

**CONFIDENTIAL**

**AGREEMENT FOR LOCAL ACCESS CHARGE ARRANGEMENTS**

**BETWEEN**

**AND**

CONFIDENTIAL

**AGREEMENT FOR LOCAL ACCESS CHARGE  
ARRANGEMENTS**

**THIS AGREEMENT** (“**Agreement**”) is made as of this day of *31 October* 2014

**BETWEEN:**

**AND**

(            and            are collectively referred to hereinafter as the “Parties” or each individually as a “Party”)

**RECITALS:**

(A)            is the holder of            granted under the Telecommunications Ordinance for the provision of telecommunications services in Hong Kong.

(B)            is the holder of            granted under the Telecommunications Ordinance for the provision of telecommunications services in Hong Kong.

(C)            and            entered into an Interconnect Agreement on 19 September 2003. Both Parties now agreed that the LAC(t) (Local Access Charge (Transit)) charge rate for external telecommunication services (ETS) calls as stated in Schedule 4 of the Interconnect Agreement would only be effective up to 30 June 2013. From 1 July 2013 onwards, the Local Access Charge arrangement will be replaced by the terms and conditions of this Agreement.

## CONFIDENTIAL

THE PARTIES AGREE as follows:

### 1. DEFINITIONS AND INTERPRETATION

1.1 Unless the context otherwise requires, the following terms shall have the meanings as defined below:

**“Affiliate”** means, in relation to either Party, any entity which the Party directly or indirectly controls, any entity which directly or indirectly controls the Party, or any entity which is under common control with a Party. An entity will be deemed to control another entity if it has the power to direct or cause the direction of the management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise.

**“Agreement”** means this Agreement (including the Annexes to this Agreement).

**“Applicable Law”** means (a) any applicable laws, statutes or ordinances and any rules, practice notes, circulars and any other notification issued by any government entity, taxing authority, or regulatory authority pursuant to such laws, statutes and ordinances in Hong Kong or any jurisdiction which is applicable to the Parties' provision or use of the Services; (b) the obligations under any telecommunications licence held by \_\_\_\_\_ or \_\_\_\_\_; and (c) any lawful determination, or direction of a Government Agency in Hong Kong which is applicable to a Party's provision or use of the Services.

**“Business Day”** means a day other than a Saturday, Sunday or a public holiday or a day on which a tropical cyclone warning signal of No. 8 or above or a “black” rainstorm warning signal is hoisted or remains hoisted in Hong Kong at any time between 9:00 a.m. to 12:00 noon.

**“CA”** means the Communications Authority of Hong Kong.

**“Charges”** means any charge payable by one Party to the other Party in relation to the provision of Services in accordance with this Agreement.

**“Confidential Information”** of a Party means all information provided by one Party to the other Party pursuant to this Agreement that is

## CONFIDENTIAL

identified as confidential or by its nature is confidential and includes all confidential information of a Party or any of its Affiliate (regardless of its form and whether or not the other Party becomes aware of it before or after the Effective Date). For the avoidance of doubt, the terms of this Agreement are the confidential information of                      and                      .

**“Due Date”** means the date specified in any relevant invoice, or if no such date is specified, the date which is thirty (30) days from the date of the relevant invoice.

**“Effective Date”** means 1 July 2013.

**“End Date”** means 30 June 2019.

**“External Services Provider”** means the holder of a carrier licence or services-based operator licence issued under the Telecommunications Ordinance which permits the licensee to offer retail external telecommunication call services to customers in Hong Kong.

**“Fixed Carrier Licence”** means the fixed carrier licence granted under the Telecommunications Ordinance and any equivalent substitute or replacement telecommunications licence granted by the Government Agency for the provision of equivalent telecommunications services in Hong Kong.

**“FNO”** means a fixed network operator in Hong Kong which provides telecommunications services between fixed points.

**“Force Majeure Event”** means anything outside the reasonable control of a Party, which includes acts of God, industrial dispute, civil disobedience or any kind of war (declared or undeclared), blockade, disturbance, natural disaster, lightning, fire, earthquake, storm, flood, explosion or meteor, pandemic or epidemic, government restraint, expropriation or prohibition, any action or event that infringes property rights, inability or delay in granting or obtaining government approvals, consents, permits, licences or authorities including but not limited to, from government agencies, or termination or withdrawal of such approvals, consents, permits or licences. However, a Force Majeure Event does not include an inability or delay in obtaining, or a termination or withdrawal of, any governmental approval, consent,

## CONFIDENTIAL

permit, licence or authority which is due to the default, negligence or omission of the Party claiming force majeure.

**“Good Industry Practice”** means the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from an experienced operator engaged in the same or substantially similar type of business under the same or similar circumstances.

**“Government Agency”** means any government or governmental department, a governmental, semi-government or judicial person or a person charged with the administration of any Applicable Law (including the CA).

**“Hong Kong”** means the Hong Kong Special Administrative Region of the People’s Republic of China.

**“Interest Rate”** means a rate of interest which is equal to two per cent (2%) per annum above the prime lending rate of The Hongkong and Shanghai Banking Corporation Limited as current from time to time.

**“Local Access Charges”** or **“LAC”** means those charges agreed between the Parties to be imposed for the handling of external telecommunication calls originating or terminating under this Agreement and as set out in **Annex 2**. For the avoidance of doubt, Local Access Charges include both charges for fixed and mobile origination and termination related to the Services (i.e., external telecommunication calls) between the Parties.

**“MNO”** means a mobile network operator in Hong Kong which provides telecommunications services to enable two-way communications between moving locations or between a moving location and a fixed location.

**“Occupancy Minute”** means the duration in relation to a call between the time of seizure of a circuit in a Party’s interconnect gateway exchange or local exchange which is connected to the other Party’s interconnect gateway exchange or local exchange or an exchange in a relevant third party’s network (as applicable) until that circuit is released at the relevant exchange.

## CONFIDENTIAL

**“Services”** means the provision of originating or terminating services for external telecommunication calls by one Party to the other Party as more particularly described in Annex 1.

**“Tax”** means any present or future income tax, withholding tax, VAT, business tax, sales tax, turnover tax, excise tax, tariff, levies, impost, deduction, charge, duties and any other similar liabilities.

**“Telecommunications Ordinance”** means the Telecommunications Ordinance (Cap. 106, the Laws of Hong Kong) and includes any amendments or future re-writes.

**“Term”** means the entire six year period of this Agreement, from 1 July 2013 to 30 June 2019 (inclusive).

**“Unauthorized Activity”** means:

- (a) any act or omission in relation to the Service that is in breach of this Agreement or any Applicable Law; or
- (b) any bypass of the Local Access Charge that is in breach of this Agreement or any Applicable Law.

**“Unified Carrier Licence”** means the Unified Carrier Licence granted under the Telecommunications Ordinance and any equivalent substitute or replacement telecommunications licence granted by the Government Agency for the provision of equivalent telecommunications services in Hong Kong.

1.2 In this Agreement, unless the context otherwise requires:

- (a) monetary references are references to Hong Kong dollars;
- (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;

## CONFIDENTIAL

- (e) a reference to a document, includes any amendment, replacement or novation of it;
- (f) a reference to a Clause, part or Annex is a reference to a Clause of, part of or Annex, to, this Agreement and a reference to this Agreement includes any clause, part or Annex;
- (g) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- (h) the headings are for convenience only and do not affect the interpretation of this Agreement.

1.3 If there is any inconsistency between the provisions in the body of the Agreement and the provisions in any Annex (including its schedules (if any) as varied from time to time), then the provisions in the body of the Agreement will prevail to the extent of the inconsistency.

## 2. SERVICES

2.1 During the Term, each Party agrees to provide Services to the other Party pursuant to this Agreement.

2.2 This Agreement supersedes any previous agreement for local access charge arrangements signed between the Parties in relation to the Services.

## 3. CHARGES

3.1 In consideration of the Services provided by one Party to the other Party, the Parties shall use and pay for the Services in accordance with the Charges as set out in **Annex 2**.

3.2 The Charges are exclusive of any Taxes and shall be borne by the Party receiving the Services (if any) (save and except that each Party shall bear its own profit taxes which may arise out of this Agreement).

## **CONFIDENTIAL**

### **4. NETWORK PLANNING**

- 4.1 The Parties will cooperate and use reasonable endeavours to ensure that sufficient capacity and equipment exists between their networks to allow the Services to be provided in a continuous and satisfactory manner.
- 4.2 The Parties will use reasonable endeavours to assist each other in planning and forecasting necessary capacity and equipment to provide the Services, including cooperation in regard to preventing any Unauthorized Activity. The Parties may further exchange information (other than commercially sensitive or Confidential Information) for the specific purpose of combating any Unauthorized Activity.

### **5. INVOICING AND PAYMENT**

- 5.1 Each Party will comply with the traffic billing and routing principles set out in Annex 4 to this Agreement and unless otherwise expressly provided for, each Party will invoice the other Party monthly. If a Party requires or requests assistance in determining the traffic data or amounts due, the other Party shall use reasonable endeavours to cooperate and provide such information without charge and as soon as practically possible.
- 5.2 Each Party, subject to Clause 6, must pay any invoice issued by the other Party under this Agreement by the Due Date, and all amounts payable by either Party under this Agreement must be paid without set off or counter claim and free and clear of any withholding or deduction. However, if either Party disputes in good faith any amount mentioned in the invoices issued by the other Party in accordance with Clause 6, the Party shall still be required to pay the undisputed amount of such invoices by the Due Date without delay.
- 5.3 If any undisputed portion of the amount payable in relation to any invoice issued by a Party pursuant to this Agreement is not received by the Due Date, the other Party shall pay interest in respect of the overdue amount calculated at the Interest Rate from the Due Date until the date of payment. Interest payable under this clause shall accrue on all outstanding undisputed amounts from the Due Date until the date on which such outstanding amount is received in full. Interest on the



## **CONFIDENTIAL**

outstanding undisputed amount will continue to accrue despite the expiration or termination of this Agreement.

- 5.4 A Party may re-issue any invoice (other than those subject to good faith dispute and being resolved in accordance with Clause 6) if an error is subsequently discovered within twelve (12) months from the date on which the invoice was originally issued, in which event the Due Date for the re-issued invoice shall be determined anew as if it were a new invoice.
- 5.5 If a cheque or payment by direct debit is dishonoured or cancelled, the debtor Party shall pay to the creditor Party, within thirty (30) days of the date of the invoice or the demand note issued, any resulting bank or other charges incurred by the creditor Party.
- 5.6 All enquiries or disputes concerning any invoice must be notified to the other Party, along with any supporting documentation in accordance with Clause 6. Nothing herein shall relieve a Party of its obligation to pay the undisputed portion of any invoice on or before the Due Date. The Parties shall work together in good faith to resolve any bona fide invoice enquiry or dispute in accordance with Clause 6.

### **6. BILLING DISPUTE RESOLUTION**

- 6.1 If either Party disputes in good faith an invoice prepared by the other Party or the calculation of any amount owing under this Agreement where the total traffic discrepancy is more than \_\_\_\_\_ and the disputed amount is more than \_\_\_\_\_, that Party must notify the other Party within ninety (90) days of receipt of that invoice or notice of calculation of the amount owing, specifying:
  - (a) the invoice in dispute;
  - (b) the amount in dispute;
  - (c) the reasons for disputing the invoice or calculation of the amount owing; and
  - (d) the supporting documents as appropriate.

## **CONFIDENTIAL**

- 6.2 The Parties must in good faith promptly resolve any dispute notified under this clause, and in any event within thirty (30) Business Days from receipt of the dispute notice from the disputing Party.
- 6.3 Subject to the other provisions of this Agreement (including Clause 9), the Parties shall continue to comply with their respective obligations under this Agreement during the pendency of the dispute resolution process undertaken in accordance with this Clause 6.
- 6.4 Any amount found to be due or requiring refund following resolution of a dispute by the Parties in accordance with this Agreement, together with interest on that amount at the Interest Rate, calculated from:
- (a) its Due Date, in the case of a disputed invoiced amount that has not yet been paid; or
  - (b) the date of payment, in the case of a disputed overpayment,
- must be paid or refunded, as the case may be, within fourteen (14) Business Days of the resolution.
- 6.5 Nothing in this Clause 6 shall preclude or limit the right of any Party to make at any time a court application for urgent interlocutory relief or exercise any rights available to it under this Agreement.

## **7. LIMITATION OF LIABILITY**

- 7.1 Nothing in this Agreement shall limit or exclude a Party's liability: (a) for death or personal injury resulting from the negligence of a Party; or (b) for its fraud.
- 7.2 Notwithstanding any other provisions of this Agreement and to the extent permitted by law, a Party shall not be liable to the other Party for any indirect, consequential, collateral, special, punitive or incidental loss or damage, loss of revenue, loss of profit, loss of anticipated savings or business, loss of data or goodwill, loss of use or value of any equipment or software, claims of third parties, and all associated and incidental costs and expenses, suffered or incurred by the other Party in connection with this Agreement whether during or after and regardless of the form in which any legal or equitable action may be brought (whether in tort, contract, strict liability or otherwise) whether or

## **CONFIDENTIAL**

not such loss or damage was foreseeable and whether a Party was or has been advised of the possibility of such loss or damage.

7.3 Subject to Clauses 7.1 and 7.2, the total liability of each Party to the other Party in contract, tort (including any liability for negligence), strict liability, equity or otherwise is limited to:

- (a) \$1,000,000 for any one incident or series of events arising from a single incident or common cause; and
- (b) an aggregate amount of \$5,000,000 for all liability arising by reason of or in connection with this Agreement.

7.4 This Clause 7.3 does not apply to a Party's liability to pay the Charges to the other Party in accordance with this Agreement.

### **8. EFFECTIVE DATE AND TERM**

8.1 Unless otherwise terminated earlier in accordance with this Agreement, this Agreement shall come into force on the Effective Date and shall continue in full force and effect until the End Date (that is, the Term).

### **9. TERMINATION AND SUSPENSION**

9.1 Each Party may terminate (in whole or in part) this Agreement with immediate effect by giving written notice to the other Party if:

- (a) the other Party is in material breach of this Agreement, and has failed to remedy such breach (if capable of remedy) within sixty (60) days of receiving written notice from the other Party regarding the material breach;
- (b) the other Party has a receiver or an administrative receiver appointed or has passed a resolution for winding-up (otherwise than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction has made an order to that effect or if the other Party has become subject to an administrative order or has entered into any voluntary arrangement with its creditors or has ceased or threatened to cease to carry on business or analogous event in the jurisdiction in which the other Party is incorporated; or

## **CONFIDENTIAL**

- (c) the other Party's Unified Carrier Licence, Fixed Carrier Licence or equivalent licence: (i) expires without renewal; or (ii) is suspended (without a resumption date or reactivation); or (iii) has been cancelled, revoked or terminated (in each case, without renewal or replacement with an equivalent licence).
- 9.2 Either Party may suspend the provision of the Services to the other Party by giving as much prior written notice as possible if it is necessary to comply with an order, instruction, determination or direction of a Government Agency. In such case, the Party shall act in good faith to restore the provision of the Services as soon as possible.
- 9.3 The suspension, expiration or termination of this Agreement shall not prejudice or affect any right or remedy which will have accrued or will thereafter accrue to either Party before the date of suspension, expiration or termination.
- 9.4 Upon expiration or early termination of this Agreement (whether in whole or in part), each Party remains liable to the other Party in respect of all amounts validly invoiced or to be invoiced in accordance with this Agreement and in respect of the Services provided prior to the date of expiration or termination. Both Parties shall pay all outstanding Charges and invoices no later than thirty (30) days of the expiration or termination of this Agreement, whichever is earlier.

## **10. CONFIDENTIAL INFORMATION**

- 10.1 Each Party undertakes to hold the Confidential Information received from the other Party as absolutely secret and in the strictest confidence and shall not at any time disclose or use or permit to be disclosed or used any of the Confidential Information for any purpose other than as specified in this Agreement.
- 10.2 Each Party shall limit circulation and disclose of the other Party's Confidential Information only to those of its employees, duly authorized agents, professional advisors or representatives on a need to know basis and solely for the purpose of facilitating the Party to perform its obligations under this Agreement. Each Party shall ensure that such of its employees, duly authorized agents, professional advisors and representatives who have access to the other Party's Confidential Information are aware of and comply with the confidentiality obligations

## CONFIDENTIAL

as set out in this Agreement. Each Party shall take all reasonable steps to protect the confidentiality of the other Party's Confidential Information. Such steps shall be no less than the degree of care and security that the Party applies to its own Confidential Information.

- 10.3 Each Party agrees that it shall not make any public announcements about the discussions or negotiations regarding the subject matter of this Agreement, the terms of this Agreement or any amendments to it, or any other information relating to any of the foregoing, whether in the form of press release or otherwise, without first consulting with the other Party and obtaining the other Party's prior written consent.

## 11. NOTICES

- 11.1 Any notice, consent, request or other communication ("Communication") under this Agreement must be in writing and must be left at the address of the addressee, or sent by prepaid post to the address of the addressee or sent by facsimile to the facsimile number of the addressee specified below. Each Party may change its address or facsimile number for this purpose by giving seven (7) days' prior written notice to the other Party in accordance with this clause.

If to :

Attention:

Facsimile:

Address:

## CONFIDENTIAL

If to :

Attention:

Facsimile:

Address:

Copy to:

Attention:

Facsimile:

Address:

11.2 A written Communication is deemed to be received:

- (a) if by hand delivery, when it is delivered;
- (b) if by post, three (3) days after posting from a place within Hong Kong; and
- (c) if by 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.

11.3 A Party may request that Communication for operational issues be sent to another addressee other than the one named above by notifying the other Party of the same in a notice issued in the manner stated in Clause 11.1. Any Communication received by a Party outside of normal working hours (being 9:00 a.m. to 5:00 p.m. on any Business Day) will be regarded as received on the immediately following Business Day.

## 12. FORCE MAJEURE

12.1 Notwithstanding any other provisions of this Agreement, a Party will not be liable for any failure to fulfil an obligation under this Agreement (other than an obligation to pay any Charges which are due and payable under this Agreement) if such a fulfilment is delayed, prevented, restricted or interfered with for any reason as a result of a Force Majeure Event provided that:

## **CONFIDENTIAL**

- (a) the Party has promptly notified the other Party of the Force Majeure Event setting out the details of the Force Majeure Event and an estimate of the extent and duration of its inability to perform; and
- (b) the Party has used its reasonable endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Agreement in any other way practicable.

12.2 If a delay or failure to perform a Party's obligations due to a Force Majeure Event exceeds a continuous period of ninety (90) days, the other Party may immediately terminate this Agreement on notice to the first Party, but only if it has otherwise complied with the provisions of this Agreement.

### **13. COSTS**

13.1 Each Party shall bear its own costs and expenses in respect of preparation, negotiation and execution of this Agreement.

### **14. SEVERABILITY**

14.1 If any provision of this Agreement is construed to be illegal, invalid or unenforceable, it will not affect the legality, validity and enforceability of the other provisions of this Agreement. The illegal, invalid or unenforceable provisions will be treated as being deleted from this Agreement and no longer incorporated, but all the other provisions of this Agreement shall continue to be binding on the Parties.

### **15. RELATIONSHIP OF THE PARTIES**

15.1 Nothing in this Agreement is to be construed as creating a partnership, association, trust or joint venture between the Parties. Neither Party nor any of its employees, agents, representatives or contractors is deemed an employee, agent or contractor or representative of the other Party.

15.2 Neither Party has the authority to bind or incur any liability on behalf of the other Party and no such authority is to be implied.

## **CONFIDENTIAL**

### **16. ASSIGNMENT**

16.1 Neither Party shall assign, novate, transfer, subcontract or otherwise dispose of its rights and/or obligations under this Agreement without the prior written consent of the other Party.

### **17. CUMULATIVE RIGHTS**

17.1 The rights, powers, authorities, discretions and remedies of a Party under this Agreement do not exclude any other rights, powers, authorities, discretions and remedies provided by law independently of this Agreement.

### **18. EXERCISE OF RIGHTS**

18.1 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.

### **19. WAIVER AND VARIATION**

19.1 Any failure, delay, relaxation or indulgence by a Party in exercising any right, power or remedy conferred on that Party by this Agreement does not operate as a waiver of that right, power or remedy unless expressed in writing to be a waiver.

### **20. FURTHER ASSURANCE**

20.1 Each Party must do all things reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

### **21. VARIATION**

21.1 Any amendment to this Agreement must be in writing and signed by the authorized representative of the Parties.



## **CONFIDENTIAL**

### **22. GOVERNING LAW AND JURISDICTION**

22.1 This Agreement is governed by and construed in accordance with the laws of Hong Kong. Each Party shall irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Hong Kong in the event of any disputes.

### **23. REVIEW**

23.1 If any provision of this Agreement is in breach of any Applicable Law, the Parties will negotiate in good faith such amendments to this Agreement to ensure consistency between this Agreement and the Applicable Law.

### **24. ENTIRE AGREEMENT**

24.1 This Agreement (together with the Annexes which form an integral part of this Agreement) constitutes the entire agreement and understanding between the Parties relating to the provisioning of the Services. This Agreement supersedes and cancels in all respects all previous negotiations, proposal, arrangements, understandings or agreements of any nature between the Parties on this subject matter. The Annexes shall form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement shall include the Annexes.

### **25. USE OF SERVICE**

25.1 A Party will:

- (a) use the Services in accordance with this Agreement and all Applicable Law;
- (b) not use the Services in any manner that would cause the other Party to be in breach of the Applicable Law;
- (c) not be directly or indirectly involved in any Unauthorized Activity in regard to the Services;

## CONFIDENTIAL

- (d) use reasonable endeavours to co-operate in establishing procedures to eliminate or reduce Unauthorized Activities and the opportunity for Unauthorized Activities;
- (e) provide the other Party as soon as reasonably practicable with such information as is available which may be of assistance in identifying and preventing Unauthorized Activities;
- (f) not cause any harmful interference, impediment or impairment to the Services of the other Party;
- (g) notify the other Party as soon as reasonably practicable of any fault in the Services or deterioration in the quality of the Services;
- (h) comply with all Applicable Law and obtain and keep effective all licences, consents, clearances, approvals, or otherwise, relating in any way to the Services or otherwise required to perform its obligations under this Agreement;
- (i) upon reasonable request, provide relevant information to the other Party in an efficient and timely manner so as to assist that Party to comply with applicable licence conditions and statutory obligations or answer any enquiries, requests or directions of any competent authorities; and
- (j) not without the prior written approval of the other Party, issue and/or distribute any promotional or marketing materials that contain or make reference to the other Party's company name, logo, trademark and business of the other Party or its Affiliates.

25.2 Each Party shall adopt appropriate security, maintenance and protection measures, and such other reasonable precautions as may be required accordingly.

25.3 If any of the terms and conditions of this Agreement is subject to review by the CA and is not upheld in its entirety, the Parties will negotiate in good faith to agree on a similar arrangement taking into consideration the outcome of the CA's review.

## 26. THIRD PARTY RIGHTS

## **CONFIDENTIAL**

26.1 A person who is not party to this Agreement shall have no right to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise.

### **27. RESOLUTION OF DISPUTE BY ARBITRATION**

27.1 If the Parties are unable to resolve any invoice dispute within ninety (90) Business Days from receipt of the dispute notice from the disputing Party, then either Party may refer the matter to arbitration in accordance with the Arbitration Ordinance.

27.2 The arbitrator shall be agreed by the Parties. If the Parties are unable to agree on the appointment of an arbitrator, an arbitrator shall be appointed by the President of the Law Society of Hong Kong.

27.3 A decision of the arbitrator will be binding on the Parties except in the event of manifest error or mistake of law.

27.4 Any amount determined as payable by the arbitrator becomes an undisputed amount and is payable in accordance with clause 6.4 of this Agreement.

### **28. REPRESENTATIONS OR WARRANTIES**

28.1 Each of the Parties represents and warrants that: (a) it is an entity validly existing under applicable law; (b) the person signing this Agreement has full authority to do so; (c) the execution of this Agreement is made with all necessary consents and approvals, including but not limited to, the approval of the senior management and the board of each Party (if required); and (d) the execution of this Agreement and the performance or compliance with the terms of this Agreement will not infringe any contractual obligations owed to a third party.

28.2 Each Party represents and warrants to the other that it has full rights and authority to provide the Services and that it holds or shall take all necessary steps to hold all permits, licences and regulatory approvals in order to provide the Services in accordance with the terms of this Agreement, subject to Clause 28 herein.

**CONFIDENTIAL**

28.3 Each Party warrants and undertakes to the other that it shall maintain its network at a performance standard in accordance with Good Industry Practice.

**CONFIDENTIAL**

**EXECUTED AS AN AGREEMENT.**

**Signed for and on behalf of**

**Signed for and on behalf of**

# **CONFIDENTIAL**

## **Annex 1**

### **Services**

#### **Service Description**

The Services relate to the provision of originating or terminating services for external telecommunication calls by one Party to the other Party. Such Services may by agreement be provided directly or indirectly on a transiting basis.

External telecommunication calls in this Agreement means those calls which are either originated in Hong Kong and destined for termination outside of Hong Kong or originated from outside of Hong Kong and terminated in Hong Kong.

# CONFIDENTIAL

## Annex 2

### Charges

1. The Local Access Charges (LAC) payable (in Hong Kong cents per Occupancy Minute) are shown in the table below:

With effect from	LAC payable to FNOs				LAC payable to MNOs			
	Call Origination from a Fixed Line Network		Call Termination on a Fixed Line Network		Call Origination from a Mobile Network		Call Termination on a Mobile Network	
	Direct	Transit	Direct	Transit	Direct	Transit	Direct	Transit
1-Jul-13	NA	7.5	NA	10.6	NA	NA	NA	NA
1-Jan-14	NA	6.5	NA	10.6	NA	NA	NA	NA
1-Jul-14	NA	6.0	NA	10.6	NA	NA	NA	NA
1-Jan-15	NA	5.0	NA	10.6	NA	NA	NA	NA
1-Jul-15	NA	5.0	NA	10.6	NA	NA	NA	NA
1-Jan-16	NA	5.0	NA	10.6	NA	NA	NA	NA
1-Jul-16	NA	4.5	NA	10.6	NA	NA	NA	NA
1-Jan-17	NA	4.5	NA	10.6	NA	NA	NA	NA
1-Jul-17	NA	4.5	NA	10.6	NA	NA	NA	NA
1-Jan-18	NA	3.5	NA	10.6	NA	NA	NA	NA
1-Jul-18	NA	3.5	NA	10.6	NA	NA	NA	NA
1-Jan-19	NA	3.5	NA	10.6	NA	NA	NA	NA

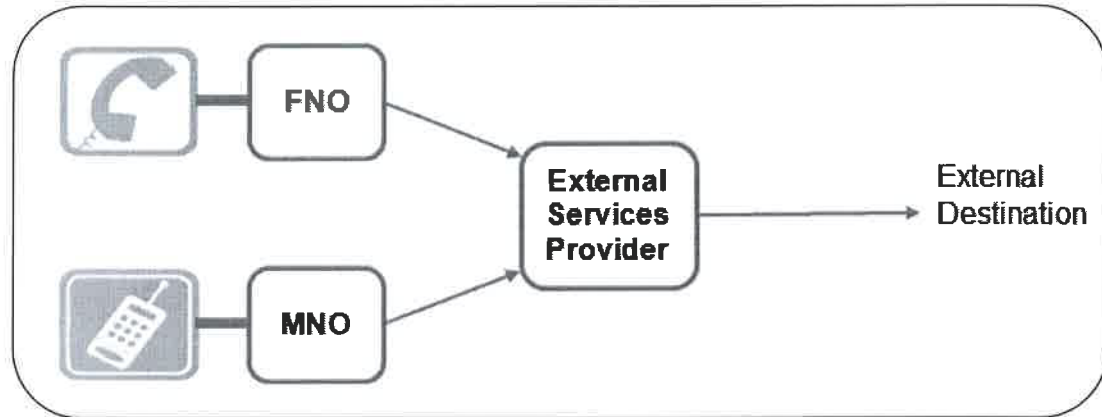
2. The various call types for which LAC in the above table apply and the Party responsible for payment of the LAC for each call type are shown in **Annex 3**.
3. Call durations are measured in seconds but are rounded up to the nearest Occupancy Minute for the purposes of invoicing for LAC as set out in Annex 4.

Annex 3

Call Types & Payment of Charges

In this Annex, all LAC refer to the rates shown in the table in Annex 2.

1. **Call Origination (Direct) – This call type is not applicable between and**

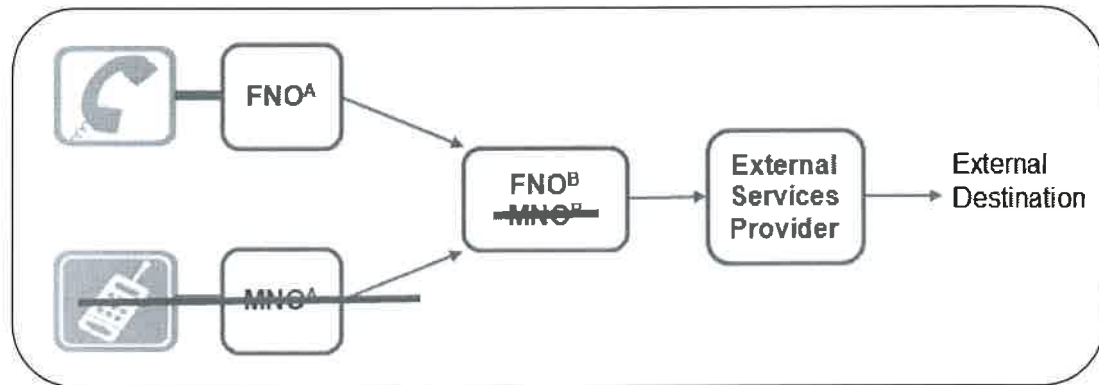


- 1.1 The call originates in Hong Kong from a customer of FNO or MNO who makes use of the international call service provided by External Services Provider. FNO or MNO passes the call to an External Services Provider which then delivers the call to the external destination.



## CONFIDENTIAL

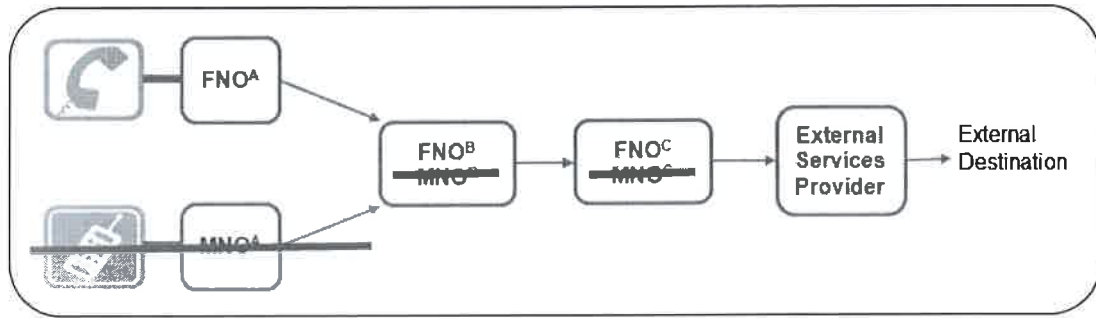
### 2. Call Origination (Transit)



- 2.1 The call originates in Hong Kong from a customer of FNO<sup>A</sup> who makes use of the international call service provided by External Services Provider. FNO<sup>A</sup> passes the call to FNO<sup>B</sup> to which External Services Provider is connected. External Services Provider then delivers the call to external destination.
- 2.2 FNO<sup>A</sup> and FNO<sup>B</sup> will be subject to the LAC shown in **Annex 2**. As External Services Provider is connected to FNO<sup>B</sup>, FNO<sup>B</sup> is responsible for payment of the LAC.
- 2.3 LAC will be payable as follows:
- FNO<sup>B</sup> pays FNO<sup>A</sup> the LAC for "Call Origination from a Fixed Line Network - Transit".
  - External Services Provider pays FNO<sup>B</sup> a charge which is separately negotiated and outside the terms of this Agreement.

## CONFIDENTIAL

### 3. Call Origination (Double Transit)



3.1 The call originates in Hong Kong from a customer of FNO<sup>A</sup> who makes use of the international call service provided by External Services Provider. FNO<sup>A</sup> passes the call to FNO<sup>B</sup>. FNO<sup>B</sup> then passes the call to FNO<sup>C</sup> to which External Services Provider is connected. External Services Provider then delivers the call to the external destination.

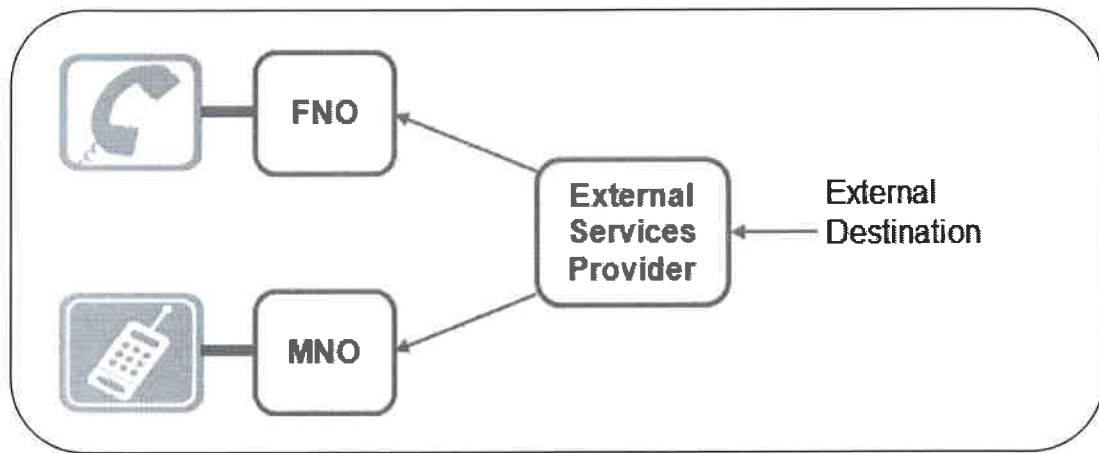
3.2 FNO<sup>A</sup> and FNO<sup>C</sup> will be subject to the LAC shown in **Annex 2**. As External Services Provider is connected to FNO<sup>C</sup>, FNO<sup>C</sup> is responsible for payment of the LAC.

3.3 LAC will be payable as follows:

- FNO<sup>C</sup> pays FNO<sup>A</sup> the LAC for "Call Origination from a Fixed Line Network - Transit".
- FNO<sup>A</sup> pays FNO<sup>B</sup> a charge which is separately negotiated and outside the terms of this Agreement.
- External Services Provider pays FNO<sup>C</sup> a charge which is separately negotiated and outside the terms of this Agreement.

**CONFIDENTIAL**

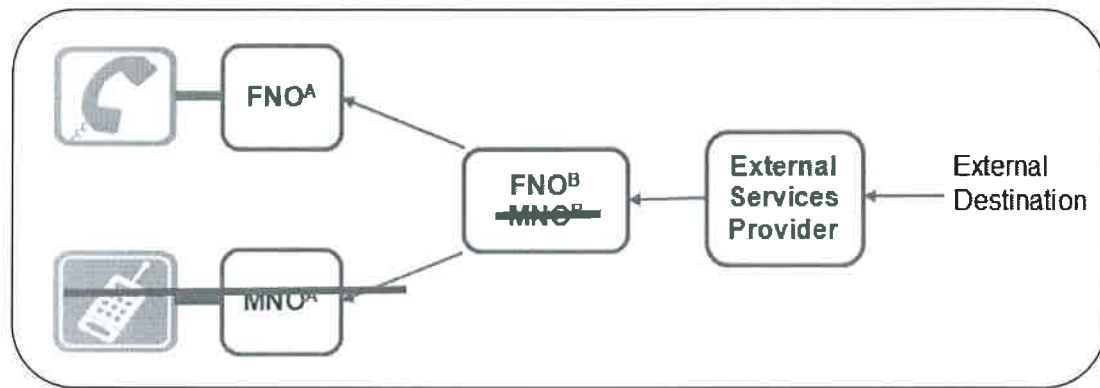
**4. Call Termination (Direct) – This call type is not applicable between and**



- 4.1 The call terminates in Hong Kong at a customer of the FNO or MNO. The External Services Provider collects the call originated from abroad and delivers it to the FNO or MNO to which the customer is connected.

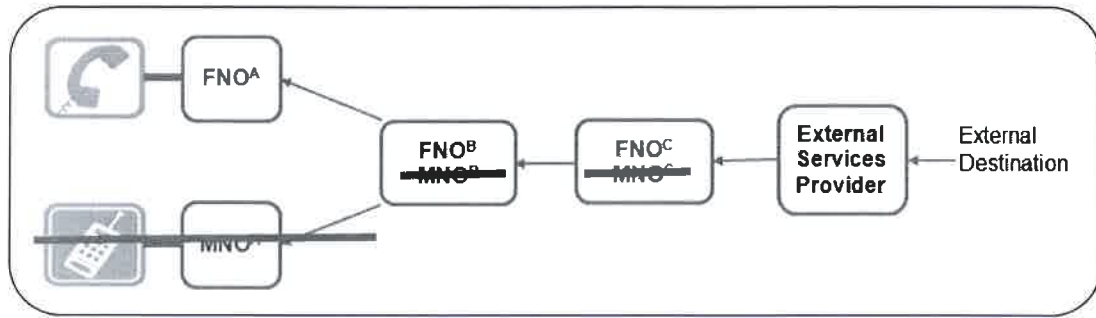
## CONFIDENTIAL

### 5. Call Termination (Transit)



- 5.1 The call terminates in Hong Kong at a customer of FNO<sup>A</sup>. The External Services Provider collects the call originated from abroad and passes it to FNO<sup>B</sup> with which it has signed an agreement for the delivery of external telecommunication calls. FNO<sup>B</sup> then delivers the call to FNO<sup>A</sup> to which the customer is connected.
- 5.2 FNO<sup>A</sup> and FNO<sup>B</sup> will be subject to the LAC shown in **Annex 2**. As External Services Provider is connected to FNO<sup>B</sup>, FNO<sup>B</sup> is responsible for payment of the LAC.
- 5.3 LAC will be payable as follows:
- FNO<sup>B</sup> pays FNO<sup>A</sup> the LAC for "Call Termination on a Fixed Line Network - Transit".
  - External Services Provider pays FNO<sup>B</sup> a charge which is separately negotiated and outside the terms of this Agreement.

6. Call Termination (Double Transit)



- 6.1 The call terminates in Hong Kong at a customer of FNO<sup>A</sup>. The External Services Provider collects the call originated from abroad and passes it to FNO<sup>C</sup> with which it has signed an agreement for the delivery of traffic. FNO<sup>C</sup> then passes the call to FNO<sup>B</sup> with which it has signed an agreement for the delivery of traffic. FNO<sup>B</sup> delivers the call to FNO<sup>A</sup> to which the customer is connected.
- 6.2 FNO<sup>A</sup> and FNO<sup>C</sup> will be subject to the LAC shown in **Annex 2**. As External Services Provider is connected to FNO<sup>C</sup>, FNO<sup>C</sup> is responsible for payment of the LAC.
- 6.3 LAC will be payable as follows:
- FNO<sup>C</sup> pays FNO<sup>A</sup> the LAC for “Call Termination on a Fixed Line Network - Transit”.
  - FNO<sup>C</sup> pays FNO<sup>B</sup> a charge which is separately negotiated and outside the terms of this Agreement.
  - External Services Provider pays FNO<sup>C</sup> a charge which is separately negotiated and outside the terms of this Agreement.

**Note:** The charges for any other call types not covered by the above are to be separately negotiated between the operators involved.

## CONFIDENTIAL

### Annex 4

#### Traffic billing and routing

1. All calls shall be measured on a one (1) second incremental based on occupancy. The chargeable minutes of each trunk type shall be the aggregate total seconds of each call during the traffic month, rounded up to the nearest Occupancy Minute. Invoice settlement shall be made based on the rates as set out in Annex 2.
2. The monthly invoice shall include the following information for all chargeable calls as well as any information mutually agreed by the Parties, from time to time, to be provided with the monthly invoice:
  - Year and month of traffic;
  - Trunk types:
    - (i) 00x/20x;
    - (ii) 15x/16x;
    - (iii) 305-9; and
    - (iv) international CLI
  - Call minutes in occupancy for each call type;
  - Settlement rates; and
  - Total charges for the invoiced month.
3. All inbound ETS traffic carrying an international CLI shall only be routed via the dedicated circuits as mutually agreed by the Parties, from time to time. The number of dedicated circuits established between the Parties shall be mutually agreed and shall be reviewed from time to time to accommodate effective traffic routing.