

PRE-PROVISIONING AGREEMENT

DATED: 26 September 1994

PARTIES:

1.

2.

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THIS AGREEMENT is made on: 26 September 1994

BETWEEN:

AND:

## INTRODUCTION

A.

B. The Hong Kong Government has announced that \_\_\_\_\_ will be issued under the *Telecommunication Ordinance*, in accordance with which it may offer fixed telecommunications network services

C. \_\_\_\_\_ have not yet agreed on the terms and conditions on which to interconnect their respective public switched telecommunications networks.

D. Pending the conclusion of an interconnect agreement between \_\_\_\_\_ has agreed to pre-condition certain of its exchanges to install and make available capacity which is planned to be used in providing an interface between the \_\_\_\_\_ network and the \_\_\_\_\_ network once the interconnection agreement is concluded.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

1.1 In this Agreement the following words and expressions have the meanings given to them in this clause, unless the contrary intention appears.

"Additional Equipment" means equipment to be installed by \_\_\_\_\_ which is reasonably necessary to establish, operate and facilitate the utilisation of the Interconnect Exchange Capacity at each respective Interconnect Gateway Exchange, including but not limited to ports, racks, line cards and cabling, as set out in the Schedule and amended in accordance with this Agreement from time to time.

"Confidential Information" has the same meaning as it has in the Confidentiality Agreement previously entered between

"Interconnect Agreement" means one or more agreements (but not necessarily the entirety of the arrangement) between for interconnection between their respective networks and services and dealing with the subject matter of this Agreement, which currently are being negotiated by the parties (and for clarification, includes any determination of interconnection arrangements between the parties by OFTA pursuant to section 36A of the *Telecommunication Ordinance*).

"Interconnect Exchange Capacity" means the capacity at each Interconnect Gateway Exchange to be provisioned by pursuant to this Agreement for the purpose of that capacity being available for use in relation to the interface which will be established between public switched telecommunications networks pursuant to the Interconnect Agreement, set out in the Schedule and amended in accordance with this Agreement from time to time.

"Interconnect Gateway Exchange" means the exchanges set out in the Schedule, which are planned to support the initial interface between the public switched telecommunications networks of

"Licence" means which is to be issued to the pursuant to the *Telecommunication Ordinance*.

"Provisioning Cost" means the relevant labour, equipment and other costs and charges reasonably incurred by in accordance with this Agreement in planning, provisioning, installing and testing the Interconnect Exchange Capacity and the Additional Equipment in respect of each Interconnect Gateway Exchange, estimates of which costs are set out in the Schedule, as amended in accordance with this agreement from time to time.

"Provisioning Date" means the date on which the relevant Interconnect Exchange Capacity or Additional Equipment is to be made available to , as set out in the Schedule.

"TA" means the Telecommunications Authority of Hong Kong.

"Technical Specifications" means the technical specifications set out in the Schedule, as amended or modified by for the purposes of its network (although those amendments or modifications may not materially detract from the specifications in the Schedule), and to the extent not set out in the Schedule, as published by the relevant supplier, in relation to the installation and testing of the Interconnect Exchange Capacity and the Additional Equipment.

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 corporate, an unincorporated association or an authority;
- (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; and
- (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.

## 2. SCOPE OF THIS AGREEMENT

- 2.1 This Agreement is intended to regulate the relationship between the parties in respect of the Interconnect Exchange Capacity and the Additional Equipment prior to the conclusion of the Interconnect Agreement, or if the Interconnect Agreement is not concluded between the parties.
- 2.2 The parties acknowledge that the Interconnect Agreement will include terms and conditions on which the Interconnect Exchange Capacity and the Additional Equipment is to be made available by one party to the other party. To the extent that the terms and conditions in this Agreement are inconsistent with the terms and conditions of the Interconnect Agreement, the terms of the Interconnect Agreement prevail.
- 2.3 The parties agree to negotiate in good faith to agree as part of the Interconnect Agreement the terms and conditions which are to apply to the Interconnect Exchange Capacity and the Additional Equipment to replace the provisions of this Agreement. The terms and conditions of this Agreement are entirely without prejudice to the negotiations and agreement in connection with the Interconnect Agreement. Without limitation, the parties may also agree in respect of any amounts paid under this Agreement, that those amounts may be recovered under the Interconnect Agreement.

## 3. PROVISIONING OF INTERCONNECT EXCHANGE CAPACITY

- 3.1 In consideration of \_\_\_\_\_ agreeing to pay the Provisioning Cost to \_\_\_\_\_ in the circumstances set out in this Agreement, \_\_\_\_\_ agrees to use its reasonable endeavours (but in any event, no less a level of performance than would be undertaken for \_\_\_\_\_ own provisioning for similar levels of capacity) to plan, order, install (including installation testing) and configure in accordance with the Technical Specifications and for the provision of public switched telecommunications services (in each case so as to have available by the Provisioning Date), and have available by the Provisioning Date, the Interconnect Exchange Capacity and Additional Equipment in respect of each Interconnect Gateway Exchange for use on and from the Provisioning Date in accordance with the Interconnect Agreement, so as to facilitate interconnection between the parties on and from the Provisioning Date in accordance with the Interconnect Agreement.
- 3.2 \_\_\_\_\_ agrees to notify \_\_\_\_\_ as soon as reasonably possible if at any time it reasonably believes or has reason to believe that it will be unable to provide the Interconnect Exchange Capacity or Additional Equipment in accordance with this Agreement, and also advise \_\_\_\_\_ of the following actions in

respect of the Interconnect Exchange Capacity or Additional Equipment as soon as it is reasonably able to do so:

- (a) estimated time at which any externally sourced capacity or equipment is to be delivered to ;
- (b) at least two calendar weeks prior to the physical installation of the relevant capacity or equipment;
- (c) commencement of the relevant tests in respect of that capacity or equipment; and
- (d) completion of the installation of the capacity or equipment in accordance with this Agreement.

3.3 From time to time may notify that it requires further Interconnect Exchange Capacity or Additional Equipment. On receipt of such a notice, the parties must negotiate in good faith to determine the specific requirements for additional capacity or equipment required by and any variation to the estimated Provisioning Costs or Provisioning Dates for any capacity or equipment. The agreed capacity and equipment will then be considered to be Interconnect Exchange Capacity and Additional Equipment in accordance with the other terms of this Agreement, and the relevant Schedules must be updated accordingly.

3.3A From time to time may notify that it no longer requires capacity or equipment previously agreed. On receipt of such a notice, the parties must negotiate in good faith to determine any variation to the estimated Provisioning Costs or Provisioning Dates for any remaining capacity or equipment. This Agreement is deemed to be terminated to the extent and in respect of the capacity or equipment which notifies is no longer required.

3.4 must give the assistance reasonably requires, including the provision of information (other than commercially sensitive information), in the planning, ordering, installing, testing and making available of the Interconnect Exchange Capacity and the Additional Equipment.

3.5 (a) For the avoidance of doubt, the provisioning undertaken by under this Agreement does not include commissioning and nothing in this Agreement gives the right to use the Interconnect Exchange Capacity or to install its own equipment on the premises at which each Interconnect Gateway Exchange is located.

(b) Once the Interconnect Exchange Capacity and Additional Equipment has been installed and tested and is available in accordance with this Agreement (on and from the Provisioning Date), further charges, in addition to any charges payable under this Agreement, may be payable by in respect of the continued availability, use, maintenance, operation, upgrading, replacement or decommissioning of that Interconnect Exchange Capacity and Additional Equipment.

(c) The parties acknowledge that the matters described in paragraphs (a) and (b) are to be addressed, amongst other matters, in the Interconnect Agreement.

4. COST OF PROVISIONING

4.1 Unless otherwise provided by this Agreement, the costs and charges to be paid in respect of the Interconnect Exchange Capacity and the Additional Equipment will be as set out in the Interconnect Agreement.

4.2 If this Agreement is terminated (whether in whole or in respect of any identified Interconnect Exchange Capacity or Additional Equipment), prior to execution by the parties of the Interconnect Agreement and other than due to default by \_\_\_\_\_ will bear solely the Provisioning Costs in respect of the relevant Interconnect Exchange Capacity or Additional Equipment, together with:

- (a) with respect to equipment or capacity used or disposed of in accordance with clause 4.2A, an agreed loading of 20% per annum on the proportion of those Provisioning Costs attributable to the relevant capacity or equipment, during the period of holding of the relevant Interconnect Exchange Capacity and Additional Equipment from the date of termination to the date of use or disposal of that capacity or equipment, or the time at which it ought reasonably to have been used or disposed, in accordance with mitigation obligations under this Agreement;
- (b) any costs reasonably incurred in arranging for that reuse or disposal; and
- (c) any other direct and foreseeable net loss (and, for clarification, direct losses exclude consequential losses and loss of profits) reasonably incurred by \_\_\_\_\_ in respect of that capacity or equipment as a result of that termination (excluding costs of capital and interest costs, and also excluding any costs arising as a consequence of the negligence or default of \_\_\_\_\_);

((a), (b) and (c) being collectively "the Loss"), less any amount by which \_\_\_\_\_ has mitigated or reasonably ought to mitigate those costs and losses in accordance with this Agreement. \_\_\_\_\_ must comply with the obligations set out in this Agreement in relation to seeking to mitigate the extent of the Provisioning Costs or the Loss for which \_\_\_\_\_ is liable, but is not required otherwise to attempt to mitigate the Provisioning Costs or the Loss for which \_\_\_\_\_ is liable.

4.2A Within the period of two months following the date of termination, \_\_\_\_\_ agrees to make reasonable endeavours to mitigate the Provisioning Costs or the Loss by:

- (a) invoking any reasonably available provision in its terms and conditions with its supplier to cancel or limit any order for the relevant capacity or equipment;
- (b) reasonably determining (having regard to all relevant matters) whether the Interconnect Exchange Capacity and Additional Equipment can reasonably be re-used wholly or partly (including, in the case of E1 capacity and ancillary Additional Equipment by converting to T1 use, and having regard to any reasonable request for capacity or equipment, whether or not from a related company of \_\_\_\_\_, if that request is in accordance with the terms and conditions which are made available by \_\_\_\_\_ to similarly placed companies at that time) within a period of 30 months from the date of termination, and if so, by committing the Interconnect Exchange Capacity and Additional Equipment to re-use (in which case the amount of the Provisioning Cost for which \_\_\_\_\_ is liable will be reduced by the amount of the Provisioning Cost attributable to that capacity or equipment);

- (c) offering the Interconnect Exchange Capacity and the Additional Equipment for sale on arms length terms to related companies of (whether in Hong Kong or elsewhere) and, if not accepted by those companies, to ; and
- (d) offering the Interconnect Exchange Capacity and the Additional Equipment for re-sale on arms length terms to the relevant equipment supplier.
- 4.2B must not offer any equipment or capacity which is subject to this Agreement for sale to any related company, supplier or other person other than for a separate cash consideration ("Price") and without first offering that equipment or capacity for sale to as a set off against the Provisioning Costs for the Price and on terms and conditions no less favourable than those offered to the third party.
- 4.2C must use its reasonable endeavours to achieve the best possible price on any sale of Interconnect Exchange Capacity or Additional Equipment.
- 4.2D Nothing in this Agreement obliges to offer for sale any capacity or equipment once physically installed in its network, and the parties acknowledge that the only relevant mitigation requirements for physically installed capacity or equipment relate to reuse of that capacity or equipment within network. agrees that, if it receives written notice of termination from the prior to installing any Interconnect Exchange Capacity or Additional Equipment, it will not proceed to physically install that Interconnect Exchange Capacity or Additional Equipment until it has fully complied with its obligations under this Agreement to mitigate the Provisioning Cost or the Loss.
- 4.2E agrees to use its reasonable endeavours to secure from its suppliers terms and conditions (including as to price, force majeure and cancellation rights) no less favourable than those which would reasonably be expected to negotiate for its own equipment from time to time. agrees that, in performing this Agreement, it will allocate relevant labour and other relevant resources as it would for reasonably similar activities for its own purposes in reasonably comparable circumstances.
- 4.2F agrees that it will repay to a proportionate part of the Provisioning Cost paid by in respect of any Interconnect Exchange Capacity or Additional Equipment, if commits that equipment or capacity to reuse within a period of thirty months from the date of termination of this Agreement. The amount to be repaid to is calculated as the value to of the relevant capacity or equipment at the time of its reuse less any reasonable cost incurred in holding that capacity or equipment until the time of reuse, although that amount must not in any case exceed the amount paid to by in respect of that capacity or equipment less any amount previously paid by to in respect of that capacity or equipment. The value of the relevant capacity or equipment is to be determined as the Provisioning Cost paid by in respect of that capacity or equipment, depreciated on a straight line basis at the rate of 16% per annum from the time of acceptance by of the relevant capacity or equipment.
- 4.2G Within thirty days of receipt of a written request from on or before 1 July in each year during the currency of this Agreement and for a period of three years following its termination in respect of the last of the Interconnect Exchange Capacity or Additional Equipment, must certify in writing to the the extent of reuse of any capacity or equipment in accordance with



the previous clause and must pay \_\_\_\_\_ the value of that capacity or equipment calculated as described in that clause. If any amount remains outstanding after becoming due under this sub-clause, \_\_\_\_\_ must pay interest on the outstanding balance each month at the rate of 2 per cent per month calculated from the due date.

4.3 \_\_\_\_\_ has advised that it determined the estimates of the Provisioning Costs in good faith as at the date of this Agreement, but that the Provisioning Costs may exceed or be less than these amounts. However, \_\_\_\_\_ agrees that the Provisioning Costs may not exceed the estimated Provisioning Costs increased by the amount (if any) set out in the Schedule in respect of those costs, unless otherwise agreed by the parties. If \_\_\_\_\_ anticipates that the Provisioning Costs will, or are likely to, exceed the estimated amounts:

- (a) \_\_\_\_\_ must provide \_\_\_\_\_ with a variation notice which explains the relevant circumstances which \_\_\_\_\_ considers warrants an increase in the cost, and the amount of the increase; and
- (b) if required by \_\_\_\_\_, \_\_\_\_\_ must promptly consult with \_\_\_\_\_ in good faith on the amount by which the cost should be increased and \_\_\_\_\_ will give its reasonable consideration to any alternative technical or other solution proposed by \_\_\_\_\_ which would reduce or eliminate the anticipated cost increase; and
- (c) until resolution of the amount of the increase in costs, \_\_\_\_\_ may request that \_\_\_\_\_ temporarily halt work in respect of the relevant Interconnect Exchange Capacity or Additional Equipment.

## 5. INSTALLATION TESTING

5.1 \_\_\_\_\_ will perform testing on the Interconnect Exchange Capacity and the Additional Equipment at each Interconnect Gateway Exchange in accordance with the Technical Specifications and \_\_\_\_\_ standard installation procedures, unless the parties have agreed that the equipment will be provisioned with different functionality or configuration in accordance with this Agreement (in which case the testing will be performed in the agreed manner).

5.2 \_\_\_\_\_ must give \_\_\_\_\_ 30 days' written notice of the times and the arrangements for the testing of Interconnect Exchange Capacity and Additional Equipment.

5.3 Nothing in this Agreement is intended to apply to the testing required for commissioning of the Interconnect Exchange Capacity and Additional Equipment, establishment of points of interconnection, or provision of services over those points of interconnection, which must separately be agreed between the parties.

## 6. TITLE

\_\_\_\_\_ acknowledges that \_\_\_\_\_ retains all right, title and interest to and in the Interconnect Exchange Capacity and the Additional Equipment at each Interconnect Gateway Exchange.

7. PAYMENT

- 7.1 On termination of this Agreement (whether in whole or in respect of any identified Interconnect Exchange Capacity or Additional Equipment), other than due to execution by the parties of the Interconnect Agreement or default by , will render an invoice for the Provisioning Cost and the Loss in respect of the relevant Interconnect Exchange Capacity or Additional Equipment to , less any amount by which has mitigated or reasonably ought to mitigate those costs and losses in accordance with this Agreement. may only issue an invoice under this clause following its compliance with its obligation to mitigate the Provisioning Costs or the Loss under this Agreement.
- 7.2 The must pay any valid invoice issued by under clause 7.1 within 30 days of the date of the invoice. If any amount remains outstanding after that period, must pay interest on the outstanding balance each month at the rate of 2 per cent per month calculated from the invoice date.
- 7.3 must pay any Hong Kong or foreign taxes, duties, impost, levies or government charges in relation to or in connection with this Agreement and services and goods provided, supplied or made available by to under this Agreement (other than any taxes payable with respect to profits or income).

8. INDEMNITY AND LIMITATION OF LIABILITY

- 8.1 indemnifies and holds harmless , its employees, agents and sub-contractors from any claims, demands, proceedings or liability which may be brought against or any of them in respect of any loss, injury or damage (whether personal or to property) arising directly or indirectly out of or in connection with any breach of this Agreement by . However, subject to any other contrary provision in the Interconnect Agreement, the maximum aggregate liability of the (and any guarantor under this Agreement) to under this Agreement is limited to the amount of the Provisioning Cost and the Loss payable by to under this Agreement.
- 8.2 The liability, if any, of in respect of this Agreement will be determined in accordance with the Interconnect Agreement. Until such liability is agreed, and other than in respect of amounts expressly payable by under this Agreement, excludes all liability to and to third parties which may arise out of or in connection with this Agreement including, but not limited to, loss incurred by or by third parties claimed against , loss of profits or savings actual or anticipated or any costs relating to an interruption of or a third party's business.

9. TERM AND TERMINATION

- 9.1 Unless otherwise agreed by the parties, this Agreement terminates on the earlier of 31 December 1995, or execution by the parties of the Interconnect Agreement.
- 9.2 may terminate this Agreement (whether in whole or in respect of any identified Interconnect Exchange Capacity or Additional Equipment) immediately by giving notice in writing if:

- (a) the \_\_\_\_\_ materially breaches a material provision of this Agreement and that breach is not remedied within 14 days after written receiving notice to do so; or
- (b) the \_\_\_\_\_ becomes subject to any form of insolvency administration or winding-up, unless there is a bona fide dispute between \_\_\_\_\_ and the person or persons seeking to subject \_\_\_\_\_ to that insolvency, administration or winding up; or
- (c) \_\_\_\_\_ notifies \_\_\_\_\_ in writing that \_\_\_\_\_ wishes to discontinue the negotiation of the Interconnect Agreement because \_\_\_\_\_ no longer proposes to interconnect its network to the network of \_\_\_\_\_ ; or
- (d) OFTA determines and notifies \_\_\_\_\_ in writing that it will not issue a Licence to \_\_\_\_\_ or revokes \_\_\_\_\_ Licence, or \_\_\_\_\_ refuses or has not taken up its Licence, at the conclusion of the period given by OFTA for it to do so (including any extensions allowed by OFTA to that period).

9.3 \_\_\_\_\_ may terminate this Agreement (whether in whole or in respect of any identified Interconnect Exchange Capacity or Additional Equipment) immediately by giving \_\_\_\_\_ notice in writing if:

- (a) \_\_\_\_\_ breaches a material provision of this Agreement and that breach is not remedied within 14 days after receiving written notice to do so; or
- (b) \_\_\_\_\_ wishes to withdraw its request for provisioning of any identified Interconnect Exchange Capacity or Additional Equipment.

9.4 On termination of this Agreement (whether in whole or in part) each party remains liable to the other in respect of all amounts validly invoiced or to be invoiced in accordance with this Agreement in respect of actions up to the date of termination. The terms and conditions of this Agreement continue to operate until \_\_\_\_\_ has been compensated in accordance with this Agreement for any Interconnect Exchange Capacity or Additional Equipment requested by \_\_\_\_\_ to termination.

## 10. CONFIDENTIAL INFORMATION

Any Confidential Information supplied under this Agreement is subject to the Confidentiality Agreement executed between the parties.

## 11. FORCE MAJEURE

11.1 A party does not breach this Agreement and is not liable to any other party for a delay or failure to perform an obligation (except an obligation to pay money) resulting from events or circumstances beyond the party's reasonable control. The party affected by the event or circumstance will be granted a reasonable extension of time to perform the obligation, if:

- (a) it notifies the other parties as soon as reasonably practicable of the event or circumstance and of the period for which it expects performance of its obligations to be delayed or prevented; and

(b) it takes all reasonable steps to avoid or limit the effects of the event or circumstance.

11.2 If a delay or failure to perform a party's obligations due to an event or circumstance beyond that party's reasonable control exceeds 30 days, the other party may immediately terminate this Agreement on notice to the first party, but only if it has otherwise complied with the terms of this Agreement.

11.3 An event or circumstance beyond a party's control includes acts of God, war, flood, fire, explosion, civil disobedience, legislation not in force at the date of this Agreement, labour disputes, or delays of third parties, including suppliers, over which the party has no control.

## 12. ASSIGNMENT

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

## 13. NOTICES

13.1 A notice, consent, request or any other communication under this Agreement must be in writing and must be left at 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.

Attention:  
Office held:  
Address:

Facsimile:  
Copy to:

### FTNS Operator

Attention:  
Office held:  
Address:

Facsimile:

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

- (i) if by delivery, when it is delivered;
- (ii) if a letter, three days after posting (seven, if posted to or from a place outside Hong Kong); and
- (iii) 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.

14. GENERAL

14.1 Cumulative rights

The rights, powers and remedies of a party under this Agreement are cumulative with the rights, powers or remedies provided by law independently of this Agreement.

14.2 Exercise of rights

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy.

14.3 Waiver and variation

A provision or a right under this Agreement may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by the parties.

14.4 Approvals and consents

A party may give or withhold its approval or consent conditionally or unconditionally in its discretion unless this Agreement states otherwise.

14.5 Indemnities

Each indemnity in this Agreement is a continuing indemnity, separate and independent from the other obligations of the parties and survives termination and completion of this Agreement. A party need not incur expense or make payment before enforcing an indemnity under this Agreement.

14.6 Further assurances

Each party must, at its own expense, do everything reasonably necessary to give full effect to this Agreement.

15. GOVERNING LAW AND JURISDICTION

15.1 This Agreement is governed by the laws of Hong Kong.

15.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Hong Kong.

17. DISPUTE RESOLUTION

17.1 If either party disputes in good faith an invoice prepared by the other or the calculation of any amount owing under this Agreement, that party must notify the other party within 14 days of receipt of that invoice or notice of calculation of the amount owing, specifying:

- (i) the reasons why the party disputes the invoice or calculation of the amount owing; and
- (ii) the amount in dispute.

17.2 Both parties must use their best efforts to promptly resolve any dispute notified under this clause and, if they are unable to do so within 30 days from receipt of the invoice by \_\_\_\_\_, the dispute must be referred to, if the TA agrees to that referral, the TA, and if it does not agree, a person agreed between the parties or, failing agreement, nominated by the TA. That person may then request reasonable information from either party (which may be given on the basis that it is not released to the other party, although the giving party must reasonably itemise for the other party the general nature and description of the matters in that submission), and determine an appropriate resolution to the dispute. The nominated expert may also appoint any other experts required to assist in the resolution of the dispute as the nominated expert sees fit (including telecommunications and legal experts), to assist in the resolution of the dispute.

17.2A Each party agrees to support the application for appointment of the TA in accordance with this clause.

17.3 Any amount found to be due or requiring refund following resolution of a dispute by the parties, together with interest on that amount at the rate of 2 per cent per month from the invoice due date, must be paid or refunded, as the case may be, within three business days of the resolution.

17.4 If, following resolution of the dispute, the party which raised the dispute has the amount payable varied in its favour by less than 5%, that party must pay the costs of the dispute resolution, otherwise the party against whom the dispute was raised must pay the costs of the dispute resolution, and those costs are to be the reasonable costs of the dispute resolution as determined by the person resolving the dispute.

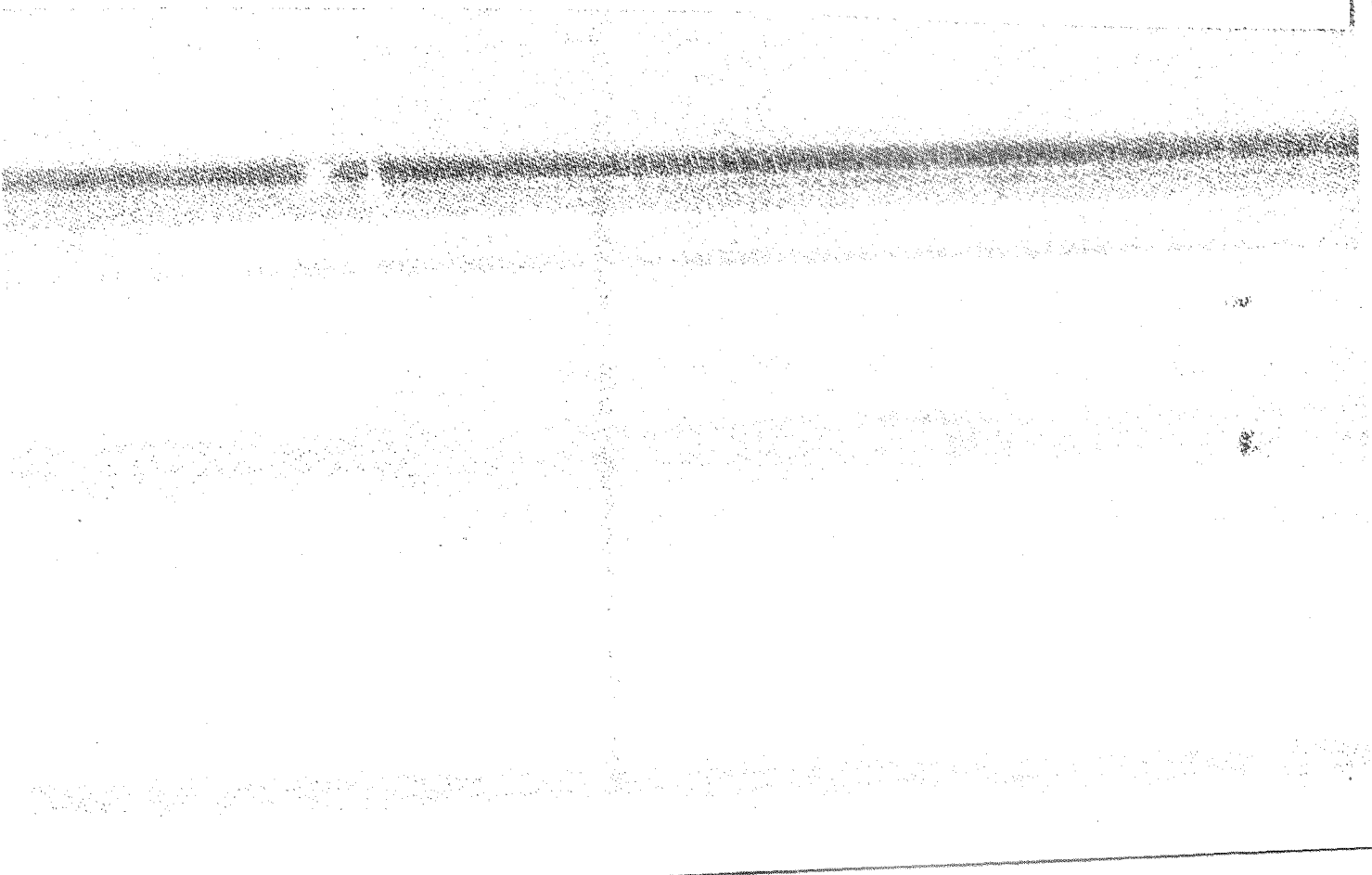
17.5 Each party acknowledges that this Agreement will not prevent the Telecommunications Authority exercising its powers under the *Telecommunication Ordinance* or its rights under \_\_\_\_\_, or other lawful rights or powers from time to time.

EXECUTED as an Agreement.

SIGNED for and on behalf of )  
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by )  
)  
in the presence of: )  
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SIGNED for and on behalf of )  
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by )  
)  
in the presence of: )  
)  
)  
)



SCHEDULE

Interconnect Exchanges, Capacity and Provisioning Dates

List of Interconnect Gateway Exchanges and Interconnect Exchange Capacity to be provided at each exchange, and Provisioning Dates by which the parties agree the capacity is to be provided.

The Interconnect Exchange Capacity and Additional Equipment is to be installed at each of the Interconnect Gateway Exchanges

in equal quantities (unless otherwise agreed by the parties).

Total number of E1 Ports to be provisioned: 25.

Total number of T1 Ports to be provisioned: 75.

The Provisioning Date is: 1 June 1995.

Estimated Provisioning Costs

estimate of the Provisioning Cost per E1 port payable by respect of the capacity in this Schedule (after the first 25 ports) is: in

HK\$77,955.00.

estimate of the Provisioning Cost per E1 port payable by respect of the capacity in this Schedule (for the first 25 ports) is: in

HK\$Nil.

estimate of the Provisioning Cost per T1 port payable by respect of the capacity in this Schedule (after the first 75 ports) is: in

HK\$62,364.00.

estimate of the Provisioning Cost per T1 port payable by respect of the capacity in this Schedule (for the first 75 ports) is: in

HK\$Nil.

This cost includes all labour, equipment and other costs and charges, including capital, billing, transmission, installation and switch related costs for each switch port capacity.



agrees that it will be able to mitigate in respect of at least 25 E1 and 75 T1 ports, and so does not require any cover from in respect of those ports.

agrees that the Provisioning Cost per port may not be increased in accordance with this Agreement so as to exceed the above estimates by more than 20%.

Technical Specifications

E1 switch port capacity:	As defined in sections 5 and 6 of <i>Connection Reference CR15.</i>	<i>Network</i>
T1 switch port capacity:	As defined in sections 5 and 6 of <i>Connection Reference CR14.</i>	<i>Network</i>