

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into on 1 April 2010

BY

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(and their affiliates shall collectively be referred to as the "Parties" and individually as a "Party"). Any reference to in this agreement shall be taken to include a reference to predecessor companies and/ or affiliates unless the context otherwise requires.

DEFINITIONS

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- **BAK or Bill and Keep** means the billing arrangement whereby the relevant Party shall charge interconnection for origination, termination or transit of the local fixed and mobile interconnection traffic at HK\$0.00 per occupancy minute;
- **Interconnection Agreements** means the agreements, memoranda of understanding, letters of intent or any other form of agreement concerning fixed and mobile interconnection between the Parties' respective fixed and mobile

networks hitherto entered into by
under their names, their affiliates' names or by predecessor companies;

- "local fixed-mobile interconnection traffic" means all local calls originated from the fixed network of one Party and terminated on the mobile network of the other Party or local calls originated from the mobile network of one Party and terminated on the fixed network of the other Party, irrespective of whether the calls are interconnected directly or transit via the network of a Party's affiliate(s);
- "TO" means Telecommunications Ordinance (Cap 106, Laws of Hong Kong).

RECITALS

(A) The Parties provide fixed and/or mobile services, and are interconnected in the provision of such services.

(B)

(C) On 26 April 2009, the TA published a press release confirming the formal withdrawal as planned of the regulatory guidance in favour of "mobile party's network pays" arrangement and the operators are free to negotiate the terms and conditions for local fixed-mobile interconnection. has since 28 April 2009 continued to invoice for FMIC traffic

(D) After 27 April 2009, gave notice to of and published tariffs for the interconnection charges payable by any fixed network operator for local call termination at its mobile network. A number of invoices were issued by interconnection charges for local call termination and sent

(E) After 27 April 2009, (providing mobile telecommunications under the respective mobile carrier licence or unified carrier licence) gave notice to of and published tariff for the interconnection charges payable by any fixed network operator for local call termination at its mobile network and invoiced for local fixed-mobile interconnection traffic.

(F) The Parties now intend to enter into this Agreement relating to FMIC matters noted above

(G)

NOW IT IS AGREED as follows:

1.

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) Bill and Keep approach shall be adopted with effect from 27 April 2009 and going forwards for the local fixed-mobile interconnection traffic between the fixed and mobile networks of the Parties unless the Parties agree otherwise. Pending the negotiation and conclusion of a new interconnection agreement, the Parties agree that each Party shall continue interconnection with the other Party in accordance with the current prevailing interconnection configuration/ practice and service standards. For the avoidance of doubt, the Interconnection Agreements shall be deemed to have lapsed in effect and shall not apply;

(c) consistent with the BAK approach from 27 April 2009 for local fixed-mobile interconnection traffic, the Parties agree, with effect from 27 April 2009, as follows:

- (i) each Party shall, without limitation, cancel, revoke and withdraw all the Invoices for the local fixed-mobile interconnection traffic issued to (including affiliates and as the case may be) for traffic exchanged after 27 April 2009;
- (ii) and their respective affiliates shall waive, discharge and release from all or any liability whether past, present or future with respect to the local fixed-mobile interconnection charges, Disputed Invoices and tariffs from 27 April 2009 and thereafter;
- (iii) and their respective affiliates shall similarly waive, discharge and release from all or any liability whether past, present or future with respect to the local fixed-mobile interconnection charges, Invoices and tariffs from 27 April 2009 and thereafter;
- (iv) has not imposed such local fixed-mobile interconnection charges post 27 April 2009, and shall not seek to impose such charges retrospectively or in the future;
- (v) each Party shall not issue new or additional invoices to, or seek to make any claim for payment from, any other Party for the local fixed-mobile interconnection traffic for the period after 27 April 2009 under any of its tariffs, or otherwise;
- (vi)

Nothing herein shall affect the rights or entitlement of to charge for the ETS traffic originated or terminated after 16 April 2010 pursuant to their respective mobile interconnection services tariffs or otherwise, which rights and entitlements are hereby reserved by the respective Parties.

- (d) shall jointly write a letter to OFTA by 1 April 2010 informing OFTA that commercial agreement has been reached by the Parties

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- (i) 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;
- (j) each Party shall act in good faith and shall use their best efforts to negotiate and conclude a new interconnection agreement with respect to local fixed-mobile interconnection traffic between the respective fixed and mobile network after 27 April 2009 so as to reflect this Agreement (including the adoption of the BAK Approach) and the provisions of this Agreement shall govern the terms of local fixed-mobile interconnection traffic pending the negotiation and conclusion of such agreement;
- (k)

(l)

2. Confidentiality

- 2.1 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 2.1 (a) or (b) as if that Party made the disclosure.

If a Party has an obligation to make any disclosure pursuant to Clause 2.1(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.

- 2.2 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.

3. 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.

4. 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.

5. 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.

6. **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.

7. **Notice**

7.1 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:

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Copy to:

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- 7.2 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 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.
- 7.3 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 7.1. 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 having been received on the immediately following business day.

8. Dispute Resolution

In the event of any dispute concerning this Agreement, each Party agrees in the first instance to refer any dispute to its respective senior management for resolution. Failing resolution within forty two (42) 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.

9. **Miscellaneous**

- 9.1 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.
- 9.2 No amendment or variation of this Agreement shall be effective unless it is in writing and signed by the Parties.
- 9.3 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.
- 9.4 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.
- 9.5 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.
- 9.6 This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

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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