any defect, irregularity or informality of any other security held by IMDA in respect of, the Bidder's participation in the 2.1 GHz Spectrum Auction.

WARRANTY

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

UNDERTAKING

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

IMMEDIATE RECOURSE

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

NO DEDUCTIONS AND TAXES

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

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

DEFAULT INTEREST

12. If the Bank fails to pay any amount due under this Guarantee, the Bank shall pay interest in Singapore dollars on that amount from the date of demand up to the time of actual payment in full, compounded quarterly (before as well as after judgment) at the rate of five per cent per annum over the average of the prevailing prime lending rates of the banks and finance companies quoted and published by the Monetary Authority of Singapore. Such interest shall be payable on demand and accrue from day to day on the basis of the number of days elapsed and a 365-day year.

SUSPENSE ACCOUNT

13. IMDA may, at any and for such time as it thinks fit, place and keep any amounts received, recovered or realised under this Guarantee, to the credit of an account of IMDA or of such other person (if any) as IMDA thinks fit (without liability to pay interest thereon).

REMEDIES AND WAIVERS

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

ASSIGNMENT

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

15.2 As soon as practicable after any assignment in accordance with clause 15.1, IMDA will give notice of the assignment to the Bank containing details of the assignment including the identity of the assignor and assignee.

15.3 Save as provided in clauses 15.1 to 15.2, neither IMDA nor the Bank shall purport to assign, transfer, charge or otherwise deal with all or any of its rights under this Guarantee nor grant, declare, create or dispose of any right or interest in it without the prior written consent of the other party.

NOTICES

16.1 Any notice, demand or communication given or sent to IMDA and/or the Bank in connection with this Guarantee shall be given in writing and delivered by hand or registered post to the recipient at its address stated in this Guarantee or at such other address as may be notified by a party to the other, from time to time, for that purpose. For the avoidance of doubt, any notice, demand or communication given or sent to IMDA and/or the Bank through other means which have not been specified in this clause 16, shall be rejected.

16.2 Any notice, demand or communication sent to IMDA and/or the Bank as provided in this clause 16.1, if delivered by hand or registered post, will be deemed received when delivered, provided that where delivery occurs after 6.00 pm on a Business Day or on a day which is not a Business Day, receipt will be deemed to occur at 9.00 am on the following Business Day.

INVALIDITY

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

CHOICE OF LAW

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

JURISDICTION

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

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

SIGNED, SEALED AND DELIVERED by)
[insert name of authorised signatory of Bank])
Designation:)
[insert designation of authorised signatory of Bank])
for and on behalf of)
[insert name of Bank])
in the presence of:)

Signature of Witness:

Name of Witness:

DECLARATION FORM

SUBMISSION OF BANK GUARANTEE FOR 2.1 GHZ SPECTRUM AUCTION

Date of Declaration:

1. Bank Guarantee No.:
2. Date of Bank Guarantee:
3. Guaranteed Amount: S\$
4. The Bank Guarantee is issued in favour of IMDA by a financial institution which is licensed by the Monetary Authority of Singapore to provide the full scope of services falling within the definition of banking business in the Banking Act (Cap. 19): Yes / No *
5. The Bank Guarantee is fully valid and duly completed: Yes / No *
6. You have obtained written confirmation from the Bank (as named in the Bank Guarantee) that the signatories of the Bank Guarantee are the duly authorised signatories of the Bank: Yes / No *
7. There are no deviations from any of the terms and conditions in the template Bank Guarantee dated [*date 2021*]: Yes / No *
8. IMDA has the right to reject any Bank Guarantee which deviates from the Bank Guarantee template or is not in such form as may have been previously approved in writing by IMDA. In such a case, a revised Bank Guarantee must be submitted for IMDA's approval.

**Delete as appropriate*

DECLARATION FORM

SUBMISSION OF BANK GUARANTEE FOR 2.1 GHZ SPECTRUM AUCTION

I, *[insert name of person signing the Declaration]*, hereby confirm that I am duly authorised by *[insert name of the Bidder]* to make the above declarations and to submit this Bank Guarantee.

In submitting this Bank Guarantee, *[insert name of the Bidder]* acknowledges that the unique nature of spectrum as a scarce and finite resource critical to national productivity means that any failure on its part to comply with the requirements set out within the Auction Rules may adversely affect the national interests of Singapore. Accordingly, *[insert name of the Bidder]* acknowledges and agrees that the Guaranteed Amount furnished under the Bank Guarantee is provided as earnest money to guarantee the compliance of *[insert name of the Bidder]* with the Auction Rules and is fully forfeitable by IMDA in its sole and absolute discretion in accordance with the terms of the Bank Guarantee and/or the Auction Rules.

Signature

Name and Designation