

This **INTERCONNECTION (BAK) AGREEMENT** is made on the 28<sup>th</sup> day of June 2012.

**BETWEEN:**

**AND:**

will hereinafter be referred to individually as "Party" and collectively as "Parties".

**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 former Telecommunications Authority issued a statement entitled "Deregulation for Fixed-Mobile Convergence" on 27 April 2007 announcing that, among other things, the regulatory guidance for fixed-mobile interconnection charges ("FMIC") in favour of the "mobile party's network pays" ("MPNP") model was to be withdrawn subject to a 2-year transition period ending on 26 April 2009.
- D. has issued certain invoices to in respect of interconnection services for local voice traffic provided by ("Invoices").
- E. has provided interconnection services for local voice traffic but has not issued any invoices to in respect of those services.
- F. Both Parties have now agreed to:
- (i) resolve all claims and entitlements in respect of FMICs for interconnection services provided to one another since 27 April 2009; and

- (ii) interconnect their respective telecommunications networks with each other for local voice traffic,

on the terms and conditions set out herein.

**NOW THEREFORE it is agreed as follows:**

**1. Future interconnection and charging Principles**

- 1.1 With effect from 27 April 2009 the Parties shall provide interconnection services to each other for local traffic originating from one Party's telecommunications network and terminating at the other Party's telecommunications network in Hong Kong adopting a "Bill and Keep" ("BAK") FMIC arrangement under which there shall be no interconnection charge payable by either Party to the other Party.
- 1.2 The BAK arrangement is applicable regardless of direct or indirect traffic routes.
- 1.3 The Interconnection Services Tariff published by \_\_\_\_\_ as well as any supplements or amendments in connection thereof shall not be applicable to \_\_\_\_\_. The Tariff for Interconnection Service for Local Traffic published by \_\_\_\_\_ as well as any supplements or amendments in connection thereof shall not be applicable to \_\_\_\_\_.
- 1.4 With effect from 27 April 2009, the Parties hereby unconditionally and irrevocably waive all of its rights and claims of whatever nature against the other over and related to FMICs, whether invoiced or not, including all associated claims for interest, expenses and/or legal costs.
- 1.5 The \_\_\_\_\_ Invoices issued to \_\_\_\_\_ in relation to any of the aforesaid FMIC as well as any claim for interest in connection therewith are hereby absolutely and irrevocably cancelled and cease to have any legal effect.
- 1.6 For the avoidance of doubt and without prejudice to the generality of the above Clauses 1.4 and 1.5, \_\_\_\_\_ hereby further unconditionally and irrevocably waives all of its rights and claims of whatever nature over any FMIC that may have accrued in respect of interconnection between \_\_\_\_\_
- 1.7 In connection with the above, \_\_\_\_\_ hereby confirms that \_\_\_\_\_ did not or will not assign any of its aforesaid rights and claims (including under the Invoices) over FMICs.

## 2. Direct Interconnection

- 2.1 The Agreement for the Provision of Interconnection Link Service between and \_\_\_\_\_ as evidenced by an offer letter issued by \_\_\_\_\_ as accepted by \_\_\_\_\_ shall remain effective except for the second sentence of Clause 3 "The FTNS-Mobile Interconnection Charge (Transit) will be applied for this ETS traffic, currently the rate is HK\$0.012 per occupancy minute." until terminated in accordance with its terms or a new arrangement is mutually agreed between the Parties.
- 2.2 In the event of any inconsistencies between such agreement and this Agreement, this Agreement shall prevail to the extent of such inconsistencies.

## 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 such circumstances, either Party shall redirect its excess outgoing telecommunications traffic to the other Party via another fixed network at its own choice and costs, or upon mutual agreement, add extra transmission circuits between \_\_\_\_\_ for the direct fixed-mobile telecommunications traffic.

## 4. Term and Termination

- 4.1 This Agreement shall be deemed to have taken effect as from 27 April 2009 and shall continue hereafter indefinitely unless and until terminated in accordance with the provisions of this Agreement.
- 4.2 Either Party may terminate this Agreement at any time without cause by serving not less than twelve (12) months' prior written notice of termination on the other Party, in which event neither Party shall have any claim against the other Party for any loss or damages that it may suffer or incur as a result of such termination.
- 4.3 Notwithstanding Clause 4.2, this Agreement may be terminated forthwith by either Party giving prior written notice to that effect to the other Party if that other Party :-
- (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) no longer holds any valid licence for the provision of telecommunications services via its telecommunications network; or

- (c) 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.

4.4 If either:

- (a) has entered into with another fixed network 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 BAK Arrangement provided under this Agreement; or
- (b) 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 April 2009 between or among any operators, which is in substance materially different from the BAK Arrangement provided under this Agreement, regardless of whether or not also participates in that determination;

either Party may on account of any such event (irrespective of whether or not the Party is in fact benefited or adversely affected by such event) terminate this Agreement without cause by serving not less than 60 days’ prior written notice of termination on the other Party, in which event neither Party shall have any claim against the other Party for any loss or damages that it may suffer or incur as a result of such termination.

- 4.5 Termination of this Agreement shall be without prejudice to any antecedent accrued claims or rights a Party may have.

## 5. Confidentiality

- 5.1 shall keep confidential any information obtained from the other under or in connection with this Agreement and shall not without the prior written consent of the other Party disclose the same to any third party or use any part of such information other than reasonably necessary for the purpose of this Agreement.
- 5.2 Each Party shall be entitled to reveal confidential information relating to the other Party only to its directors, officers, employees, professional advisors and their employees, contractors and their employees and financiers providing funding to it and its advisors so far as necessary to enable them to perform their duties for the purpose of this Agreement. Each Party shall require its directors, officers, employees, professional advisors and contractors to observe the obligation of confidentiality contained in this Clause 5.

- 5.3 The obligations of confidentiality in this Clause 5 shall not apply to :-
- (a) any information in the public domain otherwise than by breach of this 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 or a competent regulatory or judicial authority.

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 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 14 days written notice to the other Party terminate this Agreement.

## **7. Material Legislative Change**

- 7.1 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 applicable to a Party is made by the CA,

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

- 7.2 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.
- 7.3 If within 30 days of commencing such negotiations the Parties are unable to reach agreement upon such amendments then either Party may terminate this Agreement by serving written notice of termination on the other Party, in which event neither Party shall have any claim against the other Party for any loss or damages that it may suffer or incur as a result of such termination.
- 7.4 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, except as expressly set out in this Agreement, have any 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 Notwithstanding anything to the contrary herein contained, 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 damage or in respect of any 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 fulfil its obligations under this Agreement.

## **9. Dispute Resolution**

- 9.1 In the event of a dispute arising under this Agreement, the Parties agree that their authorized agents shall first attempt to discuss and negotiate the issues, with

informal escalation within the Parties' organizations as necessary to pursue and achieve resolution as expeditiously as possible.

9.2 If a resolution cannot be achieved through informal negotiations between the Parties as described above within 30 days, either Party may serve upon the other a written notice that negotiations have reached an impasse and may resort to litigation to resolve the dispute.

9.3 The provisions of this Clause 9 shall be without prejudice to either Party's ability to apply for and obtain injunctive relief in the courts.

## 10. Notices

10.1 A Party giving notice or notifying (except notification of rates or change of rates) under this Agreement must do so in writing, hand delivered, sent by pre-paid post or by facsimile transmission to the recipient's address specified below, as varied by notice in writing from time to time :-

10.2 A notice given in accordance with Clause 10.1 is taken to be received, in the absence of evidence of earlier receipt:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, three days after the date of posting; and
- (c) if sent by facsimile, on the next working day following transmission.

## **11. Assignment**

- 11.1 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 or delayed). Notwithstanding the above, either Party is at liberty and without the need to seek the consent of the other Party 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.

## **12. Changes to this Agreement**

- 12.1 No amendment or variation of this Agreement shall be effective unless agreed in writing and signed by duly authorised representatives of both Parties.

## **13. Miscellaneous**

- 13.1 Failure by either Party to enforce any of its rights under this Agreement shall not be taken as or deemed to be a waiver of that right unless the waiving Party acknowledges the waiver in writing.
- 13.2 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.
- 13.3 Clauses 1.3, 1.4, 1.6, 1.7, 5 and 8, any other Clause, sub-clause or provision of this Agreement which expressly or by implication, is intended to survive termination or expiry of this Agreement, shall survive termination of this Agreement.
- 13.4 The words and phrases not specifically defined herein shall have the meaning generally understood in the telecommunications industry. This Agreement shall be construed in accordance with its fair meaning and not for or against either Party on account of which Party drafted this Agreement.
- 13.5 Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that this Agreement is a valid and legal agreement binding on such Parties and enforceable in accordance with its terms.



**14. Governing Law and Jurisdiction**

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

**IN WITNESS** whereof the Parties or their authorised representatives have set their hands the day and year first above written.

**SIGNED** for and on behalf of

**SIGNED** for and on behalf of

