

THIS INTERCONNECTION AGREEMENT is made the 12 day of June 2012

BETWEEN

AND

( are collectively referred to as the "Parties" and each a "Party")

WHEREAS

- A) Pursuant to the Statement of the Telecommunication Authority ("TA") entitled "Deregulation for Fixed-Mobile Convergence" issued on 27<sup>th</sup> April 2007 ("FMC Statement"), the then existing regulatory guidance of the TA for fixed-mobile interconnection ("FMI") charges ("FMIC") in favour of the "mobile party's network pays" model was withdrawn with effect from 27<sup>th</sup> April 2009.
- B) Since FMIC deregulation on 27<sup>th</sup> April 2009:
- 1) the Parties' respective networks have remained interconnected to one another and voice traffic has continued to pass between them without agreement between the parties as to the FMIC charges payable;
  - 2) has issued invoices to in respect of fixed-mobile interconnection at (" Invoices"). has rejected all the Invoices and all amounts invoiced under them remains unpaid; and
  - 3) has issued invoices to in respect of fixed-mobile interconnection at (" Invoices"). has rejected all the Invoices and all amounts invoiced under them remains unpaid.
- C) It is the mutual intent of and to negotiate and enter into this interconnection agreement ("Interconnection Agreement") which shall resolve all claims and disputes relating to FMICs since FMIC deregulation, the Invoices and the Invoices and provide for an FMIC arrangement that shall be deemed to have taken effect from 27<sup>th</sup> April 2009 and shall continue until terminated hereunder.

NOW IT IS HEREBY AGREED by

as follows:

#### **Future FMIC Arrangement**

1. With effect from 27<sup>th</sup> April 2009 shall provide to one another at no charge fixed-mobile interconnection services for the origination, termination and/or transit of the following local fixed to mobile and mobile to fixed voice traffic:
  - i) local traffic originated from the network of and terminated at the network of , including traffic transited through one or more networks; and
  - ii) local traffic originated from the network of and terminated at the network of , including traffic transited through one or more networks.

The aforesaid arrangement shall be hereinafter referred to as the "Bill and Keep Arrangement" ("BAK Arrangement").

2. For the avoidance of doubt, the commercial and contractual arrangements for the provision and cost of the transmission links for interconnection between and shall remain the subject of other agreements independent of and unaffected by the BAK Arrangement or this Interconnection Agreement.

#### **Settlement of disputed amounts and other claims**

3. The Parties hereby irrevocably cancel, revoke and withdraw all the Invoices and the Invoices issued to each other in relation to FMIC for all periods since 27 April 2009, including all invoices for deposits and/or interest, if applicable.
4. This Agreement constitutes a full and final settlement of all of the Parties' claims against and/or liability to one another (if any) with respect to fixed-mobile interconnection and FMIC from 27<sup>th</sup> April 2009 to date hereof, including in respect of the Invoices and the Invoices, and any associated claims for damages, interest, administrative costs and/or legal costs (if any), invoiced or otherwise, whether or not raised by or known to either of the Parties prior to the date of this Agreement.

#### **Termination**

4. The BAK Arrangement provided for in this Interconnection Agreement shall remain in force indefinitely until it is terminated with notice as follows:
  - a) either gives to the other prior written notice of termination (which does not have to specify any cause) of not less than twelve (12) months; or

b) either:

- (i) has entered into with another FTNS/fixed carrier operator, or has entered into with another mobile network operator, a fixed-mobile interconnection arrangement the FMIC of which is in substance materially more favourable to the other party than the Bill and Keep Arrangement; or
- (ii) there is a determination or decision of any form made and published by the Communications Authority ("CA") under the Telecommunications Ordinance that provides for an FMIC with respect to fixed and mobile interconnection that applies post 27<sup>th</sup> April 2009 between or among any operators, which is in substance materially different from the Bill and Keep Arrangement, regardless of whether or not also participates in that determination;

and either Party on account of any such event (irrespective of whether or not the Party is in fact benefited or adversely affected by such event) gives the other Party prior written notice of termination (which does not have to specify any cause) of not less than 30 days;

c) either party either (i) no longer holds any valid licence for the provision of telecommunications services via its telecommunications network; or (ii) 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 proceedings (otherwise than for the purpose of amalgamation or reconstruction), and the other Party on account of such event gives the first Party written notice of termination at any time thereafter.

For the avoidance of doubt, a party may elect to exercise its right to terminate by way of a notice under either (a), (b) or (c) above at its absolute discretion.

5. Upon termination of this Agreement pursuant such a notice, the Parties shall enter into discussions with a view to re-negotiate a new mutually acceptable arrangement. If the Parties cannot reach commercial agreement within 60 days after the effective date of termination of the BAK Arrangement, the Parties shall together make joint application to the CA for the determination of the relevant terms and conditions to replace the BAK Arrangement.

### **Confidentiality**

6. This Interconnection Agreement, the negotiation of it and any information provided by one Party to the other pursuant to this Interconnection Agreement shall be confidential and each Party undertakes not to use or make available to any third person any such information unless it has first obtained the written consent of the other party, save as required by law or disclosure to the CA, or under the following circumstances :

- (a) in confidence, to the Party's respective professional advisers;

- (b) so as to meet legal, regulatory, accounting, stock exchange, CA, insurance or governmental (including taxation authority) requirements; or
- (c) for the purpose of preserving or protecting rights under, or enforcing any of the terms, of this Agreement.

This covenant shall be binding on \_\_\_\_\_ with effect from the signature of this Interconnection Agreement. The parties hereto shall provide that their respective employees or agents are bound by and comply with this covenant.

#### **Notices**

- 7. Any notice required to be given hereunder shall be sufficiently given if sent by fax or registered post addressed to the principal or registered office of the Party to be served. Any such notice shall be deemed to have been received and given at the time it should have been delivered to the address to which it was sent in the ordinary course of transmission.

#### **Entire Agreement**

- 8. This Interconnection Agreement constitutes the entire understanding between the Parties in respect of the matters referred to herein to the exclusion of all other agreements or arrangements, whether express or implied, and therefore supersedes any prior agreements or arrangements between the parties in respect of such matters of any nature whatsoever.
- 9. This Interconnection Agreement may only be amended by an instrument in writing signed by or on behalf of each of the parties.

#### **Dispute resolution**

- 10. In the event of any dispute concerning the provision of this Agreement, each Party may 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 between the Parties, either Party may initiate legal proceedings to resolve the dispute. For clarity, this provision is intended to assist the Parties to resolve any difference between them amicably, but shall be without prejudice to their rights to issue proceedings at such time as they each shall think fit under Clause 13.

#### **Assignment**

- 11. Neither Party may assign its rights under this Agreement without the prior written consent of the other Party.

#### **Severability**

12. If any provisions of this Agreement is, or becomes at any time void, voidable, unenforceable or illegal, that shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Governing law and jurisdiction**

13. This Interconnection Agreement shall be governed by and construed in accordance with the laws of Hong Kong Special Administrative Region and the Parties submit to the exclusive jurisdiction of the courts of Hong Kong Special Administrative Region in the event of dispute.

have signed this Interconnection Agreement the date and year above written.

For and on behalf of

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