

and

Local Delivery Agreement

TABLE OF CONTENTS

	Page
1. DEFINITIONS AND INTERPRETATION	1
2. SCOPE OF THIS AGREEMENT	5
3. CHARGES AND PAYMENT	5
4. CLI AND PROVISION OF INFORMATION GENERALLY	6
5. NUMBERING	6
6. NETWORK OPERATION AND MANAGEMENT	6
7. QUALITY OF SERVICE AND FORECASTING	6
8. LIMITATION OF LIABILITY	7
9. TERM AND TERMINATION	8
10. CONFIDENTIAL INFORMATION	10
11. FORCE MAJEURE	10
12. ASSIGNMENT	10
13. NOTICES	10
14. GENERAL	12
15. GOVERNING LAW AND JURISDICTION	13
16. DISPUTE RESOLUTION	14
Schedule 1 Service Description, Designated Communications and Charges	
Schedule 2 Access Codes and User Number Ranges	
Schedule 3 Operations Provisions	
Schedule 4 [Intentionally left blank]	
Schedule 5 Billing and Settlement Procedures	

THIS AGREEMENT is made on the 8th day of October 2004

BETWEEN:

AND:

RECITALS:

- A. and each operates telecommunications facilities and services in Hong Kong pursuant to a
- B. and have agreed to convey Designated Communications to and from each of their network in accordance with this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

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

"**Access Code**" of a Party or of a Third Party Operator means a prefix or number allocated to that Party or Third Party Operator under the Numbering Plan used to enable access to that Party or Third Party Operator for the provision of one or more services to the Calling Party (including, without limitation, in the case of each Party, the access codes which have been allocated to that Party and are set out in Schedule 2) and for the avoidance of doubt excludes a User Number.

"**Business Day**" means a day on which trading banks are open for business in Hong Kong (excluding Saturdays).

"**Call Delivery Service**" means the call delivery services described in Schedule 1 provided in relation to Designated Communications and any other call delivery services agreed in writing from time to time between the Parties.

"**Called Party**" means the device, customer equipment or person, to which or to whom a Designated Communication from a Calling Party is conveyed for final termination.

"**Calling Party**" means a device, customer equipment or person from which or from whom a Designated Communication is originated for transmission to a Called Party.

"Charges" means amounts set out in Schedule 1 payable by each Party to the other Party under this Agreement in accordance with paragraph 5 for the supply of Call Delivery Services, as amended from time to time under this Agreement or as lawfully determined by the TA under section 36A of the Ordinance.

"CLI" or "Calling Line Identification" means the information identifying the number of the telephone line or apparatus from which a communication originates that is generated or transmitted by the Network or Third Party Network to which that line or apparatus is connected.

"CLI Code of Conduct" means the Code of Conduct for handling CLI Information issued by the TA.

"Commencement Date" means the date of this Agreement.

"Confidential Information" has the same meaning as it has under the Mutual Confidentiality Agreement.

"Mutual Confidentiality Agreement" means the confidentiality agreement dated 8 October 2004 entered into between the parties.

"Connection Customer" of a Party or of a Third Party Operator means a Calling Party or Called Party that transmits and/or receives communications using a Connection Customer Line operated by that Party or Third Party Operator.

"Connection Customer Line" means the line that directly connects a Calling Party or Called Party to a local telecommunications exchange in Hong Kong.

"Designated Communication" means a communication comprised of voice and/or data on the voiceband and any other communications agreed in writing from time to time to be exchanged between the Parties respective Networks.

"Fixed Telecommunications Network Service" has the same meaning as the term "Service" given in Schedule 1 of each Party's Licence.

"FTNS Ported Number" means a Telephone Number of a person who was previously a Connection Customer of a Party who has become a Connection Customer of the other Party and retained the same Telephone Number.

"Interconnect Manual" means the interconnect manual to be agreed by the Parties and updated from time to time.

"External Communication" means a Designated Communication which is to be, or has been, conveyed between a place within Hong Kong and a place outside of Hong Kong, or vice versa.

"**Licence**" means in relation to a Party, the Fixed Telecommunications Network Services Licence 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 that Party pursuant to its Licence or licensed under the Ordinance and for clarification, includes facilities of the other Party or of a third party which that Party operates in the course of conveying communications.

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

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

"**Party**" means a party to this Agreement and "**Parties**" means the parties to this Agreement.

"**Personal Number**" means a Telephone Number in the "8" number range designated as a personal number under the Numbering Plan.

"**POI**" means the agreed and designated demarcation point between Network and Network, as established or to be established by separate agreement between the Parties.

"**Service Number**" of a Party or of a Third Party Operator means:

- (a) an Access Code; and
- (b) a User Number.

"**Service Supplier**" means the Party which provides Fixed Telecommunications Network Services to the Connection Customer or to the person who provides the telecommunications service to the Connection Customer, including through the provision of a service by the Service Supplier.

"**Services**" means the services, including the Call Delivery Services, to be provided by each Party under this Agreement.

"**Supporting Operator**" means the Party which provides Call Delivery Services to the Service Supplier.

"**TA**" or "**Telecommunications Authority**" means the Telecommunications Authority of Hong Kong.

"**Telephone Number**" means a number which identifies a Called Party or a Calling Party.

"Third Party Network" means any telecommunications network lawfully owned or operated by a third party from time to time.

"Third Party Operator" means a person that owns or operates a Third Party Network.

"User Number" means, in relation to a Party or Third Party Operator,

- (a) a Telephone Number falling within a number range allocated to that Party or Third Party Operator under the Numbering Plan (or, in the case of , if applicable, any previous arrangements for allocation of numbers under which the Telephone Number remains allocated to) that is allocated to a Connection Customer of that Party or of a Third Party Operator or a person who accesses the Personal Number Services of that Party or Third Party Operator; or
- (b) an FTNS Ported Number of a Connection Customer of that Party or of a Third Party Operator or of a person who accesses the Personal Number services of that Party or Third Party Operator; or
- (c) a Telephone Number which falls within paragraphs (a) and (b)

(including but not limited to the User Numbers specified in Schedule 2) and for the avoidance of doubt excludes an Access Code.

"Value Added Service Provider" means Third Party Operator that operates value added service under a PNETS licence issued by the TA.

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;

- (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.

2. SCOPE OF THIS AGREEMENT

- 2.1 This Agreement is intended to regulate the relationship and to set out the rights and obligations as between the Parties in respect of the conveyance and exchange of Designated Communications across their respective Networks, the provision of Services and the other matters set out in this Agreement.
- 2.2 From the Commencement Date, the Supporting Operator will provide Call Delivery Services to the Service Supplier in accordance with this Agreement.

3. CHARGES AND PAYMENT

- 3.1 Each Party must pay the other Party the amount of the Charges as specified in Schedule 1 in accordance with the billing and settlement procedures in Schedule 5.
- 3.2 The Parties agree that if, after the date of this Agreement, the TA determines any new charges between the Parties in relation to all or any of the Services provided under this Agreement:
 - (a) the Parties will reconcile the Charges previously paid under this Agreement such that those new charges are treated as having applied from the effective date of the new charges; and
 - (b) any Party which claims to be entitled to an additional payment or reimbursement as a result of the operation of paragraph (a) will issue an invoice for such amount in accordance with the billing and settlement procedure set out in Schedule 5.
- 3.3 Unless otherwise agreed, in all respects the provisions of Schedule 5 will apply to the issue and payment of invoices arising from the retrospective application of charges as contemplated by this clause.

4. CLI AND PROVISION OF INFORMATION GENERALLY

- 4.1 Each Party must provide CLI, as far as technically practicable and in the case of Designated Communications received by that Party from a Third Party Network, where available, to the other Party as part of the call set up signal for a Designated Communication for which the other Party is the Service Provider, except to the extent that the CLI Code of Conduct provides or the TA otherwise directs. Each Party must use its reasonable efforts to ensure that it provides CLI under this clause in accordance with the signalling specifications specified in the Interconnect Manual.
- 4.2 Each Party must use CLI provided by the other Party in such manner as is authorised by the CLI Code of Conduct and in accordance with the terms of any other relevant guideline or determination issued or made by the TA and any applicable law.
- 4.3 Each Party must endeavour to ensure that information provided by it to the other Party under this Agreement is correct to the best of its knowledge at the time of provision.
- 4.4 Subject to clause 4.3, neither Party warrants that information provided under this Agreement be entirely free from errors or will remain valid after its provision.

5. NUMBERING

- 5.1 Each Party must open up the number ranges specified in Schedule 2 by the applicable dates set out in Schedule 2 ("Access Date").
- 5.2 Neither Party shall have an obligation to convey Designated Communications to a Service Number until the Access Date for that Service Number or such earlier time as the relevant number range may have been opened up.

6. NETWORK OPERATION AND MANAGEMENT

Each Party must use reasonable endeavours to comply with the terms of the Interconnect Manual and must comply with the provisions of Schedule 3.

7. QUALITY OF SERVICE AND FORECASTING

- 7.1 Each Party shall use its reasonable endeavours to ensure that the conveyance and exchange of Designated Communications required to be conveyed and exchanged under this Agreement in and across their respective Networks complies with the Interconnect Manual.

7.2 The Parties shall within every months provide each other with reasonable forecasts of Designated Communications to be conveyed across their respective Networks. Whilst each Party shall, if possible, provide the Services with respect to Designated Communications, whether or not forecast, a Party shall not be liable to the other Party with respect to:

- (a) failure to convey Designated Communications which do not fall within an agreed forecast; or
- (b) the inferior quality of Designated Communications which do not fall within an agreed forecast,

provided that the Party otherwise relieved from liability has used reasonable endeavours to avoid the failure or inferior quality as aforesaid. The Parties agree that their obligations to exercise reasonable endeavours and provide services where possible in relation to Designated Communications which do not fall within an agreed forecast for any period shall be subject to any obligation to carry traffic properly forecast in relation to the same period by Third Party Operators.

8. LIMITATION OF LIABILITY

8.1 Nothing in this Agreement in any way excludes or restricts a Party's liability for death or personal injury resulting from the negligence of that Party.

8.2 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 Agreement whether during or after the term of this Agreement. For the purposes of this Agreement, 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.

8.3 Each Party will use its best endeavours to ensure that in its contracts with persons to whom it provides telecommunications services, the liability of the other Party is excluded to the fullest extent permissible by law.

8.4 The liability of each Party to the other in contract, tort or otherwise (including any liability for negligence) arising by reason of or in connection with this Agreement is limited to for any one incident or series of events arising from a single incident or common cause, and an aggregate amount of for all liability arising by reason of or in connection with this Agreement.

9. TERM AND TERMINATION

9.1 This Agreement commences on the Commencement Date and remains in force until terminated in accordance with this clause or by the TA pursuant to a lawful determination under section 36A of the Ordinance.

9.2 may terminate this Agreement immediately by giving notice in writing if:

- (a) materially breaches a material provision of this Agreement and that breach is not remedied within days after receiving written notice to do so; or
- (b) 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) the TA validly determines and notifies in writing that it will revoke's Licence, in which case this Agreement shall terminate at the date such revocation becomes effective.

9.3 may terminate this Agreement immediately by giving notice in writing if:

- (a) breaches a material provision of this Agreement and that breach is not remedied within days after receiving written notice to do so;
- (b) 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) the TA validly determines and notifies in writing that it will revoke's Licence, in which case this Agreement shall terminate at the date such revocation becomes effective.

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 owed to the other Party in accordance with this Agreement in respect of actions up to the date of termination.

9.5 If a Party ("Defaulting Party") is in material breach of this Agreement and the other Party ("Injured Party") notifies the Defaulting Party requesting it to rectify that breach ("Default Notice") then within Business Days after that Default Notice is given the Defaulting Party must notify the Injured Party of the action it proposes to take to remedy that material breach and must commence to take appropriate action to remedy the material breach.

9.6 If the Defaulting Party:

- (a) fails to commence to take appropriate action to remedy the material breach within Business Days after receiving the Default Notice; or
- (b) having taken the appropriate action to remedy the material breach, fails to remedy the material breach as soon as possible and in any event within Business Days after receiving the Default Notice,

the Injured Party may, without prejudice to any right to damages under this Agreement, after giving Business Days notice suspend the provision of any Service of the kind in respect of which the breach has occurred until the material breach is remedied and the Defaulting Party has certified that the material breach has been so remedied.

9.7 After the termination of this Agreement in circumstances where there is no agreement between the Parties or lawful determination providing for the contrary, unless there is a bona fide dispute in relation to the validity of the termination:

- (a) each Party must within a reasonable period (which will not be less than months) after termination disconnect its Network from the Network of the other Party or allow the other Party to so disconnect its Network; and
- (b) each Party's right to use the other Party's Confidential Information ceases.

9.8 Termination or expiry of this Agreement does not:

- (a) affect and is without prejudice to any accrued rights or remedies a Party may have under this Agreement that have accrued prior to or as a result of termination or expiry of this Agreement; or
- (b) operate as a waiver of any breach of this Agreement by a Party.

9.9 This clause and clauses 3 (Charges and payment), 8 (Limitation of liability) and 10 (Confidential information) shall survive termination or expiry of this Agreement.

9.10 If this Agreement is terminated for any reasons and the obligation to provide Services continues, each Party's obligations under clause 3 (Charges and payment) will also continue for the duration of the provision of those Services to it.

10. CONFIDENTIAL INFORMATION

Any Confidential information supplied under or in relation to this Agreement is subject to the Mutual Confidentiality Agreement except that CLI may be used as specified in clause 4.

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 to the extent that the effect of those events or circumstances renders performance impossible. The Party affected by the event or circumstances will be granted a reasonable extension of time to perform the obligation, if:

- (a) it notifies the other Party as soon as reasonably practicable of the event or circumstances 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 circumstances.

11.2 If a delay or failure to perform a Party's obligations due to an event or circumstances beyond that Party's reasonable control exceeds days, the other Party may immediately terminate this Agreement on notice to the first Party, but only if it has not at that time breached this Agreement in a manner which would entitle the other Party to terminate this Agreement.

11.3 An event or circumstances beyond a Party's reasonable 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. However, the parties agree that the failure of either Party to be granted a Licence is not an event of Force Majeure for the purposes of this Agreement.

12. ASSIGNMENT

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

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.

Address:

Attention:

Address:

Fax:

Attention:

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 No Representations or Warranties

The Parties have not relied on any representations or warranties about its subject matter except as provided in this Agreement.

14.6 Further Assurance

Each Party must do everything reasonably necessary to give full effect to its obligations under this Agreement.

14.7 Publicity

A Party may not make press or other public announcements or releases about this Agreement and the transactions related to it without the approval of the other Party unless the announcement or release is required to be made by law or the rules of stock exchange or by a government agency and that Party gives the other Party the maximum practicable notice of that announcement.

14.8 Severability

If at any time a provision of this Agreement becomes void, voidable, unenforceable or illegal, that shall not affect the legality, validity or enforceability of any other provision of this Agreement.

14.9 Relationship of the Parties

- (a) The relationship of the Parties under this Agreement is one of independent contractors only. Unless otherwise expressly provided, nothing in this Agreement is to be construed as creating an agency, partnership, association, trust or joint venture between the Parties.
- (b) Neither Party nor any of its employees, agents, representatives or contractors is to be deemed an employee, agent, contractor or representative of the other Party.
- (c) Other than as expressly provided in this Agreement, neither Party has any authority to bind or obligate or incur any liability on behalf of the other Party and no such authority is to be implied.

14.10 Amendment

This Agreement may not be amended except by written instrument executed by the Parties.

14.11 Entire Agreement and Primacy

- (a) Except as the Parties otherwise agree, this Agreement constitutes the entire agreement of the Parties about its subject matter and supersedes any previous understandings or agreements on that subject matter.
- (b) To the extent that there is any inconsistency between this Agreement and the Interconnect Manual then this Agreement shall prevail to the extent of any such inconsistency.

14.12 Counterparts

This Agreement may be executed in any number of counterparts and all those counterparts taken together will constitute one instrument.

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 exclusive jurisdiction of the courts of Hong Kong.

16. DISPUTE RESOLUTION

- 16.1 Disputes in relation to this Agreement will be reviewed by the working group established by the Parties that has the greatest expertise in relation to the subject matter of that dispute. Failing resolution of the dispute by this working group within _____ calendar days or such other time as may be agreed between the Parties, the dispute must be referred to the senior management of the Parties for resolution.
- 16.2 Each Party acknowledges that this Agreement will not prevent the TA exercising its powers under the Ordinance or its rights under the Licences, or other lawful rights or powers from time to time.

EXECUTED as an agreement

SCHEDULE 1

**SERVICE DESCRIPTION, DESIGNATED COMMUNICATIONS
AND CHARGES**

The Parties agree to review and negotiate the charges in this Schedule on the anniversary of this Agreement. If agreement cannot be reached on the new rates after months from commencement of negotiation, either Party may request for a determination by the TA.

1. External Telecommunications Services

- 1.1 The provision of a Call Delivery Service by the Supporting Operator to the Service Supplier to convey a Designated Communication which is an External Communication from the Supporting Operator's Connection Customer to a POI (whether addressed to a 00X, calling card or another Access Code of a third party connected to the Network of the other Party) (the "Outgoing External Communication").
- 1.2 The provision of a Call Delivery Service by the Supporting Operator to the Service Supplier to convey a Designated Communication which is an External Communication from a POI to the Supporting Operator's Connection Customer (the "Incoming External Communication").
- 1.3 Charges for the provision of the Call Delivery Service by the Supporting Operator are as follows:

Type of calls	Charges
Incoming External Communication from Category A countries terminated on Network of	10.6 cents per occupancy minute
Outgoing External Communication to Category A countries that originated from Network of	10.6 cents per occupancy minute

Type of calls	Charges
Incoming External Communication from Category A countries terminated on Network of	10.6 cents per occupancy minute
Outgoing External Communication to Category A countries that originated from Network of	10.6 cents per occupancy minute

2 Domestic Termination

- 2.1 Subject to paragraph 2.2, the provision of a Call Delivery Service by the Supporting Operator to the Service Supplier to convey a Designated Communication from a POI to the Supporting Operator's Connection Customer which is not an Access Code allocated to a Value Added Service Provider for provision of value added service under its PNETS licence. This type of licence Designated Communication is subject to terminating access charges (the "TAC").
- 2.2 Subject to paragraph 2.2, the provision of a Call Delivery Service by the Supporting Operator to the Service Supplier to convey a Designated Communication from the Supporting Operator's Connection Customer to a POI addressed to an Access Code allocated to a Value Added Service Provider for provision of value added service under its PNETS licence. This type of Designated Communication is subjected to originating access charges (the "OAC").
- 2.3 Charges for the provision of the Call Delivery Service by the Supporting Operator are as follows:

Type of calls	Charges
TAC	1.4 cents per occupancy minute 2.5 cents per call attempt
OAC	1.4 cents per occupancy minute 2.5 cents per call attempt

3. Domestic Transit

- 3.1 Each party will deliver Designated Communications delivered to it by the other Party at the POI from the POI to a Third Party Network which is connected to the first mentioned Party's Network, for the onward conveyance by the Third Party Operator to the Called Party if the Designated Communication is addressed to a User Number of the relevant Third Party Operator (the "Domestic Transit Calls").
- 3.2 Charges for the delivery of Domestic Transit Communications are as follows:

Type of call	Charges
Domestic Transit Calls	0.8 cents per occupancy minute 0.4 cents per call attempt

4. Per Minute Calculations

The per minute payments referred to in paragraphs 1 and 2 will be calculated on the basis of one second units of occupancy minutes for each Designated Communication in respect of which a Call Delivery Service is provided. The total occupancy minutes for each day will be rounded up at the end of each day to the nearest full minute. An "occupancy minute" will be each period of 60 seconds calculated in relation to the period between circuit seizure and circuit release.

SCHEDULE 2
ACCESS CODES AND USER NUMBER RANGES

No.	Calling Party ^{*1,3}	Called Party	Numbering Levels ^{*2}	Remarks
1.				Access code to the international gateway(s)
				Short codes for FTNS
				Services of high volume of traffic
				Calling card
				Fixed network numbers
				Public Non-Exclusive Telecommunications Services (other than External Telecommunications Services/IDD type of services)
				Public Non-Exclusive Telecommunications Services (for External Telecommunications Services/IDD type of services)
				Network numbers
				Paging services
				Freephone services
				Personal Numbering Services
				Information Services for sponsored services
				Information Services for information services for children
				Information Services for mass calling services
			2.	
	Short codes for FTNS			
	Fixed network numbers			
	Public Non-Exclusive Telecommunications Services (for External Telecommunications Services/IDD type of services)			
	Network numbers			
	Freephone services			

SCHEDULE 3

OPERATIONS PROVISIONS

1. Each Party is responsible for the safe and efficient operation of its Network.
2. Each Party shall be responsible for the operation, maintenance, management and administration of facilities on that Party's side of the POI.
3. Subject to paragraph 6 of this Schedule and except as expressly permitted under the Interconnect Manual, neither Party may:
 - (a) take any unauthorized action materially and adversely affecting the operation of the other Party's Network;
 - (b) cause or knowingly or recklessly permit the other Party's Network to be used for or in connection with any illegal purpose; or
 - (c) damage, interfere with, or cause any deterioration in the operation of the other Party's Network; or
 - (d) take any action which would materially adversely affect the operation of the Network of the other Party.
4. Each Party shall take all steps reasonably practicable to ensure the implementation of this Agreement will not endanger the health or safety of any persons including each other's employees.
5. Each Party agrees to co-operate with the other Party in developing and implementing procedures regarding Network operation and interference and restoring call delivery services and alternative carriage of calls during the period of a major service affecting fault (as defined under paragraph 6). These procedures will be set out in the Interconnect Manual as amended from time to time. In the interim:
 - (a) the Parties will use their reasonable efforts to comply with the relevant procedures in the Interconnect Manual; and
 - (b) each Party shall manage traffic on its Network so as to avoid disruption to the other Party's Network to the extent reasonably practicable.
6. Each Party may suspend or restrict the provision of a Service to the extent necessary provided that the Party has given to the other Party the maximum period of notice practicable in the circumstances and there are no alternatives reasonably available to it which would avoid such suspension or restriction:

- (a) to overcome a major service affecting fault in respect of that Party's Network or in respect of the Network of a Third Party Operator ("major service affecting fault" to have the meaning set out in the Interconnect Manual); or
- (b) in such other circumstances as may be agreed by the Parties in writing acting reasonably in the circumstances in view of the respective reasonable needs of the Parties;

provided that, if possible, the Parties shall use their best efforts to agree upon the timing of the suspension and shall ensure that the duration and extent of the suspension is minimized to the extent reasonably practicable in the circumstances.

- 7. Each Party must comply with the emergency, security, safety and supervisory practices and procedures agreed between the Parties from time to time.
- 8. Each Party must use its reasonable efforts to comply with the Interconnect Manual, as amended from time to time in writing by agreement of any employee of each Party that is authorized to amend the Interconnect Manual.
- 9. Each Party may route calls in any particular case as it, acting reasonably, sees fit, in order to avoid or minimize the effect of a service failure or network congestion or blockage.
- 10. The Parties agree that, to the extent that the Interconnect Manual does not do so at the date of this Agreement, they shall negotiate in good faith to agree the procedures for inclusion therein in relation to:
 - (a) suitable forecasting, ordering and provisioning procedures in relation to the provision of conveyance of Designated Communication and other, interconnect services under this Agreement;
 - (b) the provisioning, delivery and testing of Services not specified in this Agreement but which are agreed between the parties to be supplied by one Party to the other Party;
 - (c) the management of interconnection and other Services including without limitation:
 - (i) network operations and maintenance (including network failure, congestion and blockage); and
 - (ii) ensuring that the Parties' respective Networks are adequately protected from harm; and
 - (d) such other parties as the Parties shall agree.

Following agreement in relation to particular procedures referred to above, each Party must comply with those Procedures.



SCHEDULE 4

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SCHEDULE 5

BILLING AND SETTLEMENT PROCEDURES

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

1. BILLING PRINCIPLE

The DNO shall send statements to the RNO and the RNO shall settle the statements for charges of the services set out in the agreement in accordance with the procedures set out in this Schedule.

2. ISSUE OF STATEMENTS

Issue of Statements

2.1 Within Business 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 information set out in the letter to which this Schedule is attached to.

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 within months of the original statement date for the difference between the correct and incorrect amount of charges set out in the statements.

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 agreement;

it 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 months shall have lapsed 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 successful completion of the advice of portable number sent from RNO 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 Business Days pay the overpaid amount plus overdue interest at the rate set out in section 3.3 to the Payment Party; and
 - (iii) if this reconciliation shows that there has been an underpayment, the Payment Party must pay the underpaid amount plus overdue interest

at the rate set out in section 3.3 to the Recipient Party within Business Days.

If the re-processing and the issue of a revised statement cannot be completed within 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 Business 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 in good faith 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 in good faith a statement and the amount in dispute is more than the tolerance limit stated in section 5, it must within 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 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.

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 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) 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. Following resolution, the Recipient Party must refund excess amount of payment (if any and without interest) to the Payment Party within Business Days of the resolution date.

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 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 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 within Business Days paid 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 overdue interest as set in section 3.3 on such refunded amount to be calculated from the original payment date to the refund date.

- 4.10 Any amount (including principal and interest) assessed to be payable following the dispute resolution must be settled within Business Days of the dispute resolution date.
- 4.11 If the party entitled to such payment does not receive the outstanding principal and interest within Business 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 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 %, 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 data measured by the parties respectively will be % in respect of the number of successful completion of the advice of portable number sent from RNO used in the month covered by a statement. This tolerance limit will be reviewed regularly, and adjusted by written agreement between the parties.