

## Memorandum of Understanding

This Memorandum of Understanding ("Memorandum") is made on the 23<sup>rd</sup> day of March 2004 between: -

(1)

And

(2)

### RECITALS: -

- A.                    and                    intend to interconnect their respective fixed networks upon the basis set out in this Memorandum.
- B.                    and                    agree to negotiate a full interconnect agreement 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 ("the Definitive Agreement").
- C.                    and                    are entering into this Memorandum of the way in which they will co-operate with each other for the purpose referred to in Recital A and B of this Memorandum.

### Definitions

In this Memorandum, the following words and expressions have the following meanings: -

"Period" means the period commencing from the date that both Parties executed this Memorandum and expiring on six(6) months from the date of signing of this Memorandum, which may be extended or revised by the written agreement of the Parties.

"Party" means                    or                    as the case requires and Parties means both of them.

### THE PARTIES AGREE AS FOLLOWS:

#### 1. Basis of Co-operative Relationship between                    and

- (a)                    &                    shall in good faith discuss the long term commercial, technical, regulatory and legal issues associated with the interconnection of their respective networks based on the principles set out in this Memorandum to ensure that the Definitive Agreement is agreed and executed during the Period.
- (b) Each Party must ensure that the set up of its network equipment and facilities for the purpose of routing and conveying communication either direct or indirect 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 and/or as required to comply with the technical standards made by the Telecommunications Authority of Hong

Kong ("TA").

- (c) 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.
- (d) Each Party shall deliver all relevant traffic of the numbering levels specified in Schedule 2, which may be revised by mutual agreement from time to time.
- (e) Each Party must take reasonable steps to ensure that the technical and operational quality and timing of the conveyance and exchange of communication are at least equivalent to that which it provides to itself.
- (f) Each Party must take reasonable steps to keep their respective networks in good condition and repair and to manage, modify and rectify any fault arising in its network which affect the interconnection and exchange of traffic by either Party.
- (g) 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.

## **2 Billing and Settlement**

Charging principles 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 (Second Revision)-"Carrier-to-Carrier Charging Principles" dated 18 March 2002, Determination under Section 36A of the Telecommunication Ordinance (Cap.106) for Interconnection between PCCW-HKT Telephone Limited and Wharf T&T Limited dated 27 February 2003, Implementation of Local Access Charge and Modified Delivery Fee Arrangements dated 25 November 1998 and TA statement for the review of Local Access Charge dated 28 June 2001 and other applicable TA statements and/or Determinations as may be issued from time to time.

Both parties agree to negotiate in good faith with a view to mutually agree on the level of charges that determined and specified in Schedule 2 from time to time.

The charges will be settled in accordance with the Billing and Settlement Procedure as set out in Schedule 3.

## **3. Termination**

- 3.1 This Memorandum will be legally binding on both Parties upon the signing thereof by both Parties and will continue in force until the execution by both Parties of the Definitive Agreement or otherwise terminated in accordance with Clause 3.2 or 3.3.
- 3.2 This Memorandum will expire or terminate on the earlier to occur of:
  - (i) Six (6) months from the date of this Memorandum, or any later date agreed between the Parties in writing; or
  - (ii) by giving to the other party six (6) month advance notice in writing; or
  - (iii) the date the Parties enter into the Definitive Agreement;

3.3 Either Party may terminate this Memorandum by giving the other Party notice in writing if:

- (i) 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
- (ii) 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
- (iii) 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.

#### **4. Limitation of Liability**

- (a) 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.
- (b) 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, 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.

#### **5. Confidentiality**

Each Party shall treat as confidential all information obtained from the disclosing Party pursuant to this Memorandum and shall not divulge such information to any person (except to such Party's own employees, directors or professional advisors and then only to those employees, directors or professional advisors who need to know the same) without the disclosing party's prior written consent provided that this Clause shall not extend to information which was rightfully in the possession of the receiving Party prior to the commencement of the negotiations leading to this Memorandum, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause) or which is trivial or obvious or which was required to be disclosed pursuant to court order, laws, stock exchange or regulatory body. Each Party shall ensure that its employees are aware of and comply with the provisions of this Clause. The foregoing obligations as to confidentiality shall survive any termination of this Memorandum.

#### **6. Relationship of the Parties**

Each Party acknowledges that it has no authority to act as the other Party' agent to bind or commit the other Party to a contractual liability except as may be otherwise agreed in writing. The Parties further understand that there is no intention to form or for the Parties to be construed as a partnership under Hong Kong law or the laws of any other jurisdiction.

**7. Governing Law**

This Memorandum is governed by the laws of the Hong Kong Special Administrative Region. In the event of any disputes arising from this Memorandum, the Parties hereby submit to the exclusive jurisdiction of the Hong Kong Courts.

**8. Assignment**

The Parties may not assign, charge or sub-contract all or any of its rights and obligations under this Memorandum without the other Party's prior consent.

**9. Variation**

This Memorandum may only be varied with the written agreement of both Parties.

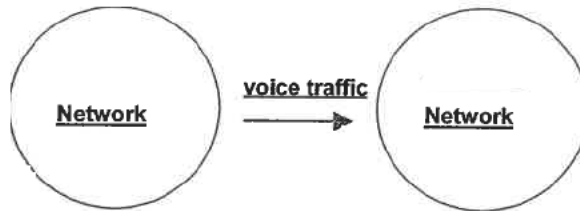
Signed for and on behalf of

Signed for and on behalf of

**SCHEDULE 1**

**Configuration of the interconnection between and**

agreed to deliver the voice traffic that originated from subscribers to .



**Interconnection Configuration**

## SCHEDULE 2

### Numbering plan for traffic passing between and

Subject to Schedule 1, agreed to modify its network to accommodate the following number blocks for at the following charges:

#### 1) Number Block:

- a. -for the service of International Direct Dial
- b. - for the service of customer services Hotline or operator-assisted services

#### 2) Charges:

##### a. External Calls

Local Access Charge: HKD 0.106 per occupancy minute

##### b. Local Calls

Interconnection Charge: i) HKD 0.025 per call attempt  
ii) HKD 0.014 per call occupancy minute

## **SCHEDULE 3**

### **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 charge 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 statement**

2.1 Within 30 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 invoice 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 reasonable required by the Payment Party to verify rates and charges to be billed by the Recipient Party to the Payment Party.

##### **Accuracy of Statement**

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 separated statement for the difference within twenty-four (24) months of the original statement date.

### **Non-Availability of Recipient Party's Billing System**

- 2.4 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, 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 within 15 days after the expiration of the calendar month 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 and provide the revised statement within 15 days after the system is fully operational; and
    - (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 monthly 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. 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 three (3) months 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 Days 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 if 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 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 cost 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 parties.

~ End ~