

CONFIDENTIAL

INTERCONNECTION AGREEMENT

THIS AGREEMENT is made this 24th day of April 2009

BETWEEN

whose registered office is situated at

(" ");

AND

whose principal place of business is at

(" ")

(hereinafter referred to jointly as "Parties" and individually as "Party").

WHEREAS

- a) is in Hong Kong and offers mobile telecommunications services via its telecommunications network.
- b) is in Hong Kong and offers various telecommunications services via its telecommunications network.
- c) The Telecommunications Authority ("TA") issued a statement namely "Deregulation for Fixed-Mobile Convergence" on 27 April 2007 ("FMC Statement") and concluded that, among others, the regulatory guidance for fixed-mobile interconnection charge ("FMIC") in favour of the mobile party's network pays ("MPNP") model will be withdrawn subject to a 2-year transition period commencing from 27 April 2007.
- d) Both parties agree to interconnect their respective telecommunications networks on the terms and conditions set out in this Agreement.

NOW THEREFORE it is agreed as follows:

1. Charging Principles

- 1.1 Both parties agree to adopt a "Bill And Keep" ("BAK") interconnect arrangement under which there will be no interconnection charge between the parties for the local traffic originating from one party's telecommunications network and terminating at the other party's telecommunications network in Hong Kong.
- 1.2 The BAK arrangement is applicable regardless of direct or indirect traffic routes.

2. Direct Interconnection

- 2.1 The Offer for Provision of Interconnection Link between _____ and _____ dated _____ shall remain effective until a new arrangement is mutually agreed.

3. Indirect Interconnection

- 3.1 _____ and _____ acknowledge that the direct fixed-mobile telecommunications traffic may exceed the capacity of established transmission circuits from time to time.
- 3.2 Each party shall redirect its excess outgoing telecommunications traffic via another fixed network at its own choice and costs.

4. Term and Termination

- 4.1 This Agreement shall be effective from _____ and shall continue unless and until terminated earlier in accordance with the provisions of this Agreement.
- 4.2 Either Party may terminate this Agreement at any time without cause by serving six (6) months written notice on the other.
- 4.3 This Agreement may be terminated forthwith by either Party giving written notice to the other if the other Party:

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- (a) is in material breach of any term or condition of this Agreement, which breach is not remedied within thirty (30) days after a written request to do so; or
 - (b) goes into liquidation, has a trustee, receiver or manager or like official appointed over the whole or substantial part of its undertaking or property or calls a meeting of or makes any composition with or assignment for the benefit of its creditors or is subject to any winding up proceeding.
- 4.4 Termination of this Agreement shall not affect the rights of the Parties which have accrued as at the date of termination.
5. Confidentiality
- 5.1 and shall keep confidential any information obtained under or in connection with the Agreement and shall not:
- (a) disclose the same to any third party; or
 - (b) use all or any part of such information other than reasonably necessary for the purpose of this Agreement,
- without the consent in writing of the other Party.
- 5.2 The obligations of confidentiality in this clause 5 shall not apply to:
- (a) any information in the public domain otherwise than by breach of the Agreement;
 - (b) information in the possession of the receiving party thereof as evidenced by a writing or writings dated before any disclosure as aforesaid;
 - (c) information obtained from a third party who is free to disclose the same; or
 - (d) information required to be disclosed by law.
- 5.3 and shall disclose confidential information only to those employees or representatives on a need to know basis and shall ensure that such employees and representatives are aware of and comply with these obligations as to confidentiality.
- 5.4 This clause 5 shall survive the termination of this Agreement.

6. Force Majeure

- 6.1 Neither Party will be obliged to carry out any obligation under this Agreement where performance of such obligation is prevented due to any cause beyond that Party's reasonable control, including but not limited to any act of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, tsunami, terrorist attacks, labour shortage or labour dispute, the act or omission of Government, highways authorities, other telecommunications operators or administrations or other competent authority, the obstruction by a third Party of line of sight between microwave installations, war, military operations or riot.
- 6.2 If any event described in clause 6.1 lasts for more than three (3) months from the date of its commencement, and that event prevents either Party from performing all or a material part of its obligations during that period, either Party may by giving fourteen (14) days written notice to the other Party terminate this Agreement.

7. Regulatory Determinations and Legislative Change

Inconsistent Interconnection Guidance by TA

- 7.1 Subject to clause 7.3, an interconnection determination or statement of the TA under the *Telecommunications Ordinance* ("Interconnection Guidance") prevails if this Agreement is inconsistent with the Interconnection Guidance.
- 7.2 Subject to clause 7.3, each Party must use reasonable endeavours to agree on the implementation of the Interconnection Guidance referred to in clause 7.1 and any consequential changes. This includes, without limitation, amending this Agreement.
- 7.3 The Parties do not have to implement the Interconnection Guidance whilst it is stayed by a court of competent jurisdiction.
- 7.4 Either Party may refer a disagreement between the Parties about whether or how a determination should prevail to the TA within three (3) months of the date on which the TA made the Interconnection Guidance.

Material Legislative Change and Legislative Remedies

- 7.5 A Material Legislative Change occurs if:

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- (a) the *Telecommunications Ordinance* is amended or repealed; or
- (b) a condition of a Party's telecommunications licence is amended or deleted or a new condition or rule is imposed; or
- (c) a lawful direction is made by the TA,

and any such amendment, repeal, deletion, new condition or rule or direction materially affects the rights or obligation of either of the Parties under this Agreement.

7.6 If a Material Legislative Change occurs a Party may notify the other Party of that Material Legislative Change and the Parties will then negotiate in good faith to agree such amendments to this Agreement as are necessary or appropriate to ensure consistency between this Agreement and the *Telecommunications Ordinance*, licence or lawful direction.

7.7 Any present or future legislation which operates on a right, power or remedy of a person in connection with this Agreement is excluded except to the extent that:

- (a) its exclusion is prohibited or rendered ineffective by law; or
- (b) this Agreement specifically or by necessary implication provides to the contrary.

8. Limitation of Liability

8.1 Neither Party shall be liable to the other Party except as expressly set out in this Agreement, and shall have no other obligation or liability whatsoever in contract, tort or otherwise to the other Party. Neither Party has an obligation of any kind to the other Party beyond the obligations to exercise reasonable skill and care of a competent telecommunications operator in performing this Agreement.

8.2 Neither Party shall be liable to the other under this Agreement in contract, tort (including negligence) or otherwise for any indirect or consequential loss or damages including but not limited to loss of revenue, business, contracts, anticipated savings or profits.

8.3 Neither Party shall be liable to the other for any failure to comply with its obligations under this Agreement to the extent that such liability arises as a result of the failure by the other Party to fulfill its obligations under this Agreement.

9. **Assignment**

Neither Party shall assign or otherwise deal with any of its rights and obligations under this Agreement without the other Party's prior written consent (not to be unreasonably withheld). Notwithstanding the above, either Party is at liberty to transfer any right, obligation, title or property interest in this Agreement or any part of it to its holding, subsidiary or associated company or to any surviving entity or transferee upon any merger or consolidation involving that party or upon any sale of all or substantially all of the assets of that party.

10. **Severability**

Part or all of any clause of this Agreement which is held to be invalid, unenforceable or illegal by a court of competent jurisdiction or telecommunications regulator will be severed from this Agreement and will not affect the enforceability of the remaining provisions of this Agreement.

11. **Entire Agreement**

This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes and merges any and all prior written and oral agreements, promises, understandings, statements, representations, warranties, indemnities and covenants regarding the subject matter hereof.

12. **Governing Law and Jurisdiction**

This Agreement is governed by the laws of Hong Kong Special Administrative Region and the parties irrevocably submit to the exclusive jurisdiction of the courts of Hong Kong Special Administrative Region.

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IN WITNESS WHEREOF the parties have set their hands the day and year first above written.

Signed by)
for and on behalf of)
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in the presence of)

Signed by)
for and on behalf of)
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in the presence of)