

AGREEMENT FOR INTER-OPERATOR SHORT MESSAGE SERVICE

THIS AGREEMENT is made as of

BETWEEN:

_____ a company incorporated in Hong Kong with its registered office

_____ a company incorporated in Hong Kong with its registered office at

_____, a company incorporated in Hong Kong with its registered office at

_____ a company incorporated in Hong Kong with its registered office at

_____ a company incorporated in Hong Kong with its registered office at

_____ a company incorporated in Hong Kong with its registered office at

(collectively referred to as “the Operators”).

RECITALS:

- (a) Each of the Operators carries on the business of, inter alia, providing Public Mobile Radiotelephone Services operated under Public Radiocommunication Service licences issued by the Telecommunications Authority under the Telecommunications Ordinance.
- (b) The Operators have respectively entered into agreements (the “Inter-Operator Short Message Service Agreement”) with the Contractor to acquire rights to use certain Inter-Operator Short Message Service and facilities provided by the Contractor as defined in the Contract subject to the same terms and conditions with respect to their respective rights and obligations to the Contractor.

- (c) Each of the Operators has agreed to enter into this Agreement to regulate the relationship amongst the Operators and to set out the rights and obligations as amongst the Operators in respect of the use of the Inter-Operator Short Message Service.

1. Definitions and interpretation

- 1.1 Terms defined in the Contract have the same meaning when used in this Agreement, unless otherwise specified in this Agreement.
- 1.2 The following terms used in this Agreement will have the following meanings, unless the contrary intention is specified:

“Code of Practice” means an industry Code of Practice on Inter-Operator Short Message Service to be issued by the Operators, as amended or supplemented from time to time.

“Contractor” means

“Inter-Operator Short Message Service” means the Inter-Operator Short Message Service (as defined in the Contract) provided by the Contractor pursuant to the Contract.

“Contract” means the agreement entitled the “Contract for Supply of Inter-Operator Short Message Service” entered into on _____ between an Operator and the Contractor.

“Operators” means _____
and **“Operator”** means any of them.

2. Coordination and Cooperation

- 2.1 Each Operator agrees to use commercially reasonable endeavours to coordinate and cooperate with the other Operators in relation to the exercise of that Operator’s rights and obligations under its Contract with the Contractor and particularly under the following Clauses thereof:
- (a) 4.1 on renewal of the term of the Contract;
 - (b) 7.1 on approval of the Acceptance Test procedures;
 - (c) 7.3 on authorisation of re-performance of tests by the Contractor;

- (d) 7.6 on issuance of the System Acceptance Letter;
- (e) 12.4 on alterations, amendments, revision, substitution, additions to, or otherwise variations to the direction given to the Contractor;
- (f) 15.1 on nomination or, as the case may be, responsibility for taking possession and removing from the Contractor's premises all designs, drawings, technical specifications that were provided by the Operators and certain additional documents prepared by the Contractor that describe the external physical connectivity to the System in relation to the supply of the Inter-Operator Short Message Service;
- (g) 19.2 on determination of new Price Schedule upon renewal of the term of the Contract.

3. [Intentionally Omitted]

3.1 [Intentionally Omitted]

4. Operator's Covenants

4.1 Each Operator acknowledges that each of the following Clauses of the Contract affects the other Operators, and agrees that it will not exercise those rights as contained in those Clauses without getting the unanimous consent of the other Operators (such consent shall not be unreasonably withheld or delayed).

- (a) 1.1.18 on Service Launch Date;
- (b) 7.4 on provisional use of the Inter-Operator Short Message Service and/or the System;
- (c) 7.5 and 7.8 on taking action against the Contractor;
- (d) 9.4 on the use of additional designs, drawings or specifications acquired under the Contract;
- (e) 10.4 on effecting insurance and payment of any premiums;
- (f) 12.3 and 12.6 on alterations, amendments, revision, substitution, additions to, or otherwise variations to the System Specifications;
- (g) 13.1 on issuing notices (including, without limitations, notice of termination) to the Contractor in case of Contractor's default and/or the obtaining of Inter Operator Short Message Service or part thereof elsewhere;

- (h) 14.1 on taking action in case of bankruptcy of the Contractor;
 - (i) 17 on the representative duly authorized by Operators to purchase the Core System; and
 - (j) 32.4 on the exercise of rights in the case of force majeure.
- 4.2 Each Operator acknowledges and respects the other Operators' respective right of access to the Inter-Operator Short Message Service and/or the System on an equal and fair basis. Without prejudice to the generality of the foregoing, each Operator agrees that it will not:
- (a) perform any work in the Contractor's premises which may cause interference or disturbance to the equipment or system, in relation to the use of the Inter-Operator Short Message Service, of any other Operator;
 - (b) exert any undue pressure on or offer any advantage (monetary or non-monetary) to the Contractor with an intent to procure preferential access to or use of the Inter-Operator Short Message Service. For the avoidance of doubt, any alteration, amendment, revision, substitution, addition to, or otherwise variation to the System Specifications in accordance with Clause 12.4 of the Contract shall not be deemed or construed as a breach or default under this Clause 4.2(b).
- 4.3 Each Operator agrees that it will:
- (a) use its commercially reasonable endeavours to ensure that the Inter-Operator Short Message Service will be available on
 - (b) use its reasonable endeavours to terminate to terminals the short messages originating from other Operators' networks through the Inter-Operator Short Message Service provided that the

this Agreement have not expired or terminated in accordance with the provisions thereof;
 - (c) use its reasonable endeavours to transmit and deliver the short messages for its subscribers and ensure that such short messages will be transmitted in full; and
 - (d) give notice to the Other Operators of any proposed amendment, variation or modifications of the Contract and no such amendment, variation or modification shall be made save and except with such prior

written notice and with _____ given to the Other Operators to respond in accordance with Clause 33.2 of the Contract.

- 4.4 Each Operator agrees to comply with the Code of Practice relating to the provision of the Inter-Operator Short Message Service.

5. Payment

- 5.1 If the Core System is to be purchased under Clause 17.1.1 of the Contract, the Operators participating in the purchase shall share equally the price.

- 5.2 Each Operator agrees to pay the Contractor the Contract Price as required under Clause 19 (subject to any deduction under Clause 20) of the Contract.

- 5.3 In the event that one or more of the Operators (the "Request for Modifications Operators") require a specific modification/enhancement to a particular feature of the System without contravening any provision of Clauses 4.2 and 4.3 hereof (the "Modification/Enhancement"), the development cost of such Modification/Enhancement shall be equally shared between the Request for Modification Operators. If other Operator(s) subsequently wish to use the Modification/Enhancement, such Operator(s) shall share the costs of the Modification/Enhancement equally with the Request for Modifications Operators and pay the Request for Modifications Operators accordingly plus interest on such costs paid calculated at the Hong Kong prime rate prevailing at such time by reference to the period commencing from (and including) the date of payment of such costs by the Request for Modifications Operators and up to (and including) the date of payment by such other subsequently joining Operators, if the Request for Modifications Operators have already paid the development cost of the Modification/Enhancement to the Contractor.

6. Exclusion of liability

Notwithstanding anything to the contrary herein contained, no party shall be liable to any other party for any indirect, special or consequential losses or damages which may arise out of or in connection with this Agreement.

7. Cessation and assignment of share

- 7.1 In the event that an Operator assigns the benefit of any Contract in accordance with Clause 21.3 of the relevant Contract, that Operator's liability under this Agreement (save and except Clause 8 hereof) shall cease, provided that:

- (a) any liability:

- (i) accrued prior to the assignment of the benefit of the relevant Contract; or
- (ii) arising from an act or omission of that Operator prior to the date of assignment of the benefit of the relevant Contract;

shall continue notwithstanding such cessation; and

- (b) the assigning Operator shall procure the assignee to enter into a deed with the assigning Operator and each other Operator to be bound by the terms of this Agreement.

7.2 No Operator shall be entitled to assign any of its rights or obligations under this Agreement, unless that Operator has assigned the benefit of this Agreement to a person to whom it has assigned the benefit of the relevant Contract in accordance with that Contract, and, unless further that the assignee has upon such assignment entered into a deed with the assigning Operator and each other Operator to be bound by the terms of this Agreement.

8. Confidentiality

8.1 Each Operator (hereinafter the "Receiving Party") shall keep all information received from the other Operator (hereinafter the "Disclosing Party") under or in connection with the performance of this Agreement in whatever form as strictly confidential and shall not disclose it to third parties without the prior written consent of the Disclosing Party. Information shall not be used by the Receiving Party for any purpose other than in connection with the purposes of this Agreement. The foregoing obligations shall not apply to any information which :

- (a) is in the public domain at the time of disclosure or later becomes part of the public domain through no fault of the Receiving Party;
- (b) was known to the Receiving Party prior to disclosure by the Disclosing Party as proven by the contemporaneous written records of the Receiving Party;
- (c) is disclosed to the Receiving Party by a third party who did not obtain such information, directly or indirectly, from the Disclosing Party subject to any confidentiality obligation;
- (d) is at any time independently developed by the Receiving Party as proven by its contemporaneous written records;
- (e) is expressly authorized in writing by the Disclosing Party; or

- (f) is required by law, court order or a governmental or regulatory body or pursuant to listing rules of a stock exchange in which any party's shares are traded, to be disclosed (in which case the Receiving Party will give the Disclosing Party as much notice thereof as reasonably practicable).

9. The Contract, commencement and termination of this Agreement

9.1 This Agreement shall take effect _____ as the Contract.

9.2 The Contract shall remain in full force and effect, and shall not be amended by this Agreement.

9.3 Subject to Clause 9.5 hereof, an Operator shall give to terminate the whole of this Agreement if:

- (a) its Contract with the Contractor has been terminated; or
- (b) if the relevant licence(s) of the Operator expires or is being cancelled, suspended, revoked or terminated.

9.4 Subject to Clause 9.5 hereof, Operators may unanimously (except the defaulting Operator) decide and give _____ to terminate this Agreement with any defaulting Operator who has persistently failed to comply with the terms and conditions of this Agreement and/or the Code of Practice if such persistent failures will or are likely to cause or have caused material adverse effect on the provisioning of the Inter-Operator Short Message Service to the other Operators or any of the other Operators.

9.5 Provided that at least _____ Operators remain parties to this Agreement, this Agreement shall continue in effect in respect of the remaining Operators.

9.6 Upon termination of this Agreement, the Operators shall be relieved of their obligations hereunder save for (a) any accrued rights and/or obligations of, any of the parties prior to that date; and (b) Clause 8 which shall remain in full force and effect notwithstanding such termination.

9.7 Cessation of an Operator to be a party to this Agreement shall not affect the rights and obligations of the remaining parties to this Agreement. For the avoidance of doubt, should any Operator cease to be a party to this Agreement, the provisions (including, without limitation, the Contract Price) of the Contract and this Agreement (save and except the number of the Operators) shall remain effective and be binding on the remaining Operators.

10. General Provisions

- 10.1 The relationship between the Operators under this Agreement does not constitute a partnership, joint venture, agency or any forms of business association between the parties hereto.
- 10.2 This Agreement is governed by and construed in accordance with the laws of Hong Kong Special Administrative Region. For these purposes, all parties hereby submit to the exclusive jurisdiction of the courts of Hong Kong Special Administrative Region.
- 10.3 Each Operator shall bear all its own costs and expenses incurred in connection
- 10.4 If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.
- 10.5 A notice, consent, request or any other communication under this Agreement shall be in writing and left at the address of the addressee, or sent by prepaid post to the address of the addressee or sent by facsimile to the facsimile number of the addressee below or any other address or facsimile number of the addressee requests.

IN WITNESS WHEREOF this Agreement has been signed by the duly authorized representatives of each party hereto.

Agreed and accepted by the authorized representative
for and on behalf of

