

Letter of Intent

THIS LETTER OF INTENT (“LOI”) is made this 22nd day of May 2009

BETWEEN

AND

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

WHEREAS

- a) is in Hong Kong and offers various telecommunications services via its telecommunications network.
- b) is in Hong Kong and offers mobile 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for fixed-mobile interconnection charge (“FMIC”) in favour of the mobile party’s network pays (“MPNP”) model will be withdrawn subject to a 2-year transition period commencing from 27 April 2007.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 LOI.

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 and terminating at their respective telecommunications networks in Hong Kong.
- 1.2 The BAK arrangement is applicable to the traffic types as per Clause 2.1, 3.1 and 4.1.
- 1.3 The terms and conditions stated in the Rate Offer between both Parties dated (“Rate Agreement”) shall be in full force and effect except that the Parties agree to amend the Rate Agreement by deleting items 6 and 7 in Schedule 1. For avoidance of doubt, shall be responsible for all the charges of the transmission circuits between both Parties’ telecommunications networks until the Rate Agreement is terminated.
- 1.4 Unless otherwise agreed by the Parties, the Interconnection Services Tariff published by and any supplements or amendments in connection thereof shall not be applicable to

2. Direct Interconnection

- 2.1 and shall maintain transmission circuits for conveying direct fixed-mobile telecommunications traffic between their respective telecommunications networks commencing from 27 April 2009. This refers to the following traffic directions :

- →
- →

2.2 The transmission circuits for direct interconnection between both Parties' telecommunications networks will be supplied by _____ to _____ under the Rate Agreement.

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. In this situation, either Party may redirect its excess outgoing telecommunications traffic to the other Party via another fixed network at its own choice and costs. This refers to the following traffic directions :

- → FNO →
- → FNO →

4. Transit Traffic

4.1 _____ and _____ shall maintain transmission circuits for conveying transit telecommunications traffic between their respective telecommunications networks commencing from 27 April 2009. This refers to the following traffic directions :

- FNO → →
- → → FNO
- MNO → →
- → → MNO
- MNO → FNO → →
- → → FNO → MNO

4.2 The transmission circuits between both Parties' telecommunications networks will be supplied by _____ to _____ under the Rate Agreement.

4.3 _____ agrees and acknowledges that _____ will not act as a billing agent between _____ and other network operators in relation to the transit traffic.

5. Term and Termination

5.1 This LOI shall be effective from the date of execution and shall continue unless and until terminated earlier in accordance with the provisions of this LOI.

5.2 Either Party may terminate this LOI at any time without cause by serving six (6) months written notice on the other.

5.3 This LOI may be terminated forthwith by either Party giving written notice to the other if the other Party:

- (a) _____ is in material breach of any term or condition of this LOI, 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.

5.4 Termination of this LOI shall not affect the rights of the Parties which have accrued as at the date of termination.

6. Confidentiality

6.1 and shall keep confidential any information obtained under or in connection with the LOI 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.

6.2 The obligations of confidentiality in this Clause 6 shall not apply to:

- (a) any information in the public domain otherwise than by breach of the LOI;
- (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.

6.3 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.

6.4 This Clause 6 shall survive the termination of this LOI.

7. Force Majeure

7.1 Neither Party will be obliged to carry out any obligation under this LOI where performance of such obligation is prevented due to any cause beyond that Party's reasonable control, including but not limited to any acts of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, tsunami, terrorist attacks, the act or omission of Government, other telecommunications operators or other competent authority, war, military operations or riot.

7.2 If any event described in Clause 7.1 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 LOI.

8. Regulatory Determinations and Legislative Change

Inconsistent Interconnection Guidance by TA

8.1 Subject to Clause 8.3, an interconnection determination or statement of the TA under the *Telecommunications Ordinance* ("Interconnection Guidance") prevails if this LOI is inconsistent with the Interconnection Guidance.

8.2 Subject to Clause 8.3, each Party must use reasonable endeavours to agree on the implementation of the Interconnection Guidance referred to in Clause 8.1 and any consequential changes. This includes, without limitation, amending this LOI.

- 8.3 The Parties do not have to implement the Interconnection Guidance whilst it is stayed by a court of competent jurisdiction.
- 8.4 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

- 8.5 A Material Legislative Change occurs if:
- (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 LOI.
- 8.6 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 LOI as are necessary or appropriate to ensure consistency between this LOI and the *Telecommunications Ordinance*, licence or lawful direction.
- 8.7 Any present or future legislation which operates on a right, power or remedy of a person in connection with this LOI is excluded except to the extent that:
- (a) its exclusion is prohibited or rendered ineffective by law; or
 - (b) this LOI specifically of by necessary implication provides to the contrary.

9. Limitation of Liability

- 9.1 Neither Party shall be liable to the other Party except as expressly set out in this LOI, 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 LOI.
- 9.2 Neither Party shall be liable to the other under this LOI 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.
- 9.3 Neither Party shall be liable to the other for any failure to comply with its obligations under this LOI to the extent that such liability arises as a result of the failure by the other Party to fulfill its obligations under this LOI.

10. Assignment

Neither Party shall assign or otherwise deal with any of its rights and obligations under this LOI 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 LOI 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.

11. Severability

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

12. Binding Effect

This LOI is legally binding on the Parties. In the event of any inconsistency between the Rate Agreement and this LOI, this LOI shall prevail.

13. Governing Law and Jurisdiction

This LOI 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.

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

SIGNED for and on behalf of

by its duly authorised representative:

SIGNED for and on behalf of

by its duly authorised representative: