

AMENDMENT AGREEMENT TO POI ESTABLISHMENT AGREEMENT

This Amendment Agreement (“Amendment Agreement”) is made on
20th January 2005

BETWEEN

AND

(Each a “Party” and collectively the “Parties”)

RECITALS

- A. The parties entered into the POI Establishment Agreement on 29 June 1995 and have since entered into several amendment agreements on 1 August 1997, 17 April 2000, 30 March 2001, 14 June 2001, and 6 November 2001 (collectively, “POI Agreement”).
- B. This Amendment Agreement sets out the terms and conditions upon which and have agreed to supplement the POI Agreement.

THE PARTIES AGREED AS FOLLOWS:

1. INTERPRETATION

- 1.1 The terms and conditions of this Amendment Agreement are an integral part of the POI Agreement.
- 1.2 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.

2. TERM AND TERMINATION

2.1 Unless earlier terminated pursuant to the POI Agreement, this Amendment Agreement shall be deemed to have commenced on 1 January 2005 (“**Commencement Date**”) and shall continue in force until expiry of ten (10) years from the Commencement Date (“**Term**”).

2.2 On and from the Commencement Date, both Parties agree to delete the existing Clauses 13.1 to 13.9 of the POI Agreement and replace them with the following Clauses:

13.1 Unless earlier terminated pursuant to this clause, this POI Agreement shall continue in full force and effect for a period of ten (10) years from the 1 January 2005.

13.2 may terminate this POI Agreement immediately by written notice to if:

(a) is in material breach of this POI Agreement and that breach is not remedied within fourteen (14) days from the date of receiving notice from ;

(b) becomes subject to any form of insolvency, administration or winding-up unless there is a bona fide dispute between and the person seeking to subject to that insolvency, administration or winding-up;

(c) the TA revokes Licence (without replacement); or

(d) the supply of Point of Interconnect Link (“**POI Link**”) will cause to be in breach of any applicable law or Licence.

13.3 may terminate this POI Agreement immediately by written notice to if:

(a) is in material breach of this POI Agreement and that breach is not remedied within fourteen (14) days from the date of receiving notice from ;

(b) becomes subject to any form of insolvency, administration or winding-up unless there is a bona fide dispute between and the

person seeking to subject to that insolvency, administration or winding-up; or

(c) the TA revokes Licence (without replacement).

13.4 Termination or expiration of this POI Agreement shall not affect the rights of the parties, which have accrued prior to the date of termination or expiration.

13.5 On termination or expiration of this POI Agreement, all charges in respect of the POI Agreement up to and including the date of termination or expiration and all other charges owing by to will become immediately due and payable.

13.6 Each party should bear its own Re-engineering Costs upon the termination or expiration of the POI Agreement.

13.7 The parties agree to review and discuss the way forward for the arrangement of POI Links provided under this POI Agreement six (6) months prior to 31 December 2014.

3. SUPPLEMENT

3.1 The parties agree not to pursue further with

3.2 agrees to abandon the self-built of points of interconnection arrangement between and during the Term.

3.3 agrees to grant a non-exclusive right of use during the Term to on the POI Links established between the networks of and . Unless otherwise expressly granted under this Amendment Agreement and/or the POI Agreement, the grant of right of use to under this Clause shall not convey any title, ownership or any other proprietary rights regarding any POI Links to

3.4 On and from the Commencement Date, any new POI Link provisioned by to will be subject to the Minimum Service Period of eighteen (18) months.

3.5 can only terminate a particular POI Link after the expiry of the Minimum Service Period by giving at least one (1) month written notice of termination to . Such notice of termination can only be given after the expiration of the Minimum Service Period of that POI Link.

3.6 shall maintain at all times a minimum capacity of five hundred (500) POI Links during the period from 1 January 2005 to 31 December 2007.

3.7 The parties agree to replace the Monthly Recurrent Charge on Interconnect Equipment and Network Charges set out in Schedules 1A, 1C and 1E of the POI Agreement with the following charges for the Term.

(a) Interconnect Equipment Charges

	From 1 January 2005 To 31 December 2005	From 1 January 2006 To 31 December 2006	From 1 January 2007 To 31 December 2007	From 1 January 2008 To 31 December 2014
Schedule 1C	\$16,954.00	\$13,563.20	\$10,172.40	\$0.00

(b) Network Charges

	From 1 January 2005 To 31 December 2005	From 1 January 2006 To 31 December 2006	From 1 January 2007 To 31 December 2007	From 1 January 2008 To 31 December 2014
Schedule 1A	\$819.50	\$655.60	\$491.70	\$0.00
Schedule 1C	\$746.50	\$597.20	\$447.90	\$0.00
Schedule 1E	\$1,639.00	\$1,311.20	\$983.40	\$0.00

For the avoidance of doubt, the above charges are not subject to any annual adjustment and Payment Reduction.

3.8 agrees to waive the charge for the relocation of POI Link including datafill of the subject relocation (“**Relocation Charge**”) up to 300 POI Links per annum from 1 January 2005 to 31 December 2007.

3.9 Relocation Charge will be quoted by to on case-by-case basis (a) from 1 January 2008 onwards or (b) prior to 1 January 2008, if the number of POI Links

relocated per annum shall exceed three hundred (300) POI Links for the period from 1 January 2005 to 31 December 2007.

- 3.10 On and from the Commencement Date, _____ agrees to waive the One-off Installation Charge for new POI Links provisioned by _____ to _____.
- 3.11 _____ agrees to waive the reconfiguration charge of POI Links throughout the Term of this Amendment Agreement.
- 3.12 A Monthly Recurring Maintenance Charge of \$111.00 per POI Link shall apply and be payable by _____ to _____ for the maintenance of the POI Links provided under the POI Agreement for the period commencing on 1 January 2008 and ending on 31 December 2014 (both dates included). This charge is not subject to any annual adjustment and Payment Reduction.
- 3.13 The spending of the POI Agreement and this Amendment Agreement will be included for the calculation of the Yearly Required Spend (as defined in Annex 1 of the Settlement Agreement) of the Settlement Agreement signed, inter alia, by _____ and _____ on 29 July 2004.

4. GENERAL

- 4.1 Unless otherwise expressly amended by this Amendment Agreement, the terms and conditions of the POI Agreement will continue in full force and effect between _____ and _____.
- 4.2 Except under Clause 13 of the POI Agreement, _____ and _____ shall not terminate the POI Agreement and this Amendment Agreement during the Term.
- 4.3 If any provision of this Amendment Agreement is in breach of any applicable law, the parties must negotiate in good faith such amendments to this Amendment Agreement that are necessary or appropriate to ensure consistency between this Amendment Agreement and the applicable law.
- 4.4 The provisions of this Amendment Agreement shall remain in full force and effect during any negotiations under Clause 4.3 until the commencement of an agreement replacing or amending this Amendment Agreement.
- 4.5 This Amendment Agreement is governed by the laws of the Hong Kong Special Administrative Region ("Hong Kong").

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

EXECUTED as an Agreement by the parties on the date first above written.

SIGNED

SIGNED