

**THIS AGREEMENT** is made this 27 day of March 2013

**BETWEEN**

**AND**

(hereinafter referred to jointly as "**Parties**" and individually as "**Party**").

**WHEREAS**

- a) is in Hong Kong and offers mobile telecommunications services via its telecommunications network.
- b) is in Hong Kong and offers fixed telecommunications services and external telecommunications services via its telecommunications network.
- c) The Communications Authority ("CA") 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for fixed-mobile interconnection charge ("FMIC") in favour of the mobile party's network pays ("MPNP") model will be withdrawn subject to a 2-year transition period commencing from 27 April 2007.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 Networks and route their respective traffic to the other Party on the terms and conditions set out in this Agreement.

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

**1 Definitions and Interpretations**

- 1.1 In this Agreement, except where otherwise specified, words and expressions have the meanings set out in Schedule 1, and this Agreement is to be construed in accordance with that Schedule.

**2 Indirect Interconnection**

- 2.1 Both Parties agree to establish indirect interconnection between mobile Network and fixed Network via a mutually agreed Third Party Operator's network. The Agreed Traffic between the Parties' Networks will be routed via the Third Party Operator's network unless otherwise agreed between the Parties.

- 2.2 Both Parties agree to provide conveyance service to the other Party for the Agreed Traffic through the agreed Third Party Operator's network and in accordance with this Agreement. Each Party will open up the number ranges specified in Schedule 2 and such other number ranges as may be notified to the other Party from time to time. For any new number range assigned to a Party by the CA after the commencement of this Agreement, the other Party will open up such number range within 4 weeks upon notification.
- 2.3 Each Party shall be responsible for procuring and maintaining, at its own expense, the necessary facilities and equipments required to receive/deliver the Agreed Traffic from/to the agreed Third Party Operator's network.

### **3 Charging Principles**

- 3.1 Both Parties agree to adopt a "Bill And Keep" ("BAK") arrangement under which there will be no interconnection charge between the Parties for the local traffic originating from one Party's telecommunications network and terminating at the other Party's telecommunications network in Hong Kong.
- 3.2 The BAK arrangement is applicable regardless of direct or indirect traffic routes.
- 3.3 For ETS traffic between the Parties' Network, the interconnection charge is subject to a separate agreement on Local Access Charge to be mutually agreed by the Parties.
- 3.4 Each Party shall be responsible for paying, at its own expense, the necessary transit charges of the agreed Third Party Operator for the Agreed Traffic which originated from the Network of the Party and terminated to the Network of the other Party. The rate of the transit charges and the billing and settlement procedure for the transit charges are to be negotiated directly between each Party and the agreed Third Party Operator and do not form part of this Agreement.

### **4 Network Operation and Management**

- 4.1 Both Parties agree to comply with the provisions of Schedule 3.
- 4.2 Each Party will use its reasonable endeavours to ensure that the conveyance and exchange of the Agreed Traffic in and across their respective Networks complies with CA's related requirements.

### **5 Term and Termination**

- 5.1 This Agreement shall be effective from the date of this Agreement and shall continue unless and until terminated earlier in accordance with this clause 5 of this Agreement.

- 5.2 Either Party may terminate this Agreement at any time without cause by serving prior written notice on the other.
- 5.3 This Agreement may be terminated forthwith by either Party giving written notice to the other Party if:
- (a) the other Party is in material breach of any term or condition of this Agreement, which breach is not remedied within \_\_\_\_\_ after a written request to do so; or
  - (b) the other Party 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.
  - (c) the CA validly determines and notifies the other Party in writing that it will revoke its Licence, in which case this Agreement shall terminate at the date such revocation becomes effective.
- 5.4 Termination of this Agreement 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 Agreement 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 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 in accordance with the requests of regulators.

- 6.3            and            shall disclose confidential information only 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 Agreement.

## **7 Force Majeure**

- 7.1 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 of riot.
- 7.2 If any event described in clause 7.1 lasts for more than            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            written notice to the other Party terminate this Agreement.

## **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 CA under the Telecommunications Ordinance ("Interconnection Guidance") binding the Parties prevails if this Agreement 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 Agreement.
- 8.3 Either Party may refer a disagreement between the Parties about whether or how a determination should prevail to the CA within three (3) months of the date on which the CA made the Interconnection Guidance.

### Material Legislative Change and Legislative Remedies

- 8.4 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 Agreement.

- 8.5 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.
- 8.6 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 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 Agreement, 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 Agreement.
- 9.2 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 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 Agreement to the extent that such liability arises as a result of the failure by the other Party to fulfill its obligations under this Agreement.

## **10 Assignment**

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). Notwithstanding the above, either Party is at liberty 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.

## 11 Notices

11.1 A notice, consent, request or any other communication under this Agreement must be in writing and must be delivered by personal delivery to the address of the addressee, or sent by prepaid post (airmail if posted to or from a place outside Hong Kong) 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.

If to

Address:

Attention:

Fax:

with copy to:

If to

Address:

Attention:

Fax:

with copy to:

11.2 A notice, consent, request or any other communication is deemed to be received:

- (a) if by personal delivery, at the time when it is delivered;
- (b) if a letter, \_\_\_\_\_, if posted to or from a place outside Hong Kong) after posting; and

- (c) if 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.

## **12 Severability**

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 Entire Agreement**

This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes and merges any and all prior written and oral agreements, promises, understandings, statements, representations, warranties, indemnities and covenants regarding the subject matter hereof.

## **14 Governing Law and Jurisdiction**

This Agreement 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.

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

Signed by )  
for and on behalf of )  
 )  
 )  
in the presence of )

Signed by )  
for and on behalf of )  
 )  
 )  
 )  
 )  
 )  
in the presence of )



**SCHEDULE 1**

**DEFINITIONS**

**1 Definitions and Interpretations**

1.1 In this Agreement the following words and expressions have the following meanings, unless the contrary intention appears.

**“Agreed Traffic”** means the voice calls originated from the Network of \_\_\_\_\_ and terminated to the Network of \_\_\_\_\_ as well as the voice calls originated from the Network of \_\_\_\_\_ and terminated to the Network of \_\_\_\_\_.

**“Agreement”** means these terms and conditions (including the Schedules and any Annexes attached hereto) as may be amended by the Parties from time to time.

**“CA”** or **“Communications Authority”** means the Communications Authority of Hong Kong (and includes its predecessor or successor).

**“ETS”** means external telecommunications services.

**“Licence”** means the respective \_\_\_\_\_ of \_\_\_\_\_ which has been issued to that Party pursuant to the Ordinance, each as amended from time to time.

**“Network”** of a Party means the telecommunications network owned or operated by \_\_\_\_\_ for the purpose of providing fixed telecommunications services or the telecommunications network owned or operated by \_\_\_\_\_ for the purpose of providing mobile radio communications services pursuant to its Licence.

**“Numbering Plan”** means the Numbering Plan for telecommunications services in Hong Kong issued by the Communications Authority, as amended from time to time.

**“Ordinance”** means the Telecommunications Ordinance (Cap. 106) of Hong Kong.

**“Third Party Operator”** means a fixed network operator which agrees to provide transit service to the Parties.

1.2 In this Agreement unless, the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) the word person includes a body an unincorporated association or an authority;

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- (d) a reference to a Party includes its successors and permitted assigns;
- (e) a reference to a document, includes any amendment, replacement or novation of it;
- (f) a reference to a statute, ordinance or by-law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (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;
- (h) a reference to agreement by or between the Parties, means agreement in writing signed by each Party; and
- (i) a reference to this Agreement includes the Schedules and Exhibits hereto.

**SCHEDULE 2**

**CALL DELIVERY OF AGREED TRAFFIC**

**1 Conveyance of Agreed Traffic**

1.1 The Parties agree to convey Agreed Traffic destined for the other Party, as follows:

	<b>Calling Party</b>	<b>Called Party</b>	<b>Numbering Levels</b>	<b>Remarks</b>
1				Network number
			All called numbers terminating at the Network of	Mobile network numbers
				Mobile short codes
2				Customer enquiry and hot lines
			All called numbers terminating at the Network of	Fixed network numbers
				Network number

The above table shows the numbering levels of each Party as of the date of this Agreement. Refer to the latest issue of “The Numbering Plan for Telecommunications Services in Hong Kong” issued by CA for the up-to-date details on the numbering levels of each Party.

**SCHEDULE 3**

**OPERATIONS PROVISIONS**

Each Party agrees that it shall use technically reasonable endeavours to ensure that interconnection between the Parties' Networks shall be available on a 24 hours per day, 7 days per week continuous basis. Notwithstanding the generality of the foregoing, the Parties shall resolve all technical matters in relation to the interconnection as soon as practically possible in accordance with this Schedule. The Parties acknowledge that grade of service is not guaranteed by the Third Party Operator for indirect interconnection.

Other than in the case of emergency outages or a planned outage in accordance with this Schedule, the Parties will not intentionally cause an outage of the Network Facility.

The Parties will each limit to a minimum any planned outages for scheduled maintenance, such as periodic system patch upgrades or preventative maintenance work, that may cause short service interruption to the other. The Parties each agree to carry out such upgrades or maintenance only in low traffic periods. The Parties will each inform the other at  
in advance of any planned customer impacting outage, or  
in advance of any planned non-customer impacting outage.

Nothing in this Agreement shall restrict or prevent the Party from carrying out at any time capacity upgrades or enhancements to the Network Facility that do not cause outages.

**FAULT REPORTING**

The Parties must each provide the contact details of its Network Operations Centre (NOC). This NOC must be staffed 24 hours a day, 365 days a year.

On becoming aware of any fault, which fault is potentially generated by the other party, contact will be made via the NOC to report the fault to the other party. For any fault being logged by NOC, a fault docket will be issued with a reference number for cross checking until the fault has been cleared.

The classification of fault priorities, as well as the target response and resolution times for each fault category, will be agreed between the Parties.