

POI AMENDMENT AGREEMENT

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THIS AGREEMENT is dated 30th March 2001

BETWEEN

and

RECITALS

- A. The Parties have entered into the POI Establishment Agreement dated 29 June 1995 ("POI Agreement") and have since entered into further amendment agreements.
- B. Schedule 1A and Schedule 1B of the POI Agreement have expired on 31 December 1998. The Parties have now agreed to replace Schedules 1A and 1B of this Amendment Agreement to the POI Agreement effective from 1st January 1999, and to amend further certain provisions of the POI Agreement and Schedule 1C thereof on the terms and conditions set out in this Amendment Agreement. The Parties have also agreed to supplement the POI Agreement as set out in this Amendment Agreement.

THE PARTIES AGREED AS FOLLOWS:

1. SCHEDULES

- 1.1 The Parties agree to replace Schedules 1A and 1B of this Amendment Agreement to the POI Agreement with effect from 1 January 1999.
- 1.2 The Parties agree to amend the existing Schedule 1C of the POI Agreement by replacing it with Schedule 1C of this Amendment Agreement.
- 1.3 For avoidance of doubt, the Parties agree that Schedule 1D has been terminated with effect from 6 February 1999 without prejudice to either Party's rights accrued before the said date of termination.

2. AMENDMENT AND SUPPLEMENT

- 2.1 The Parties agree to delete the definition of Payment Reduction in the POI Agreement and replace it with the following definition:

“Payment Reduction” means the reduction in the payments to be made to _____ by _____ in the circumstances and calculated in the manner set out in Schedule 1A, 1B and 1C.”

- 2.2 The Parties agree to add a new clause 17 to the POI Agreement as follows:

“17. Regulatory Review and Material Legislative Change

- 17.1 If any provision of this POI Agreement is in breach of any applicable law the Parties must negotiate in good faith such amendments to this POI Agreement that are necessary or appropriate to ensure consistency between this POI Agreement and the applicable law.
- 17.2 This POI Agreement (and all matters the subject of it) is conditional on all necessary governmental consents and approvals (including, without limitation, any necessary consents and approvals from the TA), if any, relating to this POI Agreement, being obtained in terms reasonably satisfactory to both Parties as to form and content.
- 17.3 If any of the terms and conditions of this POI Agreement is subject to review by the TA and is not upheld in its entirety, the Parties shall negotiate in good faith to agree on a similar arrangement taking into consideration the outcome of the TA’s review.
- 17.4 The provisions of this POI Agreement remain in full force and effect during any negotiations under this clause until the commencement of an agreement replacing or amending this POI Agreement.
- 17.5 If the Parties are mutually unable to agree a solution within 3 months of commencing negotiations under this clause 17, either Party may terminate this POI Agreement with by giving 3 months advanced written notice to the other Party.
- 17.6 A Material Legislative Change occurs if:
- (a) the Telecommunications Ordinance is amended or repealed; or
 - (b) a condition of a Party’s FTNS Licence is amended or deleted or a new condition or rule is imposed; or
 - (c) a lawful direction is made by the TA;

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

- 17.7 If a Material Legislative Change occurs, a Party may notify the other Party of that Material Legislative Change and the Parties shall then negotiate in good faith to agree such amendments to this POI Agreement as are necessary or appropriate to ensure consistency between this POI Agreement and the Ordinance, FTNS Licence or lawful direction.
- 17.8 Any present or future legislation which operates on a right, power or remedy of a person in connection with this POI 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."
- 2.3 Each Party agrees to comply with the POI physical link charging principles set out in the Determination under Section 36A of the Telecommunication Ordinance (Cap. 106) for Interconnection between
("Determination"). Each Party further agrees to apply the POI physical link charging principles set out in the Determination retrospectively from 29 June 1995.
- 2.4 Upon execution of this Amendment Agreement, both Parties shall reconcile the POI charge records. Either Party shall issue an invoice to the other Party for the settlement of the agreed POI charges.

3. INTERPRETATION

- 3.1 The amendments set out in this Amendment Agreement take effect from the date of this Agreement except for the amendments set out in clause 1.1 which take effect from 1 January 1999, and clause 1.3 which take effect from 6 February 1999.
- 3.2 The terms and conditions of this Amendment Agreement are deemed to be an integral part of the POI Agreement and reference to "this POI Agreement" in the POI Agreement refers the POI Agreement and this Amendment Agreement.
- 3.3 A term which is defined in the POI Agreement and used in this Amendment Agreement but not defined herein has the same meaning as used in the POI Agreement unless the context requires otherwise.
- 3.4 Nothing in this Amendment Agreement shall in any way vary the POI Agreement unless expressly stated in this Amendment Agreement. The Parties agree that the variation set out in this Amendment Agreement shall not affect and is without prejudice to the rights and remedies that a Party may have accrued prior to the variation.
- 3.5 This Amendment Agreement is governed by the laws of Hong Kong Special Administrative Region.

3.6 Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Hong Kong Special Administrative Region.

EXECUTED as an Agreement.

SIGNED

for and on behalf of

by its duly authorized representative:

Name:

Title:

SIGNED

for and on behalf of

by its duly authorized representative:

Name:

Title:

**SCHEDULE 1A
INTERCONNECT LINK (IN E1)**

PART I: GENERAL

SWITCH LOCATION

INTERCONNECT GATEWAY EXCHANGE

The Interconnect Links are to be provisioned at each of these Interconnect Gateway Exchanges in reasonably distributed quantities, unless otherwise agreed by the Parties.

MINIMUM SERVICE PERIOD

36 months for all existing and new installed Interconnect Links commencing 1st January 1999 or the date the Interconnect Links are provisioned, whichever is the later.

GROWTH CONDITIONS

1. Additional capacity may be ordered in accordance with the POI Agreement.
2. The procedure set out in Clause 5 of the POI Agreement will apply for ordering

additional capacity under this Schedule. must give nine months advance written notice of any increase in capacity, setting out the requested Provisioning Date in respect of that capacity. will provision the required capacity subject to the availability of the relevant capacity within its network, and must pay in respect of that capacity in accordance with this Agreement.

3. Interconnect Equipment Charges and Network Charges are payable for additional capacity in accordance with the POI Agreement.

PART II: CHARGES

INTERCONNECT EQUIPMENT CHARGES

The charges are incorporated in the amounts of Network Charges set out below.

NETWORK CHARGES

1. **One-off Installation Charge – HK\$791.00 per E1 Link**

Installation Charge for each Interconnect Link which includes charges for relevant labour, equipment and other costs and charges reasonably incurred by in relation to the planning, provisioning, installing and testing the required capacity and equipment.

2. **Monthly Recurrent Charge - HK\$1,639.00 per E1 Link**

CHARGE ADJUSTMENT

The One-off Installation Charge and Monthly Recurrent Charge will be subject to an annual increase set at CPI (A) minus 2%.

PART III: PAYMENT REDUCTION

Payment Reduction is not applicable to Schedule 1A as the charges already reflect the equal sharing of the provisioning cost for the Interconnect Links.

**SCHEDULE 1B
INTERCONNECT LINK (IN E1)**

PART I: GENERAL

SWITCH LOCATION

INTERCONNECT GATEWAY EXCHANGE

The Interconnect Links are to be provisioned at each of these Interconnect Gateway Exchanges in reasonably distributed quantities, unless otherwise agreed by the Parties.

MINIMUM SERVICE PERIOD

36 months for all existing and new installed Interconnect Links commencing 1st January 1999 or the date the Interconnect Links are provisioned, whichever is the later.

PART II: CHARGES

INTERCONNECT EQUIPMENT CHARGES

The charges are incorporated in the amounts of Network Charges set out below.

NETWORK CHARGES

1. One-Off Installation Charge – HK\$1,582.00 PER E1 LINK

Installation Charge for each Interconnect Link which includes charges for relevant labour, equipment and other costs and charges reasonably incurred by in relation to the planning, provisioning, installing and testing the required capacity and equipment.

2. Monthly Recurrent Charge - HK\$3,278.00 per E1 Link

CHARGE ADJUSTMENT

The One-off Installation Charge and Monthly Recurrent Charge will be subject to an annual increase set at CPI (A) minus 2%.

PART III: PAYMENT REDUCTION

Payment Reduction is not applicable to Schedule 1B E1 Interconnect Links.

**SCHEDULE 1C
INTERCONNECT LINK (IN T1)**

PART I: GENERAL

SWITCH LOCATION

INTERCONNECT GATEWAY EXCHANGE

The Interconnect Links are to be provisioned at each of these Interconnect Gateway Exchanges in reasonably distributed quantities, unless otherwise agreed by the Parties.

MINIMUM SERVICE PERIOD

36 months for all existing and new installed Interconnect Links commencing 1st January 1999 or the date the Interconnect Links are provisioned, whichever is the later.

GROWTH CONDITIONS

1. Additional capacity may be ordered in accordance with the POI Agreement.
2. The procedure set out in Clause 5 of the POI Agreement will apply for ordering additional capacity under this Schedule 1C. must give three months advance written notice of any increase in capacity up to a maximum of 84 T1, setting out the requested Provisioning Date in respect of that capacity. will provision the required capacity subject to the availability of the relevant capacity within its network, and must pay in respect of that capacity in accordance with this Agreement.

PART II: CHARGES

INTERCONNECT EQUIPMENT CHARGES

1. One-off Installation Charge – HK\$124,326.00 per 84 T1 increment
2. Monthly Recurrent Charge – HK\$33,908.00 up to 84 T1

NETWORK CHARGES

1. **One-off Installation Charge – HK\$792.00 per T1 Link**

Installation charge for each Interconnect Link which includes charges for relevant labour, equipment and other costs and charges reasonably incurred by in relation to the planning, provisioning, installing and testing the required capacity and equipment.

2. **Monthly Recurrent Charge - HK\$1,493.00 per T1 Link**

CHARGE ADJUSTMENT

The One-off Installation Charge and Monthly Recurrent Charge will be subject to an annual increase set at CPI (A) minus 2%.

PART III: PAYMENT REDUCTION

For the purposes of calculating the Payment Reduction as set out in this Schedule 1C:

- Interconnect Equipment One-off Installation Charge Reduction is HK\$1,480.00 per T1
- Recurrent Charge Reduction is HK\$404.00 per T1

The above amounts do not represent any additional payment by

Payment Reduction for Schedule 1C T1 Interconnect Links is calculated as follows:

In respect of the One-off Charges, the sum of:

(One-off Charges specified within Network Charges) x (Agreed Allocation for Network), and

(Interconnect Equipment One-off Installation Charge Reduction) x (Agreed Allocation for Interconnect Equipment)

In respect of the Recurrent Charges, for each month the sum of:

(Recurrent Charges specified within Network Charges) x (Agreed Allocation for Network), and

(Recurrent Charge Reduction per T1 specified within Interconnect Equipment Charges) x

(Agreed Allocation for Interconnect Equipment)

AGREED ALLOCATION

For the Network

For the confirmed orders in respect of each Provisioning Date set out in this Agreement, Agreed Allocation is 50% of the relevant confirmed orders. As a clarification, Agreed Allocation does not include capacity in relation to the interconnection between and

For the Interconnect Equipment

For the confirmed orders in respect of each Provisioning Date set out in this Agreement, Agreed Allocation is 50% of (84 T1 or its multiples as may be mutually agreed by the parties, excluding capacity in relation to the interconnection between and) (the "Interconnect Equipment Agreed Allocation").

The Interconnect Equipment Agreed Allocation shall be calculated in accordance with the following principles:

- If initially only orders Interconnect Links for interconnection with Network, the Interconnect Equipment Agreed Allocation will be 84 T1