

Dated

Interconnection Agreement

Between

("Operator 1")

And

("Operator 2")

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**INTERCONNECTION AGREEMENT**

**BETWEEN**

**("Operator 1");**

**AND**

**("Operator 2")**

**EFFECTIVE DATE:**

**BACKGROUND:**

- A. Operator 1 hold \_\_\_\_\_ licence granted under the Telecommunications Ordinance Cap 106 ("Telecommunications Ordinance") to establish networks and provide public mobile telecommunications services.
- B. Operator 2 hold \_\_\_\_\_ licence granted under the Telecommunications Ordinance Cap 106 ("Telecommunications Ordinance") to establish networks and provide public mobile telecommunications services.
- C. Operator 1 and Operator 2 wish to provide certain interconnection services to each other on the terms and conditions of this Interconnection Agreement.

**OPERATIVE PROVISIONS:**

**1 STRUCTURE, INTERPRETATION AND DEFINITIONS**

1.1 This Interconnection Agreement comprises:

- (a) clauses 1 to 17, which are the main body of this Interconnection Agreement;
- (b) Schedule 1 - Interpretation and Definitions;

- (c) Schedule 2 – Services;
- (d) Schedule 3 – Charges; and
- (e) Schedule 4 – Provisioning.

1.2 Unless otherwise specified:

- (a) the rules of construction and interpretation of this Interconnection Agreement are set out in the Interpretation in Part 1 of Schedule 1; and
- (b) capitalised words used in this Interconnection Agreement have the meanings given to them in the Definitions in Part 2 of Schedule 1.

## **2 COMMENCEMENT, DURATION AND REVIEW**

2.1 This Interconnection Agreement commences on the Effective Date and continues in force until terminated in accordance with clause 10.

2.2 If the rights and obligations of either of the Parties under this Interconnection Agreement are affected or are likely to be affected by:

- (a) any amendment to or repeal of the Telecommunications Ordinance or any provision thereof or of any condition of a Party's Licence; or
- (b) any statement, lawful determination, ruling or direction of the Regulator; or
- (c) either Party reasonably believing, based on some action of the Regulator, that a part of this Interconnection Agreement contravenes or may contravene any provision of an Applicable Law, either Party's Licence or other statutory requirements,

the Parties must meet as soon as practicable and negotiate in good faith for any variation to this Interconnection Agreement that may be necessary or appropriate to ensure consistency with the Applicable Law, ruling, determination or direction of the Regulator or such other regulatory requirement and if the Parties cannot agree on any such variation, the terms of clause 13 apply.

- 2.3 For the avoidance of doubt, and notwithstanding the interconnection of the Parties' Networks, each Party must not convey or direct any category of traffic or services to the other Party, unless the other Party has expressly agreed to provide the relevant Service.

### **3 DUTY TO PROVIDE SERVICES AND PROVISIONING**

- 3.1 The Parties must connect and keep connected their respective Networks at Points of Interconnection in accordance with this Interconnection Agreement and to the extent permitted by the Parties' respective Licences and the Applicable Laws.

- 3.2 Subject to clause 3.3, each Party (as an Access Provider) must use technical and commercial reasonable endeavours to supply the Services requested by the other Party (as an Access Seeker) in accordance with and subject to the requirements specified in this Interconnection Agreement and including the relevant Service Descriptions.

- 3.3 The Access Seeker must comply with the forecasting and other procedures set out in clause 8 and Schedule 4 (Provisioning) except to the extent that the terms in a Service Description may override, vary or supplement these procedures.

- 3.4 Each Party must comply with the Service Description, in so far as they apply to the provision of Services.

- 3.5 The Parties must observe all standards and operating guidelines relevant to the interconnection of their Networks, in the order of precedence specified below:

- (a) any legal requirements imposed upon each of them including requirements under the Telecommunications Ordinance and the Parties' respective Licences;
- (b) Service Description;
- (c) any international, regional and national standards including ITU, 3GPP, ETSI and ANSI as agreed by both Parties.

- 3.6 Each Party must comply with the Hong Kong Numbering Plan in relation to the Services and supply of services using the Services.
- 3.7 As a condition of providing Services to it, the Access Seeker agrees that it must not use Services provided by the Access Provider as part of services or products that the Access Seeker provides to non-Access Seeker Customers.
- 3.8 Each Party shall be solely responsible for its own costs and charges for the provisioning and maintaining of any transmission circuit from its network facility until the Points of Interconnection.

#### 4 CUSTOMER RELATIONSHIPS

- 4.1 The relationship between the Parties is one of independent contractors only and nothing in this Interconnection Agreement shall be construed to constitute a relationship of agency or partnership between the Parties. Each Party remains fully responsible for its own acts and defaults (including those of its Representatives). Neither Party is authorised to bind the other Party to any obligation. The Parties and their Representatives must not engage in any conduct that may lead any person to believe that it is an employee, agent or representative of the other Party.
- 4.2 The Access Seeker has no right to set off bad debts arising from its provision of a service to an Access Seeker Customer against any sum due, accrued or payable in respect of any Service supplied by the Access Provider under this Interconnection Agreement that forms part of, or is incidental to, the provision of the relevant service.
- 4.3 The Access Seeker must not represent to any person that the Access Provider:
- (a) participates (other than as a wholesale supplier) in the provision of the Access Seekers' services, or is a supplier, to the Access Seeker's Customers, or that the Access Seeker is approved by, or an agent or dealer of, or affiliated with, the Access Provider; or
  - (b) has a preferred relationship with the Access Seeker, including in respect of special prices or services.

## 5 CHARGES

- 5.1 Subject to Schedule 3 (Charges and Settlement), each Party must pay the other Party the Charges for the Services.
- 5.2 A Party must pay Charges in Hong Kong Dollars within the due date set out in clause 6.1.
- 5.3 Both Parties agree to follow the charging principles and mechanism as set out in Schedule 3.

## 6 BILLING AND PAYMENT

- 6.1 The Access Provider shall invoice the Access Seeker no later than the 15th day of each calendar month for each Service for the immediate preceding month. The Access Seeker shall settle the undisputed portion of the invoices after the invoice date (“Due Date”).
- 6.2 If payment is not received by the Access Provider by the Due Date, the Access Provider may at its sole discretion charge interest on the undisputed amount outstanding from the Due Date at the rate of \_\_\_\_\_ over the best per annum lending rate of the Hongkong and Shanghai Banking Corporation Limited in Hong Kong until payment of the undisputed amount is made.
- 6.3 Each Party agrees that discrepancies for each Service arising from a monthly invoice shall not be disputed if the aggregate discrepancy is less than HK\$1,000 or 1% of the total net amount of the total charge payable by the Access Seeker or due to the Access Provider, whichever amount is higher. Subject to the previous sentence, a Party may set-off any undisputed amounts payable pursuant to this Interconnection Agreement against any amount which it is owed by the other Party under this Interconnection Agreement.
- 6.4 For the avoidance of doubt, the Parties acknowledge that each Party is responsible for billing, and collecting its charges from, its own customers for the services it provides to them including, in its capacity as an Access Seeker, for services supplied to Access Seeker Customers using the Services, except where a Service Description expressly provides otherwise or the Parties expressly agree otherwise in writing.

## **7 NETWORK PROTECTION AND SAFETY**

7.1 Each Party is responsible for the safe operation of its Network, and must, so far as is reasonably practicable, take all necessary steps to ensure that its Network, its Network operations and implementation of this Interconnection Agreement:

- (a) do not knowingly endanger the safety or health of any person, including the Representatives of the other Party; and
- (b) do not knowingly cause physical or technical harm to the other Party's Network, including causing damage, interfering with or causing deterioration in the operation of that Party's Network.

7.2 Each Party must make reasonable commercial endeavours to manage its Network to minimise disruption to Services and in the event of interruption or failure of any Services, must notify the other Party of the interruption or failure and restore those Services as soon as is reasonably practicable.

7.3 A Party must:

- (a) not use or knowingly permit the use of any Service, or install, connect, link or use (or permit the installation, connection, linking or use of) any telecommunications equipment in contravention of any Applicable Law; and
- (b) as an Access Seeker, be responsible to the Access Provider for preventing and stopping any abuse or unauthorised act of anyone who uses any Service or any part of any Service provided to the Access Seeker.

7.4 Each Party must ensure that its Network and operating procedures comply in all respects with the safety requirements established by the Parties.

## **8 FORECASTS**

8.1 Each Party must provide the other Party with Forecasts (if any are required) in accordance with Schedule 4 (Provisioning).



9 LIABILITY AND INDEMNITY

9.1 Neither Party shall be liable to the other Party or to any other person, body of persons or corporation for any indirect or consequential loss including loss of revenue, business or anticipated earnings, profits suffered or alleged to have been suffered by the other Party or any other party or any other person, body of persons or corporation resulting from any reason or cause whatsoever under this Interconnection Agreement.

9.2 Without prejudice to the generality of clause 9.1 and save and except for cases relating to personal injury or death caused by the Party's negligence or the negligence of its employees acting in the course of their employment, the aggregate liability of one Party to the other Party under this Interconnection Agreement shall be limited to the lower of either (a) or (b) below:

(a)

(b)

9.3 If any Applicable Law implies warranties or conditions or imposes obligations on a Party that cannot be, or can only to a limited extent be, excluded, restricted or modified, then to the extent to which that Party is entitled to do so, the liability of that Party under the Applicable Law is limited to:

(a) the supply of services again or the payment of the cost of having the services supplied again, at that Party's option;

(b) the repair or replacement of property or paying the cost of repair or replacement, at that Party's option; or

(c) any other remedy prescribed by the Applicable Law.

9.4 Each Party shall be solely responsible for the use of the Services or any part thereof by its Customers. Unless otherwise specified in the Service

Description, neither Party shall be liable to the other Party or its Customers for any failure or delay in the provision of the Service.

- 9.5 If a Schedule to this Interconnection Agreement contains a remedy for the failure of a Party (**Liable Party**) to perform its obligations under that Schedule, then that remedy is the sole and exclusive liability of the **Liable Party**, its Affiliates, and its Representatives, in connection with the performance of that obligation, and is the sole remedy of that other Party against the **Liable Party**, its Affiliates and its Representatives in connection with the performance of that obligation.

## 10 SUSPENSION AND TERMINATION

### Without cause

- 10.1 A Party may terminate this Interconnection Agreement, or the supply or use (as the case may be) of any Service at any time without cause by giving to the other Party notice to that effect.

### With cause

- 10.2 A Party shall have the right to suspend or terminate this Interconnection Agreement, or the supply or use (as the case may be) of any Service immediately at any time by giving to the other Party a written notice to that effect if:
- (a) the other Party is in breach of any of its obligations under this Interconnection Agreement and fails to remedy such breach (if capable of remedy) of receiving a written notice to do so from the first Party;
  - (b) the other Party is or appears likely to become Insolvent;
  - (c) the continued operation of this Interconnection Agreement would be unlawful, contravene legal or regulatory obligations, or pose an imminent threat to life, safety or cause serious damage to property; or
  - (d) any licence, consent or approval required in connection with its telecommunications services is revoked, withdrawn, suspended or expires

(without a replacement license being granted immediately) which will make it unlawful to provide telecommunications services to its own customers.

(e) if all of the Services (but not part) are suspended under clause 10.3 or 10.4 for more than \_\_\_\_\_ and if the relevant event for the suspension continues to exist, then either Party may terminate this Agreement with immediate effect by giving the other Party prior written notice; or

(f) termination of a Service is permitted pursuant to a Service Description.

10.3 A Party ("Suspending Party") may suspend a Service, by giving the other Party five Business Days written notice if:-

(a) in its reasonable opinion, the other Party's Network has an adverse effect on the efficient operation of the Suspending Party's Network and the other Party failed to rectify the adverse effect of receiving a written notice to do so from the Suspending Party;

(b) the other Party engages in an act of default as set out, or an event occurs as described, in clause 10.2(a) to (d); or

(c) in its reasonable opinion, the other Party has attempted to use or has used the Service in contravention of any Applicable Laws or in non-conformity with any part of the Service's technical specifications or applicable standards or guidelines.

10.4 A Suspending Party may suspend a Service immediately, if:

(a) in its reasonable opinion the Service poses a threat to the life or safety of any person, a hazard to equipment or the property of any person, including the Suspending Party; or is an imminent threat to the normal operation, access, integrity or security of the Suspending Party's Network or any third party's network facility;

(b) there is an emergency situation that in the Suspending Party's reasonable opinion (and at all times the Suspending Party in

forming this reasonable opinion is acting in good faith) requires the suspension of the Service;

- (c) continued provision of the Service would be unlawful;
- (d) suspension is required pursuant to a lawful governmental or regulatory direction; or
- (e) such suspension is permitted pursuant to a Service Description.

10.5 The right of suspension under 10.3 and 10.4 shall be subject to the following principles:-

- (a) a Party may only suspend a Service to the extent reasonably necessary to address the relevant event; and
- (b) the Suspending Party shall restore the suspended Service as soon as it is practicable after the relevant event has been resolved.

10.6 The right to suspend pursuant to clause 10.3 and 10.4 shall not affect the payment obligations for any outstanding charges or the charges for unaffected Services.

10.7 A Party's exercise of its right to suspend this Interconnection Agreement or any Service is without prejudice to any other right or remedy available to that Party, including any subsequent right to suspend or terminate this Interconnection Agreement, that Service, or a different Service.

10.8 Termination of this Interconnection Agreement, or the supply or use (as the case may be) of any Service shall not relieve either Party of any liability for breach of this Interconnection Agreement or as may otherwise be established or affect the rights and obligations of the Parties which accrued prior to the date of termination.

## 11 CONSEQUENCES OF TERMINATION

11.1 On termination of this Interconnection Agreement (or termination of any Service):

(a) all sums payable to each Party under this Interconnection Agreement up to the date of termination, including any Charges in respect of termination, are payable

(b)

(c) all Services, leases, licenses and other rights conferred on the other Party under this Interconnection Agreement (or leases, licenses and other rights relating to the Service) and

(d) each Party must return all of the other Party's property in good working condition, fair wear and tear excepted.

## 12 FORCE MAJEURE AND REGULATORY EVENTS

12.1 Subject to clause 12.2, neither Party must be liable for any failure to comply with or observe any term of this Interconnection Agreement if a Force Majeure Event or a Regulatory Event caused that failure.

12.2 For the avoidance of doubt, each Party remains liable:

(a) for the performance of each obligation, and to comply with and observe each term, of this Interconnection Agreement, which is not affected by the Force Majeure Event or Regulatory Event; and

(b) to pay all sums payable in respect of each Service provided by the other Party during the Force Majeure Event or Regulatory Event.

12.3 If a Party fails to comply with or observe any term of this Interconnection Agreement because of a Force Majeure Event or a Regulatory Event, then that Party must notify the other Party:

(a) as soon as practicable, giving details of the Force Majeure Event or Regulatory Event, and its estimated extent and duration; and

(b) immediately after the end of the delay or failure caused by the Force Majeure Event or Regulatory Event.

### 13 DISPUTE AND DISPUTE RESOLUTION

13.1 The Parties agree to settle any dispute in respect of a Billing Dispute or a General Dispute in accordance with the procedures set out in this clause 13.

13.2 If either Party wishes to raise a Billing Dispute, it must notify the other Party before the Due Date ("*Dispute Notification Date*") in writing specifying the invoice in dispute, the amount in dispute and the reasons and facts for the dispute, after which the Party raising the dispute may withhold payment only of the disputed amount. Notwithstanding any dispute with respect to a monthly invoice, the Party raising the dispute shall remain obligated to pay the undisputed portion of the invoiced amount in accordance with clause 6.

13.3 The Parties must use their commercially reasonable endeavours to investigate and resolve a Billing Dispute from the Dispute Notification Date.

13.4 If a General Dispute arises between the Parties, then either Party may by written notice to the other Party refer the General Dispute to the dispute officer of each Party to resolve the General Dispute.

13.5 If the General Dispute remains unresolved after referral to the dispute officers under clause 13.4, then either Party may by written notice to the other Party, refer the dispute to the Chief Executive Officer of each Party, or a nominee of the Chief Executive Officer, who must confer and

endeavour in good faith to resolve the General Dispute by negotiating a commercial settlement.

- 13.6 If the Billing Dispute or General Dispute cannot be resolved from the Dispute Notification Date or any other period of time agreed by both Parties, then either Party may refer the matter to arbitration in accordance with the Arbitration Ordinance.
- 13.7 If the Parties are unable to agree on the appointment of an arbitrator, an arbitrator shall be appointed by the President for the time being of the Law Society of Hong Kong.
- 13.8 A decision of the arbitrator will be binding on the Parties except in the event of manifest error or mistake of law. Any amount determined as payable after arbitration becomes an undisputed amount.
- 13.9 The costs of the arbitration shall be shared by both Parties equally unless the arbitrator determines that one of the Parties was manifestly unreasonable in respect of the dispute and/or determines that a Party should bear a specified portion of the costs of the arbitration.
- 13.10 The Access Provider shall send a supplementary invoice setting out the correct outstanding amount upon the settlement of the dispute (if any). The Access Seeker shall settle this invoice from the date of receipt of such invoice.
- 13.11 The terms of this clause 13 do not prohibit either Party from seeking the Regulator's assistance and/or determination in resolving any General Dispute pursuant to the Telecommunications Ordinance (Cap.106).
- 13.12 In this clause:

**Billing Dispute** means any dispute about whether an invoice issued by a billing Party contains any errors.

**General Dispute** means any dispute, other than a Billing Dispute, arising between the Parties in respect of this Interconnection Agreement.

14 INTELLECTUAL PROPERTY

- 14.1 Except as otherwise expressly provided in this Interconnection Agreement, all Intellectual Property Rights remain in the ownership of the Party creating or owning them.
- 14.2 Except as otherwise expressly provided in this Interconnect Agreement, nothing in this Interconnection Agreement may be construed, and the provision of any service by a Party must not be construed, as:
- (a) an assignment or alienation of any Intellectual Property Rights of that Party to the other Party; or
  - (b) the grant of any licence of any Intellectual Property Rights of that Party to the other Party.
- 14.3 Without prejudice to or limiting clause 14.1, neither Party is entitled to use any trademarks, copyrighted materials or service marks (whether registered or not) of the other Party in any document or other medium, without the prior written consent of that other Party.
- 14.4 The Parties may negotiate in good faith, arrangements (including in respect of title) concerning Intellectual Property Rights jointly developed in the course of performing this Interconnection Agreement or otherwise arising in respect of this Interconnection Agreement.
- 14.5 Each Party indemnifies the other Party and its personnel against an action, claim, loss, liability, cost or expense (including all legal costs and expense) that may be brought against or suffered or incurred by any of them arising out of any infringement or claim of infringement resulting from the use of the first Party's Intellectual Property Rights as permitted under this Agreement.



14.6 The indemnity in Clause 14.5 is the only remedy and form of compensation available to a Party in respect of any breach of Intellectual Property Rights relating to any Services under this Interconnection Agreement.

## 15 CONFIDENTIALITY

15.1 Each Party agrees to keep and procure to be kept secret all Confidential Information pursuant to this Interconnection Agreement for the purpose of this Interconnection Agreement.

15.2 A Party shall not at any time divulge, disclose or otherwise furnish to any third party the Confidential Information and any information relating to the affairs or business of the other Party.

15.3 A Party may only disclose the Confidential Information to its Representatives or Affiliates to whom disclosure is necessary for each of them to perform their duties for the purposes of this Interconnection Agreement. Each Party shall require the above obligation of confidentiality from the foregoing persons to whom the Confidential Information is disclosed.

15.4 The obligations of confidentiality set out in this clause do not apply, however, to any part of the Confidential Information which:

- (a) was already known to the recipient Party prior to receipt of it;
- (b) was already in the public domain or becomes so through no fault of the recipient Party;
- (c) was acquired by the recipient Party from a third party having the right to convey the Confidential Information to the recipient Party without any obligation of confidentiality not to disclose the same;
- (d) is independently developed by the recipient Party without reference to the Confidential Information;
- (e) is approved for release by prior written authorization by the disclosing Party; or

(f) is required to be disclosed by law, pursuant to a juridical order or request made by a government authority or a stock exchange pursuant to its listing rules, but only to the extent so ordered or required and provided that the receiving Party has given sufficient prior notice to the disclosing Party (without breaching any order, law or rule) of the requirement for disclosure to enable the disclosing Party to seek an appropriate protective remedy and the receiving Party shall immediately, following disclosure, advise the disclosing Party of the contents of the disclosure made (without breaching any order, law or rule).

15.5 Subject to the provision in clause 15.4, these obligations of confidentiality survive the termination of this Interconnection Agreement for two years.

15.6 The terms of this Interconnection Agreement shall remain private and confidential between the Parties and neither Party shall, without the prior written consent of the other Party, divulge to any third party (other than professional or financial advisers of either Party) or use for any purpose other than for the performance of its obligations under this Interconnection Agreement, any information concerning this Interconnection Agreement save for the purpose of any filing of information with or fulfilment of requirement of government bodies under statutory requirements, or a stock exchange in which either Party's shares are traded.

15.7 A Party must exercise no lesser security or degree of care than that Party applies to its own confidential information of an equivalent nature and, in any event, not less than the degree of care that a reasonable person with knowledge of the confidential nature of the information would exercise.

15.8 A Party may not issue any news releases, public announcements or any other form of publicity concerning this Interconnection Agreement or the terms of this Interconnection Agreement unless it has obtained the other Party's prior written consent.

## 16 GENERAL

### Variation

16.1 This Interconnection Agreement may be varied only by agreement in writing signed by duly authorised representatives of each of the Parties.

### **Assignment**

16.2 Neither Party may assign, transfer or otherwise dispose of its rights and/or obligations under this Interconnection Agreement without the prior written consent of the other Party (which must not be unreasonably withheld) except that a Party may assign (in whole or in part) its rights, transfer (in whole or in part) or otherwise dispose of (in whole or in part) its rights and/or obligations under this Interconnection Agreement to any of its Affiliates which is willing and able to perform the obligations under this Interconnection Agreement at any time without the consent of the other Party. For the purpose of this clause, the "Affiliates" of a Party has to be a holder of a valid Licence and is capable of providing the Services and performing the duties and obligations under this Interconnection Agreement upon and after the assignment (in whole or in part) of a Party's rights, the transfer (in whole or in part) or otherwise the disposal of (in whole or in part) a Party's rights and/or obligations under this Interconnection Agreement.

### **Non-exclusivity**

16.3 Nothing in this Interconnection Agreement must prevent, limit or restrict either Party in any way whatever from:

- (a) supplying any service to any third party by means of such Party's Network; or
- (b) entering into an agreement with another person in relation to services similar to the Services.

### **Entire agreement**

16.4 This Interconnection Agreement supersedes all previous understandings, commitments, representations, warranties and agreements between the Parties in respect of the video interconnection matter of the Inter-operator Video Call Service, and contains the entire agreement of the Parties about the video interconnection matter of the Inter-operator Video Call Service.

16.5 A Party may not rely on any representation or warranty about the subject matter of this Interconnection Agreement except as expressly provided in this Interconnection Agreement.

16.6 For the avoidance of doubt, nothing in this Interconnection Agreement shall be construed to imply that the Parties intend to apply the terms of this Interconnection Agreement to any services or facilities that are not included as a Service. Neither Party shall argue that the terms of this Interconnection Agreement shall apply to any services or facilities provided or to be provided by the other Party if such services or facilities have not been made expressly subject to the terms herein by the Parties in writing.

#### **Severance**

16.7 If any provision of this Interconnection Agreement is construed to be illegal or invalid, it shall not affect the legality, validity and/or enforceability of the other provisions of this Interconnection Agreement. The illegal or invalid provision shall be deleted from this Interconnection Agreement and no longer incorporated in it but all other provisions of this Interconnection Agreement shall continue in force.

#### **Waiver**

16.8 A right may only be waived in writing and signed by an authorised officer of the Party granting the waiver.

16.9 No conduct of a Party, including a failure to exercise, or any delay in exercising, a right, operates as a waiver of the right or otherwise prevents the exercise of that right.

16.10 A waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again.

#### **Governing law and jurisdiction**

16.11 This Interconnection Agreement is governed by the laws of Hong Kong. The validity and interpretation of this Interconnection Agreement shall be governed in all respects by the laws of Hong Kong. Save for the alternative dispute resolution procedures set out herein, the Parties shall submit to the exclusive jurisdiction of the courts of Hong Kong for settlement of any dispute.

#### **Notices**

- 16.12 Any notice or communication required to be given under this Interconnection Agreement must be in writing and is deemed to have been sufficiently given if (i) delivered personally, (ii) transmitted by facsimile or (iii) sent by registered post to the principal or registered office of the Party to whom the notice is to be served.
- 16.13 All notices and other communications shall be effective on (i) the date of receipt if delivered personally, (ii) the date of acknowledgement of receipt of the registered letter containing the notice by the addressee if delivered by registered post, or (iii) the date of transmission if transmitted by facsimile (printed transmission report to the correct fax number being evidence of such delivery), whichever shall first occur.
- 16.14 Notwithstanding clause 16.12, the Parties may agree to other forms of communication of notices in respect of technical and operational matters required pursuant to the performance of this Interconnection Agreement.

Notices shall be sent to:

Operator 1 Title:

Address:

Fax:

Operator 2 Title:

Address:

Fax:

### **Cumulative rights**

- 16.15 Subject to the terms of this Interconnection Agreement, the rights, powers and remedies of a Party under this Interconnection Agreement are cumulative with and do not exclude or limit any other right, power or remedy provided at law or in equity independently of this Interconnection Agreement.

## Costs and expenses

16.16 Each Party is responsible for its own costs incurred in enabling and maintaining the interconnection including network conditioning costs, costs associated with advertising and marketing the Services to its Customers and costs associated with the preparation, negotiation and execution of this Interconnection Agreement.

## 17 FURTHER AGREEMENT REGARDING COMMERCIAL COMMUNICATIONS

17.1 All Commercial Communications shall be subject to a separate interconnection charge and the terms of interconnection to be agreed in writing by the Parties and unless otherwise set out in this (or any subsequent) Interconnection Agreement the only Charges that apply to non-Commercial Communications are those as set out herein.

17.2 For the avoidance of doubt, either Party shall have the right to refuse terminating any Commercial Communication before both Parties agreed the interconnection charge and the terms of interconnection.

SIGNED as an agreement

**EXECUTION CLAUSE**

SIGNED by

as authorised signatory for

in the presence of:

Signature of witness

Signature of

Name of witness (print)

Date:

SIGNED by

as authorised signatory for

in the presence of:

Signature of witness

Signature of

Name of witness (print)

Date:

## SCHEDULE 1 –INTERPRETATION AND DEFINITIONS

### 1 SCHEDULE 1, PART 1 - INTERPRETATION

1.1 Unless otherwise specified or the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) different grammatical forms of the same word have the corresponding meaning;
- (c) the words “include”, “including”, “for example” or “such as” are not used as, and are not to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (d) the expression “person” includes a reference to a natural person, firm, corporation, unincorporated association or other legal entity;
- (e) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and permitted assigns;
- (f) a reference to a part, schedule, clause, annexure or attachment is a reference to a part, schedule, clause, annexure or attachment forming part of this Interconnection Agreement between the Parties; and
- (g) headings are used for convenience only and do not affect the interpretation of this Interconnection Agreement;
- (h) a reference to an agreement, document, manual or another instrument includes any variation or replacement of any of them;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;



- (j) all dollar amounts are expressed in Hong Kong dollars unless expressly specified;
- (k) a reference to a period of time:
  - (i) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
  - (ii) which commences on a given day or the day of an act or event is to be calculated inclusive of that day;
- (l) a reference to a month is a reference to a calendar month;
- (m) if the day on which the payment of money falls due is not a Business Day, the due date will be deemed to be the next Business Day;
- (n) a reference to a Party is a reference to Operator 1 or Operator 2 and a reference to Parties means both of them;
- (o) a reference to a third person or a third party is a reference to a person who is not a Party to this Interconnection Agreement;
- (p) words and expressions in relation to a particular Service or a price for a particular Service, have the meanings set out in the Service Description for that Service;
- (q) a reference to a thing (including a chose in action) includes a part of that thing; and
- (r) an agreement on the part of two or more persons binds them jointly and severally.

- 1.2 Where the day on or by which something must be done is not a Business Day, then that thing must be done on or by the following Business Day. Where something must be done on a Business Day during which a typhoon signal 8 or above or black rainstorm has been hoisted, then that thing must be done on the following Business Day.
- 1.3 Any inconsistency between provisions of this Interconnection Agreement must be resolved in accordance with the following descending order of precedence (to the extent of the inconsistency):
- (a) Schedule 3 (Charges);
  - (b) Schedule 2 (Services);
  - (c) the main body of this Interconnection Agreement; and
  - (d) the other Schedules.

## 2 SCHEDULE 1, PART 2 - DEFINITIONS

**Access Provider** means, in relation to a Facility, the Party who owns, leases, is the licensee of, or has other rights of use in respect of the Facility to which the Access Seeker has been, will be or is seeking to be, provided access via the Points of Interconnection.

**Access Seeker** means in relation to a Facility, the Party which seeks, or has been or will be provided, access to that Facility by the Access Provider via the Points of Interconnection.

**Access Seeker Customer** means a customer (whether a natural person or otherwise) to whom the Access Seeker agrees to supply products and services (and for the avoidance of doubt, excludes a mobile virtual network operator but includes a wholesale or quasi-wholesale customer who uses the same network identities as the Access Seeker).

**Affiliate** of a Party means any entity, which directly or indirectly owns, or is owned by, or is under common ownership with, a Party, where ownership means at least 50% of the voting power of securities or interests in such entity.

**Applicable Law** means:

- (a) any law, rule or regulation of Hong Kong;
- (b) any obligation under any Licence held by a Party in Hong Kong; or
- (c) any lawful and binding determination, decision or direction of a government agency in Hong Kong.

**Billing Dispute** has the meaning ascribed in clause 13.12.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Hong Kong.

**Charges** mean the charges for the supply of a Service as set out in, or calculated in accordance with, Schedule 3.

**Communication** includes any communication:

- (a) whether between persons and persons, things and things or persons and things; and
- (b) whether in the form of speech, music or other sounds, data, text, visual images, signals or any other form or in any combination of forms, and

where the context permits, includes an attempt to establish a Communication.

**Commercial Communication** means a communication that includes but is not limited to a Video Call, Voice Call, MMS, SMS containing value added content, or is a network-based service, originating or terminating from a machine and connected to the network of a Party other than Video Calls originating from a subscriber mobile station. For the avoidance of doubt, **value added content** means content that has been created for the specific purpose of commercial gain or profit to persons either known or unknown which was either solicited or unsolicited by those persons.

**Confidential Information** means all information of a confidential nature relating to the other Party including but not limited to know-how, ideas, concepts, technology, the terms of this Interconnection Agreement, the terms of any mediation settlement made under this Interconnection Agreement, manufacturing processes, industrial marketing and commercial knowledge, which is disclosed, communicated or delivered by it to the other Party under this Interconnection Agreement or comes to

the knowledge or into the possession of the other Party in connection with this Interconnection Agreement.

**Customer** means a subscriber of a Party's network services or other person to whom the Party agrees may use its network services and whose mobile device is able to send and/or receive or utilise a Service.

**Due Date** has the meaning ascribed in clause 6.1.

**Facility** means:

- (a) any part of the infrastructure or system of a Network; or
- (b) any line, equipment, apparatus, tower, mast, antenna, tunnel, duct, hold, pit, pole or other structure or thing used, or for use, in or in connection with a Network.

**Forecast** means a Party's best estimate of one or more future events or circumstances, in compliance with Schedule 4 (Provisioning).

**Force Majeure Event** in relation to a Party, means:

- (a) any act of God or act of nature, fire, flood, storm, explosion, sabotage, riot, act of war whether declared or not, requirement or restriction of governmental authorities, or any other like event;
- (b) any strike, lockout, work stoppage or other industrial dispute of any kind;
- (c) any act or omissions of a third party which affect the provision of a Service, including a failure to provide goods and services or access to premises; or
- (d) any other similar circumstances,

beyond the reasonable control of the affected Party.

**General Dispute** has the meaning ascribed in clause 13.12.

**Hong Kong** means the Hong Kong Special Administrative Region of the People's Republic of China.

**Hong Kong Numbering Plan** means the document entitled "The Numbering Plan for Telecommunications Services in Hong Kong" issued by the Office of the Telecommunications Authority as updated from time to time.

**Insolvent** includes means being an insolvent, under administration or insolvent, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts as and when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction.

**Intellectual Property Rights** means all rights conferred under statute, common law or equity now or in the future and wherever in the world subsisting in and in relation to copyright, including any right of communication to the public, or right of making available to the public, trade marks, designs, patents, know-how, circuit layouts, trade secrets, Confidential Information, trade or business names, goodwill and all other intellectual property (whether registrable or otherwise).

**Interconnection Agreement** has the meaning ascribed in clause 1.1.

**Inter-operator Video Call Service** is a service whereby the Access Provider carries and terminates a Video Call from the Point of Interconnection to its relevant Customer.

**Licence** means a licence granted under the Telecommunications Ordinance and which is required in order to provide the Services.

**MM** means a multimedia message conforming to the 3GPP Technical Specifications.

**MMS** means a MM service conforming to the 3GPP Technical Specifications.

**Network** of a Party, means that Party's system, or series of systems, that carries, or is capable of carrying Communications by means of guided or unguided electromagnetic or optical energy.

**Party** means either Operator 1 or Operator 2.

**Parties** means both Operator 1 and Operator 2.

**Points of Interconnection** means an agreed location which:

- (a) is a point of demarcation between the Networks nominated by the Parties ; and
- (b) is associated (but not necessarily co-located) with one or more of a Party's interconnect gateway exchanges, as described in Schedule 2, but does not include an international point of interconnection.

**Regulator** means the Telecommunications Authority of Hong Kong established under the Telecommunications Ordinance (Cap 106).

**Regulatory Event** occurring in relation to a Party means:

- (a) the grant of an injunction against that Party in relation to a breach or alleged contravention of the Telecommunications Ordinance; or
- (b) the making of a determination or finding by a Regulator or a court of law that all or any part of this Interconnection Agreement contravenes any provision of any law; or
- (c) the giving of a lawful directive to that Party by a Regulator.

**Representatives** means, in relation to a Party, any director, officer, employee, agent or contractor.

**Service** means a service as described in a Service Description.

**Service Description** means an Annex to Schedule 2 (Services).

**SMS** means a Short Message Service of up to 140 octets - containing a maximum of 160 characters of Latin alphabets, or, a maximum of 70 characters of non-Latin alphabets such as Arabic and Chinese alphabets, or a maximum of 140 bytes of binary data - created on a mobile device using the mobile keypad or transmitted from a connected computer or peripheral and transmitted and originated from an Access Seeker's Customer to the Customer of the Access Provider.

**Unsolicited Promotional Communications** means a communication that includes but is not limited to a Video Call, Voice Call, MMS, SMS of a promotional or similar nature which the intended recipient has not given his/her explicit prior consent to receive.

**Video Call** means a circuit switched multimedia (video and audio) call, which is made by an Access Seeker's Customer to a Customer of the Access Provider, and setup according to ITU-T ISUP and 3GPP 3G-324M specifications.

**Voice Call** means a circuit switched voice call that is made by an Access Seeker's Customer to a Customer of the Access Provider and the call is established in accordance with the HKTA 2202 issued by the Regulator as amended from time to time.

## SCHEDULE 2 - SERVICES

1. Implementation of Inter-operator Video Call Service
  - 1.1 The Parties shall implement and enable the Inter-operator Video Call Service between them by way of indirect interconnection via the network of
  - 1.2 shall subscribe at least two (2) dedicated IDA E1 links from during the initial set up for the transit of Video Calls between the networks of the Parties.
  - 1.3 Each Party agrees that it shall use commercially reasonable endeavours to do all things necessary to ensure that the Inter-operator Video Call Service and the provision and delivery of the same will be available on continuous basis.
  - 1.4 Neither Party is allowed to transit an international inbound Video Call from overseas to the other Party's Network under this Interconnection Agreement.
  - 1.5 The Parties agree that the Point of Interconnection for the purposes of the Inter-operator Video Call Service is the network of
  - 1.6 Without prejudice to either Party's rights and/or obligations under any applicable directions, statements, orders, codes of practice and instruments issued by the Regulator, either Party may in good faith refuse to terminate any Video Call that are intended for any of its Customers if, in its reasonable belief (including where it has received complaints or queries from Customers) that the said communication: (i) constitutes an Unsolicited Promotional Communication; or (ii) originated from a network facility outside of Hong Kong; or (iii) is a Commercial Communication.



### SCHEDULE 3 – CHARGES

#### 1. CHARGES AND SETTLEMENT

- 1.1 For the conveyance of Video Calls between the Parties, the Access Seeker shall pay an interconnection Charge for the Video Calls to the Access Provider (“Interconnection Charge”) in accordance with clause 1.2 of this Schedule.
- 1.2 The Access Provider agrees to charge the Access Seeker an Interconnection Charge of HK\$1 per net-off conversation minute (rounded up to the nearest 6 seconds for each Video Call). The net-off conversation minute is the monthly total conversation minutes of the terminating Video Calls of one Party (which originate on the other Party’s Network) minus the monthly total conversation minutes of the originating Video Calls of the same Party (and which terminate on the other Party’s Network). For the avoidance of doubt, only the positive net-off conversation minutes are chargeable and invoiced by the Access Provider in accordance with this Schedule 3. The Video Calls in this context are limited to the Video Calls made between mobile handsets of the Parties.
- 1.3 Each Party shall bill the other Party the Interconnection Charge based on the net-off conversation minutes of the Video Call in accordance with clause 6 of this Interconnection Agreement.

## SCHEDULE 4 –PROVISIONING

1. Connection Circuits and Capacity Arrangement
  - 1.1 Each Party must arrange its own quantity of transmission circuits so as to handle and send Video Calls to the other Party in accordance with the agreed capacity requirements as set out in clause 1.2 of this Schedule.
  - 1.2 The Access Provider shall arrange sufficient switch capacity to cater for the maximum capacity of incoming circuits to terminate incoming Video Calls from the Access Seeker.
  - 1.3 The conveyance of Video Calls originating from one Party's Network to the other Party's Network shall be carried through the network of
  - 1.4 Each Party agrees to use its best endeavours to detect, identify, notify and prevent any bulk volume of Video Calls from being sent from its Network to the other Party's Network, which is not person-to-person communication.
2. Forecast
  - 2.1 The Access Seeker shall provide a forecast to the Access Provider in respect to the of the Video Call.