

## COLOCATION EXCHANGE SITE INTERNAL TIE CABLE AGREEMENT

This AGREEMENT is made on \_\_\_\_\_

BETWEEN

AND

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

### RECITALS:

- A. The Parties have entered into an Exchange Colocation and Local Access Link Agreement \_\_\_\_\_ ; and
- B. The Parties wish to supplement the Exchange Colocation and Local Access Link Agreement with the following terms and conditions, regarding the arrangements for enabling the LAL Requester to link its Colocation Equipment at two (2) or more separate Colocation Spaces in the same Exchange Site by means of Internal Tie Cables laid over an Internal Tie Cable Structure provided by the LAL Provider.

### OPERATIVE PROVISIONS:

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following capitalised terms have the meanings given to them in this Clause unless the context otherwise requires:

“**Accepted ITCS Application**” means an ITCS Application received from the LAL Requester and approved by the LAL Provider under this Agreement.

“**Actual ITCS RFU Date**” means the date the applicable ITCS RFU Notice is given by the LAL Provider in accordance with this Agreement.

**“Agreement”** means these terms and conditions together with any schedules and attachments annexed hereto.

**“Internal Tie Cables”** or **“ITC”** means LAL Requester fibre or copper cables linking LAL Requester Colocation Equipment at two (2) or more separate Colocation Spaces allocated to the LAL Requester at the same Exchange Site.

**“ITCS Application”** has the meaning ascribed in Clause 3 of this Agreement.

**“ITCS Cancellation Charge”** means the charge payable by the LAL Requester to the LAL Provider in respect of the cancellation of a mutually agreed plan for the implementation of the ITC Structure, as set out in further detail in Clause 11.6 of this Agreement.

**“ITCS Charges”** shall be deemed to be Charges for the purposes of the Principal Agreement and are the following charges payable by the LAL Requester to the LAL Provider:

- (a) ITCS Preparation Work Charge;
- (b) ITCS Recurrent Charge;
- (c) ITCS Cancellation Charge; and
- (d) other charges provided for in this Agreement.

**“ITCS Design Plan”** means the plan prepared by the LAL Provider setting out the design and planning regarding the physical arrangement of the ITCS and the ITC proposed by the LAL Provider.

**“ITCS Feasibility Study”** means the desktop study and physical survey conducted by the Providing Operator in order to determine whether the arrangements proposed by the LAL Requester in an ITCS Application are feasible.

**“ITCS Implementation Plan”** has the meaning ascribed to it in Clause 5.1 of this Agreement.

**“ITCS Physical Work”** has the meaning ascribed in Clause 6.1 of this Agreement.

**“ITCS Preparation Work”** means the work performed by the LAL Provider in respect of an ITCS Application consisting of:

- (a) the conduct of the ITCS Feasibility Study;

- (b) the preparation of the ITCS Design Plan;
- (c) the preparation of the ITCS Implementation Plan; and
- (d) the ITCS Physical Work.

**“ITCS Preparation Work Charge”** means the one-off charge quoted on a case-by-case basis for the ITCS Preparation Work payable by the LAL Requester to the LAL Provider.

**“ITCS Recurrent Charge”** means the charge quoted on a case-by-case basis for the maintenance and space occupation of the ITC Structure and payable monthly by the LAL Requester to the LAL Provider.

**“ITCS RFU Notice”** means a notice given by the LAL Provider informing the LAL Requester that the identified ITC Structure is ready for use.

**“Internal Tie Cable Structure”, “ITC Structure” or “ITCS”** means the racking and all related structural facilities provided by the LAL Provider to support the ITC so that they can be used for the purpose of linking Colocation Equipment at separate Colocation Spaces in the same Exchange Site.

**“Planned ITCS RFU Date”** means, in relation to an ITC Structure, the date worked out in accordance with the ITCS Implementation Plan by which the LAL Provider is planned to have completed the ITCS Preparation Work.

**“Principal Agreement”** means the Exchange Colocation and Local Access Link Agreement between the Parties

- 1.2 This Agreement is supplemental and subject to the terms and conditions of the Principal Agreement.
- 1.3 In respect of ITC and ITCS only, the terms and conditions of this Agreement shall prevail to the extent of any inconsistency with the Principal Agreement. For the avoidance of doubt, this Agreement is not intended to amend the Principal Agreement in any manner that does not relate to ITC or the provision of ITCS by the LAL Provider.
- 1.4 The terms and conditions of this Agreement are deemed to be an integral part of the Principal Agreement and references to “this Agreement” in the Principal Agreement are deemed to include references to this Agreement.
- 1.5 Any amendment to the Principal Agreement, whether made by agreement between the Parties or by Determination of the TA or otherwise, will apply to this Agreement as appropriate

1.6 Unless the context otherwise requires, a term defined or construed in the Principal Agreement and used in this Agreement but not defined or construed herein, shall have the same meaning and construction in this Agreement as it has in the Principal Agreement.

## 2. **TERM AND TERMINATION**

2.1 This Agreement commences on the date first written above and shall continue in force thereafter unless terminated in accordance with Clause 2.2 of this Agreement.

2.2 Either Party may terminate this Agreement in accordance with the termination provisions contained in the Principal Agreement. This Agreement shall automatically terminate in the event of termination or expiry of the Principal Agreement.

## 3. **ITCS APPLICATIONS**

3.1 Subject to Clause 3.2, the LAL Requester may apply for an ITCS by sending an application for an ITCS ("**ITCS Application**") to the LAL Provider from time to time in respect of an Exchange Site where there are two or more Colocation Spaces allocated to the LAL Requester.

3.2 An ITCS Application may only be made:

- (a) to link different Colocation Spaces situated in the same Exchange Site and allocated to the LAL Requester; and
- (b) provided that no termination or suspension notice has been given by the LAL Provider under the Principal Agreement in respect of the concerned Exchange Site.

3.3 An ITCS Application must be in writing, and must specify:

- (a) the Exchange Site in respect of which the ITCS Application relates;
- (b) the Colocation Spaces to be linked by the ITC and ITCS; and
- (c) the type (copper or fibre), physical dimensions, weight, quantity, specifications and capacity of the ITC to be laid over the ITCS.

3.4 After the receipt of an ITCS Application the LAL Provider must:

- (a) within                Business Days;
  - (i) acknowledge receipt of the ITCS Application; and

- (ii) notify the LAL Requester if there are any apparent errors or inconsistencies in the ITCS Application; and
  - (b) within Business Days notify the LAL Requester of any further information that is reasonably required by the LAL Provider for the purpose of assessing the ITCS Application and facilitating the discussions referred to in Clause 5.1 of this Agreement.
- 3.5 The LAL Requester must use its reasonable endeavours to correct any errors or inconsistencies in the ITCS Application and to provide any further information reasonably requested by the LAL Provider under Clause 3.4 of this Agreement within Business Days of notification of such request.
- 3.6 Upon the LAL Provider's receipt from the LAL Requester of all necessary information reasonably requested under Clauses 3.3 and 3.4 of this Agreement, the ITCS Application shall automatically become an Accepted ITCS Application.

#### **4. ITCS FEASIBILITY STUDY**

- 4.1 The LAL Provider must conduct an ITCS Feasibility Study once the ITCS Application has become an Accepted ITCS Application.
- 4.2 Within Business Days of the ITCS Application becoming an Accepted ITCS Application, the LAL Provider must complete the ITCS Feasibility Study and notify the LAL Requester:
- (a) that the Accepted ITCS Application is feasible; and
  - (b) of the ITCS Design Plan; or
  - (c) of any factors that make it not reasonably practical to fulfil the Accepted ITCS Application in accordance with its terms; and
  - (d) if necessary and if possible, an alternative to the proposal set out in the Accepted ITCS Application.

#### **5. ITCS IMPLEMENTATION PLAN**

- 5.1 Upon notification to the LAL Requester that an Accepted ITCS Application is feasible, each Party must use its bona fide reasonable efforts to discuss and agree during the next Business Days:
- (a) the ITCS Design Plan;
  - (b) the ITCS Preparation Work that must be performed to fulfil the Accepted

ITCS Application ; and

- (c) the implementation plan for the ITCS Preparation Work, which will include:
  - (i) the target date on which the LAL Provider will provide an estimate of the amount of the ITCS Preparation Work Charges and ITCS Recurrent Charges;
  - (ii) the lead-time for commencement of the ITCS Preparation Work after the Parties have agreed the amount of ITCS Charges referred to in paragraph (i); and
  - (iii) the lead-time from commencement of the ITCS Preparation Work to the completion of the ITCS Preparation Work

**(“ITCS Implementation Plan”).**

- 5.2 The Parties acknowledge and agree that the lead-times for the implementation of the ITCS Preparation Work depends on each individual case as well as on the number of Colocation related projects that are being handled by the LAL Provider.
- 5.3 The Parties agree to use their bona fide reasonable efforts to agree the relevant ITCS Charges before the commencement of the relevant ITCS Preparation Work.
- 5.4 If the Parties are unable to agree upon any of the matters referred to in Clauses 5.1 or 5.3 within the time period specified in those Clauses, they will resolve any dispute in accordance with Clause 20 of the Principal Agreement.
- 5.5 The Parties acknowledge that the time periods specified in this Clause 5 will not prevent the Parties from conducting earlier discussions and the Parties will endeavour to exchange information and progress the agreement of an ITCS Implementation Plan in an efficient and practicable manner and, to the extent that it is efficient and practicable, they will do so by progressing discussion and exchange of information concurrently.

## **6. ITCS PHYSICAL WORK**

- 6.1 Upon receipt of written acceptance by the LAL Requester of the ITC Charges applicable to an Accepted ITC Application,
  - (a) the LAL Provider will notify the LAL Requester of the Planned ITCS RFU Date; and
  - (b) will perform the physical component of the ITCS Preparation Work, which shall include:

- (i) installation of the ITCS in accordance with the ITCS Implementation Plan;
- (ii) laying of ITC on the ITCS in accordance with the ITCS Implementation Plan;
- (iii) performing tests on the ITC to ensure it is fit for connection; and
- (iv) other accepted requests by the LAL Requester set out in the ITCS Implementation Plan.

**(“ITCS Physical Work”)**

- 6.2 In consideration of the payment of the ITCS Preparation Work Charge, the LAL Provider must use its reasonable endeavours to perform and finalise the ITCS Preparation Work before the Planned ITCS RFU Date.
- 6.3 When the ITCS Preparation Work in respect of an ITCS identified in an Accepted ITCS Application is completed, the LAL Provider will issue an ITCS RFU Notice in respect of that ITCS.

**7. ITC TERMINATION AND MAINTANANCE**

- 7.1 Upon receipt of an ITCS RFU Notice from the LAL Provider, the LAL Requester shall terminate the ITC specified in the relevant Accepted ITCS Application at the Colocation Spaces in the relevant Exchange Site in accordance with the terms of this Agreement and the Principal Agreement.
- 7.2 Unless otherwise agreed in writing between the Parties, the LAL Provider shall have no responsibility under this Agreement for the maintenance of the ITC.
- 7.3 In the event that the LAL Requester needs to perform any maintenance or other work on the ITC that needs to be performed outside of the LAL Requester’s Colocation Spaces in the relevant Exchange Site, the LAL Requester must notify the LAL Provider in writing and the Parties will discuss in good faith the arrangements and charges for the performance of such work.

**8. ITCS MAINTENANCE**

- 8.1 In consideration of the ITCS Recurrent Charge, the LAL Provider must maintain the ITCS provisioned under this Agreement so that it remains fit for the purpose of supporting the ITC specified in the relevant Accepted ITCS Application.
- 8.2 The ITCS Recurrent Charge does not cover:
- (a) unplanned remedial work that may become necessary due to:

- (i) major damage to the ITCS caused by third party, landslide or any other disaster or accident, or
  - (ii) the request of a Governmental Agency or utility; or
- (b) complete renewal of the ITC Structure.

8.3 If any work referred to in Clause 8.2 of this Agreement is necessary, the Parties will discuss in good faith in relation to the cost and undertaking of such work. The LAL Provider is not obliged to conduct any such work if no written agreement is reached with the LAL Requester.

8.4 Without limiting the LAL Provider's rights under this Agreement, the LAL Provider will be relieved of its maintenance obligations if the LAL Requester is in breach of its payment obligation under this Agreement or the Principal Agreement (including the obligation to pay interest on overdue amounts) which remains unremedied for a period of \_\_\_\_\_ days, and in the case of any other material breach by the LAL Requester of this Agreement or the Principal Agreement which remains unremedied for a period of \_\_\_\_\_ days after receipt of a notice to remedy the same.

## 9. **EXPANSION, MODIFICATION, RELOCATION AND DECOMMISSIONING OF ITCS**

9.1 If the LAL Requester wishes to expand or relocate an existing ITCS or to lay additional ITC on an existing ITCS, the LAL Requester must place an application for this in accordance with the procedures in this Agreement for making an ITCS Application.

9.2 Subject to its acceptance of the LAL Requester's ITCS Application and acceptance by the LAL Requester of the applicable ITCS charges, the LAL Provider will implement the expansion or relocation request in the ITCS Application.

9.3 The LAL Requester acknowledges and agrees that the LAL Provider retains the sole discretion to refuse to lay additional ITC on an existing ITC Structure if, in the reasonable opinion of the LAL Provider, the laying of such ITC would overload, impair, interfere with or otherwise cause damage to the ITC or the existing ITC Structure.

9.4 The LAL Requester acknowledges that the LAL Provider may at any time modify, relocate or decommission an ITCS. In this event:

- (a) the LAL Provider will give the LAL Requester a minimum of \_\_\_\_\_ months written notice of its intention to modify, relocate or decommission the ITC Structure (other than if the notice is required by an event of Force



Majeure); and

- (b) the Parties will negotiate in good faith in relation to the modification, relocation or decommissioning in order to minimise any disruption to the supply of a telecommunications service as a result thereof.

9.5 On and from the date that an ITCS is decommissioned, the obligations of the Parties under this Agreement in relation to that ITCS will cease (other than the obligation to pay ITC Charges in respect of the period prior to the date of decommissioning).

## 10. AGREED USE OF ITC AND ITC STRUCTURES

10.1 ITC must be used:

- (a) only to connect and provide transmission capacity between Colocation Equipment at two or more of the LAL Requester's Colocation Spaces at a single Exchange Site; and
- (b) only to carry traffic that originates from or terminates at an end-customer served by the LAL Requester using a LAL provisioned by the LAL Provider under the Principal Agreement.

10.2 The ITCS is for the sole use of supporting ITC. The LAL Requester shall not place any Colocation Equipment or other equipment or devices or unauthorised ITC of the LAL Requester upon the ITCS or connect such to the ITCS.

10.3 The LAL Requester must not use or permit any other person to use ITC or any ITCS for any purpose other than an Agreed Use, and must not:

- (a) use or permit the use of the ITC or ITCS in any way which threatens or is likely to threaten the safety or security of:
  - (i) any employee or customer of the Providing Operator; or
  - (ii) any third party;
- (b) use or permit the use of the ITC or ITCS in any way which causes damage or is likely to cause damage to:
  - (i) the property or facilities of the Providing Operator; or
  - (ii) the property or facilities of any third party;
- (c) use or permit the use of the ITC or ITCS in any way which interferes with or is likely to interfere with the supply or potential supply of telecommunication services by the LAL Provider or any third party; or

- (d) use or permit the use of the ITC or ITCS in any way which may jeopardise the integrity of and/or the confidentiality of communications within the LAL Providers's Network or any third party's network.
- 10.4 This Agreement does not confer on the LAL Requester the right to and the LAL Requester (including its employees, agents and contractors) must not access or attempt to gain access to any part of the LAL Provider Equipment.
11. **CHARGES**
- 11.1 ITCS Preparation Work Charge and ITCS Recurrent Charge shall be quoted by the LAL Provider on a case by case basis in accordance with the terms of this Agreement.
- 11.2 The LAL requester must pay the ITCS Charges in accordance with this Clause 11 and Schedule 4 of the Principal Agreement, which shall apply in respect of an ITCS Charge as though it were a Charge for the purposes of the Principal Agreement:
- (a) The ITCS Preparation Work Charge is a one-off amount which will become payable on the date of the ITCS RFU Notice for the relevant ITCS;
  - (b) The ITCS Recurrent Charges are payable each month in advance, such ITCS Charge to be first payable in respect of a particular ITCS from the date of the ITCS RFU Notice for the relevant ITCS;
  - (c) all other ITCS Charges are payable at the times and in the manner indicated on the invoice issued after the date that the LAL Requester's obligation to pay that Charge arises under this Agreement.
- 11.3 Each Party must comply with the billing, settlement and dispute resolution procedures set out in Schedule 4 of the Principal Agreement.
- 11.4 If the LAL Requester wishes:
- (a) to vary an Accepted ITCS Application before the Planned ITCS RFU Date, the Parties will consult with a view to determining whether it is reasonably practicable for the LAL Provider to agree to the variation and to agree on the related charges; and
  - (b) to cancel an Accepted ITCS Application before the Planned ITCS RFU Date, the LAL Requester must pay the applicable ITCS Cancellation Charge.
- 11.5 If the LAL Requester cancels an Accepted ITCS Application after the LAL Provider has commenced design and planning work but before the Parties have

agreed to the design, the LAL Requester will pay the LAL Provider for the work done up to the time of cancellation.

11.6 If the LAL Requester cancels an Accepted ITCS Application after the Parties have agreed to the design for the ITCS, the LAL Requester must pay an ITCS Cancellation Charge as follows :

<b>Cancellation Date</b>	<b>ITC Cancellation Charge</b>
More than _____ before Planned ITCS RFU Date	_____ of ITCS Preparation Work Charge
_____ weeks before Planned ITCS RFU Date	_____ of ITCS Preparation Work Charge
_____ weeks before Planned ITCS RFU Date	_____ of ITCS Preparation Work Charge
Less than _____ weeks before Planned ITCS RFU Date	_____ of ITCS Preparation Work Charge

## 12. **GOVERNING LAW**

12.1 This Agreement is governed by the laws of the Hong Kong Special Administrative Region of the People's Republic of China ("**Hong Kong**") and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Hong Kong.

Executed as an AGREEMENT.

SIGNED  
as authorised representative for

SIGNED  
as authorised representative for

\_\_\_\_\_  
Name:  
Title:  
Date:

\_\_\_\_\_  
Name:  
Title:  
Date: