

AND

**EXCHANGE CO-LOCATION AND LOCAL ACCESS LINK
AGREEMENT**

EXCHANGE COLOCATION AND LOCAL ACCESS LINK AGREEMENT

THIS AGREEMENT is made on:

BETWEEN: _____ a company incorporated in
Hong Kong and

AND: _____ a company incorporated in Hong Kong and

RECITAL:

This Agreement sets out the terms and conditions which each Party will:

- (a) provide access to space allocated by it within its Exchange Sites to the other Party from time to time for Agreed Purposes so that the other Party may use that space for the purpose of operating LALs for an Agreed Use; and
- (b) provision and permit the other Party to use LALs for an Agreed Use on the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following words and expression have the meanings stated in this clause unless the context otherwise requires:

"Accepted Site Application" means a Site Application received from the LAL Requester and approved by the LAL Provider under this Agreement.

Accepted LAL Order" means an order for LALs by the LAL Requester that has been received and accepted by the LAL Provider under this Agreement.

"Access Terms" means the terms and conditions set out in Schedule 7 on which the LAL Requester may access Exchange Sites of the LAL Provider for an Agreed Purpose.

"Agreed Purpose" in relation to the LAL Requester's access to and use of Colocation Space means a purpose specified in paragraph 2 of Schedule 7.

"Agreed Use" relation to a LAL and Colocation Equipment means a use specified in Part 1 or Part 2 of Schedule 1 (as the case may be).

"Actual RFU Date" in relation to the provisioning of a Colocation Space or a LAL means the date the applicable RFU Notice is given by the LAL Provider in accordance with this Agreement.

“Authorised Representative” of a LAL Requester means an employee, agent or contractor of the LAL Requester who is appointed by the LAL Requester under this Agreement for the purposes of accessing the LAL Provider’s Exchange Site for an Agreed Purpose.

“Business Day” means a day other than a Saturday or a Sunday or a public holiday in Hong Kong.

“Charges” means:

- (a) the Site Set-up Charges;
- (b) the Site Management and Maintenance Charges;
- (c) the Site Supervision Charges;
- (d) the Site Facilities Charges;
- (e) the Site Occupation Charges;
- (f) the Site Cancellation Charges;
- (g) the LAL Connection Charge;
- (h) the LAL Periodic Charge;
- (i) the LAL Relocation Charge;
- (j) the LAL Cancellation Charge;
- (k) the LAL Minimum Commitment Charge; and
- (l) other charges provided for in this Agreement.

“Colocation Equipment” means the equipment specified in Part 2 of Schedule 2 that the Parties have agreed may be located by the LAL Requester at Exchange Sites for connection to LALs so that they may operate up to but not in excess of the applicable Agreed Use for those LALs.

“Colocation Space” means an equipment space at an Exchange Site, which the LAL Provider has established for the purpose of the LAL Requester locating the Colocation Equipment within that space for an Agreed Purpose.

“Customer” in relation to LAL, means the person who contracts with the LAL Requester for the provision by the LAL Requester of fixed telecommunications network services over the LAL Requester Network using that LAL.

“Customer End Equipment” means the equipment of the LAL Provider located at the Customer Building end of a LAL as described in Part 1 of Schedule 2.

“Customer Interface Point” in relation to a LAL, means the point at the Customer Location at which that LAL is required to terminate in accordance with this Agreement.

“Customer Location” in relation to a LAL, means the address at which the Customer is located and where the LAL is to be terminated in accordance with this Agreement.

“Data Grade LAL” means a 2 wire copper line owned by the LAL Provider meeting but not exceeding the specification in Part 2 of Schedule 1 between the Exchange End Equipment and a Customer Interface Point.

“DEL” in relation to a LAL Provider means that part of a local direct 2 wire copper exchange line that may be used as a LAL (but not including any facility other than the copper line) that connects a customer site directly to the LAL Provider’s Network.

“DEL Disconnection Notice” means the LAL Provider’s standard retail disconnection notice from time to time used by it for the purpose of a customer of the LAL Provider terminating the supply of a DEL to that customer by the LAL Provider.

“Exchange Site” means the premises for an exchange of the LAL Provider set out in Schedule 3 on the date of this Agreement or which is subsequently added to that Schedule by mutual agreement of the Parties.

“Exchange End Equipment” means the LAL Provider MDF and other equipment located at an Exchange Site described in Part 1 of Schedule 2.

“Forecast” means a forecast of expected demands for LALs given by the LAL Requester to the LAL Provider under clause 6.

“Fixed Telecommunication Network Services” has the same meaning as the term “Service” is given in Schedule 1 of each Party’s Licence.

“Force Majeure” means anything outside the reasonable control of the Party including acts of God, industrial disputes of any kind, war declared or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion or meteor, governmental restraint, expropriation or prohibition, unavailability or delay in availability of equipment (including from suppliers) or transport, inability or delay in granting or obtaining governmental 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.

“Government Agency” means any government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable law (including but not limited to the Telecommunications Authority).

“Implementation Plan” in relation to Colocation Space, means the plan described in clause 3 for that Exchange Site agreed by the LAL Provider and LAL Requester in relation to the Preparation Work for that Colocation Space in accordance with clause 4.

“LAL” means a:

- (a) a Data Grade LAL;
- (b) a Voice Grade LAL; or
- (c) such other local access links as the Parties may agree to include in Schedule 1 from time to time;

as the case may be:

“LAL Cancellation Charge” means the charges payable by the LAL Requester to the LAL Provider in respect of the cancellation of an Accepted LAL Order, as specified in Schedule 4.

“LAL Connection Charge” in relation to a LAL, means the one-off charge payable by the LAL Requester to the LAL Provider in respect of the initial provisioning of that LAL as specified in Schedule 4.

“LAL Minimum Commitment Charge” means the charges payable by the LAL Requester under clause 8 and Schedule 4 if it has not commenced paying the LAL Periodic Charge for the minimum quantity of LALs specified in Part 3 of Schedule 1.

“LAL Order” means a written request made by the LAL Requester to the LAL Provider in accordance with clause 7 requesting that the LAL Provider provision one or more LALs under this Agreement.

“LAL Periodic Charge” in relation to a LAL, means the periodic charge payable by the LAL Requester to the LAL Provider in respect of that LAL each month that is specified in Schedule 4.

“LAL Provider” means the Party owning the LALs requested by the other Party and operating the Exchange Site at which the other Party requires Colocation Space.

“LAL Provider Equipment” means the Exchange End Equipment and Customer End Equipment and such other equipment as may be used by the LAL Provider in connection with this Agreement.

“LAL Requester” means the Party requesting LALs and access to the Colocation Space of the LAL Provider.

“Licence” in relation to a Party, means the Fixed Telecommunications Network Services Licence which has been issued to that Party pursuant to the Ordinance, as amended from time to time.

“**Licensee**” means a person issued with a licence to supply a telecommunications service under the Ordinance.

“**Loss**” means loss, cost, damage, expense and charge.

“**Network**” in relation to a Party means the network, as defined in Schedule 2 of that Party’s Licence, established or maintained by that Party pursuant to its Licence.

“**Operational Manual**” means the operational manual containing operational procedures and practices in relation to the supply and use of LALs under this Agreement to be negotiated and agreed after the date of this Agreement in accordance with clause 21.

“**Ordinance**” means the *Telecommunication Ordinance (Cap.106)* of Hong Kong.

“**Quarter**” means each period of 3 calendar months commencing on 1 January, 1 April, 1 July and 1 October during the term of this Agreement.

“**Party**” means either of _____ and “**Parties**” means both of them.

“**Planned RFU Date**” in relation to the provisioning of a Colocation Space means the date set out in the Implementation Plan by which the LAL Provider is planned to have completed the Preparation Work.

“**Preparation Work**” in relation to an Exchange Site, means the work described in Schedule 5 to be performed by the LAL Provider in respect of that Exchange Site as set out in the Implementation Plan for that Exchange Site.

“**RFU Notice**” means a notice given by the LAL Provider informing the LAL Requester that the identified Colocation Space or LAL is Ready for Use.

“**Ready for Use**” or “**RFU**” in relation to:

- (a) a Colocation Space means that the LAL Provider has completed the Preparation Work for that space in accordance with the Implementation Plan; and
- (b) a LAL means that the LAL Provider has provisioned the LAL in accordance with this Agreement

“**Site Application**” means an application for Colocation Space setting out the information referred to in clause 3.

“**Site Cancellation Charge**” means the charges payable by the LAL Requester to the LAL Provider in respect of the cancellation of an Accepted Site Application, as specified in Schedule 4.

“**Site Facilities Charges**” means the recurring charges specified in Schedule 4 payable by the LAL Requester to the LAL Provider for providing the associated facilities referred to in Schedule 2 in respect of each Colocation Space of the LAL Provider.

“Site Management and Maintenance Charges” means the recurring charges specified in Schedule 4 payable by the LAL Requester to the LAL Provider for managing and maintaining Colocation Space under this Agreement.

“Site Minimum Commitment Period” means a period of twenty-four (24) months commencing from the Actual RFU Date of a Colocation Space.

“Site Occupation Charges” means the recurring charges specified in Schedule 4 payable by the LAL Requester to the LAL Provider for providing access to the Colocation Space for the purpose of locating the Colocation Equipment.

“Site Set-up Charges” means the one-off charges set out in Schedule 4 payable by the LAL Requester to the LAL Provider to make ready Colocation Space for the purpose of accommodating Colocation Equipment.

“Site Supervision Charges” means the recurring charges specified in Schedule 4 payable by the LAL Requester to the LAL Provider from time to time for supervising access in accordance with these terms and conditions in respect of each Colocation Space.

“Standard Delivery Period” means in relation to:

- (a) a LAL, the standard target delivery period that is specified in Schedule 5 for the provisioning of that LAL after the date of the applicable Accepted LAL Order; and
- (b) a Colocation Space, the standard target delivery period that is specified in Schedule 5 for the completion of Preparation Work for that Colocation Space after the date of the applicable Accepted Site Application.

“TA” means the Telecommunications Authority of Hong Kong.

“Voice Grade LAL” means a 2 wire copper line owned by the LAL Provider meeting but not exceeding the specification in Part 2 of Schedule 1 between the Exchange End Equipment specified in Part 1 of Schedule 2 and a Customer Termination Point.

“Tax” means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding tax (together with any related interest, penalty, fine and expense in connecting with any of them) levied or imposed by any Government Agency, other than those imposed on overall income.

“Telecommunications Authority” has the meaning given to the term “Authority” in the Ordinance.

1.2 In this agreement unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any amendment, replacement or novation of that document;

- (c) 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;
- (d) a reference to any party includes its successors and permitted assigns, and a reference to party or person includes living individuals, bodies incorporate and unincorporate;
- (e) a reference to "include" or cognate expressions does not limit what else may be included;
- (f) a reference to this Agreement includes all the schedules and attachments, and their contents will have the same force and effect as if expressly set out in the body of this Agreement;
- (g) a reference to dollars or \$ is to Hong Kong dollars; and
- (h) a reference to a charge means that charge as varied from time to time in accordance with this Agreement.

2. SCOPE OF AGREEMENT

2.1 This Agreement sets out the terms and conditions on which:

- (a) each Party as a LAL Requester may request Colocation Space to be allocated within Exchange Sites of the other Party as a LAL Provider for an Agreed Purpose; and
- (b) the LAL Provider will provision Colocation Space at Exchange Sites for an Agreed Purpose and the LAL Requester may use that Colocation Space for an Agreed Purpose; and
- (c) each Party as a LAL Requester may:
 - (i) request the other Party as a LAL Provider to provision LALs in accordance with this Agreement; and
 - (ii) use each LAL for its Agreed Use;
- (d) the LAL Provider will provision and maintain LALs for the LAL Requester; and
- (e) the LAL Provider will provide access to Colocation Space to the LAL Requester for an Agreed Purpose.

3. REQUESTS FOR NEW EXCHANGE SITES

3.1 The Parties acknowledge that Schedule 3 sets out the initial Exchange Sites and the initial Colocation Space (to the extent that Colocation Space has been allocated as at the date of this Agreement).

- 3.2 If the LAL Requester requires access to any exchange sites of the LAL Provider (other than an Exchange Site) (“New Exchange Site”) for any Agreed Purpose:
- (a) the LAL Requester must notify the LAL Provider of its requirements in relation to the New Exchange Site;
 - (b) the Parties will meet and negotiate in good faith for a period of Business Days in relation to the inclusion of the New Exchange Site in Schedule 3;
 - (c) if the Parties agree to include that New Exchange Site in Schedule 3 the LAL Requester will submit a Site Application under clause 4 in respect of the New Exchange Site; and
 - (d) if the Parties are unable to agree to include that New Exchange Site in Schedule 3 within Business Days the Parties will resolve any dispute in accordance with clause 20.
- 3.3 The Parties acknowledge and agree that the time periods in clause 3.2 are subject to the relevant request being limited to a reasonable number of New Exchange Sites in any given period, but in any event no less than one New Exchange Site per month, and that following the inclusion of a New Exchange Site in Schedule 3 a Site Application will be made under clause 4.

4. SITE APPLICATIONS FOR EXCHANGE SITES

- 4.1 The LAL Requester may apply for a Colocation Space or additional Colocation Space by sending a Site Application to the LAL Provider from time to time in respect of an Exchange Site.
- 4.2 A Site Application must be in writing, and must specify:
- (a) the Exchange Site in respect of which the Site Application relates;
 - (b) a list of the type of and the manufacturer’s name, model numbers and specifications for each item of Colocation Equipment to be located by the LAL Requester at the Exchange Site;
 - (c) quantity, physical dimensions, and capacity of the listed items in paragraph (b);
 - (d) a proposed equipment footprint and the proposed relative positioning of Colocation Equipment within that footprint;
 - (e) a description of the site environment requirements of the nominated Colocation Equipment;

- (f) the area (measured in square metres) required by the LAL Requester at the Exchange Site over the period of months from the date of the request and the likely dates that each material part of the requested space will be required for actual use;
- (g) the Forecasts provided by the LAL Requester which support the Site Application;
- (h) the proposed Implementation Plan for the Exchange Site; and
- (i) such other information that the LAL Provider may have reasonably requested at least Business Days prior to the Site Application to assess the feasibility and the time required to meet Site Applications.

4.3 After the receipt of a Site Application from the LAL Requester the LAL Provider must:

- (a) within Business Days;
 - (i) acknowledge receipt of the Site Application; and
 - (ii) notify the LAL Requester if there are any apparent errors or inconsistencies in the Site Application (including that the exchange to which the Site Application relates is not an Exchange Site, the requested Planned RFU Date for the availability of the Colocation Space is less than the Standard Delivery Period, or the space requested at the Exchange Site is greater than the space that may be allocated under clause 4.9); and
- (b) use its reasonable endeavours within Business Days to, and in any event must within Business Days, notify the LAL Requester
 - (i) of any further information that is reasonably required by the LAL Provider for the purpose assessing the Site Application and completing discussions referred to in clause 4.4;
 - (ii) of any factors that may make it not reasonably practical to fulfill the Site Application in accordance with its terms; and
 - (iii) if necessary, an alternative proposed Implementation Plan to the proposal set out in the Site Application.

4.4 Within Business Days of the LAL Provider's acknowledgment under clause 4.3:

- (a) the LAL Requester must provide such further information that the LAL Provider has reasonably requested under clause 4.3;
- (b) the Parties must meet and each Party must use its bona fide reasonable efforts to agree during the next Business Days in accordance with Schedule 6 and Schedule 4:

- (i) the Preparation Work that must be performed to make ready the applicable Exchange Site ready for use in accordance with this Agreement;
- (ii) the Site Occupation Charges for the Colocation Space at the Exchange Site; and
- (iii) the Implementation Plan for the Preparation Work which will include:
 - A. the time required for the LAL Provider to complete the design and planning work;
 - B. the date on which the LAL Provider will provide an estimate of the amount of Charges payable by the LAL Requester for Preparation Work at the Exchange Site;
 - C. date for commencement of Preparation Work after the Parties have agreed the amount of Charges referred to in paragraph (b); and
 - D. the Planned RFU Date.

4.5 The LAL Provider must, in accordance with the Implementation Plan, provide an estimate of the Charges payable for the Preparation Work at the relevant Exchange Site and after notification of that estimate the Parties will meet and use their bona fide reasonable efforts to agree those Charges in accordance with Schedule 4 before the commencement of that Preparation Work.

4.6 If the Parties are unable to agree any of the matters referred to in clause 4.4 or 4.5 within the time period specified in that clause they will resolve any dispute in accordance with clause 20.

4.7 The Parties acknowledge and agree that:

- (a) subject to Schedule 6, the Standard Delivery Period for Colocation Space will, at a minimum, be achievable in accordance with Schedule 6 provided that Preparation Work is not required to commence for more than one Exchange Site each month and Preparation Work is not required to be undertaken concurrently at more than 3 Exchange Sites at the same time; and
- (b) if the LAL Requester requires Preparation Work to be undertaken in excess of that referred to in paragraph (a) the LAL Provider will notify the LAL Requester and the Parties will negotiate in good faith to agree alternative Planned RFU Date(s) or alternative Charges which may include overtime charges.

4.8 The Parties acknowledge that the time periods specified in clauses 4.3 and 4.4 will not prevent the Parties conducting earlier discussions and the Parties will endeavor to exchange information and progress the agreement of an 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 the exchange of information concurrently.

4.9 If the LAL Requester requires Colocation Space at an Exchange Site in addition to the equipment space set out in Schedule 3:

- (a) the LAL Requester must provide a Site Application in accordance with clause 4.1 in relation to that additional space;
- (b) the LAL Provider will notify the LAL Requester whether that space may be allocated to the LAL Requester in view of:
 - (i) the LAL Requester's requirement for that space as evidenced by its Forecasts for the next months in relation to that Exchange and rate of the provisioning of LALs at that Exchange during the previous months;
 - (ii) whether the additional space is used by the LAL Provider or any other person as at the date of receipt of the Site Application;
 - (iii) whether the additional space is reasonably required to be used by the LAL Provider in relation to the supply of telecommunications services and associated functions during the period of months after the proposed Planned RFU Date on the basis of the LAL Provider's current business plans.;
 - (iv) whether the additional space is the subject of a committed order for space in that Exchange Site that has been made by any other person in relation to the supply of telecommunications services and associated functions ;
 - (v) any restriction imposed on the LAL Provider by the lessor of the applicable Exchange Site or a Government Agency; and
 - (vi) any relevant event of Force Majeure affecting the availability of the relevant equipment space.
- (c) if there is any dispute in relation to the need for that additional space to be allocated to the LAL Requester or the availability of that additional space that dispute will be resolved in accordance with clause 20

4.10 If the LAL Requester has been allocated Colocation Space and fails to use that space within months of the Planned RFU Date on the basis of which that Colocation Space was allocated to the LAL Requester and that space is required by the LAL Provider for its own purposes or to allocate that space to any other person (including another Licensee) in accordance with clause 4.9(ii) to (iv):

- (a) the LAL Provider will advise the LAL Requester of the relevant space that is required for an alternative purpose;
- (b) the LAL Requester will provide such information to the LAL Provider as may be reasonably required by the LAL Provider for the purpose of assessing whether the Colocation Space is required by the LAL Requester in the next months;

- (c) if the LAL Requester's requirement for that Colocation Space during the next months is not substantiated on the basis of the rate of the provisioning of LALs at that Exchange during the previous months and its Forecast for the next months, the LAL Provider may notify the LAL Requester that the relevant space is removed from the Colocation Space and Schedule 3 is deemed amended accordingly; and
- (d) if there is any dispute in relation to whether the LAL Requester's continued requirement for the relevant space that dispute will be resolved in accordance with clause 20

4.11 The LAL Requester acknowledges that the LAL Provider requires space at its Exchange Sites for the purposes of its own business including the allocation of space to third parties (including other Licensees) and accordingly the LAL Requester must:

- (a) comply with any reasonable procedures established by the LAL Provider for the purpose of ensuring the efficient use of space and facilities within any Exchange Site; and
- (b) co-operate with the LAL Provider in co-ordinating the reasonable use of space and facilities by all persons with access to the Exchange.

4.12 The Parties acknowledge that clause 4.11 will not entitle the LAL Provider to unilaterally reduce the LAL Requester's Colocation Space.

4.13 If the LAL Requester wishes:

- (a) to vary an Accepted Site Application before the Planned 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 Site Application before the Planned RFU Date, the LAL Requester must pay the applicable Cancellation Charge.

5. EXCHANGE SITE PREPARATION WORK

5.1 In consideration of the payment of the Site Set-Up Charges, the LAL Provider must use its reasonable endeavours to perform and finalise the Preparation Work before the Planned RFU Date specified in the Implementation Plan.

5.2 If the LAL Provider considers that all or part of the Preparation Work at an Exchange Site is likely to be delivered late (including but not limited to for the reasons that significant changes are required at the Exchange Site to provide the facilities described in Schedule 2 to the Colocation Space or due to delays in obtaining any approvals from third parties (including Government Agencies and lessors)):

- (a) it must promptly inform the LAL Requester of the probable delay and the reason for that delay and the Parties will seek to agree alternative work around procedures to minimise the delay;

- (b) if the LAL Provider reasonably regards that the delay is attributable in whole or part to an act or omission of the LAL Requester, the LAL Provider will notify the LAL Requester of the relevant act or omission; and
- (c) until an alternative solution is agreed the LAL Provider must continue to endeavour to finalise the Preparation Work by or as soon as practicable after the expiry of the Planned RFU Date set out in the Implementation Plan and if the cause of the delay is an act or omission of:
 - (i) the LAL Provider, it will use its best endeavours to finalise that Preparation Work; and
 - (ii) the LAL Requester, the LAL Provider will continue to use its reasonable endeavours to finalise that Preparation Work.

5.3 When the Preparation Work in respect of a Colocation Space identified in an Accepted Site Application is completed, the LAL Provider will issue a RFU Notice in respect of that Colocation Space. The LAL Provider will ensure that the Colocation Space complies with the specifications agreed in the Implementation Plan before issuing the RFU Notice. The LAL Provider will give at least Business Days notice to the LAL Requester prior to the Actual RFU Date in accordance with the Operational Manual.

5.4 The LAL Requester must give at least Business Days notice to the LAL Provider prior to each proposed date for delivery of the relevant Colocation Equipment to a particular Exchange Site in accordance with the Operational Manual. The appointed time or times for delivery of the Colocation Equipment must be during the LAL Provider's usual working hours, unless the LAL Provider agrees otherwise. If the LAL Requester orders materials to be delivered on site, the LAL Requester must have an Authorised Representative on site to accept delivery of those materials.

6. LAL FORECASTING PROCEDURES

6.1 On or before the date of this Agreement and the first day of each Quarter ("**Forecast Date**") of each year during the term of this Agreement, each Party must give to the other Party forecasts of its requirements for the provision of LALs that comply with this clause ("**Forecasts**"). If a Party expects no requirement for LAL's of the other Party it is under no obligation to provide a Forecast.

6.2 Each Forecast must:

- (a) specify the number and type of LALs that the LAL Requester expects to be provisioned to or from each Exchange Site of the LAL Provider in:
 - (i) the 6 month period between the date months from the date of the Forecast and the date months from the date of the Forecast;
 - (ii) each Quarter between the date months from the date of the Forecast and the date months from the date of the Forecast; and

- (iii) each calendar month between the date of the Forecast and the date months from the date of the Forecast

(“Forecast Period”); and

- (iv) forecast area reasonably nominated by the LAL Provider that is served by that Exchange Site (“Forecast Area”);

(b) include the following information:

- (i) the total number of forecast LALs which are anticipated to be required in each Forecast Area in each Forecast Period; and
- (ii) such further relevant information as the LAL Requester is able to provide to the LAL Provider in respect of each of the LALs forecast under paragraph (i).

6.3 The LAL Requester must provide Forecasts under this clause in good faith and use its reasonable efforts to ensure the accuracy of those Forecasts. Each Party acknowledges that Forecasts provided under this clause will not be binding on either Party. The LAL Requester acknowledges that forecasts that overestimate or underestimate the volume of LALs ordered by it under this Agreement or which are materially varied between Forecast Periods in the months before the Forecast in which provisioning will take place may delay the provision of those LALs to the LAL Requester in accordance with clause 6.4 to 6.6.

6.4 Subject to clause 6.5, if at any time prior to the date 1 Period month before the commencement of the Forecast Period in which provisioning is to be implemented, the LAL Provider considers that the work which it would be required to carry out based on any Forecast for that Forecast Period under this clause is not reasonably achievable within that Forecast Period in accordance with the LAL Provider’s usual provisioning procedures and resources and the demands placed on those resources (having attributed a priority to the LAL Requester’s Forecast that is no worse than is attributed to other Licensees and the LAL Provider’s own requirements for LALs):

- (a) the LAL Provider will notify the LAL Requester as soon as practicable after it confirms that meeting that Forecast is not reasonably achievable;
- (b) the LAL Requester will provide to the LAL Provider with such information as will allow the LAL Provider to assess the reasonableness and accuracy of the Forecast and to attribute appropriate priority to it;
- (c) the LAL Provider will determine its ability to meet the Forecast in view of its available resources and the demands placed on those resources (having attributed a priority to the LAL Requester’s Forecast that is no worse than is attributed to other Licensees and the LAL Provider’s own requirements for LALs) and notify the LAL Requester of the number of LALs that LAL Provider considers that it will not be able to provision in accordance with that Forecast (“Affected LALs”);

- (d) the LAL Provider will advise the LAL Requester of a timetable that it considers reasonably achievable to provision the Affected LALs (“Resource Constraint Timetable”); and
- (e) the LAL Provider may provision the Affected LALs in accordance with that Resource Constraint Timetable notwithstanding clause 7.

6.5 Any revised provisioning date for Affected LALs by the LAL Provider under clause 6.4 must be made in good faith and based on the following principles:

- (a) the LAL Provider must seek to balance the reasonable needs of the LAL Requester and other Licensees and the LAL Provider’s own DEL and other customers;
- (b) the LAL Provider will not unduly discriminate against the LAL Requester in favour of any other Licensee or unduly discriminate against any other Licensee in favour of the LAL Requester; and
- (c) the LAL Provider will seek to reasonably prefer the LAL Requester’s Forecasts where they are consistently more accurate and provided earlier than other Licensees.

6.6 If a LAL Requester varies its:

- (a) actual LAL Orders requirements for LALs from the last Forecast Period before the Forecast Period in which the LAL Order is made by more than _____ before and _____ ; or
- (b) Forecasts in respect of the Quarter applying to the actual provisioning of LALs from the Quarter immediately preceding the Quarter in which LAL’s will be provisioned by more than _____ , after that date;

then:

- (c) the LAL Provider may notify the LAL Requester that the Forecasts are inaccurate and may for the purposes of clause 6.4 assign a lower priority to that part of the current and the immediately following Forecast to be considered under clause 6.4 represented by the amount of the under or over forecast in excess of _____ that date
- (d) the LAL Provider may decline to accept LAL Orders under clause 7 that fail to comply with any Resource Constraint Timetable determined under clause 6.4.

6.7 The Parties acknowledge that if the provisioning of any LALs is delayed in accordance with clause 6.4 that amount of the Affected LAL’s provisioned in the next Forecast Period will not form part of the LAL Requester’s actual orders for that Forecast Period for the purpose of determining if there has been any under forecasting or further under forecasting in that Forecast Period under clause 6.6.

7. LAL ORDERING PROCEDURES

7.1 The LAL Requester may from time to time request a LAL between an Exchange Site of the LAL Provider and a Customer Termination Point by giving the LAL Provider a written request (“LAL Order”) that contains sufficient information for the LAL Provider to assess and respond to that request including:

- (a) the address of the requested Customer Location and details of the requested Customer Interface Point;
- (b) the Exchange Site address or the LAL Provider designated three letter exchange code;
- (c) the requested Planned RFU Date for that LAL;
- (d) whether the LAL is required to be a Voice Grade LAL or a Data Grade LAL;
- (e) if applicable, a copy of the Customer’s DEL Disconnection Notice and LAL Requester authorisation in accordance with clause 7.6; and
- (f) such other information that the LAL Provider reasonably requires to enable the LAL Provider to fulfill the LAL Order as notified by the LAL Provider to the LAL Requester from time to time.

7.2 The LAL Provider must use its best endeavours within Business Days of the date of receipt of a LAL Order under clause 7.1, in writing:

- (a) to accept that LAL Order; or
- (b) to notify the LAL Requester that the LAL Provider’s acceptance requires the resolution of one or more matters referred to in clause 7.3 and identify the areas of concern; or
- (c) to reject that LAL Order under clause 7.7.

7.3 The LAL Provider will notify the LAL Requester if any of the following matters affect a LAL Order (“Review Event”):

- (a) the LAL Order does not contain all the information specified in clause 7.1;
- (b) the Customer Location is not served by the specified Exchange Site;
- (c) the period between the date of the LAL Order is accepted and the Planned RFU Date for any LALs in the LAL Order is less than the Standard Delivery Period;

- (d) the number of LALs in the LAL Order exceeds the number of LALs specified in LAL Requester's last Forecast for the applicable provisioning period or exceeds the number of LAL's that may be provisioned in accordance with any Resource Constraint Timetable;
- (e) copper wiring is not available in accordance with clause 7.5 to directly connect the Customer Interface Point and Exchange Site;
- (f) as at the date of that LAL Order, the LAL Provider has available copper wiring to provision the LAL but has current plans to generally decommission copper wiring in an area including the copper wiring supporting the LAL;
- (g) in the case of a Data Grade LAL, it is not technically feasible to provision the LAL without causing interference to a telecommunications service supplied by any person or the Data Grade LAL is in a "Rural Area" (as defined in Schedule 4); or
- (h) it is not reasonably practical to fulfill the LAL Order as a result of a Force Majeure Event.

7.4 If the LAL Provider withholds approval of a LAL Order as a result of any of the matters referred to in clause 7.3 or because it requires further time to consider the application of any of the matters referred to in clause 7.3, it will notify the LAL Requester as soon as practicable of the general nature of the relevant Review Event and the further time required to complete that review (which must be the least time that is practicable for the LAL Provider to complete that review using its reasonable efforts) and in the case of a Review Event under:

- (a) paragraph 7.3(a), the LAL Requester will provide all of the information reasonably requested by the LAL Provider and the LAL Provider will, subject to resolution of any other Review Event, use its best efforts to accept the LAL Order within Business Days of being notified of that information;
- (b) paragraph 7.3(b), the LAL Provider will notify the LAL Requester of the exchange site serving that Customer Location and, if that exchange site is an Exchange Site the order will be deemed amended accordingly on the date of that notification and the LAL Provider will, subject to resolution of any other Review Event, be deemed to accept that amended LAL Order on the date of notification;
- (c) paragraph 7.3(c), the LAL Requester must as soon as practicable after the date of notification notify the LAL Provider whether it wishes the delivery period to be within the Standard Delivery Period or it wishes to have the LAL provisioned by a specified date within the Standard Delivery Period in accordance with clause 7.8, and the LAL Provider will, subject to resolution of any other Review Event and compliance with clause 7.8, accept the LAL Order within Business Days of notification of the relevant amended terms;
- (d) paragraph 7.3(d), the LAL Provider will accept the LAL Order to the extent of the number of LALs properly the subject of the Forecast and any applicable Resource

Constraint Timetable and will proceed to provision the additional LALs within a time that is reasonably achievable in which case the LAL Provider;

- (i) may request the LAL Requester to prioritise the provisioning of LALs under those LAL Orders; and
 - (ii) will act in accordance with those priorities; and
- (e) paragraph 7.3(f), the LAL Provider may advise the LAL Requester that the LAL will only be available for the period until the date of decommissioning and, in that event, the LAL Requester must elect to withdraw the LAL Order in respect of that LAL or to have the LAL provisioned only until the date of decommissioning and the LAL Provider will, subject to resolution of any other Review Event, accept the LAL Order within Business Days of notification of the amended LAL Order.

7.5 A LAL will be regarded as being available for the purposes of clause 7.2(e) if:

- (a) a DEL of the LAL Provider is to be simultaneously disconnected and made available to be provisioned as a LAL in accordance with clause 7.6; or
- (b) there is suitable available copper wiring in place between the relevant Exchange Site and:
 - (i) the Customer Interface Point proposed in the LAL Order; or
 - (ii) the Customer Building proposed in the LAL Order, and the LAL Requester provides its own vertical and horizontal block wiring or the Parties agree the terms and conditions on which the LAL Provider will install that vertical and horizontal block wiring; or
 - (iii) the end of the vertical blockwiring in the Customer Building proposed in the LAL Order, and the LAL Requester provides its own horizontal block wiring or the Parties agree the terms and conditions on which the LAL Provider will install that horizontal block wiring;

and the relevant in situ wiring of the LAL Provider is not:

- (iv) being used by any person (including the LAL Provider); or
- (v) reasonably required to be used by the LAL Provider during the period of:
 - A. months after the proposed Planned RFU Date on the basis of the LAL Provider's current business plans for a telecommunications service of the LAL Provider that is tariffed at the date of the applicable LAL Order; or

- B. months after the proposed Planned RFU Date on the basis of the LAL Provider's current business plans for a telecommunications service that is not tariffed at the date of the applicable LAL Order.

7.6 If the LAL Provider is providing telecommunication services to a person ("DEL User") over a DEL that could be provisioned as a LAL under this Agreement and that DEL User wishes to become a Customer of the LAL Requester in respect of that DEL then that DEL will be made available for the purposes of clause 7.5(a) if:

- (a) a DEL Disconnection Notice is signed by a duly authorised representative of the DEL User and the original is provided by the Customer or the LAL Requester to the LAL Provider's customer front office and a copy of that DEL Disconnection Notice is provided to the LAL Provider together with the applicable LAL Order;
- (b) the LAL Requester provides to the LAL Provider a copy of an authorisation in such form as the LAL Requester may determine which confirms that the Customer wishes to connect the LAL to the LAL Requester Network; and
- (c) that DEL Disconnection Notice is not revoked or canceled by the Customer before that LAL is provisioned.

7.7 The LAL Requester acknowledges and agrees that:

- (a) if the LAL Provider provides to the LAL Requester a DEL Disconnection Notice and an authorisation that has been signed by a duly authorised representative of a Customer which confirms that the Customer wishes a LAL that is used by the LAL Requester to be disconnected from the LAL Requester Network and connected to the LAL Provider Network the LAL Provider may so disconnect and connect that LAL and that LAL will no longer be available for use by the LAL Requester under this Agreement; and
- (b) the LAL Provider is not required to provision for the LAL Requester any LAL owned by the LAL Provider that is used by any Licensees other than the LAL Provider and if it requires use of such LALs it must agree further arrangements with that person and the LAL Provider.

7.8 If the LAL Requester wishes to provision any LALs earlier than the date they would otherwise be provisioned under this clause it will notify the LAL Provider that it requests earlier provisioning of the LALs in which case:

- (a) the LAL Provider will notify the LAL Requester of the overtime charges for provisioning the LALs by that earlier date; and
- (b) the LALs will be provisioned in accordance with any agreed timetable.

7.9 The LAL Provider may reject a LAL Order if:

- (a) the LAL Requester is in material breach of this Agreement (including but not limited to clause 13, 17 or the Access Terms); or
- (b) in the event that any of the Review Events referred to in paragraphs 7.3(e), (f), (g) or (h) apply and the Parties are not able to resolve that Review Event having negotiated in good faith in an effort to do so.

7.10 If the LAL Requester wishes to cancel an Accepted LAL Order in whole or in part, it must:

- (a) notify the LAL Provider of that cancellation; and
- (b) pay the LAL Provider the applicable Cancellations Charge for that Accepted LAL Order.

8. LAL PROVISIONING PROCEDURES AND MINIMUM QUANTITIES

8.1 The LAL Provider must provision LAL's specified in an Accepted LAL Order in accordance with Schedule 6. When provisioning of a LAL is completed by the LAL Provider, it will issue a RFU Notice in respect of that LAL in accordance with the Operational Manual.

8.2 If by the end of each of the periods specified in Part 3 of Schedule 1, has not commenced paying LAL Periodic Charge for the minimum quantity specified for that period in Part 4 of Schedule 1, it must commence to pay the LAL Minimum Commitment Charge for that period in accordance with Schedule 4.

8.3 If during any of the periods specified in clause 8.2:

- (a) the LAL Provider rejects more than 10% of the LAL Orders provided by the LAL Requester under clause 7 and those LAL Orders have been made in a bona fide manner by the LAL Requester (and for this purpose the circumstances in which a request will not be regarded as bona fide will include any request made in respect of areas and buildings to which the LAL Requester knows that the LAL Provider will not supply LALs under this Agreement); or
- (b) the LAL Provider rejects Site Applications for additional Colocation Space and as a result the LAL Requester is unable to order LALs because its Colocation Equipment cannot support further LALs;

the minimum volumes referred to in clause 8.1 will be reduced by the amount of the LALs that could not be provisioned as a result of those rejections

8.4 Subject to the LAL Requester continuing to meet the minimum quantities described in clause 8.3, the LAL Requester may terminate its requirement for a particular LALs by giving to the LAL Provider not less than month's prior notice. However, the LAL Requester may not give such notice for a period of months after the LAL is provisioned except where the LAL is immediately used by the LAL Provider or another Licensee or the LAL continues to be made available to the LAL Requester under this Agreement as a different form of LAL.

9. MAINTENANCE OF COLOCATION SPACE

9.1 In consideration of the payment of the:

(a) Site Management and Maintenance Charges, the LAL Provider agrees to maintain and repair Colocation Space and areas leading to the Colocation Space to the same standard as and with no less priority than it maintains areas containing equivalent equipment or serving equivalent purposes in the same Exchange Site building in which that Colocation Space is located; and

(b) the Site Facilities Charge, the LAL Provider will:

(i) use its reasonable endeavours to supply the LAL Requester with the facilities and site environmental conditions specified in Schedule 2 at the Colocation Space in accordance with the Operational Manual; and

(ii) provide the LAL Requester with back up power supplies in accordance with the Operational Manual.

9.2 The LAL Provider will coordinate usage of air conditioning and fire alarm systems provided under the Implementation Plan amongst all persons who have access to a part of the Exchange Site in accordance with the Operational Manual.

10. MAINTENANCE OF LOCAL ACCESS LINKS

10.1 In consideration of the LAL Periodic Charge the LAL Provider must maintain the LAL's provisioned under this Agreement in accordance with Schedule 6.

10.2 The LAL Requester acknowledges that the LAL Provider is under no obligation to receive fault reports from Customers or other persons or to conduct any fault detection and rectification except as expressly required by this Agreement following notification by the LAL Requester and, accordingly, the LAL Requester must:

(a) receive and act upon any fault reports in respect of LALs made by the Customer or any other person;

(b) ascertain that the fault reported by the Customer is not the result of any equipment or facility other than the LAL;

(c) having properly determined that the fault appears to have occurred in the LAL pass a full and complete fault report to the LAL Provider; and

(d) otherwise comply with each fault notification procedures as the Parties may agree.

10.3 If the LAL Requester notifies the LAL Provider of a number of faults in any LAL the Parties will negotiate in good faith to resolve any technical difficulties in relation to that LAL and if the Parties cannot resolve those difficulties in a mutually acceptable manner the LAL

Provider may terminate that LAL in which case it will be removed from the operation of this Agreement.

10.4 The LAL Requester must:

- (a) use its reasonable efforts to provide the LAL Provider with safe and reasonable access to the Customer Location as may be reasonably required to enable the LAL Provider to perform its obligations under this Agreement;
- (b) obtain the permission of any third person required to give effect to paragraph (a); and
- (c) not permit any person other than a person reasonably identified as an authorised representative of the LAL Provider to maintain, modify, repair or interfere with the LAL or any of the LAL Provider Equipment.

10.5 The LAL Requester acknowledges and agrees that where the LAL Provider's obligations under this Agreement are contingent on it obtaining safe and reasonable access to a Customer Location then the LAL Provider is relieved of those obligations to the extent that LAL Requester is unable to ensure access in accordance with clause 10.4 (a).

11. COLOCATION SPACE AND PHYSICAL ACCESS

11.1 Subject to clause 11.2 and in consideration of the payment of the Site Supervision Charges, the LAL Requester (including its employees, agents and contractors) will be permitted to gain physical access to the Colocation Space for an Agreed Purpose whenever it wishes to do so, provided always that the LAL Requester (including its employees, agents and contractors) must at all times comply with this clause and the Access Terms.

11.2 The LAL Provider may from time to time amend the Access Terms provided that:

- (a) the amendment is reasonably necessary:
 - (i) to preserve the normal functioning, security or operation of the LAL Provider's Network; or
 - (ii) to comply with applicable laws and regulations; or
 - (iii) to comply with the lease of the relevant Exchange Site;
- (b) the LAL Provider has given the LAL Requester days prior written notice of the change and has consulted with the LAL Requester in good faith with respect to that change and has complied with the procedures for amendment set out in the Access Terms; and
- (c) the LAL Provider uses its best efforts to minimise interruption to access by the LAL Requester to the Colocation Space; and

(d) if the amendment is required under:

(i) paragraph (a)(i), any necessary interruption does not have a material adverse affect on the provision of telecommunication services by the LAL Requester to Customers that is not warranted in view of the impact of the lack of such an amendment on the security or operation of the LAL Provider's Network; and

(ii) paragraph (a)(ii) or (iii) the LAL Provider will be in breach or is likely to breach any applicable law or regulation or a lease for an Exchange Site.

(e) if there is a bona fide dispute between the LAL Provider and the LAL Requester regarding whether an amendment to the Access Terms complies with paragraph (d) the Parties will resolve that dispute in accordance with clause 20 and the time period referred to in paragraph (b) will be extended by the period of the dispute resolution process in clause 20.

11.3 The LAL Requester acknowledges that nothing in this Agreement authorises the LAL Requester to access or is to be construed as conferring on the LAL Requester a right of access to the LAL Provider Network or any of the LAL Provider's equipment or facilities other than those expressly set out in this Agreement.

11.4 The LAL Requester must comply with the requirements of all Government Agencies and insurers in relation to fire prevention, partitions, fixtures or fittings at the Colocation Space, and the LAL Requester must pay to the LAL Provider the cost of any alterations to the sprinkler, security system, fire alarm and fire prevention installations which become necessary because of the LAL Requester's non-compliance with these requirements.

12. COLOCATION EQUIPMENT

12.1 The LAL Requester must not:

(a) install or place in any Colocation Space any Colocation Equipment which is or is likely in the reasonable opinion of the LAL Provider to overload the structure of any part of the Exchange Site or Colocation Space or to damage the Colocation Space or disturb the efficient operation of the air conditioning or of any other system servicing the Colocation Space and for this purpose it will not be reasonable for the LAL Provider to form such an opinion if the installation is in accordance with an Accepted Site Application and all of the relevant facts were known to the LAL Provider at the time it accepted the Site Application;

(b) install or alter any item, fixture, partition or fitting in the Colocation Space other than the Colocation Equipment;

(c) install, alter, add to or remove any security locks, bolts or fittings within Colocation Space or elsewhere in the Exchange Site other than an authorised security lock that secures any cage around the Colocation Space;

- (d) install Colocation Equipment in any place other than in the Colocation Space in accordance with the Approved Planning Information; and
- (e) extend or increase electrical wiring in the Colocation Space without the LAL Provider's prior written consent and the LAL Provider may, as a condition of giving such consent, require that the extension or increase be provided by the LAL Provider at the LAL Requester's cost.

12.2 The LAL Requester must:

- (a) install Colocation Equipment in such a way as to minimise the floor space required by it within the Colocation Space to the extent that this does not interfere with or materially adversely affect the operation of the Colocation Equipment.
- (b) re-install or take other appropriate corrective action in respect of Colocation Equipment which has been installed by or on behalf of it in breach of this Agreement within days of receiving notice from the LAL Provider of such breach or becoming aware of such breach;
- (c) ensure that the Colocation Equipment does not damage, interfere with (including but not limited to radio or electrical interference) or cause deterioration to the operation of any other the LAL Provider equipment or the LAL Provider Network or any other person's equipment or network;
- (d) take all steps reasonably necessary to ensure that the Colocation Equipment does not endanger the safety or health of the officers, employees, contractors or customers of the LAL Provider or a third person; and
- (e) take such other action as a reasonably prudent operator of the Colocation Equipment would take.

12.3 If the LAL Provider determines that an Colocation Equipment located in Colocation Space is adversely affecting the LAL Provider's or any third person's Network or operating requirements, the LAL Provider will notify the LAL Requester of such conditions and on receiving such notification, the LAL Requester must take corrective action to its Colocation Equipment (including but not limited to reinstallation, repair, maintenance or cleaning up):

- (a) immediately - in the case of emergency corrective work; or
- (b) as soon as practicable - in the case of other corrective work.

12.4 If:

- (a) the LAL Requester does not perform or complete corrective work within the time frames referred to in clause 12.3; or

- (b) the LAL Provider in its reasonable discretion determines that the Colocation Equipment poses an immediate risk of personal injury or significant property damage or significant disruption to the LAL Provider's network or other equipment or another persons network or equipment;

the LAL Provider may take appropriate corrective action (including but not limited to decommissioning, reinstalling or repairing), at the LAL Requester's cost, having used its reasonable efforts in the circumstances to notify and consult with the LAL Requester (but if required without prior notice to the LAL Requester), and the LAL Requester indemnifies the LAL Provider against all liability and losses arising out of or incurred by the LAL Provider in performing such corrective work. The LAL Provider must inform the LAL Requester of any action taken under this clause as soon as reasonably practicable after taking such action.

13. USE OF LOCAL ACCESS LINKS AND COLOCATION EQUIPMENT

13.1 The LAL Requester must not:

- (a) use the LALs or any Colocation Equipment or allow any other person to use a LAL or Colocation Equipment for any use other than its Agreed Use; and
- (b) directly or indirectly connect a LAL to any facility at an Exchange Site other than Colocation Equipment; or
- (c) install, operate or maintain any equipment or facilities in or within the Colocation Space except the Colocation Equipment notified to the LAL Provider in an Approved Site Application; or
- (d) use Colocation Space for any purpose other than its Agreed Purpose.

13.2 The LAL Requester acknowledges and agrees that the LAL Provider will be able to indirectly originate and terminate telecommunications services to and from the Customer of that LAL in accordance with the Local Delivery Agreement between the Parties dated 29 September 1995.

13.3 If the LAL Provider wishes to test any particular Colocation Equipment to ensure that it may not be used for any purpose other than operating a LAL for its Agreed Use:

- (a) the LAL Provider will give the LAL Requester Business Day's notice of the Colocation Equipment that it wishes to test, the time of the test, the nature of the test and the functionality of the required test equipment ("Test Equipment")
- (b) if the test required by the LAL Provider would adversely effect the supply of telecommunications services that is an Agreed Use in a manner that is material to Customers then before the testing commences the Parties will consult in good faith and seek to agree a testing solution that is achievable that will minimise any such effect;

- (c) the LAL Requester will ensure that its Representatives attend at the Exchange Site at the relevant time with the Test Equipment;
- (d) the LAL Provider may test the Test Equipment and ensure that it is properly calibrated and is accurate;
- (e) the LAL Requester will conduct the requested tests using the Test Equipment and under the supervision of the LAL Provider and will provide all details and information from those tests to the LAL Provider; and
- (f) if the LAL Provider elects it may appoint a suitably skilled and qualified independent testing consultant agreed by the Parties to conduct the same tests under the supervision of the LAL Requester in which case the testing consultant will either use the LAL Requester's Test Equipment or, if the testing consultant uses its own Test Equipment, allow the LAL Requester to test that equipment to ensure that it is calibrated and accurate.

13.4 The LAL Requester acknowledges that the LAL Provider may condition a LAL so that it may not be used for any use other than its Agreed Use provided that:

- (a) the LAL Provider will establish a LAL that is conditioned in this manner at an Exchange Site and give the LAL Requester Business Days notice that it is ready for testing and the Parties will then promptly conduct joint testing of the operation of that LAL to determine if the conditioning impairs the use of the LAL for its Agreed Use; and
- (b) the results of the joint testing do not confirm that the conditioning would materially impair the use of the LAL for its Agreed Use.

13.5 For the avoidance of doubt, the making of an inspection under this clause or the omission to conduct such an inspection under this clause will not operate in any manner to relieve the LAL Requester of its responsibilities, obligations and liabilities under this Agreement.

14. AVAILABILITY AND SUSPENSION OF LOCAL ACCESS LINKS

14.1 In consideration of the LAL ^{Periodic} Provider Charge the LAL Provider will continue to make available each LAL provisioned under this Agreement:

- (a) until this Agreement is terminated under clause 19; and
- (b) except during such period as the LAL Provider may suspend that availability under this clause or clause 23.

14.2 The LAL Provider shall have the right to suspend the use of a LAL (including but not limited to by disconnecting the LAL from the Colocation Equipment) at any time on notification to the LAL Requester either orally (confirming such notification in writing) or in writing if:

- (a) any charges covered by these terms and conditions remain overdue and outstanding in respect of that LAL;
- (b) the LAL is used for any use other than an Agreed Use; and
- (c) the LAL Requester commits any other material breach of this Agreement in respect of that LAL.

provided that the LAL Provider will give to the LAL Requester Business Days notice during which the LAL Requester may rectify the relevant breach of this Agreement (in which case the LAL Provider will not suspend the availability of that LAL) and any such suspension will apply until the LAL Provider has been reasonably satisfied that the relevant breach has been rectified. If there is any bona fide dispute in relation to the need for such a suspension that dispute will be resolved in accordance with clause 20.

14.3 The LAL Provider shall have the right to suspend the use of a LAL (including but not limited to by disconnecting the LAL from the Colocation Equipment) at any time on notification to the LAL Requester either orally (confirming such notification in writing) or in writing if the LAL Provider needs to carry out maintenance services to equipment or systems forming part of the LAL Provider Network which requires the suspension of the use of the LAL provided that:

- (a) the LAL Provider will give to the LAL Requester the maximum period of written notice as may be reasonable and practicable in the circumstances (which will not be less than Business Days except the case of emergencies);
- (b) such suspension will apply until the relevant maintenance is undertaken or order complied with and the LAL Provider will endeavour to ensure there is minimum disruption to the LAL Requester's use of the LAL and must ensure that any disruption is no worse than would apply to the LAL Providers Network in equivalent circumstances; and
- (c) the LAL Requester will not be required to pay the LAL Periodic Charge in respect of any period of suspension in excess of hours

14.4 If the LAL Requester uses a LAL or permits any other person to use a LAL for a use other than its Agreed Use then the LAL Provider may at its election and without prejudice to any of its other rights under this Agreement elect to:

- (a) suspend the provisioning of any new LALs under this Agreement for the longer of a period of months or the period of time taken to rectify that breach; and
- (b) charge the LAL Requester for such use at a rate equal to the LAL Provider's current tariffed leased line charges for a leased line of a bandwidth equivalent to the bandwidth of the highest capacity of use identified by the LAL Provider and for this purpose it will be assumed that such use has taken place for a minimum of 6 months.

- 14.5 For the avoidance of doubt the LAL Requester will not be regarded as having permitted a person to use a LAL for other than its Agreed Use where the relevant LAL is configured by the Colocation Equipment to operate up to but not beyond the maximum level of its Agreed Use but, without the consent of the LAL Requester, that person is using customer equipment that allows the LAL to be used other than for its Agreed Use. In such circumstances the Parties will co-operate and use their reasonable endeavours to ensure that such LALs continue to be used for their Agreed Use.
- 14.6 In the event that the LAL Provider elects to charge the LAL Requester under clause 14.4(b) then it will invoice the LAL Requester for the applicable charges and those charges will be payable under this Agreement in the same manner as the Charges.
- 14.7 If the LAL Requester is in breach of any of the covenants in clause 14.1 or the LAL Requester is otherwise in breach of this Agreement and without prejudice to any of the LAL Provider's other rights under this Agreement, the LAL Provider may request the LAL Requester to remove the Colocation Equipment or the other equipment or facilities which offend that covenant or are the subject of the other breach and the LAL Requester must immediately comply with the LAL Provider's request.

15. REARRANGEMENTS AND DECOMMISSIONING

15.1 If the LAL Requester wishes to:

- (a) relocate the Customer Interface Point for a LAL within the same Customer Location;
- (b) simultaneously disconnect one LAL and connect another LAL where the new Customer Location is within the same building; or
- (c) simultaneously disconnect one LAL and connect another LAL where the new Customer Location is in another building:
 - (i) the LAL Requester must make a LAL Order under clause 7 in respect of that disconnection and connection;
 - (ii) subject to its acceptance under clause 7, the LAL Provider will disconnect the old LAL and provision the new LAL in accordance with clause 8;
 - (iii) the LAL Requester will pay the applicable LAL Relocation Charge for the new LAL; and
 - (iv) no charge is payable by the LAL Requester for the disconnection.

15.2 The LAL Requester acknowledges that the LAL Provider may at any time modify, relocate from or decommission an Exchange and in that event:

- (a) the LAL Provider must give a minimum of months notice (other than if the notice is required by an event of Force Majeure) to the LAL Requester of its intention to modify, relocate from or decommission an Exchange;
 - (b) if the notice given by the LAL Provider under paragraph (a) is:
 - (i) between and months (other than notice required by an event of Force Majeure), the LAL Provider must pay its own costs and the LAL Requester's reasonable costs for performing the work required for that modification, relocation or decommissioning; and
 - (ii) more than months or is the result of an event of Force Majeure, the LAL Provider and the LAL Requester must each pay their own costs for performing the work required for that relocation;
 - (c) in relation to any modification, relocation or decommissioning of an Exchange each Party will perform the same tasks as it would perform in making ready each new Exchange under this Agreement; and
 - (d) the Parties will consult in good faith in relation to the modification, relocation or decommissioning of any Exchange on arrangements to minimise any disruption to the supply of a telecommunications service as a result of such decommissioning (including seeking to agree any charges for any additional transmission link than may be required to allow the LAL Requester to connect its Network to any new Exchange Site).
- 15.3 If after a LAL is provisioned by the LAL Provider under this Agreement the LAL Provider intends to generally decommission copper wiring in an area and such wiring includes the copper wiring supporting that LAL:
- (a) the LAL Provider will advise the LAL Requester of the date that the LAL will be decommissioned ("**Decommissioning Date**") and will use its best endeavours to provide that notification a minimum of months before the Decommissioning Date;
 - (b) the relevant LAL may be decommissioned by the LAL Provider on or after the Decommissioning Date in accordance with the LAL Provider's usual and reasonable decommissioning procedures as previously notified by the LAL Provider to the LAL Requester from time to time and the LAL Requester will co-operate with the LAL Provider in relation to that decommissioning process; and
 - (c) on and from the date that the LAL is decommissioned the obligations of the Parties under this Agreement in relation to that LAL will cease (other than the obligation to pay Charges in respect of the period prior to the Decommissioning Date); and
 - (d) the LAL Provider will propose alternative solutions to the LAL Requester that will allow the LAL Requester to continue to directly access Customers and the Parties

will conduct bona fide negotiations and seek to agree alternative arrangements for the LAL Requester's continued access to the Customer.

16. LAL PROVIDER EQUIPMENT

16.1 LAL Provider Equipment is and shall at all times remain the property of the LAL Provider and the LAL Requester must not remove, tamper with or obliterate any identification mark affixed to the LAL Provider Equipment showing that it is the property of the LAL Provider.

16.2 The LAL Requester must:

- (a) provide and arrange for the LAL Provider, its representatives or agents to have access to any Customer Interface Location at reasonable times to install, inspect, repair, replace, remove or recover the Customer End Equipment;
- (b) notify the LAL Provider immediately of any damage, fault, theft or loss of the LAL Provider Equipment or any part thereof of which it is aware; and
- (c) not alter, tamper with or attempt to repair or operate the LAL Provider Equipment in any way.

17. CHARGES

17.1 The LAL Requester must pay the Charges in accordance with this clause and Schedule 4:

- (a) The Site Set-up Charge is an one-off amount which will become payable on the date of the RFU Notice for the Colocation Space;
- (b) The Site Maintenance and Management Charges and the Site Occupation Charges are payable each month in advance, such Charge to be first payable in respect of particular Colocation Space from the date of the RFU Notice for that Colocation Space; and
- (c) The Site Supervision Charges and the Site Facilities Charges are payable at the times and in the manner indicated on the invoice issued monthly in accordance with the billing procedures set out in Schedule 4.
- (d) The LAL Periodic Charge in respect of each LAL is payable each month in advance, and the first LAL Periodic Charge shall be calculated from the date of the RFU Notice for that LAL.
- (e) The LAL Connection Charge and the LAL Relocation Charge in respect of each LAL is an one-off amount which will become payable on the date of the RFU Notice for that LAL.

- (f) All other 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.

17.2 Each Party must comply with the billing, settlement and dispute resolution procedures set out in Schedule 4.

17.3 The LAL Requester acknowledges that it must pay the Charges for the full term of the Site Minimum Commitment Period, irrespective of whether Colocation Equipment is located in the relevant Colocation Space (including but not limited to by reason of termination of this Agreement).

17.4 The parties acknowledge and agree that:

- (a) the Charges will apply for a period of years from the date of this Agreement ("Review Date");
- (b) months after the date of this Agreement they will commence the negotiation of new charges to apply on and from the Review Date; and
- (c) if they are unable to agree the new Charges before the date years after the date of this Agreement the Charges will be amended on and from that date in accordance with Schedule 4 until any varied Charges are agreed.

18. **LIMITATION OF LIABILITY AND INDEMNITY**

18.1 Each Party acknowledges that this clause:

- (a) provides for certain exclusions and limitations by each Party of liability to the other Party for the other Party's Losses;
- (b) does not exclude or limit the application of any provision of any law where to do so would:
 - (i) contravene that law; or
 - (ii) cause any part of this clause to be void; and
- (c) does not exclude or limit a Party's right to seek or obtain any remedy that may be available at law or in equity when damages are not an adequate remedy, including but not limited to an injunction or specific performance.

18.2 Each Party excludes all liability to the other Party (whether under contract, tort, statute or otherwise) for any:

- (a) consequential or indirect Loss (including loss of revenue or profits) of that Party;

- (b) liability to any third party for any:
 - (i) consequential or indirect Loss (including loss of revenue or profits);
 - (ii) direct Loss of that third party other than direct Loss of a type referred to in clause 18.4(a) or (b); and
- (c) liability of the other Party to any Government Agency under or in relation to the other Party's Licence;

suffered or incurred by the other Party during or after the term of this Agreement arising under or in any way out of or in connection with this Agreement, the performance of this Agreement or the termination of this Agreement.

18.3 Other than Loss of a type referred to in clause 18.4, the liability of one 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 in no case will a Party be liable for aggregate amount of in excess of _____ for all liability arising by reason of or in connection with this Agreement.

18.4 Subject to clause 18.2, nothing in this Agreement in any way excludes or restricts a Party's liability for Losses arising directly from:

- (a) any injury to or death of:
 - (i) any of the Indemnifying Party's personnel;
 - (ii) any of the Innocent Party's personnel; and
 - (iii) any other person;

caused by negligence of the Indemnifying Party or its employees, agents or contractors arising out of or in connection with this Agreement;

- (b) damage to or loss of any equipment, facility or other tangible property of the Innocent Party or any other person caused by the negligence of the Indemnifying Party or its employees, agents or contractors arising out of or in connection with this Agreement; and
- (c) intentional breach of this Agreement or any fraud by the Indemnifying Party (including non-compliance with the Access Terms).

18.5 Subject to clause 18.2 each Party ("Indemnifying Party") indemnifies the other Party ("Innocent Party") against all Losses arising directly from:

- (a) any injury to or death of:

- (i) any of the Indemnifying Party's personnel; and
- (ii) any of the Innocent Party's personnel; and
- (iii) any other person;

caused by negligence of the Indemnifying Party or its employees, agents or contractors arising out of or in connection with this Agreement;

- (b) damage to or loss of any equipment, facility or other tangible property of the Innocent Party or any other person caused by the negligence of the Indemnifying Party or its employees, agents or contractors arising out of or in connection with this Agreement; and
- (c) intentional breach of this Agreement or any fraud by the Indemnifying Party (including non-compliance with the Access Terms).

18.6 Each Party:

- (a) excludes all conditions, warranties and representations implied by law or statute except any implied condition, warranty or representation the exclusion of which would contravene an applicable law or cause this clause to be void ("Statutory Condition"); and
- (b) limits its liability for the breach of a Statutory Condition to the maximum extent permitted by law.

18.7 The LAL Requester indemnifies the LAL Provider for any Loss suffered or incurred by the LAL Provider as a result of a claim by a Customer against the LAL Provider for any loss suffered or incurred by that Customer in relation to or in connection with this Agreement, the performance of this Agreement or the termination of this Agreement to the extent that liability:

- (a) is for any consequential or indirect Loss of the Customer (including loss of revenue or profits); and
- (b) any other liability may exceed _____ in respect of any one incident, or _____ in respect of any series of incidents arising in any _____ month period from a common cause.

18.8 The limitations of liability under this clause:

- (a) do not apply to any liability to pay Charges under this Agreement; and
- (b) are to be applied such that a Party's limitations of liability under this Agreement are not exceeded as a result of any separate liability for the same event under any other agreement between the Parties.

18.9 This clause 18 survives termination of this Agreement.

19. TERMINATION OF AGREEMENT

19.1 This Agreement commences on the date of execution and continues until it is terminated in accordance with this clause 19.

19.2 This Agreement may be terminated by either Party with immediate effect if:

- (a) the other Party is in breach of this Agreement and that breach is not remedied within:
 - (i) months in respect of a breach referred to in clause 14.4;
 - (ii) days in respect of any other breach; or
- (b) an order is made or an effective resolution is passed for the winding up or dissolution without winding up (otherwise than for the purposes of reconstruction or amalgamation) of the other Party and the order or resolution remains in effect for a continuous period of Business Days; or
- (c) a receiver, receiver and manager, provisional liquidator, liquidator, official manager or like official is appointed over the whole or a substantial part of the other Party's undertaking and property and the appointment remains in effect for a continuous period of Business Days; or
- (d) a holder of an encumbrance takes possession of the whole or any substantial part of the other Party's undertaking and property;
- (e) a Force Majeure, substantially and adversely affecting the ability of a Party to perform its obligations under this Agreement, continues for a period of months or more; or
- (f) on months written notice to the other Party provided that such notice is not given before the date years after the date of this Agreement.

19.3 Each Party may terminate this Agreement by:

- (a) month's notice to the other Party given after any date that the other Party has requested the TA to make; or
- (b) months notice to the other Party given after the date the TA informs a Party that the TA has made;

a determination or direction under the Ordinance, the Licence of either Party or otherwise in relation to part or all of this Agreement, the subject matter of this Agreement or any local loop cable facility of that Party (including copper or optical fibre).

19.4 On termination of this Agreement:

- (a) the LAL Requester must immediately pay to the LAL Provider all Charges (whether or not due) which have accrued up to the date of termination and unpaid;
- (b) the LAL Requester must, at its cost, immediately remove the Colocation Equipment from the Colocation Space and make good the Colocation Space to its state and condition on the Actual RFU Date;
- (c) the LAL Requester must cease to make use of all LALs and procure that all Customers cease to make use of all LALs; and
- (d) the LAL Requester must permit or procure permission for the LAL Provider to access the Customer Locations at reasonable times for the purpose of removing the Customer End Equipment.

19.5 Termination of this Agreement will not extinguish or otherwise affect any rights of any Party against the other which:

- (a) accrued before the date of termination of this Agreement; or
- (b) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this Agreement which arose before the date of termination of this Agreement.

20. DISPUTE RESOLUTION

Working group

20.1 A party may give written notice to the other setting out any dispute that party has in relation to the subject matter of this Agreement. On receipt of that notice each party will appoint representatives to a working group. The parties shall procure that their representatives use their best efforts to resolve the dispute.

Technical matters

20.2 Notwithstanding clause 20.1 the parties will refer disputes of a technical nature to a technical working committee established under the Operations Manual. The parties will procure that its representatives on the technical working committee use their best efforts to resolve the dispute in the manner set out in the Operations Manual.

Senior Management

20.3 If the working group or the technical working committee is not able to resolve the dispute within days of that dispute being referred to it, the parties will refer to dispute to the senior management of both parties for resolution.

Settlement offers

20.4 Each party acknowledges that any offer made by a representative of the other party in an attempt to settle a dispute is made on a without prejudice basis unless specifically indicated otherwise in writing.

21. OPERATIONAL MANUAL

21.1 After the date of this Agreement the Parties will negotiate and use their respective best efforts to agree an operational manual that will establish operational procedures to be followed by the Parties in relation to this Agreement.

21.2 Each Party will appoint suitably skilled technical representatives for the purposes of the discussions referred to in clause 20.1 and will ensure that its representatives diligently seek to resolve technical operational issues.

22. NOTICES

22.1 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.

Attention:

Office held:

Address:

Facsimile:

Copy to:

Office Held:

Facsimile:

Attention:

Office held:

Address:

Facsimile:

22.2 A notice, consent, request or any other communication is deemed to be received:

- (a) if by hand delivery, when it is delivered;
- (b) if a letter, three days after posting (if posted to or from a place outside Hong Kong); and
- (c) by facsimile transmission, hours after the time recorded on the transmission report of the sender unless:
 - (i) within those hours the intended recipient has informed the sender that the transmission was received in an incomplete or garbled form; or
 - (ii) the transmission report of the sender indicates a faulty or incomplete transmission,

but if such delivery or receipt is on a day which is not a working day or is later than 4:00 p.m. (local time) on a working day the notice shall be deemed to have been given and served on the next working day.

23. FORCE MAJEURE

23.1 If a Party is unable to perform an obligation under this Agreement (other than an obligation to pay Charges) by reason of a Force Majeure, that obligation is suspended to the extent that it is affected by, and during the continuance of, the Force Majeure, if that Party:

- (a) gives the other Party prompt notice of the Force Majeure setting out the details of the Force Majeure and an estimate of the extent and duration of its inability to perform; and
- (b) uses all possible diligence to remove that Force Majeure as quickly as possible.

23.2 If the Force Majeure continues for a period of days after a notice given under this clause, the Parties must meet to discuss in good faith a mutually satisfactory resolution to the problem.

23.3 The requirement that a Force Majeure be removed with all possible diligence does not require the settlement of strikes, lockouts or other labour disputes or claims or demands by any government on terms contrary to the wishes of the Party affected.

24. CONFIDENTIALITY

24.1 The Parties acknowledge that the Confidentiality Agreement between them dated applies to all confidential information disclosed by one party to the other party in relation to this Agreement.

25. NO GRANT OF PROPERTY INTEREST

25.1 Nothing in this Agreement is to be construed as vesting in the LAL Requester:

- (a) any right, title or proprietary interest in any Colocation Space at the LAL Provider; and
- (b) any right in respect of any Colocation Space, the grant or enjoyment of which would breach any arrangement with a third person in respect of that Colocation Space.

25.2 The LAL Requester must not grant a third person either physical access to, or a right to locate a third person's equipment in Colocation Space.

26. GENERAL

Acknowledgment

26.1 The Parties acknowledge that the existence of this Agreement or the inclusion of any specific right or obligation in this Agreement is entirely without prejudice to whether the grant of that right or the acceptance of that obligation falls within or outside the terms of section 36A of the Ordinance or any obligation under its Licence.

Cumulative rights

26.2 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.

Exercise of rights

26.3 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.

Waiver and variation

26.4 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.

26.5 Failure or delay of any party at any time to take action against the other party as provided in this Agreement will not affect such first-mentioned party's right to require full performance of this Agreement at any time thereafter. Waiver by any party of a breach of any provision

of this Agreement will not constitute a waiver of any subsequent breach nor in any way affect any right, power or remedy of that party under this Agreement.

Approvals and consents

- 26.6 A party may give or withhold its approval or consent conditionally or unconditionally in its discretion unless this Agreement states otherwise.

Further assurances

- 26.7 Each party must, at its own expense, do everything reasonably necessary to give full effect to this Agreement. Each party must bear its own costs in negotiating, preparing and signing of this Agreement.

Entire agreement

- 26.8 This Agreement contains the entire agreement and understanding between the parties relating to its subject matter, and supersedes and cancels in all respects all previous letters of intent, agreements or arrangements between the parties on this subject matter.

No partnership

- 26.9 The relationship between the parties under this Agreement does not constitute a partnership.

Severability

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

Taxes

- 26.11 The LAL Requester must pay all Taxes payable in relation to this Agreement and the transactions evidenced by this Agreement.

Assignment

- 26.12 Neither Party may assign its rights, powers or remedies under this Agreement without the prior written consent of the other Party.

Governing Law and Jurisdiction

- 26.13 This Agreement is governed by the laws of Hong Kong.

**SCHEDULE 1
LOCAL ACCESS LINKS**

PART 1 - VOICE GRADE LAL

Specifications

- 1.1 A Voice Grade LAL will be limited to a 2-wire copper cable circuit with distance dependent performance of limited bandwidth from 300 Hz to 3400 Hz.
- 1.2 DC power continuity will be provided for local loop detection purposes under normal telephone operation.

Agreed Use

- 1.3 The Agreed Use for a Voice Grade LAL and the operation of the associated Colocation Equipment in relation to that Voice Grade LAL will be the carriage of telecommunications services from 300 to 3400 Hz that are supplied under the LAL Requester's Licence over its Network, including the carriage of miscellaneous speech and voice band data on copper circuits within the above bandwidth limitations.

PART 2 - DATA GRADE LAL

Specifications

- 2.1 A Data Grade LAL will be limited to a 2-wire copper cable circuit with distance dependent performance of limited bandwidth from 300 to 50,000 Hz.
- 2.2 Applications such as Line power feeding will not be supported.

Agreed Use

- 2.3 The Agreed Use for a Data Grade LAL and the operation of the associated Colocation Equipment in relation to that Data Grade LAL will be the carriage of telecommunications services from 300 Hz to 50,000 Hz that are supplied under the LAL Requester's Licence over its Network, including the carriage of basic rate ISDN services on copper circuits within the above specified bandwidth limitations.

PART 3 - T1 LAL

- 3.1 The Parties acknowledge that:
 - (a) for a period of 1 month after the date of this Agreement they will use their respective bona fide best efforts to agree the terms and conditions on which they will supply "T1 Grade LALs" to each other; and
 - (b) when those terms and conditions are agreed this Agreement will be amended accordingly to the extent necessary to accommodate any different terms applying to such T1 Grade LALs.

PART 4 - MINIMUM QUANTITIES

4.1 The Minimum Quantities are:

End of period

Minimum quantity of LALs*

*A minimum of 5 % of the minimum quantity must be for Data Grade LALs.

**SCHEDULE 2
EQUIPMENT AND ENVIRONMENTAL SPECIFICATIONS**

PART 1 - LAL PROVIDER EQUIPMENT

Customer End Equipment includes customer termination points, connectors, or sockets or other devices for the termination of the LAL.

Exchange Equipment includes of those equipment, frames, equipment racks, terminating points and tie cables situated in the associated Exchange Site for the LAL.

PART 2 - COLOCATION EQUIPMENT

1. The colocation equipment is strictly limited to:
 - (a) optical line terminating equipment;
 - (b) DS3 to DS1 multiplexing equipment;
 - (c) digital cross connect systems;
 - (d) cross connect frames and portable test equipment; and
 - (e) equipment specifically approved by the LAL Provider as part of an Accepted Site Application that is necessary for the termination of LALs that must be located at the relevant Exchange Site where the equipment performs limited call concentration functions and it is not reasonable for these functions to be provided at another site and the Parties will discuss and seek to agree in good faith any relevant parameters that may apply in this regard.

PART 3 - COLOCATION FACILITIES AND ENVIRONMENTAL CONDITIONS

1. General facilities and environmental conditions:
 - (a) Non fire rated, upper-glazed lower-louvered partition.
 - (b) The maximum measurement for a typical floor to true ceiling height is 3.4 meters in area where equipment is located. The nominal clear height can be used by the LAL Requester for equipment and cable rack is 2.5 meters.
 - (c) Environmental conditions:

(i) Temperature	26 degrees C, not exceeding 28 degrees C
(ii) Humidity	40% - 70%
(iii) Heat Dissipation	80 BTU/hr/sq ft, maximum
(iv) Floor Loading Capacity	7kPa

Note : The temperature and humidity figures refers to nominal values and may have long periods of deviations in case of air-conditioning plant failure; provided that in the event of such failure the LAL Provider will treat the LAL Requester's equipment

in the same manner as it treat its own equivalent equipment located in the vicinity of the LAL Requester's equipment.

2. Fire Detection and Suppression
 - (a) BTM total flooding system
 - (b) Pre-action sprinkler system
 - (c) Smoke and heat detection system
 - (d) Manual fire fighting systems

Note: Type of fire fighting system will be the same as that currently provided in that exchange.

3. Security
 - (a) Key lock system.
 - (b) Access by LAL Requester must be under supervision of LAL Provider, and must be in accordance with the Access Terms specified in Schedule 7.

Schedule 3:

List of telephone exchanges or districts would like to
implement equipment colocation for customer access purpose
progressively.

SCHEDULE 4

CHARGES SCHEDULE

1. Definitions and Interpretation

- 1.1 Terms defined in the Agreement apply in this Schedule unless the context requires otherwise.
- 1.2 The amount of Charges and their adjustments as specified in this Schedule are applicable for a period of 2 years from the date of the Agreement, and will be subject to variation under clause 11.3 of this Schedule in accordance with clause 17.4 of the Agreement.
- 1.3 Charges payable by the LAL Requester for use of any lead-in or cabling facilities at the Exchange Site have not been included in this Schedule.

2. Site Set-up Charge

- 2.1 The LAL Requester must pay Site Set-up Charge for the Preparation Work conducted by the LAL Provider in respect of each Colocation Space.
- 2.2 The Site Set-up Charge is a one-off charge quoted by the LAL Provider on a case-by-case basis to cover the Preparation Work in relation to the actual area of the Colocation Space. Notwithstanding the above, the Site Set-up Charge will be calculated based on a minimum of 5 square meters if the area of the relevant Colocation Space is smaller than 5 square meters.
- 2.3 A quote of the Site Set-up Charge will be provided by the LAL Provider at the same time it presents the design and work plan of the Colocation Space ("Plan") to the LAL Requester. The quote will be based on information available to the LAL Provider as of the date of the Plan.
- 2.4 The LAL Provider will not commence work proposed in the Plan until the Parties have agreed on the amount of Site Set-up Charges, unless both Parties agree otherwise.

3. Site Occupation Charge

- 3.1 The Site Occupation Charge shall be calculated at the monthly rate set out below:

Exchange Site		
Monthly amount per square meter	HK\$475	HK\$475

3.2 The amounts stated in clause 3.1 will be adjusted annually based on the market rent of commercial buildings.

4. Site Management Charge

4.1 Site Management Charge represents the LAL Requester's share of the building management fee for the specified Exchange Site and shall be calculated at the monthly rates set out below:

Exchange Site		
Monthly amount per square meter	HK\$50	HK\$50

4.2 The amounts stated in clause 4.1 will be adjusted annually based on the market rate of management fees payable for commercial buildings.

4.3 If the LAL Requester wishes to have any work done to any part of the Colocation Space or to any of the facilities associated with the Colocation Space, the LAL Provider will provide the LAL Requester with a quote of the charge payable for the work.

4.4 On termination of the Agreement or earlier cancellation of its requirement for Colocation at an Exchange the LAL Requester will make good the Colocation Space or pay the LAL Provider's reasonable costs of making good the Colocation Space.

5. Site Facilities Charges

5.1 The amount of the Site Facilities Charge will include facilities and services set out in the table below and calculated at their corresponding rates:

	Facilities and services available to LAL Requester at a Colocation Space	Monthly payment by LAL Requester	Annual Adjustment
a)	Basic facilities : routine maintenance of basic facilities (including air-conditioning, fire detection and fighting system) by LAL Provider	\$150 per square meter	CPI

b)	Capacity for AC Power : routine maintenance of AC power distribution system by LAL Provider (Note: priority access to AC back-up power is not covered)	\$300 per 5kVA of non-essential AC power capacity \$600 per 5kVA of essential AC power capacity	CPI
c)	Usage of AC Power : AC power consumed by LAL Requester	According to bill issued by electricity company	According to adjustment by electricity company
d)	Capacity for DC Power : routine maintenance of DC power generation and distribution system by LAL Provider (Note: priority access to DC back-up power is not covered)	\$1130 per kW (any necessary facility upgrading to accommodate a Colocation Equipment is not covered)	CPI
e)	Usage of DC Power : DC power consumed by LAL Requester	Quoted based on the Colocation Equipment load	According to any adjustment to rates for AC power by electricity company
f)	Rates & other government charges : contribution to rates and other government charges in respect of an Exchange Site.	Quoted based on evaluation by Government	According to any adjustment by Government
g)	Insurance : contribution to insurance premium in respect of an Exchange Site.	Quoted on a case-by-case basis	According to any adjustment by insurance company
h)	Others : any other facilities or services agreed by the Parties in finalising the Plan for a Colocation Space	As may be agreed in the Plan	As may be agreed in the Plan

5.2 The amounts stated in clause 5.1 as being subject to CPI adjustment will be revised each year in accordance with clause 11.1.

- 5.3 Subject to clause 5.4, in addition to the adjustments described in clause 5.1, the LAL Provider may, by 1 month's prior notice to the LAL Requester, increase the Site Facilities Charge if :
- (a) the DC power consumption of the Colocation Equipment located in a Colocation Space exceeds 150A per 20 square meters; or
 - (b) the heat dissipated by the Colocation Equipment located in a Colocation Space exceeds 80BTU/hour/square foot.
- 5.4 The Parties will use their best efforts to agree, within 2 weeks of the date of the Agreement, arrangements for the provision of DC power referred to in clause 5.3 and matters specified in clauses 5.1(e) to (g). If these matters cannot be agreed within the said weeks, the matter will be referred for resolution under clause 20 of the Agreement.
- 5.5 If the Parties are not able to agree charging and power loading for the DC power capacity under clause 5.1(d), the LAL Requester may provide its own DC power capacity and in that event, the area of allocated Colocation Space will be increased by a maximum of 5 square meters to the extent required for that DC power capacity. In the circumstance where the LAL Requester decides to provision its own DC power capacity, it may request that the LAL Provider provides it with backup DC power to be associated with the LAL Requester's own DC power capacity, and subject to availability and the Parties reaching an agreement on the charges payable by the LAL Requester, the LAL Provider will provide the backup DC power described above.
- 5.6 Without prejudice to clauses 5.2 and 5.3, the Parties will review the amount to be paid for Site Facilities Charges months after the date of the Agreement.

6. Site Supervision Charge

- 6.1 The LAL Provider will invoice the LAL Requester for Site Supervision Charge based on the actual number of man-hours spent by the representative(s) of the LAL Provider to supervise access by the LAL Requester to the Colocation Space during the period identified in the invoice.
- 6.2 The Site Supervision Charge will be calculated by multiplying the actual number of man-hours spent by the representative(s) of the LAL Provider with the prevailing man-hour rate charged by the LAL Provider. Each Party shall from time to time notify the other Party of its prevailing man-hour rates and at any time upon request by the other Party.
- 6.3 As of the date of the Agreement, 's man-hour rates are as follows :
- (a) during normal working hours HK\$264
 - (b) outside 's normal working hours HK\$334

In respect of each occasion of work performed by _____ under paragraph (b), New T&T must pay for a minimum of _____ nan-hours and any travelling expenses incurred to perform work during the hours specified in that paragraph.

7. Site Cancellation Charge

7.1 If the LAL Requester cancels an Accepted Site 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.

7.2 If the LAL Requester cancels an Accepted Site Application after the Parties have agreed to the design for the Colocation Space, the LAL Requester must pay Cancellation Charge as follows :

<u>Cancellation of Site</u>	<u>Site Cancellation Charge</u>
-----------------------------	---------------------------------

7.3 If the LAL Requester cancels the Colocation Space after the Actual RFU Date for that space and within the Site Minimum Commitment Period, it must pay the unpaid balance of the aggregate amount of Site Occupation Charge, Site Management Charge and Site Facilities Charge (other than items listed as clause 5.1 (c) and (e)) that would otherwise be payable for the duration of the Minimum Commitment Period.

8. LAL Connection and Periodic Charge

8.1 The amounts payable for LAL Connection Charge and LAL Periodic Charge are as set out below.

each urban LAL	LAL Connection Charge (one-off amount)	LAL Periodic Charge (per month)
Voice Grade	\$560	\$55
Data Grade	\$1,400	\$110

each rural LAL	LAL Connection Charge (one-off amount)	LAL Periodic Charge (per month)
Voice Grade	\$800	\$145

- 8.2 The amounts stated in clause 8.1 will be revised each year in accordance with the CPI adjustment set out in clause 11.2 of this Schedule.
- 8.3 The rates for urban LAL are applicable for LAL to be provisioned from Exchange Sites in Admiralty and Shaukeiwan.
- 8.4 A list of rural areas is attached to this Schedule as Attachment A. The list is only for reference, and only when the LAL Requester applies to add an exchange to the Exchange Sites in Schedule 3, the LAL Provider will confirm whether the rates for Urban LAL or Rural LAL are applicable to LAL provisioned from the requested additional exchange.

9. LAL Cancellation Charge

- 9.1 If the LAL Requester cancels an Accepted LAL Order before the Planned RFU Date, it must pay a LAL Cancellation Charge as follows :

<u>Cancellation of LAL</u>	<u>LAL Cancellation Charge</u>
On the date of acceptance of Order	nil
between date of acceptance of Order and and 3 days before Planned RFU Date	50% of LAL Connection Charge
within 3 days before Planned RFU Date	100% of LAL Connection Charge

10. LAL Minimum Commitment Charge

- 10.1 Following the end of each period specified in Part 3 of Schedule 1 the LAL Requester will be required to pay, for each month that the applicable minimum quantity is not reached, a Minimum Commitment Charge equivalent to the sum of paragraphs (a) and (b) below.

- (a) In respect of the aggregate quantity of Voice Grade LAL and Data Grade LAL, if the actual quantity ordered and paid for by the LAL Requester at the end of a month is less than the applicable minimum quantity for that month, the additional amount payable shall be:

$$(\text{minimum quantity} - \text{actual quantity}) \times (\text{Periodic Charge for Voice Grade LAL})$$

- (b) In respect of Data Grade LAL, if the actual quantity ordered and paid for by the LAL Requester at the end of a month is less than the applicable minimum quantity for that month, the additional amount payable shall be:

(minimum quantity - actual quantity) x (Periodic Charge for Data Grade LAL - Periodic Charge for Voice Grade LAL)

- 10.2 The Minimum Commitment Charge shall be calculated at the end of each month and any amount payable shall be included in the invoice issued for the immediately following month.

11. CPI Adjustment

- 11.1 Charges specified in clause 5 as being subject to CPI adjustment will be adjusted in accordance with the following formula on and from each Review Date until the next Review Date:

$$A = B \times (C/D)$$

- 11.2 Charges specified in clause 8 as being subject to CPI adjustment will be adjusted in accordance with the following formula on and from each Review Date until the next Review Date:

$$A = B \times (C/D - 0.01)$$

- 11.3 If the Parties are unable to agree revised Charges in accordance with clause 17.4 of the Agreement to apply on and from the Review Date specified in clause 17.3 then the Charges will be adjusted in accordance with the following formula on and from each Review Date until the next Review Date:

$$A = B \times (C/D + 0.04)$$

provided that if _____ has made a written offer that is lower than the Charge calculated in accordance with this clause prior to the Review Date specified in clause 17.4 then that Charge will apply on and from that Review Date.

- 11.4 For the purpose of clauses 11.1, 11.2 and 11.3, the following will apply:

A is the adjusted amount which applies on and from the Review Date

B is the amount of the relevant charge as at the Base Date

C is the CPI(A) index for Hong Kong last published before the Review Date

D is the CPI(A) index for Hong Kong last published before the Base Date

The **Base Date** is _____, and for each subsequent review after the first review, is the anniversary of that date immediately prior to that Review Date.

The **Review Date** is each anniversary of the Base Date.

- 11.4 If the CPI(A) for Hong Kong ceases to be published quarterly, then for the purposes of applying this clause, the CPI(A) for Hong Kong is to be replaced by the nearest equivalent index published at that time.
- 11.5 If any adjustments are made in accordance with this clause, and the adjustment commences on a date other than the first day of a calendar month, the charges due for that month should be re-calculated, pro-rata, on a month basis.

12. Billing

- 12.1 The LAL Provider will issue and send invoices to the LAL Requester on a monthly basis in accordance with the terms set out in this Schedule. Each invoice should include the following details:
- (a) invoice issue date and invoice number
 - (b) invoice due date
 - (c) any brought forward amount of previous invoices
 - (d) amount payable for each category of Charges in respect of the month covered by invoice
 - (e) interests on any overdue amounts
 - (f) total amount payable
- 12.2 Charges that are recurrent will be payable one month in advance and will be billed, unless otherwise agreed, on a monthly basis.
- 12.3 An invoice for all Charges (other than charges that are recurrent) payable in respect of any month will be issued at the beginning of the immediately following month.
- 12.4 The LAL Provider will issue a consolidated invoice for all Charges payable in respect of a specified month.
- 12.5 Invoices will be issued on or before the of each calendar month.
- 12.6 Invoices must be either delivered by hand or by mail. Invoices should be sent to the relevant persons notified by each Party (or such other person that person may authorise in writing) to the other at the respective address of each Party referred to in the Notice section of the Agreement and will be deemed to have been received as set out in that clause.

13. Payment

- 13.1 Unless otherwise agreed to by the LAL Provider, all invoices must be settled in Hong Kong dollars by company cheques made payable to the LAL Provider or by

electronic transfer to the nominated bank account of the LAL Provider. Payment must be credited to the LAL Provider on or before the invoice due date.

- 13.2 Subject to clause 13.6 of this Schedule, all payments of invoices must be without set off or counterclaim and free and clear of any withholding or deduction (including but not limited to a withholding or deduction in respect of any Tax).
- 13.3 Invoiced amounts, other than any brought forward amount of previous invoices and overdue interests, are due in full within calendar days from the date of issue of the invoice or next working day if it is a holiday. For clarity, the invoice issue date should not be earlier than the dispatch date of that invoice. Overdue interest is due immediately.

Late Payment of Invoice

- 13.4 If an invoice is not paid by the invoice due date, the LAL Requester must pay 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 the LAL Provider. Interest will continue to accrue despite termination of the Agreement.

Non-payment

- 13.5 All disputes concerning invoices which remain outstanding and unpaid should be settled in accordance with the dispute resolution procedures set out in clause 14 of this Schedule.

Payment of Disputed Items

- 13.6 If the LAL Requester bona fide disputes an invoice, it must pay that portion of the invoiced amount which is not disputed. Overdue interest 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 LAL Requester complies with the terms set out in clause 14 of this Schedule.

14. Dispute Resolution

Notification of Dispute

- 14.1 If the LAL Requester disputes an invoice, the LAL Requester may notify the LAL Provider in writing specifying:
- (a) the invoice in dispute
 - (b) the amount in dispute

- (c) reasons for dispute
- (d) supporting documentation as appropriate.

14.2 Notification of dispute must be delivered by hand or by post or by facsimile (as permitted and in accordance with clause 22 of the Agreement) and must reach the LAL Provider within days from the date of receipt of the invoice by the LAL Requester.

Late Notification

14.3 Any dispute raised after days from date of receipt of the invoice by the paying party will not be considered a disputed item, and the invoice must be settled in full by the invoice due date.

Dispute Investigation

14.4 In respect of any dispute, the Parties will investigate any discrepancy that may have occurred in relation to the disputed items. Alternatively, the Parties will arrange for joint investigation whether there is substantial discrepancy between the records maintained by the parties.

14.5 A dispute is not valid if there is no substantial error found in respect of the invoice in dispute within Business Days from the dispute notification date. If the dispute is not valid, the paying party must pay overdue interest commencing from the original invoice due date.

14.6 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. Before the dispute is referred to an expert, the Party raising the dispute must be informed as to the estimated cost of resolving the dispute.

14.7 The Parties must reasonably cooperate 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 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

15. Resolution

- 15.1 Following the dispute investigation, the LAL Requester must pay the amount assessed to be payable and overdue interest on the assessed amount to be calculated from the original invoice due date to the actual payment date.
- 15.2 Following the dispute investigation, the LAL Provider must refund any overpaid amount received from the LAL Requester and must also pay interests on such refunded amount to be calculated from the original invoice due date to the refund date.
- 15.3 Any amount (including principle and interest) assessed to be payable following the dispute resolution must be settled within Business Days of the dispute resolution date.
- 15.4 If the LAL Provider does not receive the outstanding principle and interest within Business Days from the dispute resolution day, it may include overdue interest in respect of these amounts in the next invoice issued to the LAL Requester.

Attachment A to Schedule 4

Rural

**SCHEDULE 5
PREPARATION WORK**

The Preparation Work to be performed by the LAL Provider includes:

- (a) design and planning support regarding the physical arrangement of the Colocation Equipment;
- (b) constructing walls, ceilings, floors, doors and other facilities around the Colocation Space to separate that space from space ordinarily accessed by the LAL Provider's employees;
- (c) constructing walls, ceilings, floors, door and other facilities within the Exchange Site;
- (d) repair work;
- (e) installing facilities for DC and AC power supply (including isolation fuses on any DC power feeds), air-conditioning equipment, and lighting;
- (f) installing fire protection equipment;
- (g) installing or augmenting security arrangements;
- (h) installing or extending cable trays and iron work;
- (i) installing or extending false flooring;
- (j) installing / running inter frames connection cables; and
- (k) other requests by the LAL Requester.

On agreement the LAL Provider may perform work in respect of nearby manholes or ducts and leads between the nearby manhole and the network side of the Colocation Equipment ("Work"). That Work may be undertaken under this or another agreement. New T&T has indicated a desire to self-build and the Parties will in due course negotiate in good faith the arrangements in relation to the Work.

**SCHEDULE 6
PROVISIONING AND MAINTENANCE TARGETS**

1. STANDARD PROVISIONING TARGETS FOR LALS

1.1 The LAL Provider will use its reasonable efforts to provision the LAL requested in a LAL Order within a period from the date of acceptance of the LAL Order of:

- (a) calendar days in the case of Voice Grade LALs for business premises;
- (b) calendar days in the case of Voice Grade LALs for residential premises;
- (c) calendar days in the case of Data Grade LALs for business premises.

1.2 The Parties acknowledge that the following factors may affect the ability of the LAL Provider to meet the provisioning targets in paragraph 1.1:

- (a) a site visit is required;
- (b) the cabling facility for block wiring at customer's premises is not available;
- (c) line removal and line upgrade;
- (d) installation of a number of LALs is required within a short time frame;
- (e) permission of building management is required for installing building cables;
- (f) work by the LAL Requester or customer is required; and
- (g) Customer Interface Space is not readily accessible.

2. STANDARD MAINTENANCE TARGETS FOR LALS

2.1 The LAL Provider will use its reasonable efforts to achieve restoration after being notified of a fault by the LAL Requester within the following periods:

- (a) Voice Grade LALs for business premises - hours;
- (b) Voice Grade LALs for residential premises - by the end of the day;
- (c) Data Grade LALs for business premises - hours;

2.2 The Parties acknowledge that the following factors may affect the ability of the LAL Provider to meet the maintenance targets in paragraph 1.2:

- (a) customer premise is inaccessible
- (b) power failure at Customer Interface Space
- (c) additional time awaiting approval from the LAL Requester and/or customer's agent
- (d) natural disaster
- (e) major cable fault
- (f) weather constraints

- (g) public transportation is not available
- (h) the LAL is in a Rural Area or an inaccessible area

* Weather constraints are defined as thunderstorm, black rain storm or typhoon warnings which may affect staff safety on carrying out repair duties.

3. TARGET MAKE READY FOR COLOCATION SPACE

3.1 will use its reasonable efforts to perform the Preparation Work at an Exchange Site as set out in an Accepted Site Application within the following time periods:

- (a) Clarification of requirements with the LAL Requester ;
- (b) Design and Planning Work by the LAL Provider ; and
- (c) Construction work for the set-up of Colocation Space -

3.2 The Parties must discuss and agree the design requirements and Charges before commencement of construction and will endeavour to agree the Charges for that construction work within after completion of the design and planning work.

3.3 The LAL Requester acknowledges that in respect of the Exchange Sites other than Admiralty and Shau Kei Wan the timescales in paragraph 3.1 may be affected by:

- (a) requirements of the LAL Requester in relation to the relevant Colocation Space relevantly different to those applying to the Admiralty or Shau Kei Wan sites; and
- (c) site conditions that are relevantly different to those applying to the Admiralty or Shau Kei Wan sites

4. REVIEW OF PROVISIONING AND MAINTENANCE PROCEDURES

4.1 As soon as practicable after the date of this Agreement Parties will review and negotiate in good faith to conclude within a maximum period of after the date of this Agreement more detailed provisioning and maintenance procedures which will be included in the Operational Manual.

4.2 The LAL Provider agrees that the provisioning and maintenance of a category of LALs under this Agreement will be no worse than the standard provisioning and maintenance performed by the LAL Provider for the generality of its customers for a category of DELs where the category of LALs is equivalent to that category of DELs in all relevant respects and the relevant Customer of the LAL Requester is similiarly situated in all relevant respects to those DEL customers for the performance of that provisioning and maintenance.

**SCHEDULE 7
ACCESS TERMS**

1. DEFINITIONS

- 1.1 In this Schedule, defined terms have the same meaning ascribed to them in the Agreement and the following words have the following meanings unless the contrary intention appears:

"Authorised Representative" means an employee, agent or contractor of the LAL Requester duly authorised by it to physically access the Colocation Space in accordance with the Agreement and this Schedule.

"Entry Notification" means a written notice by the LAL Requester seeking physical access to Colocation Space for one or more of the Agreed Purpose under the Agreement.

2. AGREED PURPOSE

- 2.1 Subject to the terms and conditions of this Schedule, the Agreed Purpose for the LAL Requester's physical access to the Colocation Space will be:

- (a) carrying out site survey prior to delivery of the Colocation Equipment;
- (b) delivering the Colocation Equipment;
- (c) performing planned installation, testing and maintenance work on the Colocation Equipment;
- (d) performing day to day operational work - inventory management and connection work on the Colocation Equipment in accordance with the Operational Manual; and
- (e) performing service restoration, network restoration or other emergency maintenance work in accordance with the Operational Manual.

- 2.2 The Agreed Purpose for the LAL Requester's use of Colocation Space will be the location and operation of Colocation Equipment that is used for its Agreed Use and connected to LALs used for their Agreed Use.

3. ACCESS TO EXCHANGES

- 3.1 LAL Requester must ensure that all its employees, agents and contractors who physically access the Exchange Sites and/or perform work at or in the Colocation Space :

- (a) are Authorised Representatives;
- (b) will only seek access to and access an Colocation Space solely for an Agreed Purpose;
- (c) have the skills and qualifications needed to carry out work required by the LAL Requester safely and competently; and
- (d) comply with the Agreement and this Schedule in all respects.

- 3.2 In accessing an Colocation Space, each Authorised Representative must produce a legal identification document (which may be a valid passport or a Hong Kong identity card), and a valid staff card (if requested by the LAL Provider). Any Authorised Representative who is not an employee of the LAL Requester will only be allowed access to an Colocation Space if accompanied by an Authorised Representative who is an employee of the LAL Requester. The LAL Requester will supply the LAL Provider a list of Authorised Representatives. Additions to this list will be notified 5 days in advance of the authorisation being recognised by the LAL Provider. Deletions from the list must also be notified and effected immediately.
- 3.3 Any person who is not an Authorised Representative wishing to access the Colocation Space for an Agreed Purpose must (a) produce legal identification documents described in clause 3.2 above, and (b) be accompanied by an Authorised Representative at all times when physically accessing the Colocation Space.
- 3.4 If any Authorised Representative breaches the Agreement or this Schedule, the LAL Provider may decline in the future to provide access to that person under this Agreement. Any such refusal to provide access shall be made on reasonable grounds.
- 3.5 All acts and omissions by the LAL Requester's employee, agent or contractor seeking access to or accessing an Exchange Site of any of the terms set out in this Schedule are deemed to be acts or omissions by the LAL Requester. Any knowledge of the LAL Requester regarding the Access Terms is imputed to its employees, agents and contractors, and any such knowledge regarding the Access Terms of such an employee, agent or contractor is imputed to the LAL Requester.

4. ACCESS PROCEDURES

- 4.1 On every occasion that the LAL Requester intends to physically access the Colocation Space, it must provide the LAL Provider with an Entry Notification.
- 4.2 The LAL Requester may gain physical access to Exchange Colocation Space during the normal working hours for that part of the Exchange Site if:
- (a) for a purpose under clause 2.1(a) to (c), the LAL Requester has given the Entry Notification in writing to the LAL Provider no less than Business Days before the requested date of access;
 - (b) for purpose under clause 2.1(d), Entry Notification shall be given no less than Business Day before the requested date of access; and
 - (c) in the case of an emergency under clause 2.1(e), the LAL Requester orally requests such access and the information otherwise provided in an Entry Notification is given at the time of the oral request.
- 4.3 An Entry Notification provided by the LAL Requester (whether orally or in writing) must include the following information:
- (a) the name, identification document number, staff card number and work title of the Authorised Representative [who is an employee of the LAL Requester] and who will

be responsible for the other Authorised Representatives for whom physical access is requested;

- (b) the name, identification document number, employer and work title of each of the other proposed Authorised Representatives who will be accompanying the Authorised Representative described in paragraph (a) above;
 - (c) the purpose for which physical access is requested in reasonable detail;
 - (d) when, and an estimate of the time during which, physical access is requested; and
 - (e) the Colocation Space to be accessed.
- 4.4 Entry Notification (oral or in writing) must be communicated to the Customer Access Fault Reporting Point (CAFRP) of the LAL Provider or any other department nominated by the LAL Provider from time to time.
- 4.5 Notwithstanding clause 4.2, if the LAL Requester wishes to have any equipment or material delivered to an Exchange Site, the LAL Requester must:
- (a) send an Entry Notification to the LAL Provider Business Days before the proposed date of delivery provided that if the LAL Provider must do more than provide an Authorised Representative to facilitate that delivery a longer period of notice will be required; and
 - (b) have an Authorised Representative present at the Exchange Site to accept delivery.
- 4.6 The LAL Provider will respond within Business Days of receiving an Entry Notification given under clause 4.2(a), 4.2(b) or 4.5, within hours of receiving an Entry Notification received under clause 4.2(b), and within of receiving an Entry Notification received under clause 4.2 (c) . In its response, the LAL Provider must either :
- (a) state that the access as requested is permitted and confirm the time and date for access by the LAL Requester's Authorised Representative(s);
 - (b) request further information if the Entry Notification received from the LAL Requester under clause 4.3 is incomplete; or
 - (c) deny the request for access stating the reason set out in clause 4.7.
- 4.7 The LAL Provider may refuse the LAL Requester physical access to the Exchange Site and stating the reason for the refusal if:
- (a) the LAL Provider determines that the Exchange Site is unsafe; or
 - (b) the LAL Provider determines that the LAL Requester is, or is likely to be in material breach of the Agreement in respect of the Colocation Space to which physical access is sought; or

- (c) no reason is given for the access sought or the reason given is inconsistent with the Agreed Purpose.

4.8 If the LAL Provider denies a request for access, it must state the reason for the refusal and give good faith consideration to any amended Entry Notification lodged by the LAL Requester.

5. ACCESS CONDITIONS

5.1 The LAL Requester may:

- (a) physically access a Colocation Space only if an LAL Provider's representative is in attendance at all times; and
- (b) physically access each Colocation Space only through that part of the Exchange Site for which approval has been granted.

5.2 The LAL Requester must :

- (a) in relation to any access, comply with:
 - (i) security requirements, safety standards and code of conduct of the LAL Provider which are applicable to the Exchange Sites and as advised by the LAL Provider;
 - (ii) relevant laws of or applicable to Hong Kong; and
 - (iii) directions of the LAL Provider which are generally applicable to its exchanges in relation to fire prevention, safety, security, and the normal functioning of network;
 - (b) promptly notify the LAL Provider of any fault, defect or problem with the Colocation Space or its vicinity which comes to the attention of the LAL Requester;
 - (c) ensure that Colocation Space is left in a safe and clean condition on each occasion of access to the Colocation Space;
 - (d) ensure that physical access to Colocation Space is not blocked or otherwise obstructed by the Colocation Equipment or any other objects or material;
 - (e) ensure that flammable, hazardous, or explosive material is not left in or around the Colocation Space; or
 - (f) conduct such maintenance of the Colocation Space as may be agreed by the Parties in the Implementation Plan.
- 5.3 The LAL Requester must ensure that each of its Authorised Representatives physically accessing a Colocation Space:

- (a) complies with all of the terms and conditions imposed on the LAL Requester under this Schedule;
- (b) has been approved by the LAL Requester in respect of security status, skills and qualifications; and
- (c) signs a log book in which is recorded the name of the person, date and time of entry and departure from the building in which the Colocation Space is situated;
- (d) informs the LAL Provider as soon as reasonably practicable after work in the relevant Colocation Space has been completed and all of the LAL Requester's personnel have left the Colocation Space; and
- (e) promptly complies with the reasonable directions of the LAL Provider in relation to safety at and security and normal functioning of the relevant Exchange.

6. RESTRICTIONS

6.1 The LAL Requester must not:

- (a) access or use the Colocation Space in any manner inconsistent with the Agreement or for any purpose other than as specifically authorised in the Agreement;
- (b) bring any equipment, goods, or chattels into the Colocation Space which is not necessary for the purpose of maintaining or operating the Colocation Equipment;
- (c) access any areas of the Exchange Site other than the Colocation Space, and such access areas approved in writing by the LAL Provider as being required to be accessed by the LAL Requester for fault restoration on a case by case basis;
- (d) cause any nuisance, interference, disturbance, inconvenience, hazard or danger to neighbouring premises of the Colocation Space or to any property in the neighbourhood of the Colocation Space;
- (e) inspect or record any image, notes or data of or in relation to any equipment at the Exchange other than the Colocation Equipment;
- (f) put any objects or material outside the Colocation Space;
- (g) seek to extend or increase electrical power wiring within the Colocation Space; or
- (h) make any alteration to the Colocation Space or alter the existing locks, bolts and fittings on the entrance door to the Colocation Space, or install any additional locks, bolts or fittings.

6.2 The LAL Requester must not do or permit or suffer to be done or omit to do anything in connection with access or physical access to Colocation Space under this Schedule that may:

- (a) threaten the safety or security of:
 - (i) employees or customers of the LAL Provider; or

- (ii) any third person or employees or customers or any third person; or
 - (iii) property of the LAL Provider; or
 - (iv) the property of any third person; or
- (b) cause damage to:
- (i) the property or facilities of the LAL Provider; or
 - (ii) the property or facilities of any third person; or
- (c) interfere with the delivery of telecommunications service supplied or to be supplied by the LAL Provider or any other third person; or
- (d) jeopardise the integrity or confidentiality or communications within the network of the LAL Provider or a third person; or
- (e) cause any insurance on the Exchange against loss or damage by fire and other calamities and/or claims by third parties for the time being in force may be rendered void or voidable or whereby the premium thereof may be increased, as may be informed by the LAL Provider.

7. GENERAL

- 7.1 Nothing in this Schedule is to be construed as vesting in the LAL Requester:
- (a) any right, title, possessory or proprietary interest in any Colocation Space, and does not create any lease agreement or analogous arrangement; and
 - (b) any right in respect of any Colocation Space, the grant or enjoyment of which would breach any arrangement with a third person in respect of that Colocation Space.
- 7.2 The LAL Requester must not grant a third person either physical access to, or a right to locate third person's equipment in, Colocation Space and the LAL Requester's rights under this Schedule are not assignable to any person.
- 7.3 The LAL Provider may inspect, temporarily remove (for no more than 24 hours on each incident), and copy the log book referred to in clause 5.3.
- 7.4 The LAL Requester must pay the reasonable direct costs of any work which the LAL Provider has to undertake in relation to the sprinkler, fire alarm, fire prevention, security system, power supply or other facilities at an Exchange which become necessary because of non-compliance of this Schedule by the LAL Requester.
- 7.5 Subject to clause 7.6, the LAL Provider will enter the Colocation Space only with the express permission of the LAL Requester and for bona fide operational reasons. The LAL Provider will provide advance notice to the LAL Requester, and the length of such notice will be the same as that set out in clause 4.2.

- 7.6 Notwithstanding clause 7.5, in case of emergency, or where the safety, security or integrity of the Network is compromised, the LAL Provider may enter the Colocation Space without giving the required prior notification, provided that it informs the LAL Requester as soon as practicable within the same day.