

**SETTLEMENT AGREEMENT ON FIXED-MOBILE INTERCONNECTION  
CHARGES**

This Settlement Agreement (“**Agreement**”) is made on 1<sup>st</sup> March 2014 by and between

(1)

(2)

Each of \_\_\_\_\_, \_\_\_\_\_ is referred to in this agreement (hereinafter referred to as “**Agreement**”) as a “Party” and they are referred to collectively as “Parties”.

WHEREAS the Parties have agreed terms for the full and final settlement of disputes regarding Fixed-Mobile Interconnection Charges (“**FMIC**”) and also agreed terms for future interconnection of local calls between \_\_\_\_\_ and \_\_\_\_\_ which shall be recorded in this Agreement.

**RECITALS**

(A)

(B) Since the deregulation of FMIC by the Office of the Communications Authority (“**OFCA**”) on 27 April 2009, \_\_\_\_\_ has continued to send invoices to \_\_\_\_\_ for FMIC in relation to the local traffic between \_\_\_\_\_ mobile network and \_\_\_\_\_ fixed network.

(C) The Parties now enter into this Agreement relating to the Recitals.

**NOW, THEREFORE**, 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 hereby agree as follows:

1. For the purpose of this Agreement:
  - 1.1 “**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. Affiliate also includes successors.
  - 1.2 “**Bill and Keep Approach**” means the provision of one Party to the other Party at no charge fixed-mobile interconnection services for the origination, termination of the following local fixed to mobile and/or mobile to fixed voice traffic:
    - (a) local traffic originated from the mobile network and terminated at the fixed network ; and
    - (b) local traffic originated from the fixed network and terminated at the mobile network .
  - 1.3 “**Claim**” means any claim or claims 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 or of the facts that might give rise to the Claim, and “**Claimed**” has a corresponding meaning.
  - 1.4 “**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.
  - 1.5 “**Issues**” means the disputes between the Parties relating to or arising out of:
    - (a)

(b) any obligation or liability, alleged, Claimed or otherwise, of to and/or to (including their respective Affiliates and as the case may be) in connection with fixed-mobile interconnection between fixed network and mobile network on local traffic at any time on and after 27 April 2009; including for the avoidance of doubt any and all:

(i) Claims by with regard to FMIC on invoices on traffic, deposit and interest; and

(ii) Claims by with regard to FMIC on cost (e.g. court, legal and expert costs) incurred by for indemnity in respect of any exposure to pay any costs to anyone else in respect of FMIC;

in each case to the extent that each such Claim, proceeding, complaint, request, appeal, application, allegation or otherwise is in connection with the matters in (a) to (b) and is against or in relation to and/or .

1.6 A reference to a particular party includes a reference to that party's executors, administrators, successors, substitutes (including parties taking by novation) and assigns.

2. Each Party agrees, and undertakes on behalf of its Affiliates, from the date of this Agreement not to commence, advance, make or maintain any Claims in connection with the Issues.

3. The Parties hereby agree to adopt the Bill and Keep Approach on local FMIC with effect from 27 April 2009 in relation to the local fixed-mobile voice interconnection traffic between mobile network and fixed network, unless the Parties agree otherwise. With the adoption of the Bill and Keep Approach commencing from 27 April 2009, there is no liability or obligation on the part of and (and their respective Affiliates) to pay the other Party FMIC (from to or from to ) for the period from 27 April 2009 onwards.

4.

- 5.
6. The Parties agree that the Interconnection Agreement dated signed between the Parties on FMIC expired on 26 April 2009.
7. The Parties agree that the aforesaid Bill and Keep Approach shall also be adopted for the period from 27 April 2009 to 30 June 2013 for the international fixed-mobile interconnection traffic between mobile network and fixed network.
8. The Parties agree that the actions and agreements in relation to all Issues shall be in full and final settlement under this Agreement without admission of any liability by each Party. Each Party unconditionally and irrevocably waive and release the other Party or any of its directors or employees from all claims, demands and rights in connection with the Issues.
9. The Parties agree, within a period of 14 days from the date of this Agreement, to jointly write and sign a joint letter to OFCA in relation to the adoption of Bill and Keep Approach substantially in the form of the letter as set out in the **Annex**.
10. 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 applicable legal or regulatory requirements or stock exchange requirements or a judicial order; and/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 (a) or (b) of this clause as if that Party made the



disclosure. If a Party has an obligation to make any disclosure pursuant to sub-section (c) of this Clause, it must give the other Party a prior or concurrent notice as is practicable in the circumstances, subject to any legal or regulatory restriction from doing so.

11. It is further agreed and acknowledged that:
  - (a) this Agreement represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto, whether oral or written, and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom.
  - (b) each Party confirms that it has not, in entering into this Agreement, relied on any representation or warranty, condition or undertaking which is not expressly set out in this Agreement.
  - (c) no amendment to this Agreement shall be effective unless made in writing signed by a duly authorized signatory for each Party which is to be bound by such amendment.
  - (d) each Party understands the importance of taking independent legal advice on this Agreement and has done so prior to executing it, to the extent, if any, which it considers appropriate, and will bear its own costs for the preparation and execution of this Agreement.
12. This Agreement shall be governed by, and construed in accordance with, the laws of the Hong Kong Special Administrative Region (“**Hong Kong**”). The courts of Hong Kong shall have exclusive jurisdiction in respect of any claim or dispute arising under or in connection with this Agreement.

The Parties hereto have caused this AGREEMENT to be executed in Hong Kong on the date first below written.

Signed for and on behalf of

by its authorised representative

Signed for and on behalf of

by its authorised representative

ANNEX

Ms Eliza Lee  
Director-General of Communications  
Office of the Communications Authority  
29<sup>th</sup> Floor, Wu Chung House  
213 Queen's Road East  
Wanchai  
Hong Kong

1<sup>st</sup> March 2014

Dear Eliza,

**Fixed-Mobile Interconnection Arrangement between  
and**

and are pleased to inform you that we have commercially agreed to adopt a “bill and keep” approach to charges for fixed-mobile interconnection with effect from 27 April 2009 in respect of local voice traffic between their fixed and mobile networks.

Yours sincerely,

Name:

Name:

Title:

Title:

For and on behalf of

For and on behalf of