

Memorandum of Understanding between and

1. Introduction

- 1.1 The purpose of this Memorandum of Understanding ("Memorandum") is to agree the basis on which and will interconnect their respective FTNS networks.
- 1.2 and agree to negotiate in good faith a full interconnect agreement ("Agreement") to be entered into on or before 30 September 1999 which will regulate the relationship and set out the rights, obligations and liabilities as between the parties in respect of the interconnection and exchange of traffic across their respective networks. For the avoidance of doubt, the Agreement shall supersede this Memorandum.

2. Operations

- 2.1 Each party must ensure that the set up of its network equipment and facilities for the purpose of routing and conveying communications across their respective networks conforms to the configuration as set out in Schedule 1. Such configuration will be revised from time to time by mutual agreement as required to be in line with the technical standards made by the Telecommunications Authority of Hong Kong.
- 2.2 Each party is responsible to provide, install, test, make operational and maintain at its own cost and expense all network equipment and facilities on its side of the point of interconnection ("POI").
- 2.3 As of 22 June 1999, each party shall deliver all relevant traffic of the numbering levels specified in Schedule 3, which may be revised by mutual agreement from time to time, directly to the other party via the POI as set out in Schedule 1.
- 2.4 Each party must take reasonable steps to ensure that the technical and operational quality and timing of the conveyance and exchange of communications are equivalent to that which it provides to itself.
- 2.5 Each party must take reasonable steps to keep their respective networks in good condition and repair and to manage, notify and rectify any fault arising in its network which affect the interconnection and exchange of traffic by either party. The parties will negotiate in good faith the detailed maintenance procedures to be included in the Interconnect Manual which will become part of the Agreement between the parties.
- 2.6 Neither party may take any action which may damage, interfere with, cause any deterioration in, or materially and adversely affect the operation of the other party's network.

3. Billing and Settlement

- 3.1 Charges for interconnection services will be determined in accordance with the principles specified in the Statements by the Telecommunications Authority of Hong Kong on Interconnection and Related Competition Issues Statement No. 7 (Revised) dated 18 November 1997, Determination under Section 36A of the Telecommunication Ordinance

(Cap. 106) for Interconnection between Hong Kong Telephone Company Limited and New T&T Hong Kong Limited dated 21 August 1998, and Implementation of Local Access Charge and Modified Delivery Fee Arrangements dated 30 December 1998. The charges will be settled in accordance with the Billing and Settlement Procedures as set out in Schedule 2.

4. Confidentiality

- 4.1 Each party agrees that it shall maintain in confidence all information of a confidential nature disclosed by the other party relating to or developed in connection with this Memorandum and the Agreement. Each party shall take all reasonable steps to ensure that its employees and agents do not make public or disclose the other party's confidential information to any third parties.

5. Term and Termination

- 5.1 This Memorandum shall commence on 22 June 1999 and shall remain in full force unless terminated in accordance with clause 1.2 or clause 5.2.
- 5.2 Either party may terminate this Memorandum immediately by giving the other party notice in writing if:
- (a) the other party materially breaches a material provision of this Memorandum and that breach is not remedied within 21 days after receiving written notice to do so; or
 - (b) the other party becomes subject to any form of insolvency administration or winding-up, unless there is a bona fide dispute between the other party and the person or persons seeking to subject the other party to that insolvency, administration or winding up; or
 - (c) the TA validly determines and notifies the other party in writing that it will revoke the other party's Licence, in which case this Memorandum shall terminate at the date such revocation becomes effective.

6. Limitation of Liability

- 6.1 Nothing in this Memorandum in any way excludes or restricts a party's liability for death or personal injury resulting from the negligence of the other party.
- 6.2 Neither party is liable to the other for any indirect, consequential, collateral, special or incidental loss or damage suffered or incurred by the other party in connection with this Memorandum whether during or after the term of this Memorandum. For the purposes of this Memorandum, indirect or consequential loss or damage includes, without limitation, loss of revenue, profit, anticipated savings or business, loss of data or goodwill, loss of use or value of any equipment including software, claims of third parties, and all associated and incidental costs and expenses.

7. Governing Law and Jurisdiction

- 7.1 This Memorandum is governed by the Laws of Hong Kong Special Administrative Region.

7.2 Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Hong Kong Special Administrative Region.

8. Non-Assignment

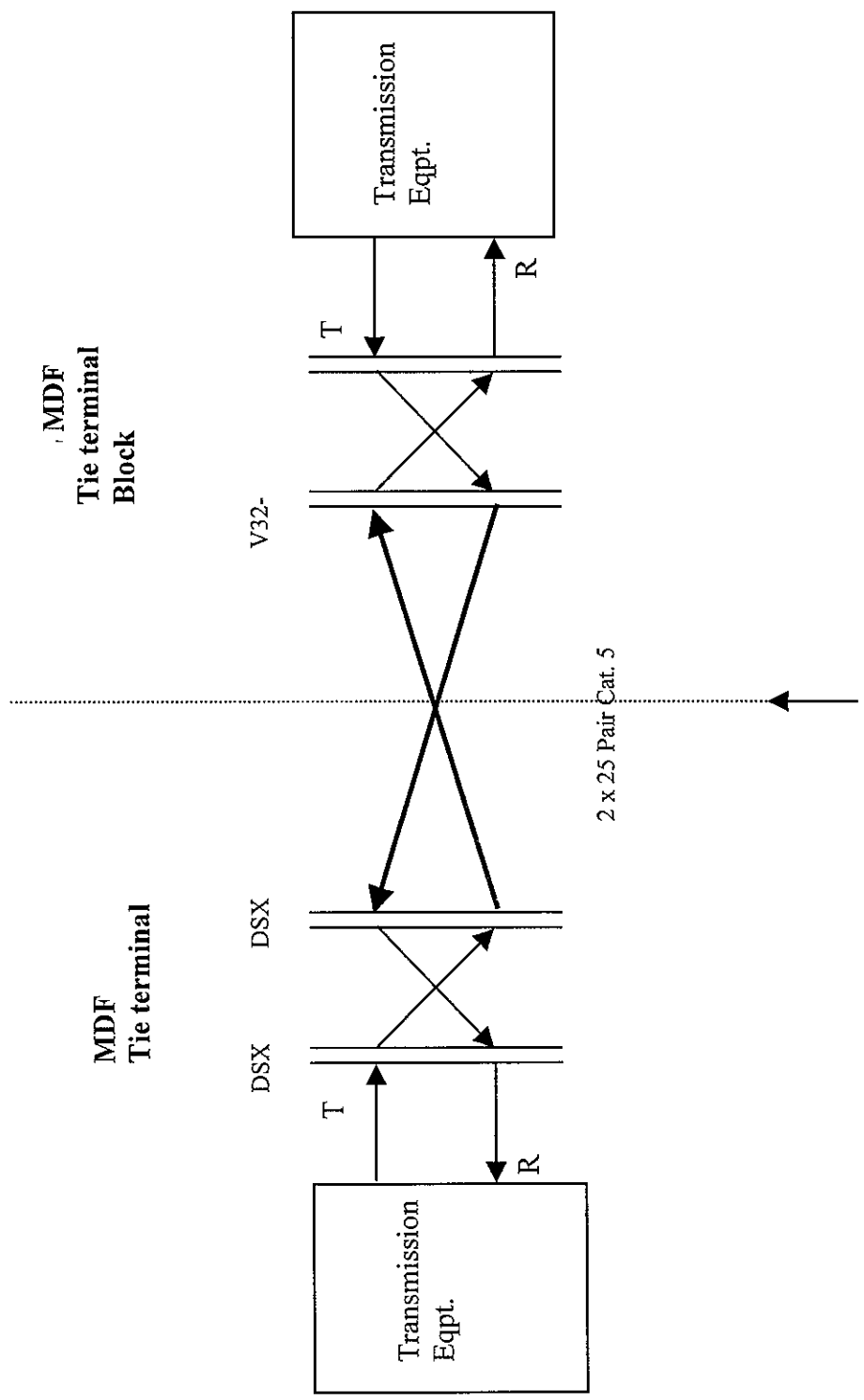
8.1 Neither party may assign its rights under this Memorandum without the prior written consent of the other party.

This Memorandum of Understanding is made on the 14th day of July, 1999.

Signed for and on behalf of

Signed for and on behalf of

POI Connection Point Between and at The Centre



POI Point at Electrical Interface

Schedule 2
Billing and Settlement Procedures

Any reference to Business Day means a day other than Saturday, Sunday and public holiday in Hong Kong.

1. BILLING PRINCIPLES

Service charges for a call which begins at or after 00:00:00 of the first day of the calendar month will be included in the statement issued for that month. Service charges for a call that begins in one calendar month and completes in the following calendar month will be included in the statement for the first month.

2. ISSUE OF STATEMENTS

Issue of Statements

2.1 Within 15 calendar days after the expiration of each calendar month, or as soon as practicable thereafter, the party to be paid the invoiced amount ("Recipient Party") will provide to the party who must pay the invoiced amount ("Payment Party") a statement containing:

- (a) the amount due to be paid by the Payment Party to the Recipient Party for the services provided in that month;
- (b) billing information for services provided in that month including but not limited to the description, unit rate, number of calls and number of minutes.

The Recipient Party must provide the Payment Party on a timely basis with all information reasonably required by the Payment Party to verify rates and charges to be billed by the Recipient Party to the Payment Party.

Accuracy of Statements

2.2 In any dispute in relation to billing and settlement a statement shall be presumed to be correct until the contrary is proved.

Correcting Errors in Statements

2.3 If after issuing the statement the Recipient Party identifies an error in the statement that involves invoicing the Payment Party for an amount less than the correct amount, the Recipient Party may issue a separate statement for the difference within 3 months of the original statement date.

2.4 If the statement was issued for an amount less than the correct amount as a result of:

- (a) incorrect information, data or signalling, being provided by the Payment Party; or
- (b) any failure of the Payment Party to comply with this Memorandum;

the Recipient Party may issue a separate statement for the difference and overdue interest at the rate set out in section 3.3 shall be applicable to such amount as if it were set out in the original statement provided that no more than 3 months shall have elapsed since the initial invoice.

Non-Availability of Recipient Party's Billing System

- 2.5 If the Recipient Party's billing system is not available or fails to operate to allow the Recipient Party to generate a statement at the relevant time:
- (a) the Recipient Party may generate a provisional statement based on the traffic measured for the immediately preceding month for which data is available. If there is a reported dispute in respect of the statement for such immediately preceding month, the provisional statement must be adjusted according to the result of the dispute resolution of that previous statement;
 - (b) the Recipient Party will notify the Payment Party of the system non-availability or failure and state that the statement is provisional;
 - (c) all procedures relating to payment and overdue interest payable under section 3.3 are applicable to such a provisional statement as if it were a statement issued in the normal course; and
 - (d) when the Recipient Party's system is again fully operational, the Recipient Party must process the records for the period during which the system was not available; and
 - (i) if there is any difference between the provisional statement and the actual amount calculated after reprocessing, the Recipient Party will adjust the invoiced amount accordingly;
 - (ii) if this reconciliation shows that there has been an overpayment, the Recipient Party must within 15 calendar days pay the overpaid amount to the Payment Party; and
 - (iii) if this reconciliation shows that there has been an underpayment, the Payment Party must within 15 calendar days pay the underpaid amount to the Recipient Party.

If the re-processing and the issue of a revised statement cannot be completed within 3 calendar months from the issue date of the provisional statement, the parties will negotiate in good faith to finalise the amount payable in respect to the period covered by the provisional statement.

3. PAYMENT

Timing of Payment

- 3.1 Subject to section 3.5, the Payment Party must pay each invoiced amount to the Recipient Party on or before the statement due date which shall be 30 calendar days from the date of the statement.

Method of Payment

- 3.2 All amounts payable by a party must be paid in Hong Kong dollars by bank cheque to the other Party or directly by electronic transfer to a bank account which has been nominated in writing by the other Party.

Interest for Overdue Payment

- 3.3 If an invoiced amount is not received by the due date, the Payment Party must pay to the Recipient Party interest in respect of the overdue amount. Overdue interest will be calculated at the rate which is equal to 2% above the prime lending rate of The Hongkong and Shanghai Banking Corporation Limited as current from time to time. Interest will accrue daily on all outstanding amounts (including accrued overdue interest) from the due date until payment in full is received by Recipient Party.
- 3.4 Any amount overpaid by the Payment Party shall be refunded promptly upon discovery of the overpayment together with interest calculated at the rate set out in section 3.3 from the date of payment until the date of refund in full.

Withholding Disputed Amounts

- 3.5 If the Payment Party disputes the statement, it must pay that portion of the invoiced amount which is not disputed. Overdue interest at the rate set out in section 3.3 will accrue in respect of the non-disputed portion if it is not paid by the invoice due date. The disputed portion is not payable pending resolution of the dispute provided that the Payment Party complies with the terms set out in section 4.
- 3.6 If at any time a dispute no longer exists in relation to all or part of a disputed amount (as a result of the resolution of all or part of that dispute or otherwise) then it becomes an undisputed amount and the Payment Party must immediately pay to the Recipient Party that undisputed amount together with interest calculated under section 3.3.

4. DISPUTE RESOLUTION

Notification of Dispute

- 4.1 If the Payment Party disputes a statement and the amount in dispute is more than the tolerance limit stated in section 5, it must within 30 Business Days of the date of the statement notify the Recipient Party in writing specifying:
- (a) the statement in dispute;
 - (b) the amount in dispute;
 - (c) the reasons for dispute;
 - (d) supporting documentation as appropriate.
- 4.2 Any dispute raised after 30 Business Days from the date of the statement by the Payment Party or which does not contain all of the information set out in section 4.1 will not be

considered a disputed item and the invoiced amount must be settled in full by the due date provided that if a dispute is lodged within 90 Business Days from the date of the statement due to information which subsequently becomes available, the dispute may be notified within 15 Business Days after the Payment Party becomes aware of that information.

4.3 If the Payment Party's system fails or is not available, the Payment Party must notify the Recipient Party of such failure and the 30 Business Day dispute notification period referred to under section 4.1 will be extended by the lesser of:

- (a) the length of the system failure or non-availability; or
- (b) 30 Business Days.

4.4 In the event of a failure or non-availability of the Payment Party's system, the Payment Party must pay the invoiced amount in full pending resolution of the system failure or non-availability and any resulting dispute.

Dispute Investigation

4.5 Where a dispute relates to measuring devices and billing systems the parties must use their best endeavours:

- (a) to investigate and resolve the dispute by establishing and undertaking joint testing procedures to investigate whether there is substantial discrepancy between the measuring devices and billing systems operated respectively by the parties;
- (b) to conclude the testing under paragraph (a) by no later than 30 Business Days from the dispute notification date;
- (c) to otherwise take such reasonable steps as may be necessary to resolve the dispute.

4.6 Unless otherwise agreed, a dispute is not valid in each of the following cases:

- (a) the difference between the basis of calculating the amount in dispute does not differ from the results of the joint testing by more than the tolerance limit stated in section 5 in respect of the number of minutes for which the relevant service has been provided in the month covered by the statement in dispute;
- (b) there is no substantial error found in respect of the statement in dispute within 40 Business Days from the dispute notification date.

4.7 If as a result of an investigation process under section 4.5 the parties find a material error in a statement, then if as a result of that error:

- (a) the Recipient Party has issued a statement for less than the correct amount the Payment Party must immediately pay to the Recipient Party the disputed amount and any additional amount invoiced by the Recipient Party under section 3.3;
- (b) part of the disputed amount is not payable by the Payment Party it may retain that amount and any balance:

- (i) if it remains in dispute it may be referred for resolution under section 4.8;
 - (ii) otherwise is an undisputed amount that must be paid immediately to the Recipient Party;
- (c) an amount has been overpaid to the Recipient Party, section 3.4 shall apply.

Resolution

- 4.8 Following the dispute investigation, the Payment Party must pay the amount assessed to be payable and overdue interest on the assessed amount to be calculated from the original due date to the actual payment date.
- 4.9 Following the dispute investigation, the Recipient Party must refund any overpaid amount received from the Payment Party and must also pay interest on such refunded amount to be calculated from the original payment date to the refund date.
- 4.10 Any amount (including principle and interest) assessed to be payable following the dispute resolution must be settled within 15 calendar days of the dispute resolution date.
- 4.11 If the party entitled to such payment does not receive the outstanding principle and interest within 15 calendar days from the dispute resolution day, then overdue interest in respect of these amounts may be included in the next statement.

Non-settlement of Dispute

- 4.12 The parties must use their reasonable efforts to promptly resolve any dispute notified under this Schedule. If the parties are unable to resolve any dispute in relation to the accounting process which affects the amount in dispute within 40 Business Days after notification of the dispute, either party may refer the matter to a suitable expert agreed between the parties, or failing such agreement as appointed by the Chairman of Hong Kong Society of Accountants. The person appointed shall act as an expert and not an arbitrator.
- 4.13 The parties must reasonably co-operate in any resolution process undertaken by the nominated expert. 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 that 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.

5. DATA DISCREPANCIES

The tolerance limit for discrepancies in respect of call data measured by the parties respectively will be 1% in respect of the number of minutes used in the month covered by a statement. This tolerance limit will be reviewed regularly, and adjusted by written agreement between the parties.

Schedule 3
Numbering Plan for Traffic Passing Between and

No.	Calling Party ^{*1,3}	Called Party	Numbering Levels ^{*2}	Remarks	
1				Access code for IDD services	
				Short code for various FTNS	
				Service code for high volume traffic	
				Calling card services access code	
				FTNS number	
				Service code for PNETS	
				Network number	
				Paging number	
				Freephone number	
				Personal number	
				Access code for sponsored information services	
	2				Access code for IDD services
					Short code for various FTNS
				Service code for high volume traffic	
				Calling card services access code	
				FTNS number	
				Service code for PNETS	
				Network number	
				Paging number	
				Freephone number	
				Personal number	
				Access code for sponsored information services	
3					Short code for various mobile services
					Network number
				Mobile number	

* Note:

1. Calling party of a network operator means CPE and ETS networks directly connected to the operator.
2. For details of the numbering formats, please refer to TA Statement 1st April 1999, "The Numbering Plan for Telecommunications Services in Hong Kong". For those agreed call types, the numbering levels will be revised by the allocation of new numbers by OFTA to the relevant operators.
- 3.