

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into on 22 January 2010 (“**Effective Date**”)

BY

(1)

(2)

(3)

() shall collectively be referred to as the “Parties” and a “Party” shall be construed accordingly).

RECITALS

(A)

entered into an agreement titled which was subsequently amended by an Amending Agreement on (collectively, “ **Interconnection Agreement**”). The **Interconnection Agreement** set out the interconnection arrangement between

(B) On 27 April 2007, the TA (as defined below) issued a statement namely “Deregulation for Fixed-Mobile Convergence” and concluded that, among other things, the regulatory guidance for fixed-mobile interconnection charge in favour of the mobile party’s network pays model would be withdrawn subject to a 2-year transition period commencing on 27 April 2007.

(C) is a holder of a pursuant to which it provides public fixed carrier telecommunications services (“**Fixed Carrier Services**”) under its licence before

(D)

(E)

(F) continued to issue invoices for FMIC traffic to after 26 April 2009.

(G) On 29 April 2009, published a tariff for the interconnection charges (“ **Interconnection Charges**”) payable by any fixed network operator for local call termination, ETS call termination and ETS call origination via its network. A number of invoices issued by for **Interconnection Charges** for local call termination and ETS call termination (“ **Invoices**”) were, , sent to such invoices remain unpaid.

(H)

(I)

(J) The Parties now intend to enter into this Agreement relating to the Invoices.

NOW IT IS AGREED as follows:

1. Definitions and interpretation

1.1 Each defined term used in this Agreement has the meaning given to it below unless the context otherwise requires:

“ **Amendment Agreement**” shall have the same meaning assigned to it in Recital (I).

“ **Interconnection Agreement**” shall have the same meaning assigned to it in Recital (A).

“**Affiliate**” means, in relation to any party, any other party that directly or indirectly through one or more intermediaries, Controls or is Controlled by the first-mentioned party or is under direct or indirect common Control with that first-mentioned party. For the purposes of this definition, “**Control**” means, in relation to a party, possession (indirectly or directly) of the power to direct or cause the direction of the management or policies of that party, whether through the ownership of voting securities, by contract or otherwise. For example, a party who owns directly or indirectly fifty percent (50%) or more of voting securities of another party will be

taken to possess the power to control the second-mentioned party. “Controlled” has a corresponding meaning.

“**Business Day**” means any day other than a Saturday, Sunday or a public holiday or a day on which a tropical cyclone warning signal of No. 8 or above or a “black” rainstorm warning signal is hoisted or remains hoisted in Hong Kong at any time between 9:00 a.m. to 12:00 noon.

“**Claim**” means any claim (whether made to a court or authority or otherwise),

whatsoever, whether in writing or oral, provided that such claim has been or could be asserted as at the date of this Agreement, but irrespective of whether the Party which could bring such claim is or is not aware of the ability to bring such claim.

“**Invoices**” shall have the same meaning assigned to it in Recital (G).

“**Interconnection Charges**” shall have the same meaning assigned to it in Recital (G).

“**Licence**” shall have the same meaning assigned to it in Recital (C).

“**Fixed Carrier Services**” shall have the same meaning assigned to it in Recital (C).

“**FMIC**” shall have the same meaning assigned to it in Recital (E).

“**Hong Kong**” means the Hong Kong Special Administrative Region of the People’s Republic of China.

“**Services Letter Agreement**” shall have the same meaning assigned to it in Recital (I).

“**OFTA**” means the Office of the Telecommunications Authority in Hong Kong.

“**TA**” means the Telecommunications Authority of Hong Kong.

1.2 In this Agreement, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

- (b) the word person includes a body corporate, an unincorporated association or an authority;
- (c) a reference to a Party includes its successors and permitted assigns;
- (d) a reference to a document, includes any amendment, replacement or novation of it;
- (e) a reference to a Clause, part, annexure, exhibit, attachment or Schedule is a reference to a Clause of, and a part, annexure, exhibit, attachment and schedule to, this Agreement and a reference to this Agreement includes any part, annexure, exhibit, attachment and schedule;
- (f) a reference to any statute, ordinance, by-law, regulation or proclamation, includes all statutes, ordinance, by-law, regulations or proclamations varying, consolidating or replacing it and a reference to a statute or ordinance includes all by-laws, regulations and proclamations issued under that statute or ordinance;
- (g) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
- (h) the headings of the Clauses or paragraphs contained herein are for convenience only and shall not affect the interpretation of such Clauses or paragraphs.

2.

For and in consideration of the mutual agreement of the Parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

(a)

(b)

(c)

(d)

(e)

- (f) by way of adopting the bill and keep approach (“BAK (互不結算)”) as from 1 October 2009 under Clause 2(h) below:
- (A) shall cancel, revoke and withdraw all Invoices issued to on Interconnection Charges traffic (with respect to ETS call termination and local call termination) for the period between 27 April 2009 and 30 September 2009 (both dates inclusive). shall waive, discharge and release from all or any liability (if any) with respect to the Interconnection Charges (local call termination, ETS call termination and ETS call origination) for such period and thereafter, subject, however, to Clause 2(j) below;
- (B) shall waive, discharge and release from all or any liability (if any) with respect to the fixed or mobile FMIC Charges for the period between 27 April 2009 and 30 September 2009 (both dates inclusive); and
- (C) the Interconnection Agreement shall be deemed and treated as terminated and cancelled and of no further legal effect as from 1 October 2009;
- (g) for the avoidance of doubt, each of shall not charge interest and shall waive its rights to interest for the FMIC and the Interconnection Charges mentioned in Clauses 2(a) to (f) above;
- (h) the BAK (互不結算) shall be adopted with effect on 1 October 2009 for the local fixed-mobile interconnection traffic between (A) , and (B) , until the Parties agree otherwise. Without obligations, the Parties will discuss in good faith a unified interconnection charge so as to decrease Local Access Charge and Mobile Access Charge bypass;
- (i) shall write a joint letter to OFTA informing OFTA that commercial agreement has been reached by the parties on FMIC incurred after 26 April 2009.
- (j) if TA’s future review by way of TA’s Statement or determination (“**Determination**”) on interconnection charges for external communications between the external telecommunications service operators and the mobile network operators/fixed network operators results in a regulatory framework for a mobile network operator to charge the fixed network operators a particular rate for such interconnection, reserves the right to charge, on a non-retrospective basis (unless the terms of the Determination expressly provide for retrospective charging) the regulated and determined rate by the TA as from the date of such Determination becomes fully final;
- (k) subject to Clause 2(j) but without prejudice to Clauses 2(b), (c) and (d) : (A) ; (B) the cancellation, revocation and withdrawal of the invoices for Interconnection Charges and the release of from all or any liability (if any) with respect to the FMIC Charges, and the termination of the

Interconnection Agreement, as mentioned in Clause 2(f) hereof; (C) the waiver of the interest mentioned in Clause 2(g) hereof; and (D) the adoption of the BAK (互不結算) by the Parties mentioned in Clause 2(h) hereof, shall be in full and final settlement of all the issues, claims or payments amongst the Parties under this Agreement without admission of liability by any Party;

(l) Clause 2(k) shall not apply to any claim or action relating to the breach or enforcement of this Agreement;

(m)

(n) and sign (A) the Amendment Agreement before the execution of this Agreement; and (B) the Backhaul Agreement and the Services Letter Agreement simultaneously with the execution of this Agreement;

(o) each Party agrees that it will do all things, including providing documentation and information and otherwise co-operating with each other, to the extent required to give full effect to this Agreement;

(p) the payment of any sum by in accordance with Clause 2 hereof shall be made, without set off or counterclaim and clear of any withholding or deduction, by cheque or wire transfer to bank account as indicated below:

Beneficiary Name :
Bank Name :

Bank Address :
Swift Code :
Account No :

If a cheque or payment by wire transfer is dishonoured or cancelled, shall pay to , within seven (7) days of written demand, any resulting bank or other charges incurred by ; and

(q) the refund of any sum by in accordance with Clause 2 hereof shall be made, without set off or counterclaim and clear of any withholding or deduction, by cheque or wire transfer to bank account as indicated below:

Beneficiary Name :
Bank Name :

Bank Address :
Swift Code :
Account No :

If a cheque or payment by wire transfer is dishonoured or cancelled, shall pay to , within seven (7) days of written demand, any resulting bank or other charges incurred by

3. **Confidentiality**

- 3.1 Each Party undertakes to keep the terms of this Agreement confidential except in so far as strictly necessary to: (a) seek professional advice in confidence; (b) make disclosures to their auditors in confidence; (c) comply with the applicable legal, regulatory or stock exchange requirements, or, a judicial order; or (d) enforce the terms of this Agreement. Each Party is responsible under this Agreement for any disclosure by a person to whom that Party discloses information, comprised in this Agreement's terms, under Clause 3.1 (a) or (b) as if that Party made the disclosure.

If a Party has an obligation to make any disclosure pursuant to Clause 3.1(c) above, it shall give the other Parties reasonable opportunity to review and comment on any such disclosure before it is made or issued provided always that this shall not have the effect of preventing the Party making the disclosure from complying with its legal, regulatory, stock exchange or judicial obligations.

- 3.2 Without limiting the above, each of the Parties agrees that it shall not make any public announcements about the discussions or negotiations regarding the subject matter of this Agreement, the terms of this Agreement and any amendments to it, or any other information relating to any of the foregoing, whether in the form of press release or otherwise, without first consulting with the other Parties and obtaining the other Parties' consent, which consent shall not be unreasonably delayed or withheld.

4. **Representations and Warranties**

Each of the Parties represents and warrants that: (a) this Agreement has been validly executed; and (b) the execution of this Agreement and the performance or compliance with the terms of this Agreement will not conflict with any arrangement or instrument to which such Party is bound, or require the consent of any third party.

5. **Waiver**

No failure or delay on the part of a Party to exercise any rights, powers or remedies under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by a Party of any rights, powers or remedies. The rights, powers and remedies provided herein are cumulative and are not exclusive of any rights, powers or remedies by law.

6. **Costs and Expenses**

The costs and expenses incurred in undertaking any activities in pursuance of this Agreement shall be borne by the respective Party incurring such costs and expenses. Each Party shall pay its own costs and expenses in respect of negotiation, preparation and execution of this Agreement.

7. **Assignment**

Each Party shall not assign, transfer or otherwise dispose of all or any of its rights and/ or obligations under this Agreement without the prior written consent of the

other Parties, provided that such consent shall not be unreasonably delayed or withheld.

8. **Notice**

8.1 A notice, consent, request or any other communication (collectively “**Communication**”) under this Agreement must be in writing and must be 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 specified below or any other address or facsimile number the addressee requests.

Attention:

Facsimile:

Address:

Copy to:

Facsimile:

Address:

Attention:

Facsimile:

Address:

Copy to:

Facsimile:

Address:

Attention:

Facsimile:

Address:

- 8.2 A written Communication is deemed to be received if:
- (a) by hand delivery, when it is delivered;
 - (b) given or made by a letter, three (3) days after posting from a place within Hong Kong; and
 - (c) given or made by a facsimile, at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.
- 8.3 A Party may request that Communication for operational issues be sent to another addressee other than the one named above by notifying the other Parties of the same in a notice issued in the manner stated in Clause 8.1. Any Communication received by a Party outside of normal working hours (being 9:00 a.m. to 5:00 p.m. on any Business Day) will be regarded as being received on the immediately following Business Day.

9. **Dispute Resolution**

In the event of any dispute concerning the provision of this Agreement, each Party agrees in the first instance to refer any dispute to its respective senior management for resolution. Failing resolution within thirty (30) calendar days of such referral, which period may be extended by agreement in writing by the Parties, a Party to the dispute may initiate legal proceedings to resolve the dispute. For the avoidance of doubt, this provision is intended to assist the Parties to resolve any difference among them amicably, but shall be without prejudice to each Party's rights to issue proceedings at such time as they each shall think fit.

10. **Miscellaneous**

- 10.1 This Agreement represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement by the Parties with respect thereto, whether oral or written, and there are no promises, terms, conditions or obligations, oral or written, expressed or implied other than those contained in this Agreement.
- 10.2 No amendment or variation of this Agreement shall be effective unless it is in writing and signed by the Parties.
- 10.3 If any provisions of this Agreement shall be construed to be illegal, invalid or unenforceable, it or they shall not affect the legality, validity and enforceability of the other provisions of this Agreement. The illegal, invalid or unenforceable provisions shall be deemed to be deleted from this Agreement and no longer incorporated as a term of this Agreement but all other provisions of this Agreement shall continue to be binding on the Parties.
- 10.4 Nothing in this Agreement is to be construed as creating a partnership, association, trust or joint venture between any of the Parties. Neither Party nor any of its employees, agents, representatives or contractors is deemed an employee, agent, contractor or representative of any of the other Parties. No Party has the authority to bind or oblige or incur any liability on behalf of any of the other Parties and no such authority is to be implied.

10.5 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and each Party hereby submits to the exclusive jurisdiction of the courts of Hong Kong.

IN WITNESS WHEREOF this Agreement has been executed as an agreement by the Parties on the day and year first above written.

Signed by the authorised representative)
for and on behalf of)
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in the presence of :)

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for and on behalf of)
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in the presence of:-)

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