

CUSTOMER ACCESS AGREEMENT

THIS AGREEMENT is made on

BETWEEN:

AND:

RECITAL:

This Agreement sets out the terms and conditions on 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 and using Leased Circuits for an Agreed Use; and
- (b) provide Customer Access Services to the other Party on a reciprocal basis on the terms and conditions of this Agreement by:
 - (i) providing and permitting the other Party to use LALs for an Agreed Use; and
 - (ii) providing and permitting the other Party to use Leased Circuits for an Agreed Use.

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 Service Requester and approved by the Service Provider under this Agreement.

“Accepted Service Order” means an order for a Customer Access Service or permitted part thereof by the Service Requester that has been received and accepted by the Service Provider under this Agreement.

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

“Agreed Purpose” in relation to the Service Requester’s access to and use of Requester Equipment Space means a purpose specified in paragraph 2 of Schedule 7.

“Agreed Use” in relation to a LAL or a Leased Circuit 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 Leased Circuit, a Requester Equipment Space or a LAL means the date the applicable RFU Notice is given by the Service Provider in accordance with this Agreement.

“Associate” in relation to a Party means a “subsidiary” of that Party a “holding company” of that Party or a “subsidiary” of the same “holding company” as those terms are defined in Companies Ordinance [Cap 32] of Hong Kong.

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

“Basic Service Charge” means the monthly fixed charge specified in Schedule 4 payable by the Service Requester in respect of each Exchange Site.

“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 Basic Service Charge;
- (c) the Site Management Charges;
- (d) the Site Supervision Charges;
- (e) the Site Cancellation Charges;
- (f) the Service Connection Charge;
- (g) the Service Periodic Charge;
- (h) the Service Cancellation Charge
- (i) the Service Relocation Charge;
- (j) the Service Minimum Commitment Charge; and
- (k) other charges provided for in this Agreement.

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

“Customer Access Service” means the provision by the Service Provider to the Service Requester of:

- (a) a LAL; and
- (b) the relevant part of the capacity on the Leased Circuit associated with that LAL;

and which for the avoidance of doubt does not include the Requester Equipment or any facilities owned or operated by the Service Requester.

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

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

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

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

“DEL” in relation to the Service Provider means that part of a local direct 2 wire copper exchange line owned by the Service Provider of a type 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 Service Provider’s Network.

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

“Exchange Site” means the premises for an exchange of the Service 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 Service Provider MDF and other equipment of the Service Provider located at an Exchange Site described in Part 1 of Schedule 2.

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

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

“Force Majeure” means anything outside the reasonable control of the Party including (insofar as it is outside the reasonable control of the party) 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, 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 Requester Equipment Space, means the plan described in clause 4.4(b) to be agreed by the Service Provider and the Service Requester in relation to the Preparation Work for Requester Equipment Space in accordance with clause 4.

“LAL” means a:

- (a) a Data Grade LAL; and
- (b) a Voice Grade LAL.

“Leased Circuit” means the dedicated E1 transmission capacity as described in the specifications in Schedule 8 to be provided by the Service Provider to the Service Requester under this Agreement from the relevant Switch Site Equipment to the point represented by the end of the Tie Cable which is connected to the Requester Equipment at the relevant Exchange Site.

“Leased Circuit O&P Procedures” means the procedures and terms and conditions in relation to the ordering and provisioning of Leased Circuits as set out in Schedule 8.

“Leased Circuit Provisioning Period” means the target provisioning periods commencing from the date of acceptance of the relevant order for a Leased Circuit, as set out in Schedule 8.

“Licence” in relation to:

- (a) _____, the Fixed Telecommunication Network Services Licence dated _____, granted to _____ under the Ordinance, as amended from time to time; and
- (b) _____, the Fixed Telecommunication Network Services Licence dated _____, granted to _____ under 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.

“O&M Manual” means the operational manual containing operational procedures and practices in relation to the supply and use of Customer Access Services under this Agreement to be negotiated or agreed after the date of this Agreement in accordance with clause 23.

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

“Party” means either of the Service Provider or the Service Requester and **“Parties”** means both of them.

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

“Preparation Work” in relation to a Requester Equipment Space, means the work described in Schedule 5 to be performed by the Service Provider in respect of that Exchange Site as set out in the Implementation Plan for that Requester Equipment Space.

“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.

“RFU Notice” means a notice given by the Service Provider informing the Service Requester that the identified Requester Equipment Space, LAL or Leased Circuit is Ready for Use.

“Ready for Use” in relation to:

- (a) a Requester Equipment Space means that the Service Provider has completed the Preparation Work for that space in accordance with the Implementation Plan;
- (b) a LAL means that the Service Provider has provisioned the LAL in accordance with this Agreement; and
- (c) a Leased Circuit means that the Service Provider has provisioned the Leased Circuit in accordance with this Agreement.

“Requester Switch Site” means one of the premises set out in Schedule 3 on the date of this Agreement or as subsequently amended in accordance with this Agreement by mutual agreement of the Parties at which the Service Requester locates and operates its FTNS switching equipment, which meets the distance restriction set out in this Agreement and at which capacity has already been established under the TNA Agreement for the termination of the Leased Circuits.

“Requester Equipment” means the equipment specified in Part 2 of Schedule 2 that the Parties have agreed may be located 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.

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

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

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

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

“Service Order” means a written request made by the Service Requester to the Service Provider in accordance with clause 7 and clause 9.1 requesting that the Service Provider provision one or more Customer Access Services or permitted part thereof under this Agreement.

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

“Service Provider” means the Party providing the Customer Access Service requested by the other Party and operating the Exchange Site at which the other Party requires Requester Equipment Space.

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

“Service Requester” means the Party requesting Customer Access Service and access to the Requester Equipment Space of the Service Provider.

“Site Application” means an application for Site Management Service in respect of a specified Requester Equipment Space setting out the information referred to in clause 3.

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

“Site Management Charges” means the recurring charges specified in Schedule 4 payable by the Service Requester to the Service Provider for Site Management Services.

“Site Management Services” means in relation to each Requester Equipment Space the services provided by the Service Provider to the Service Requester comprising

- (a) making available that Requester Equipment Space and
- (b) maintaining the Requester Equipment Space as described in the O&M Manual.

“Site Minimum Commitment Period” means a period of 2 years commencing from the Actual RFU Date of a Requester Equipment Space.

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

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

“Standard Delivery Period” means in relation to:

- (a) a LAL, the standard target delivery period that is specified in Schedule 6 for the provisioning of that LAL after the date of the applicable Accepted Service Order; and
- (b) a Leased Circuit, the standard target delivery period that is specified in Schedule 8 for the provisioning of that Leased Circuit after the date of the applicable Accepted Service Order; and
- (c) a Requester Equipment Space, the standard target delivery period that is specified in Schedule 6 for the completion of Preparation Work for that Requester Equipment Space after the date of the applicable Accepted Site Application.

“Switch Site Equipment” means equipment and other items belonging to the Service Provider which must reasonably be located at the ~~Requester Switch Site end of the Leased Circuit~~ for the purpose of providing the Leased Circuit in accordance with this Agreement and as further described in paragraph (c) of Part 1 of Schedule 2.

“TA” means the Telecommunications Authority of Hong Kong.

“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 connection 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.

"Tie Cable" means in relation to a Leased Circuit, the internal tie cable that connects the end of the Leased Circuit at the relevant Exchange Site to the Requester Equipment and in relation to a LAL, the internal tie cable that connects the end of the LAL at the relevant Exchange Site to the Requester Equipment.

"TNA Agreement" means the TNA Agreement between the Parties as supplemented by the Supplement to the Transmission Network Establishment Agreement dated

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

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 S is to Hong Kong dollars;
- (h) a reference to a charge means that charge as varied from time to time in accordance with this Agreement; and
- (i) a reference to an ordinance, regulation or licence is a reference to that ordinance, regulation or licence as amended or replaced from time to time.

1.3 If there is any inconsistency between clauses 1 to 28 of this Agreement and a Schedule or the O&M Manual or between any Schedules or between a Schedule and the O&M Manual the inconsistency will be resolved in the following order of preference:

- (a) clauses 1 to 28 of this Agreement;

- (b) the Schedules; and
- (c) the O&M Manual.

2. SCOPE OF AGREEMENT

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

- (a) each Party as the Service Requester may request Requester Equipment Space within Exchange Sites of the other Party as the Service Provider for an Agreed Purpose; and
- (b) the Service Provider will provide Site Management Services in respect of Requester Equipment Space at Exchange Sites for an Agreed Purpose and the Service Requester may use that Requester Equipment Space for an Agreed Purpose; and
- (c) each Party as the Service Requester may:
 - (i) request the other Party as the Service Provider to provision a Customer Access Service in accordance with this Agreement; and
 - (ii) only use each Customer Access Service for its Agreed Use;
- (d) the Service Provider will provision and maintain each Customer Access Service for the Service Requester in accordance with this Agreement; and
- (e) the Service Provider will provide access to Requester Equipment Space to the Service Requester for the purposes of the Service Requester locating and maintaining the Requester Equipment within that space for its Agreed Purpose.

3. REQUESTS FOR NEW EXCHANGE SITES

3.1 The Parties acknowledge that:

- (a) Schedule 3 sets out the initial Exchange Sites, the initial Requester Equipment Space (to the extent that Requester Space has been allocated as at the date of this Agreement) and the Planned RFU Dates for the initial Exchange Sites; and
- (b) clause 3.2 will apply to the Exchange Sites listed in paragraph (b) of Part B of Schedule 3 but will not apply to Exchange Sites listed in Part A of Schedule 3 or paragraph (a) of Part B of Schedule 3.

3.2 If the Service Requester requires Requester Equipment Space at any exchange sites of the Service Provider (other than an Exchange Site listed in Part A of Schedule 3 or paragraph (a) of Part B of Schedule 3) ("New Exchange Site"):

- (a) the Service Requester must notify the Service 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 10 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 Service 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 10 Business Days each Party will give its written reasons for disagreeing with the requirements of the other Party and the Parties will resolve any dispute in accordance with clause 22.

3.3 The Parties acknowledge and agree that:

- (a) 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 and that following the inclusion of a New Exchange Site in Schedule 3 a Site Application will be made within 9 months under clause 4; and,
- (b) an Exchange Site in Schedule 3 will be deemed to be removed from Schedule 3, if after 9 months from the date of this Agreement, a Site Application has not been made in respect of that Exchange Site

4. SITE APPLICATIONS FOR EXCHANGE SITES

4.1 Each Party acknowledges and agrees that:

- (a) the Service Requester may apply for a Requester Equipment Space or additional Requester Equipment Space by giving a Site Application to the Service Provider from time to time in respect of an Exchange Site;
- (b) clause 4.2 and 4.3 will not apply to the Exchange Sites listed in Part A of Schedule 3 in relation to the initial Requester Equipment Space as set out in Schedule 5 but will apply to all other Exchange Sites and additional space at the Exchange Sites listed in Part A of Schedule 3; and
- (c) on the date of this Agreement Site Applications are deemed to have been given and accepted for initial Requester Equipment Space at the Exchange Sites listed in Part A of Schedule 3 in accordance with clauses 4.2 and 4.3 and, to the extent that a complete Implementation Plan and Charges for the Preparation Work for those Requester Equipment Spaces has not been agreed at the date of this Agreement, the Parties will agree that Implementation Plan and those Charges in accordance with clauses 4.4 to 4.6 (except that clause 4.4 (b) will not be read as subject to clause 4.8 in respect of that Requester Equipment Space).

4.2 A Site Application must be in writing, and the Service Requester must use its reasonable endeavours to specify in the Site Application:

- (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 Requester Equipment to be located by the Service 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 Requester Equipment within that footprint;
- (e) a description of the site environment requirements of the nominated Requester Equipment;
- (f) the area (measured in square metres) required by the Service Requester at the Exchange Site over the period of 6 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 and, if no such area is specified, it will be deemed to be limited to the standard 10 square metres specified in Schedule 4;
- (g) the Forecasts provided by the Service Requester which support the Site Application;
- (h) the proposed Implementation Plan for the Exchange Site;
- (i) such other information that the Service Provider may have reasonably requested to assess the feasibility and the time required to meet Site Application before the date that the Service Provider receives the Site Application ; and
- (j) the Requester Switch Site to which the Requester Equipment is to be connected.

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

- (a) within 5 Business Days
 - (i) acknowledge receipt of the Site Application; and
 - (ii) notify the Service 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 Requester 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 4.8); and

- (b) within 15 Business Days of receipt of the Site Application notify the Service Requester:
 - (i) of any further information that is reasonably required by the Service Provider for the purpose of 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 5 Business Days of the Service Provider's notification under clause 4.3 (b):

- (a) the Service Requester must provide such further information that the Service Provider has reasonably requested under clause 4.3 (b);
- (b) subject to Clause 4.8, the Parties must meet and each Party must use its bona fide reasonable efforts to agree during the next 10 Business Days in accordance with Schedule 6 and Schedule 4:
 - (i) the Preparation Work that must be performed to make the applicable Exchange Site ready for use in accordance with this Agreement;
 - (ii) the Site Management Charges for the Requester Space at the Exchange Site; and
 - (iii) the Implementation Plan for the Preparation Work which will include:
 - A. the time required for the Service Provider to complete the design and planning work;
 - B. the date on which the Service Provider will provide an estimate of the amount of Charges payable by the Service Requester for Preparation Work at the Exchange Site;
 - C. the 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 Service 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 the Service Provider will commence the Preparation Work only if the Service Requester notifies the Service Provider that it agrees to the following conditions:
- (a) The Service Provider may invoice the Service Requester in accordance with the last quote given by the Service Provider for that Preparation Work ("Quote") and the Service Requester must pay that invoice subject to any repayment under this clause.
 - (b) The Service Requester may notify the Service Provider within 10 Business Days of the commencement of the Preparation Work that it wishes to have the Site Set Up Charges reviewed in accordance with this clause.
 - (c) If the Service Provider is notified under paragraph (b):
 - (i) the Service Provider will instruct its auditor to certify whether the Quote is an amount that would be calculated based on the costing approach normally used by the Service Provider for similar customer projects at the date of calculation and, if it does not, the amount of the actual Site Set Up Charge that would be calculated on this basis ; and
 - (ii) the auditor will provide that certification to the Service Provider and the Service Requester; and
 - (d) If the Service Requester continues to disagree with the Quote it may, within 10 Business Days of receipt of the certification from the Service Provider's auditor, request that the calculation of the Site Set-up Charges be reviewed by an independent third party auditor in which case:
 - (i) the Parties will agree a suitable third party auditor and, if they are unable to agree within 5 Business Days of the Service Requester's request for review by an independent third party auditor, the Parties will request the Hong Kong Society of Accountants, to nominate a suitable auditor with at least 10 years experience; and
 - (ii) the third party auditor will, after entering a confidentiality agreement required by the Service Provider, be allowed to review the information on which the Service Provider's auditor has based its certification and will certify whether or not the Quote is an amount that would be calculated based on the costing approach normally used by the Service Provider for similar customer projects at the date of calculation and, if not, the amount of the actual Site Set Up Charge that would comply with paragraph (c)(i); and
 - (e) If the auditor certifies that the actual Site Set Up Charges should be less or more than the Quote the Parties will discuss and implement any agreed payment by the Service

Provider to the Service Requester or by the Service Requester to the Service Provider so that the final Site Set Up Charges retained by the Service Provider are equal to the amount certified by the auditor.

- (f) The Service Requester will pay the auditors fees for completing any certification unless the auditor concludes that the Site Set Up Charges should be 10% or more less than the Quote in which case the Service Provider will bear that cost.

4.7 The Parties acknowledge and agree that:

- (a) subject to Schedule 6 and except as otherwise provided for in respect of the initial Exchange Sites in Part A of Schedule 3, the Standard Delivery Period for Requester Space is expected to 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 Service Requester requires Preparation Work to be undertaken in excess of that referred to in paragraph (a) the Service Provider will notify the Service 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 Notwithstanding Clauses 4.3 to 4.6 if the Service Requester requires Requester Equipment Space at an Exchange Site in addition to the equipment space specifically set out in Part A of Schedule 3:

- (a) the Service Requester must provide a Site Application in accordance with clause 4.1 in relation to that additional space;
- (b) the Service Provider will notify the Service Requester whether that space will be allocated to the Service Requester and may reject that Service Application if:
 - (i) the Service Requester's requirement for that space is not substantiated as evidenced by its Forecasts for the next 6 months in relation to that Exchange and rate of the provisioning of LALs at that Exchange during the previous 6 months;
 - (ii) the additional space is used by the Service Provider or any other person as at the date of receipt of the Site Application;
 - (iii) the additional space is reasonably required to be used by the Service Provider for its own purposes or the purposes of one of its Associates in relation to the supply of telecommunications services and associated functions during the period of 2 years after the proposed Planned RFU Date on the basis of the Service Provider's current business plans;

- (iv) 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) there is any restriction imposed on the Service Provider by the lessor of the applicable Exchange Site or a Government Agency which prevents the Requester Equipment Space from being made available;
 - (vi) there is any other relevant factor materially affecting the availability of the relevant equipment space;
 - (vii) there is any amount invoiced and due under this Agreement (not being an amount that the Service Requester is entitled to withhold as a disputed as under Schedule 4) remains outstanding as at the date of receipt of the Site Application in respect of any Exchange Site; or
 - (viii) a valid notice of termination has been given under clause 21.2;
- (c) the Service Provider will otherwise accept the Site Application; and
 - (d) if there is any dispute in relation to the need for that additional space to be allocated to the Service Requester or the availability of that additional space that dispute will be resolved in accordance with clause 22.

4.9 If the Service Requester has been allocated Requester Equipment Space and fails to use that space within 6 months of the Planned RFU Date (or such later delayed date, where the delay to the Planned RFU Date is materially caused by the Service Provider's act or default or by reason of Force Majeure) on the basis of which that Requester Equipment Space was allocated to the Service Requester and that space is required by the Service Provider for its own purposes or to allocate that space to any other person (including another Licensee) in accordance with clause 4.8(ii) to (iv):

- (a) the Service Provider will advise the Service Requester of the relevant space that is required for an alternative purpose;
- (b) the Service Requester will provide such information to the Service Provider as may be reasonably required by the Service Provider for the purpose of assessing whether the Requester Equipment Space is required by the Service Requester in the next 6 months;
- (c) if the Service Requester's requirement for that Requester Equipment Space during the next 6 months is not substantiated on the basis of the rate of the provisioning of LALs at that Exchange Site during the previous 6 months and its Forecast for the next 6 months, the Service Provider may notify the Service Requester that the relevant space is removed from the Requester Equipment Space and Schedule 3 is deemed amended accordingly; and

- (d) if there is any dispute in relation to the Service Requester's continued requirement for the relevant space that dispute will be resolved in accordance with clause 22.
- 4.10 The Service Requester acknowledges that the Service 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 Service Requester must:
- (a) comply with any reasonable procedures established by the Service Provider for the purpose of ensuring the efficient use of space and facilities within any Exchange Site; and
 - (b) co-operate with the Service Provider in co-ordinating the reasonable use of space and facilities by all persons with access to the Exchange Site.
- 4.11 Subject to clause 4.12, if the Service 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 Service 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 Service Requester must pay the applicable Cancellation Charge.
- 4.12 If the Service Requester wishes to vary or cancel an Accepted Site Application before the Planned RFU Date under clause 4.11 and the material cause of the variation or cancellation is the act or default of the Service Provider, the Service Provider and the Service Requester will negotiate in good faith to agree on an appropriate adjustment to the charges payable by the Service Requester under clause 4.11 to reflect the reasons for the variation or cancellation of the Accepted Site Application.

5. SITE PREPARATION WORK

- 5.1 In consideration of the payment of the Site Set-Up Charges, the Service 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 Service 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 Requester Equipment Space or due to delays in obtaining any approvals from third parties (including Government Agencies and lessors)):
- (a) it must promptly inform the Service 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 Service Provider reasonably regards that the delay is attributable in whole or part to an act or omission of the Service Requester, the Service Provider will notify the Service Requester of the relevant act or omission;
- (c) until an alternative solution is agreed the Service Provider, must continue to use its reasonable endeavours 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
- (d) if the Actual RFU Date is more than one month after the planned RFU Date then the date by which the Service Requester must meet its minimum commitment requirements for that Exchange Site under clause 8 and will be extended by twice the amount of time between the date one month from the Planned RFU Date and the Actual RFU Date.

5.3 When the Preparation Work in respect of a Requester Equipment Space identified in an Accepted Site Application is completed, the Service Provider will issue a RFU Notice in respect of that Requester Equipment Space. The Service Provider will ensure that the Requester Equipment Space complies with the specifications agreed in the Implementation Plan before issuing the RFU Notice. The Service Provider will give at least 5 Business Days notice to the Service Requester prior to the Actual RFU Date. On receiving the RFU Notice the Service Requester may request a visit to the Exchange Site in accordance with the Access Terms to inspect the Requester Equipment Space.

5.4 The Service Requester shall procure that each item of the Service Requester Equipment is delivered to the Exchange Site and installed in the Requester Space in the manner and at the time set out in the O&M Manual. The Service Requester must comply with the O&M Manual in respect of the time for giving notices before delivering the Requester Equipment to a particular Exchange Site and in respect of the times for delivery of the Requester Equipment to that Exchange Site. If the Service Requester orders materials to be delivered on site, the Service Requester must have an Authorised Representative on site to accept delivery of those materials.

5.5 The Parties acknowledge that:

- (a) they will discuss in good faith potential arrangements for the Service Requester to build transmission capacity to an Exchange Site and to access building lead-in facilities at Exchange Sites for that transmission capacity; and
- (b) such arrangements will not alter the Service Requester's obligations under this Agreement, including its obligations to order Leased Circuits and to pay the Charges for LALs ordered under this Agreement

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"). Notwithstanding the foregoing, if a Party expects no requirement for LALs 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 Service Requester expects to be provisioned to or from each Exchange Site of the Service Provider in:
 - (i) each calendar month between the date of the Forecast and the date 6 months from the date of the Forecast; and
 - (ii) each Quarter between the date 6 months from the date of the Forecast and the date 12 months from the date of the Forecast; and
 - (iii) each half yearly period between the date 12 months from the date of the Forecast and the date 24 months from the date of the Forecast,

("Forecast Period"); and
 - (iv) the area 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 Service Requester is able to provide to the Service Provider in respect of each of the LALs forecast under paragraph (i).

6.3 The Service 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 Service 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 Period in the 6 months before the Forecast in which provisioning will take place may delay the provision of those LALs to the Service 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 month before the commencement of the Forecast Period in which provisioning is to be implemented, the Service 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 Service Provider's usual provisioning procedures and resources and the demands placed on those resources:

- (a) the Service Provider will notify the Service Requester as soon as practicable after it confirms that meeting that Forecast is not reasonably achievable;
- (b) the Service Requester will provide to the Service Provider with such information as will allow the Service Provider to assess the reasonableness and accuracy of the Forecast and to attribute appropriate priority to it;
- (c) the Service Provider will determine its ability to meet the Forecast in view of its available resources and the demands placed on those resources and notify the Service Requester of the number of LALs that Service Provider considers that it will not be able to provision in accordance with that Forecast ("**Affected LALs**");
- (d) the Service Provider will advise the Service Requester of a timetable that it considers reasonably achievable to provision the Affected LALs ("**Resource Constraint Timetable**"); and
- (e) the Service 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 Service Provider under clause 6.4 must be made in good faith and based on the following principles:

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

6.6 If a Service Requester varies its:

- (a) actual Service Orders requirements for LALs from the last Forecast Period before the Forecast Period in which the Service Order is made by more than:
 - (i) 20% before 1 July 1997;
 - (ii) 10% between 1 July 1997 and 1 July 1998; and
 - (iii) 5% after 1 July 1998.

(b) Forecasts in respect of the Quarter applying to the actual provisioning of LALs from the Quarter immediately preceding the Quarter in which LALs will be provisioned by more than;;

- (i) 20% before 1 July 1997;
- (ii) 10% between 1 July 1997 and 1 July 1998; and
- (iii) 5% after 1 July 1998.

then:

- (c) the Service Provider may notify the Service Requester that the Forecasts are inaccurate and for the purposes of clause 6.4 and 6.5 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 the relevant percentage; and
- (d) the Service Provider may decline to accept Service 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 LALs provisioned in the next Forecast Period will not form part of the Service 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.

6.8 Notwithstanding clause 6.4, if at any time within the Quarter before the commencement of the Forecast Period in which provisioning is to be implemented the Service Provider becomes aware that it will or is likely to need to issue a Resource Constraint Timetable under clause 6.4 it will advise the Service Requester as soon as practicable of the nature and scope of the resource constraint or likely resource constraint and the Parties will consult in good faith in relation to that constraint .

7. SERVICE ORDERING PROCEDURES

7.1 The Service Requester may from time to time request a LAL between an Exchange Site of the Service Provider and a Customer Interface Point by giving the Service Provider a written request in accordance with the O&M Manual that contains sufficient information for the Service Provider to assess and respond to that request including:

- (a) the address of the requested Customer Building and details of the requested Customer Interface Point;

- (b) the Exchange Site address or the Service 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 the LAL Requester authorisation in accordance with clause 7.6(a); and
- (f) such other information that the Service Provider reasonably requires to enable the Service Provider to fulfill the Service Order as notified by the Service Provider to the Service Requester from time to time (following reasonable prior discussion).

7.2 The Service Provider must use its reasonable endeavours within 2 Business Days of the date of receipt of a Service Order under clause 7.1, in writing:

- (a) to accept that Service Order; or
- (b) to notify the Service Requester that the Service Provider's acceptance requires the resolution of a matter referred to in clause 7.3; or
- (c) to reject that Service Order under clause 7.9.

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

- (a) the Service Order does not contain all the information specified in clause 7.1;
- (b) the Customer Building is not served by the specified Exchange Site;
- (c) the period between the date the Service Order is accepted and the requested Planned RFU Date for any LALs in the Service Order is less than the Standard Delivery Period by more than the percentage referred to in clause 6.6(a);
- (d) the number of LALs in the Service Order exceeds the number of LALs specified in the Service Requester's last Forecast for the applicable provisioning period;
- (e) copper wiring is not available in accordance with clause 7.5 to directly connect the Customer Building and Exchange Site;
- (f) as at the date of that Service Order, the Service 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
- (h) it is not reasonably practical to fulfill the Service Order as a result of Majeure Event.

7.4 If the Service Provider withholds approval of a Service 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 Service Requester 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 Service Provider to complete that review using its reasonable efforts) and in the case of a Review Event under:

- (a) paragraph 7.3(a), the Service Requester will provide all of the information reasonably requested by the Service Provider and the Service Provider will, subject to resolution of any other Review Event, accept the Service Order within 2 Business Days of being notified of that information;
- (b) paragraph 7.3(b), the Service Provider will notify the Service Requester of the exchange site serving that Customer Building and, if that exchange site is an Exchange Site the Service Requester will amend the order accordingly as soon as practicable after the date of notification and the Service Provider will, subject to resolution of any other Review Event, accept that amended Service Order within 2 Business Days of notification of that amended Service Order;
- (c) paragraph 7.3(c), the Service Requester must as soon as practicable after the date of notification notify the Service Provider whether it wishes the delivery period to be extended to the Standard Delivery Period or it wishes to have the LAL provisioned in accordance with clause 7.8, and the Service Provider will, subject to resolution of any other Review Event and compliance with clause 7.8, accept the Service Order within 2 Business Days of notification of the relevant amended terms; and
- (d) paragraph 7.3(d), the Service Provider will accept the Service Order to the extent of the number of LALs properly the subject of the Forecast and will proceed to provision the additional LALs within a time that is reasonably achievable in which case the Service Provider;
 - (i) may request the Service Requester to prioritise the provisioning of LALs under those Service Orders; and
 - (ii) will act in accordance with those priorities;
- (e) paragraph 7.3(f), the Service Provider may advise the Service Requester that the LAL will only be available for the period until the date of decommissioning and, in that event, the Service Requester must elect to withdraw the Service Order in respect of that LAL or to have the LAL provisioned only until the date of decommissioning and the Service Provider will, subject to resolution of any other Review Event, accept

the Service Order within 2 Business Days of notification of the amended Service Order; and

- (f) paragraph 7.3(g), the Service Provider and the Service Requester will negotiate in good faith to attempt to resolve the technical impediments in relation to the provisioning of the LAL.

7.5 A LAL will be regarded as being available for the purposes of clause 7.3(e) if:

- (a) a DEL of the Service 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 Service Order; or
 - (ii) the end of the vertical blockwiring in the Customer Building proposed in the Service Order, and the Service Requester provides its own horizontal blockwiring;
 - (iii) the Customer Building proposed in the Service Order, and the Service Requester provides its own vertical and horizontal block wiring;

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

- (iv) being used by any person; or
- (v) required to be used by the Service Provider for its reasonable future needs during the next 2 years on the basis of its current business plans.

The Parties will agree arrangements in the O&M Manual in relation to the connection of one Party's wiring to the other Party's wiring referred to in clause 7.5(b). For the sake of clarification, the Service Requester acknowledges that the Service Provider is not obliged to install any new vertical or horizontal block wiring under this Agreement. New installations of vertical and horizontal block wiring will be subject to separate negotiations.

7.6 If the Service 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 Service 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 Service Requester to the Service Provider's customer front office and a copy of that DEL Disconnection Notice is provided to the Service Provider together with the applicable Service Order;

- (b) the Service Requester provides to the Service Provider a copy of an authorisation in such form as the Service Requester may determine which confirms that the Customer wishes to connect the LAL to the Service Requester Network; and
- (c) that DEL Disconnection Notice is not revoked or cancelled by the Customer before that LAL is provisioned. The Parties will agree appropriate procedures in relation to the form of and the exchange of copies of revocations/cancellations of DEL Disconnection Notices.

7.7 The Service Requester acknowledges and agrees that:

- (a) if:
 - (i) 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 Service Provider to the Service Requester's customer front office and a copy of that DEL Disconnection Notice is provided to the Service Requester;
 - (ii) the Service Provider provides to the Service Requester a copy of an authorisation in such form as the Service Provider may determine which confirms that the Customer wishes to connect the LAL to the Service Provider Network; and
 - (iii) that DEL Disconnection Notice is not revoked or cancelled by the Customer before that LAL is provisioned.

the Service Provider may so disconnect and connect that LAL 5 calendar days after providing the DEL Disconnection Notice (in the case of a business premise) and 7 calendar days after providing the DEL Disconnection Notice (in the case of a residential premise) and that LAL will no longer be available for use by the Service Requester under this Agreement;

- (b) the Parties will agree appropriate procedures in relation to the form of and the exchange of copies of revocations/cancellations of DEL Disconnection Notices;
- (c) the Service Provider is not required to provision for the Service Requester any LAL owned by the Service Provider that is used by any Licensees other than the Service Provider except in accordance with such procedures as may be agreed in writing between the Service Provider, Service Requester and other Licensee; and
- (d) the Service Requester is solely responsible for obtaining releases and consents from other Licensees which are using LALs which the Service Requester wishes to use and the Service Requester must provide the Service Provider with copies of all such consents and releases obtained from time to time to the extent that the arrangements under paragraph (b) require such releases and consents to be obtained from other licensees.

7.8 If the Service Requester wishes to provision any LALs earlier than the date they would otherwise be provisioned under this clause 7 it will notify the Service Provider that it requests earlier provisioning of the LALs in which case:

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

7.9 The Service Provider may reject a Service Order if:

- (a) the Service Requester is in fundamental breach of this Agreement (including but not limited to failing to pay any amount under clause 19 not being an amount that the Service Requester is entitled to withhold as a disputed amount under Schedule 4); 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; or
- (c) a valid notice of termination has been given under clause 21.

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

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

7.11 The Service Provider may give notice to the Service Requester at any time if the Service Provider requires to use LALs connected to a particular Customer Building, and if as at the date of that notice or after the date of receipt of that notice:

- (a) the Service Requester or one of its Associate Companies owns or has access to transmission capacity that is reasonably substitutable for those LALs and is not being used by it to supply a telecommunications service to a Customer in the Customer Building; or
- (b) the Customer of the Service Requester in that Customer Building has terminated all telecommunications services provided over those LALs by the Service Requester or the Service Requester does not have a Customer in that Customer Building for telecommunications services provided over those LALs (other than during the initial period of 6 months after its RFU Date);

then those LALs will no longer be available for use by the Service Requester under this Agreement, the Service Requester must notify the Service Provider and the Service Provider

must disconnect those LALs from its Network and connect them to its Network provided that:

- (c) in the case of paragraph (a) and (b) the parties implement the disconnection and connection in a manner that complies with the O&M Manual;
- (d) in the case of paragraph (a) the parties implement the connection and disconnection in accordance with the technical procedures set out in the O&M Manual for a disconnection and connection of a type referred to in clause 7.6 and
- (e) if there is any bona fide dispute in relation to whether paragraph (a) or (b) applies or in relation to the relevant technical implementation, the parties have sought to resolve that dispute in accordance with clause 22.

7.12 If the Service Requester requests that the Service Provider confirm the area served by an Exchange Site:

- (a) the Service Provider will provide that information in accordance with the O&M Manual; and
- (b) if that information materially changes during the term of this Agreement, the Service Provider will update that information in accordance with the O&M Manual.

7.13 The Parties acknowledge and agree that they will discuss in good faith:

- (a) the procedures for the porting of telephone numbers associated with LALs disconnected and connected under clause 7.6 or 7.7 (as the case may be); and
- (b) the alignment of procedures for the disconnection and connection of LALs under clause 7.6 or 7.7 (as the case may be) and the porting of telephone numbers associated with those LALs.

8. LAL PROVISIONING PROCEDURES AND MINIMUM QUANTITIES

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

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

8.3 If during the any of the periods specified in clause 8.2, the Service Provider rejects more than 10% of the Service Orders provided by the Service Requester under clause 7 and those Service Orders have been made in a bona fide manner by the Service 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 or buildings to which the Service Requester knows that the Service Provider will not supply LALs under this Agreement), then the minimum quantity referred to in clause 8.2 will be reduced by the amount of the LALs that could not be provisioned as a result of those rejections. Such reduction of the minimum volume will only be effective for the purpose of calculating the Minimum Quantity in the Quarter following a Quarter in which such a quantity of the Service Orders are rejected.

8.4 Notwithstanding clause 8.3, the Service Requester may terminate its requirement for a particular LAL at any time by giving the Service Provider 1 month's notice if the Customer terminates the telecommunications services provided by the Service Requester over the LAL as a result of failing to maintain the LAL in accordance with this agreement during the period prior to the notification.

8.5 Subject to the Service Requester continuing to meet the minimum quantities described in clause 8.2, the Service Requester may terminate its requirement for a particular LALs by giving to the Service Provider not less than 1 month's prior notice. However, the Service Requester may not give such notice for a period of 6 months after the LAL is provisioned.

9. ORDERING AND PROVISIONING OF LEASED CIRCUITS

9.1 The Service Requester is responsible for ordering and must order Leased Circuits in respect of an Exchange Site in accordance with the Leased Circuit O&P Procedures and in the following manner:

- (a) 2 Leased Circuits on acceptance of the Accepted Site Application in respect of that Exchange Site, and
- (b) 1 additional Leased Circuit at any time if the number of LALs in respect of that Exchange Site reaches the capacity threshold described in Schedule 8.

9.2 The Service Requester is not entitled to order Leased Circuit under this Agreement except under the circumstances identified in clause 9.1.

9.3 If before the date Preparation Work is commenced in accordance with the Implementation Plan the Service Provider does not receive any order for Leased Circuit in respect of the relevant Exchange Site, the Service Requester is deemed to have ordered 2 Leased Circuits for that Exchange Site.

9.4 The Service Provider will only provision Leased Circuits to Requester Switch Sites:

- (a) at which Switch Site Equipment has been installed under the TNA Agreement and where that Switch Site Equipment has sufficient capacity to support the installation and termination of the Leased Circuit; and
- (b) which are within 2 kilometres of the relevant Transmission Exchange under the TNA Agreement (other than which has been accepted despite being located outside this area).

9.5 The Service Provider's obligation to provision a Leased Circuit by its planned RFU Date is contingent on the Service Requester:

- (a) providing the Service Provider with safe and reasonable access to the relevant Requester Switch Site as reasonably required to enable the Service Provider to perform its obligations and to remove Switch Site Equipment in accordance with this Agreement;
- (b) not authorising any person other than a person reasonably identified as an authorised representative of the Service Provider to maintain, modify, repair or interfere with the Switch Site Equipment; and
- (c) providing to the Service Provider at least 21 calendar days prior to the planned RFU Date of a Leased Circuit, at the Service Requester's cost, with any necessary facilities and services at the Requester Switch Site as may be reasonably required by the Service Provider to provision and operate the Leased Circuit and otherwise ensure that the relevant site requirements as set out in Schedule 8.

9.6 At least 30 calendar days prior to the planned RFU Date for a Leased Circuit, the Service Requester must inform the Service Provider of the floor space and arrangements at the Requester Switch Site for accommodating Switch Site Equipment in accordance with the Leased Circuit O&P Procedures.

9.7 The Service Provider may at its cost, build a cage around the Switch Site Equipment installed at the Requester Switch Site and install other security devices for excluding all parties without the Service Provider's authorisation from gaining access to that section of the Requester Switch Site containing the Switch Site Equipment. The Service Provider will include provisions in the O&M Manual to allow the Service Requester access to that section if the Switch Site Equipment poses substantial risk or hazards to the Service Requester's property or personnel as described in the O&M Manual.

10. CUSTOMER ACCESS SERVICE

10.1 In consideration for the Basic Service Charge, the Site Management Charges, and all the charges payable in respect of LALs under this Agreement, the Service Provider must provide Customer Access Service to the Service Requester. The Service Provider will provide the Customer Access Service over the LALs and the Leased Circuits in accordance with the specifications set out in Schedules 1 and 8 respectively. The Service Provider is not liable to the Service Requester for any failure in relation to the Customer Access Service due to, nor is it required to incur any additional cost or expense to enable it to overcome, any problems, defects or faults in the Requester Equipment.

11. SITE MANAGEMENT SERVICE

11.1 In consideration of the Service Requester paying the Service Provider the Site Management Charge for each item of the Requester Equipment Space, the Service Provider agrees to provide Site Management Services for that Requester Equipment Space from the relevant

Actual Ready For Use Date until the Site Management Services are terminated in accordance with this Agreement

12. MAINTENANCE OF LOCAL ACCESS LINKS

- 12.1 The Service Provider must maintain the LALs provisioned under this Agreement in accordance with Schedule 6.
- 12.2 The Service Requester acknowledges that the Service 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 Service Requester and, accordingly, the Service 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 Service Provider in accordance with the O&M Manual; and
 - (d) otherwise comply with each fault notification procedures as the Parties may agree.
- 12.3 If the Service Requester notifies the Service Provider of a number of potential faults in any LAL and the Service Provider, after conducting fault detection, does not attribute the faults to the LAL failing to meet the specification in Schedule 1 the Parties will negotiate in good faith to resolve any other identified technical difficulties and if the Parties cannot resolve those difficulties in a mutually acceptable manner the Service Provider may cease to provide maintenance under this clause in respect of that LAL or may terminate that LAL in which case it will be removed from the operation of this Agreement .
- 12.4 The Service Requester must:
- (a) use its reasonable efforts to ensure the Service Provider has such safe and reasonable access to the Customer Building as may be reasonably required to enable the Service 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 Service Provider to maintain, modify, repair or interfere with the LAL or any of the Service Provider Equipment.
- 12.5 The Service Requester acknowledges and agrees that where the Service Provider's obligations under this Agreement are contingent on it obtaining safe and reasonable access to

a Customer Building then the Service Provider is relieved of those obligations to the extent that the Service Requester is unable to ensure such access in accordance with clause 12.4 (a).

13. ACCESS TO REQUESTER EQUIPMENT SPACE

13.1 In consideration of the payment of the Site Supervision Charges, the Service Provider must provide Site Supervision Services and grant the Service Requester (including its employees, agents and contractors) access to the Requester Equipment Space and entry and exit pathways in accordance with the Access Terms for the purposes of the Service Requester (including its employees, agents and contractors):

- (a) delivering the Requester Equipment;
- (b) performing the installation, connection and testing work;
- (c) maintaining the Requester Equipment in accordance with the O&M Manual;
- (d) obtaining emergency access in the circumstances described in the O&M Manual;
- (e) performing its obligations or exercising its rights under this Agreement;
- (f) performing such additional inspections as the Service Requester may reasonably request in accordance with the Access Terms and which are authorised under the Access Terms; and
- (g) carrying out site inspection or survey work prior to the delivery of an the Service Requester Equipment in accordance with the O&M Manual;

13.2 The Service Requester must:

- (a) at all times comply and ensure that its employees, agents, and contractors comply with the Access Terms when seeking access to and accessing an Requester Equipment Space; and
- (b) only seek access to and access a Requester Equipment Space for a purpose specified in Clause 13.1.

13.3 The Service Provider may from time to time amend the Access Terms provided that:

- (a) the amendment is reasonably necessary:
 - (i) to preserve the integrity, security or operation of the Service Provider's Network; or
 - (ii) to comply with applicable laws and regulations; or

- (iii) to comply with applicable terms of the lease of the relevant Exchange;
- (b) the Service Provider has given the Service Requester 10 Business Days prior written notice of the change and has consulted with the Service 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 Service Provider uses its best efforts to minimise interruption to access by the Service Requester (including its employees, agents or contractors) to each Requester Equipment Space.

13.4 For the purposes of this clause 13, all acts and omissions of an employee, agent or contractor of a Party are deemed to be acts or an omissions of that Party and any knowledge of a Party 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 that Party.

14. REQUESTER EQUIPMENT

14.1 The Service Requester must not:

- (a) install or place in any Requester Equipment Space any Requester Equipment which is or is likely in the reasonable opinion of the Service Provider to overload the structure of any part of the Exchange Site or Requester Equipment Space or to damage the Requester Equipment Space or materially disturb the efficient operation of the air conditioning or of any other system servicing the Requester Equipment Space;
- (b) install or alter any item, fixture, partition or fitting in the Requester Equipment Space other than the Requester Equipment except where this is reasonably necessary for the operation or maintenance of the Requester Equipment and the Service Requester has obtained the Service Providers prior written consent (such consent not to be an reasonably withheld or delayed);
- (c) install, alter, add to or remove any security locks, bolts or fittings within Requester Equipment Space or elsewhere in the Exchange Site other than an authorised security lock that secures any cage around the Requester Equipment Space;
- (d) install the Requester Equipment in any place other than in the Requester Equipment Space in accordance with the Implementation Plan; or
- (e) extend or increase electrical wiring in the Requester Equipment Space without the Service Provider's prior written consent (such consent not to be unreasonably withheld or delayed) and the Service Provider may, as a condition of giving such consent, require that the extension or increase be provided by the Service Provider at the Service Requester's cost.

14.2 The Service Requester must use its reasonable endeavours to:

- (a) install the Requester Equipment in such a way as to minimise the floor space required by it within the Requester Equipment Space having taken into account reasonable engineering practice;
- (b) take appropriate corrective action in respect of the Requester Equipment which has been installed by or on behalf of it in breach of this Agreement within 5 Business Days of receiving notice from the Service Provider of such breach or becoming aware of such breach except in the case of installation which must be undertaken within 10 Business Days;
- (c) ensure that the Requester Equipment does not damage interfere with (including but not limited to radio or electrical interference) or cause deterioration to the operation of any other Service Provider equipment or the Service Provider Network or any other person's equipment or network;
- (d) take all steps reasonably necessary to ensure that the Requester Equipment does not endanger the safety or health of the officers, employees, contractors or customers of the Service Provider or a third person; and
- (e) take such other action as a reasonably prudent operator of the Requester Equipment would take.

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

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

14.4 If:

- (a) the Service Requester does not perform or complete corrective work in accordance with clause 14.3; or
- (b) the Service Provider in its reasonable discretion determines that the Requester Equipment poses an immediate risk of personal injury or significant property damage or significant disruption to the Service Provider's network or other equipment or another persons network or equipment;

the Service Provider may take appropriate corrective action (including but not limited to decommissioning, reinstalling or repairing), at the Service Requester's costs, and the Service

Requester indemnifies the Service Provider for the cost incurred by the Service Provider in performing such corrective work. The Service Provider must inform the Service Requester of any action taken or to be taken under this clause as soon as reasonably permissible.

- 14.5 The Service Provider acknowledges that the Service Requester intends to use multiple vendors for Service Requester Equipment and will identify that Service Requester Equipment in accordance with clause 4.2.
- 14.6 The Service Requester will comply with any negative covenant under any lease in relation to an Exchange provided that the Service Provider has given the Service Requester prior notice of the requirements of that covenant .

15. USE OF CUSTOMER ACCESS SERVICES AND REQUESTER EQUIPMENT

15.1 The Service Requester must not:

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

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

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

- (a) the Service Provider will give the Service Requester 5 Business Days notice of the Requester 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 Service Requester does not possess the Test Equipment, the Service Requester will notify the Service Provider and the Service Provider may supply the Test Equipment (subject to the Service Requester having the opportunity to inspect that Test Equipment);

- (c) if the test required by the Service Provider would materially adversely effect the supply of telecommunications services that is an Agreed Use 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;
- (d) the Service Requester will ensure that its Representatives attend at the Exchange Site at the relevant time with the Test Equipment;
- (e) the Service Provider may test the Test Equipment and ensure that it is properly calibrated and is accurate;
- (f) the Service Requester will conduct the requested tests using the Test Equipment and under the supervision of the Service Provider and will provide all details and information from those tests to the Service Provider; and
- (g) if the Service Provider elects it may appoint at its own cost a suitably skilled and qualified independent testing consultant agreed by the Parties to conduct the same tests under the supervision of the Service Requester in which case the testing consultant will either use the Service Requester's Test Equipment or, if the testing consultant uses its own Test Equipment, allow the Service Requester to test that equipment to ensure that it is calibrated and accurate; and
- (h) the Service Provider will pay for the Service Requester's cost of twelfth test at any Exchange in any 12 month period.

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

- (a) the Service Provider will establish a LAL that is conditioned in this manner at an Exchange Site and give the Service Requester 5 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 materially impairs the use of the LAL for its Agreed Use and if the joint test is not promptly undertaken because of delay by the Service Requester ; 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.

15.5 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 Service Requester of its responsibilities, obligations and liabilities under this Agreement.

16. AVAILABILITY AND SUSPENSION OF LAL

16.1 The Service Provider will continue to make available each LAL provisioned under this Agreement:

- (a) until this Agreement is terminated under clause 21; and
- (b) except during such period as the Service Provider may suspend that availability under this clause or clause 25.

16.2 The Service Provider shall have the right to suspend the use of a LAL (including but not limited to by disconnecting the LAL from the Service Requester Equipment) at any time on notification to the Service Requester if:

- (a) any charges covered by these terms and conditions remain overdue and outstanding which are attributable to that specific LAL not being an amount that the Service Requester is entitled to withhold as a disputed amount under Schedule 4;
- (b) the LAL is used for any use other than its Agreed Use; or
- (c) the Service Requester commits any other fundamental breach of this Agreement in respect of that specific LAL.

provided that the Service Provider will give to the Service Requester 10 Business Days notice during which the Service Requester may rectify the relevant breach of this Agreement (in which case the Service Provider will not suspend the availability of that LAL) and any such suspension will apply until the Service Provider has been reasonably satisfied that the relevant breach has been rectified. If the Service Provider suspends a LAL it will not attach any voice message on other signal to the LAL except in accordance with its usual procedures.

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

- (a) the Service Provider will give to the Service Requester the maximum period of written notice as may be reasonable and practicable in the circumstances (which will be no less than 2 Business Days except in the case of emergencies); and
- (b) such suspension will apply until the relevant maintenance is undertaken or order complied with and the Service Provider will use its reasonable endeavour to ensure there is minimum disruption to the Service Requester's use of the LAL and must ensure that any disruption is no worse than would apply to the Service Providers Network in equivalent circumstances.

16.4 If the Service Requester uses a LAL or permits any other person to use a LAL for a use other than an Agreed Use then the Service 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 2 months or the period of time taken to rectify that breach; and
- (b) charge the Service Requester for such use at a rate equal to the Service Provider's current tariffed leased line charges for a leased line of a bandwidth equivalent to the bandwidth of the highest capacity of Agreed Use identified by the Service Provider and for this purpose it will be assumed that such use has taken place for a minimum of 6 months.

16.5 In the event that the Service Provider elects to charge the Service Requester under clause 16.4(b) then it will invoice the Service Requester for the applicable charges and those charges will be payable under this Agreement in the same manner as the Charges.

16.6 If the Service Requester is in breach of any of the covenants in clause 15.1 or the Service Requester is otherwise in breach of this Agreement and without prejudice to any of the Service Provider's other rights under this Agreement, the Service Provider may request the Service Requester to remove the Service Requester Equipment or the other equipment or facilities which offend that covenant or are the subject of the other breach and the Service Requester must immediately comply with the Service Provider's request.

17. REARRANGEMENTS AND DECOMMISSIONING

17.1 If the Service Requester wishes to:

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

17.2 If a Leased Circuit is no longer required to terminate at a particular Exchange Site because:

- (a) the number of LALs terminating at that Exchange Site is less than the Capacity Threshold specified in Schedule 8; or
- (b) the Requester Equipment Space has been terminated in accordance with this Agreement;

then:

- (c) the Service Requester may on 3 months prior notice and subject to the Provisioning Procedures:
 - (i) relocate an end of a Leased Circuit so that it terminates at a different Exchange Site under this Agreement in lieu of ordering a Leased Circuit under clause 9 provided that the total number of Leased Circuits provided under this Agreement does not decrease and the Parties have agreed the applicable relocation charges; or
 - (ii) redeploy that Leased Circuit as a leased circuit under the TNA Agreement in which case it will be deemed to be Leased Circuit supplied under the TNA Agreement and the terms and conditions of the TNA Agreement will apply in respect of those Leased Circuits as if they had been provisioned under the TNA Agreement and subject to the Minimum Service Period of a leased circuit under the TNA Agreement of 84 months from 1 January 1996; or
- (d) the Service Provider may :
 - (i) notify the Service Requester that it wishes to recover the Leased Circuit in which case that Leased Circuit will no longer be supplied under this Agreement; or
 - (ii) redeploy that Leased Circuit as a leased circuit under the TNA Agreement in which case it will be deemed to be Leased Circuit supplied under the TNA Agreement and the terms and conditions of the TNA Agreement will apply in respect of those Leased Circuits as if they had been provisioned under the TNA Agreement and subject to the Minimum Service Period of a leased circuit under the TNA Agreement of 84 months from 1 January 1996;
- (e) the Parties will implement that relocation, redeployment or recovery in the manner agreed and incorporated in the O&M Manual; and
- (f) the Parties agree that if a Leased Circuit is redeployed under paragraph (c) (ii) or (d) (ii) the Service Requester must pay the relevant charges under the TNA Agreement and the Parties acknowledge that they will discuss in good faith and agree the detailed application of the other terms and conditions of the TNA Agreement.

17.3 The Parties acknowledge that if the Service Requester orders, in accordance with procedures agreed between the Parties, additional Leased Circuits to an Exchange Site under this Agreement in excess of those that it is required to order under clause 9.1(b) to meet the

Capacity Thresholds and it pays the agreed additional Charges for those Leased Circuits and the number of LALs at that Exchange Site then increases such that the Service Requester would then be required to order additional Leased Circuits under clause 9.1(b) then the Service Requester may by notice to the Service Provider elect that those additional Leased Circuits will be treated as ordered for the purpose of meeting its obligation under clause 9.1(b) and in that event the additional Charges will cease to be payable from a date to be determined by the Parties.

- 17.4 The Service Provider may, following 6 month prior written notice to the Service Requester, change the location of Requester Equipment Space within the same Exchange Site from time to time at the Service Provider's cost and the Service Provider will provide the Service Requester with reasons in writing for the change in location. The Service Provider shall procure that LALs may continue to be used for an Agreed Use during and after the change in location of the Requester Equipment Space subject to any necessary interruption to the extent that interruption is no worse than interruptions in service caused to the Service Provider's customers as a result of equivalent relocations undertaken by the Service Provider in relation to its Network and the Service Provider consults in good faith with the Service Requester in order to procure a technical solution that seeks to minimise such service interruptions.
- 17.5 The Service Requester acknowledges that the Service Provider may at any time relocate substantially all of its existing telecommunications equipment from or decommission an Exchange Site provided that:
- (a) the Service Provider must give the Service Requester a minimum of 6 months notice;
 - (b) each Party will perform the same tasks in respect of that relocation that they must perform in respect of the provisioning of LALs and Customer Access Service under this Agreement;
 - (c) if the Service Provider gives:
 - (i) less than 12 months prior written notice of its intention to relocate from or decommission an Exchange (other than notice required by an event of Force Majeure), the Service Provider must pay its own and the Service Requester's reasonable costs for performing the work required for that relocation; and
 - (ii) more than 12 months or as a result of an event of Force Majeure, the Service Provider and the Service Requester must each pay their own costs for performing the work required for that relocation;
 - (d) the Service Provider procures that the provision of LALs for an Agreed Use and the other requirements of this Agreement both during and after the relocation or decommissioning subject to any necessary interruptions that are no worse than interruptions in service caused to the Service Provider's customers as a result of that relocation or decommissioning;
 - (e) the Service Provider consults in good faith with the Service Requester in relation to the relocation or decommissioning on arrangements to minimise any disruption to the

supply of a telecommunication service as a result of such decommissioning (including seeking to agree any changes for additional transmission link that may be required to allow the Service Requester to connect its Network to any new Exchange Site); and

- (f) the Service Provider procures appropriate space to locate the Requester Equipment previously located at the "old" Exchange at a "new" Exchange or some other suitable site on substantially similar terms and uses its reasonable endeavours to ensure that the Actual RFU Date for the Requester Equipment Space at the "new" Exchange Site occurs prior to decommissioning.
- 17.6 The Service Requester must not terminate its requirement for Requester Equipment Space within the Site Minimum Commitment Period. After the Site Minimum Commitment Period for a Site the Service Requester may terminate its requirement for Requester Equipment Space at that Exchange Site if it:
- (a) gives the Service Provider 12 months written notice;
 - (b) has terminated all of the LALs at that Exchange Site in accordance with this Agreement before the date of termination and paid all relevant termination Charges; and
 - (c) has terminated or relocated all of the Leased Circuits at that Exchange Site in accordance with this Agreement before the date of termination and paid all relevant termination and relocation Charges.
- 17.7 If after a LAL is provisioned by the Service Provider under this Agreement the Service Provider intends to generally decommission copper wiring in an area and such wiring includes the copper wiring supporting that LAL:
- (a) the Service Provider will advise the Service 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 12 months before the Decommissioning Date;
 - (b) the relevant LAL may be decommissioned by the Service Provider on or after the Decommissioning Date in accordance with the Service Provider's usual and reasonable decommissioning procedures as previously notified by the Service Provider to the Service Requester from time to time and the Service Requester will co-operate with the Service 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 Decommissioning Date); and
 - (d) the Service Provider will propose alternative solutions to the Service Requester that will allow the Service Requester to continue to directly access Customers and the

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

18. SERVICE PROVIDER EQUIPMENT

18.1 The Service Provider Equipment is and shall at all times remain the property of the Service Provider and the Service Requester must not remove, tamper with or obliterate any identification mark affixed to the Service Provider Equipment showing that it is the property of the Service Provider. The Service Requester may apply its brand in accordance with the O&M Manual to the socket in customer premises to which a LAL is connected.

18.2 The Service Requester must:

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

18.3 The Service Provider will comply with clause 14, mutatis mutandis, in respect of Service Provider Equipment installed at a Requester Switch Site.

19. PAYMENT OF CHARGES AND EXPENSES

19.1 The Service Requester must pay to the Service Provider the Charges in accordance with this clause and Schedule 4:

- (a) The Site Set-up Charges is an one-off amount which will become payable on the date of the RFU Notice for the Requester Equipment Space.
- (b) The Site Management Charges are payable each month in advance, such Charge to be first payable in respect of particular Requester Equipment Space from the date of the RFU Notice for that Requester Equipment Space (subject to paragraph 3.1(b) of Schedule 4).
- (c) The Site Supervision 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 Service Periodic Charge in respect of each LAL is payable each month in advance, and the first Service Periodic Charge shall be calculated from the date of the RFU Notice for that LAL
- (e) The Service Connection 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) The Basic Service Charge is payable each month in advance in accordance with clause 6.2 of Schedule 4 and the first Basic Service Charge shall be payable from the latter of the Actual RFU Date for the first 2 Leased Circuits at an Exchange Site and the Actual RFU Date for the Requester Equipment Space at that Exchange Site.
- (g) All other Charges are payable at the times and in the manner indicated on the invoice issued after the date that the Service Requester's obligation to pay that charge arises under this Agreement.

19.2 Unless otherwise agreed:

- (a) all invoices must be settled in Hong Kong dollars by company cheques made payable to the payee or by electronic transfer to the nominated bank account of the payee. Payment must be credited to the payee on or before the invoice due date; and
- (b) all payments of invoices must be without set off or counterclaim and free and clear of any withholding or deduction (except, subject to clause 28.12, if the Service Requester is required by law to withhold an amount from a payment) other than a disputed amount under Schedule 4.

19.3 Except to the extent otherwise agreed between the Parties the Service Requester is responsible for all the costs and expenses which may be incurred by it:

- (a) to deliver each item of the Requester Equipment and the Requester Equipment Part to the relevant Requester Equipment Space;
- (b) to install each item of the Requester Equipment and the Requester Equipment Parts delivered to the relevant Requester Equipment Space;
- (c) to test each item of the Requester Equipment; and
- (d) to perform the Service Requester Maintenance in respect of the Requester Equipment in accordance with the O&M Manual.

except to that extent that those costs are incurred as a result of an act or omission of the Service Provider.

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

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

19.6 The parties acknowledge and agree that:

- (a) the Charges will apply for a period of 2 years from the date of this Agreement (“Review Date”);
- (b) 12 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 2 years after the date of this Agreement the Charges will be increased on and from that date in accordance with Schedule 4 until any varied Charges are agreed.

20. LIMITATION OF LIABILITY AND INDEMNITY

20.1 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.

20.2 Notwithstanding clause 20.4 and 20.5 or any other provision of this Agreement, 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 the other Party;
- (b) liability of the other Party to any third party for any:
 - (i) consequential or indirect Loss (including loss of revenue or profits) of that third party (other than consequential or indirect Loss of a natural person for

personal injury or death under a claim by a natural person referred to in clause 20.4(a) and 20.5(a));

- (ii) direct Loss of that third party other than direct Loss of a type referred to in clause 20.4(a) or (b); and
- (c) liability of the other Party to a Government Agency under or in relation to the other Party's Licence (including under any performance bond relating to that 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.

20.3 Other than Loss of a type referred to in clause 20.4, 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 \$1,000,000 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 \$5,000,000 for all liability arising by reason of or in connection with this Agreement.

20.4 Subject to clause 20.2, nothing in this Agreement in any way excludes or restricts a Party's ("Indemnifying Party") liability to the other Party ("Innocent Party") for:

- (a) Losses of the Innocent Party for any claim against the Innocent Party by any natural person for 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) direct Losses for 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) direct Losses arising from an intentional breach of this Agreement by the Indemnifying Party or its employees, agents or contractors (including intentional non-compliance with the Access Terms) or any fraud.

20.5 Subject to clause 20.2 each Party ("Indemnifying Party") indemnifies the other Party ("Innocent Party") against all:

(a) Losses of the Innocent Party for any claim against the Innocent Party in relation to 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) direct Losses for 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) direct Losses arising from an intentional breach of this Agreement by the Indemnifying Party or its employees, agents or contractors (including intentional non-compliance with the Access Terms) or any fraud.

20.6 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.

20.7 The Service Requester must ensure that each agreement with a Service Requester Customer ("Customer Contract") includes a provision that is designed, in so far as the Service Requester is legally able to:

(a) exclude and limit the liability of the Service Provider to no lesser extent than the Customer Contract excludes and limits Service Requester's liability to that Service Requester Customer for Loss suffered or incurred by the Service Requester Customer 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; and

(b) at a minimum is designed (in so far as the Service Requester is legally able) to:

- (i) exclude the Service Provider's liability to the Service Requester Customer for all consequential and indirect Loss of the Service Requester Customer (including loss of revenue or profits); and
- (ii) limits the Service Provider's liability to the Service Requester Customer for all Loss to a maximum amount of \$1,000,000 for any one incident and \$2,000,000 for a series of incidents arising out of a common cause

provided that:

- (c) nothing in this clause requires the Service Requester to include any provision in the Customer Contract that will cause such exclusions and limitations of liability to be void at law; and
- (d) the Service Requester may provide a copy of its standard Customer Contract from time to time to the Service Provider, by notice referring to this clause, and where the Service Provider does not provide drafting comments on the relevant part of the Customer Contract within 14 days of receipt or agrees that the relevant part of the Customer Contract meets the requirements of this clause, the Service Requester will be treated as having complied with its obligations under this clause if the Service Requester includes that relevant part in the Customer Contract used by the Service Requester.

20.8 By virtue of and subject to this clause, the Service Requester confers on the Service Provider the benefit of the provision in the Customer Contract referred to in clause 20.7. The Service Requester must act as the Service Provider's trustee and agent for the sole purpose of conferring the benefit of such a provision on the Service Provider as beneficiary and hold the benefit of that provision which is conferred on the Service Provider as a trustee for the Service Provider. The Service Requester will not have any right to act on behalf of the Service Provider as agent, trustee or otherwise except as expressly set out in this clause.

20.9 The Service Requester indemnifies the Service Provider for any Loss suffered or incurred by the Service Provider as a result of a breach of clause 20.7 by the Service Requester.

20.10 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.

20.11 This clause 20 survives termination of this Agreement.

21. TERMINATION OF AGREEMENT

21.1 This Agreement commences on the date of execution and continues until it is terminated in accordance with this clause 21.

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

- (a) the other Party is in fundamental breach of this Agreement and that breach is not remedied (to the extent that it is capable of remedy) within 30 calendar days of receipt of notice of the breach from the other Party; 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 21 calendar 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 21 calendar 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; or
- (e) subject to clause 21.7, on 12 months written notice to the other Party provided that such notice is not given before the date 2 years after the date of this Agreement.

21.3 Each Party may terminate this Agreement by:

- (a) 5 month's notice to the other Party given after any date that the other Party has requested the TA to make; or
- (b) 2 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 a Party using any technology.

21.4 On termination of this Agreement:

- (a) the Service Requester must immediately pay to the Service Provider all Charges (whether or not due) which have accrued up to the date of termination and unpaid;
- (b) the Service Requester must, at its cost, immediately remove the Requester Equipment from the Requester Equipment Space and make good the Requester Equipment Space to its state and condition on the Actual RFU Date;

- (c) the Service Requester must cease to make use of all LALs and procure that all Customers cease to make use of all LALs;
- (d) the Service Requester must permit or procure permission for the Service Provider to access the Customer Buildings at reasonable times for the purpose of removing the Customer End Equipment;
- (e) the Service Provider must permit the Service Requester to access Exchange Sites at reasonable times for the purpose of removing the Requester Equipment; and
- (f) all Leased Circuits provisioned under this Agreement will be deemed to be leased circuits supplied under the TNA Agreement and the terms and conditions of the TNA Agreement will apply in respect of those Leased Circuits as if they had been provisioned under that Agreement and subject to the Minimum Service Period of a leased circuit under the TNA Agreement of 84 months from 1 January 1996.

21.5 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.

any right of a Party to have delivery up to it or to have access to remove any equipment of the Party.

21.6 The Service Requester:

- (a) may place Service Orders for further LALs between the date of a notice of termination and the date 7 months prior to the date this Agreement is terminated in accordance with that notice and such orders will be processed in accordance with clause 7 and 8; and
- (b) may not place Site Applications for further Requester Equipment Space after the date of a notice of termination.

21.7 If prior to the date a notice of termination is given under clause 21.2(e) the Service Requester has given a Site Application in respect of a new Requester Equipment Space at an Exchange Site and the Service Provider accepts that Site Application without advising the Service Requester that it intends to terminate this Agreement under clause 21.2(e) within the Service Minimum Commitment Period for that Requester Equipment Space and the Service Provider then terminates this Agreement under clause 21.2(e) within that Service Minimum Commitment Period then this Agreement will:

- (a) if the Service Requester elects, continue in respect of that Requester Equipment Space only and will terminate on the expiry of the Service Minimum Commitment

Period for that Requester Equipment Space and the Service Requester may order LALs for that Requester Equipment Space until the date 7 months prior to the end of that Service Minimum Commitment Period; and

(b). terminate in respect of all other Requester Equipment Spaces, LALs and Leased Circuits.

21.8 If the Service Requester terminates this Agreement under clause 21.2(e) within the Service Minimum Commitment Period for that Requester Equipment Space it must pay the Service Provider the relevant Charges specified in Schedule 4.

22. DISPUTE RESOLUTION

Working group

22.1 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 whether or not this Agreement specifically calls for a dispute to be referred for resolution under this clause 22. 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

22.2 Notwithstanding clause 22.1 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

22.3 If the working group or the technical working committee is not able to resolve the dispute within 14 calendar days of that dispute being referred to it, the parties will refer to dispute to the senior management of both parties for resolution who will seek to resolve the dispute for further 14 calendar days.

Settlement offers

22.4 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.

Without Prejudice

22.5 After complying with the procedure set out in this clause 22 a Party may approach the TA or exercise any legal right that may be available to it and this clause 22 is without prejudice to the right of a Party to seek the intervention of the TA or a court.

23. O&M MANUAL

- 23.1 After the date of this Agreement the Parties will negotiate and use their respective best efforts to agree an operational manual within 4 months of the date of this Agreement that will establish operational procedures to be followed by the Parties in relation to this Agreement.
- 23.2 Each Party will appoint suitably skilled technical representatives for the purposes of the discussions referred to in clause 23.1 and will ensure that its representatives diligently seek to resolve technical operational issues.

24. NOTICES

- 24.1 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:

Facsimile:

Attention:

Office held:

Address:

Facsimile:

Copy to:

Facsimile :

24.2 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 calendar days after posting (seven, if posted to or from a place outside Hong Kong); and
- (c) if a facsimile, at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.

25. FORCE MAJEURE

25.1 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.

25.2 If the Force Majeure continues for a period of 30 calendar days after a notice given under this clause, the Parties must meet to discuss in good faith a mutually satisfactory resolution to the problem.

25.3 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.

26. CONFIDENTIALITY

26.1 The Parties acknowledge that the Confidentiality Agreement between them dated 1st June, 1994 applies to all confidential information disclosed by one party to the other party in relation to this Agreement.

27. NO GRANT OF PROPERTY INTEREST

27.1 Nothing in this Agreement is to be construed as vesting in the Service Requester:

- (a) any right, title or proprietary interest in any Requester Equipment Space at the Service Provider; and

(b) any right in respect of any Requester Equipment Space, the grant or enjoyment of which would breach any arrangement with a third person in respect of that Requester Equipment Space.

27.2 The Service Requester must not grant a third person either physical access to, or a right to locate a third person's equipment in Requester Equipment Space.

28. GENERAL

Acknowledgment

28.1 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

28.2 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 and Good Faith

28.3 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

28.4 Each Party will act in good faith in seeking to agree any matters in relation to this Agreement and in the exercise of rights and the performance of obligations under this Agreement.

Waiver and variation

28.5 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.

28.6 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

28.7 Subject to clause 28.4 party may give or withhold its approval or consent conditionally or unconditionally in its discretion unless this Agreement states otherwise.

Further assurances

- 28.8 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

- 28.9 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 other relationships

- 28.10 Nothing in this Agreement shall constitute or be construed to constitute any Party as the partner, agent, or employee or representative of the other Party and no Party shall have power to incur any obligations on behalf of or pledge the credit of the other Party in any manner. This Agreement shall not constitute a joint venture or any other similar arrangement between the Parties.

Severability

- 28.11 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

- 28.12 The Service Requester must pay all Taxes payable on this Agreement, any sales, value added, consumption or similar Tax payable in relation to the goods and/or services provided under this Agreement and any Taxes payable in relation to this Agreement and the transactions evidenced by this Agreement that are introduced after the date of this Agreement (other than any income Tax payable by the Service Provider) except to the extent that such Tax is already reflected in a Charge variation pursuant to Schedule 4.

Assignment

- 28.13 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

- 28.14 This Agreement is governed by the laws of Hong Kong.
28.15 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Hong Kong.

28.16 This Agreement may be exerted in a number of counterparts. All counterparts together will be taken to constitute one instrument.

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**SCHEDULE 1
LOCAL ACCESS LINKS**

1. Specifications

1.1 Voice Grade LAL

- (a) A Voice Grade LAL will be limited to a 2-wire copper cable line with distance dependent performance of limited bandwidth from 300 Hz to 3400 Hz.
- (b) DC power continuity will be provided for local loop detection purposes under normal telephone operation.
- (c) Signal attenuation of 2.8dB nominal per km at 1600 Hz.
- (d) Circuit random noise of -45dBmp maximum.

1.2 Data Grade LAL

- (a) A Data Grade LAL will be limited to a 2-wire copper cable line with distance dependent performance of limited bandwidth from 300 Hz to 50 kHz.
- (b) Line power feeding is not supported.
- (c) Signal attenuation of 42dB maximum at 40 kHz.
- (d) Circuit random noise of -45 dBmp maximum.
- (e) DC power continuity will be provided for local loop detection purposes under normal telephone operation.

2. Agreed Use

2.1 Voice Grade LAL

The Agreed Use for a Voice Grade LAL and the operation of the associated Requester 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 Service Requester's Licence over its Network, including the duplex carriage of miscellaneous speech and voice band data on copper circuits within the above specified bandwidth limitations.

2.2 Data Grade LAL

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

3. **Minimum Quantities**

3.1 **Voice Grade LAL**

3.1.1 When there are 8 or more Exchange Sites provisioned:

(a) The minimum quantity of aggregate LALs at all Exchange Sites is :

<u>End of period</u>	<u>Minimum quantity of LALs</u>
the first 6 months after the date of the RFU Notice for the 8th Exchange Site	10,000 LALs
the first 12 months (and thereafter) after the date of the RFU Notice for the 8th Exchange Site	20,000 LALs

and

(b) In addition to clause 3.1.1(a), the minimum quantity of aggregate LALs at each Exchange Site is:

<u>End of period</u>	<u>Minimum quantity of LALs</u>
the first 6 months after the date of the RFU Notice for the relevant Exchange Site	800 LALs
the first 12 months (and thereafter) after the date of the RFU Notice for the relevant Exchange Site	1600 LALs

3.2 **Data Grade LAL**

The minimum quantity of aggregate Data Grade LAL which must be achieved is:

<u>End of period</u>	<u>Minimum quantity of LALs</u>
the first 6 months after the date of the RFU Notice for the 8th Exchange Site	to be agreed
the first 12 months (and thereafter) after the date of the RFU Notice for the 8th Exchange Site	to be agreed

- End -

Commercial-In-Confidence

SCHEDULE 2
EQUIPMENT AND ENVIRONMENTAL SPECIFICATIONS

PART 1 - SERVICE PROVIDER EQUIPMENT

1. The Service Provider Equipment includes:
 - (a) Customer End Equipment includes Customer Interface Point, connectors, or termination sockets or other devices for the termination of the LAL.
 - (b) Exchange End Equipment includes those equipment, distribution frames, equipment racks, terminating points and tie cables situated in the associated Exchange Site for the LAL.
 - (c) Switch Site Equipment includes those transmission equipment belonging to the Service Provider and installed by the Service Provider at the Requester Switch Site for provisioning of Leased Circuits.

PART 2 - REQUESTER EQUIPMENT

1. The Requester Equipment is strictly limited to:
 - (a) distribution frames and portable test equipment; and
 - (b) equipment specifically approved by the Service 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 - REQUESTER EQUIPMENT SPACE

Unless otherwise agreed, the Service Provider will, in consideration of the charges, supply the following:

1. General facilities and environmental conditions of the Requester Equipment Space must include all of the following:
 - (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 Service Requester for equipment and cable rack is 2.45 meters. The Parties will negotiate in good faith on per Exchange Site basis if the Service Requester requires a clear height higher than 2.45 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. In the events of long period air-conditioning plant and DC power plant failures, the Service Provider will treat the Requester Equipment in the same manner as it treat its own equivalent equipment located in the vicinity of the Requester Equipment Space.

2. Fire detection and suppression system:

- (a) Fire fighting system
 - BTM total flooding system; or
 - Pre-action sprinkler system; and/or
- (b) Smoke and heat detection system; and/or
- (c) 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 Service Requester must be under supervision of Service Provider, and must be in accordance with the Access Terms specified in Schedule 7.

PART 4 - REQUESTER SWITCH SITE

1. General facilities and environmental conditions of the space at a Requester Switch Site designated for the Service Provider to install and accommodate its Switch Site Equipment must include all of the following:

- (a) A patching panel or frame.
- (b) Appropriate a.c. power.
- (c) Maintained d.c. voltage supply of -48 to -60 Volts nominal.
- (d) Sufficient floor space for installation of floor standing cabinets each of dimension 700 mm (W) x 600 mm (D) x 2000 mm (H) with 700 mm clearance in the front and the back of the cabinet.
- (e) Environmental conditions required by the equipment :
 - (i) Power consumption typically 150 to 300 watts
 - (ii) Temperature -10 degree C to 50 degrees C
 - (iii) Humidity 10% to 90%

- End -

SCHEDULE 3

EXCHANGE SITES AND REQUESTER SWITCH SITES

Part A - First 4 Exchange Sites

List of _____ exchanges in respect of which a Requester Equipment Space has been deemed to have been applied for and approved in accordance with the Agreement.

Planned RFU
Date

Part B -

(a) Additional Exchange Sites

The following additional Exchange Sites will be subject to confirmation (including availability of DC power) between the Parties. The target RFU dates are indicative only.

Target RFU
Date

(b) Other Exchange Sites

The following Exchange Sites are indicative and will be subject to further discussion and confirmation between the Parties.

Part C - Requester Switch Sites

- End -

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 9 of this Schedule and in accordance with clause 19.6 of the Agreement.
- 1.3 Charges for making ready lead-in or cabling facilities at the Exchange Site have not been included in this Schedule.

2. Site Set-up Services

- 2.1 The Service Requester must pay Site Set-up Charge in respect of :
 - (a) the Preparation Work conducted by the Service Provider in respect of each Requester Equipment Space; and
 - (b) the provisioning of the Tie Cables by the Service Provider.
- 2.2 The Site Set-up Charge is a one-off charge quoted by the Service Provider on a case-by-case basis to cover the Preparation Work in relation to the actual area of the Requester Equipment Space.
- 2.3 A quote of the Site Set-up Charge will be provided by the Service Provider at the same time it presents the design and work plan of the Requester Equipment Space ("Plan") to the Service Requester. The quote will be based on information available to the Service Provider as of the date of the Plan.
- 2.4 If the Parties are unable to agree the amount of Site Set-up Charges payable by Service Requester, the provision set out in clause 4.6 of the Agreement will apply.
- 2.5 The quote described in clause 2.3 will be based on the information received by Service Provider before it commences the design and planning work, and may be revised by Service Provider following discussion with Service Requester. Service Provider may have to revise the quote if Service Requester subsequently changes its requirements or if changes are necessary in view of any information relating to the Requester Equipment subsequently provided to Service Provider.
- 2.6 The Site Set-up Charges will become payable on the Actual RFU Date for the relevant Requester Equipment Space.
- 2.7 Service Provider will charge for the man-hour spent by its staff to supervise access to the Requester Equipment Space for delivery, installation, testing and other work to be conducted by Service Requester prior to the Actual RFU Date for the Requester

Equipment at the prevailing man-hour rates charged by Service Provider. Service Provider may invoice Service Requester after Service Provider has conducted an activity specified above. The Parties will discuss in good faith for efficient procedures to conduct the access supervision taken into account of issues on security concerns.

- 2.8 If Service Requester makes any changes to Requester Equipment, and Service Provider reasonably considers that it is necessary to modify the Requester Equipment Space or any of its associated facilities (such as power supply or air conditioning), Service Provider will quote the one-off amount payable for those modifications and any increase in the Site Management Charge. If the Parties are unable to agree the amount payable by Service Requester, the provision set out in clause 4.6 of the Agreement will apply.

3. Site Management Charge

3.1 Site Occupation Charge and Building Management Charge

- (a) The Site Occupation Charge and Building Management Charge shall be calculated at the monthly rates set out below. However, if the actual period of occupation is shorter than the Site Minimum Commitment Period, the Service Requester must pay Site Occupation Charge and Building Management Charge for the entire Site Minimum Commitment Period.

Monthly Site Occupation charge per square meter	HK\$475	HK\$475	HK\$475
Monthly Building Management charge per square meter	HK\$50	HK\$50	HK\$50

- (b) Provided that the Service Requester has paid the Basic Service Charge according to clause 6 in respect of an Exchange Site, it will not be required to pay items 3.1(a) of the Site Occupation Charge and Building Management Charge for up to 10 square meters of Requester Equipment Space.
- (c) Notwithstanding clause 3.1(b) above, if the actual Requester Equipment Space of an Exchange Site is less than 10 square meters, the Basic Service Charge for the relevant Exchange Site will be reduced by an amount corresponding to the lesser of (i) the difference between 10 square meters and the actual Requester Equipment Space; and (ii) 2 square meters of Requester Equipment Space of the relevant Exchange Site. For clarity, the reduction will be calculated according to clause 3.1(a) subject to adjustment according to clause 3.1(g).
- (d) A quote of the Site Occupation Charge and Building Management Charge payable per month in respect of a Requester Equipment Space will be provided by the Service Provider at the time it presents the Plan to Service Requester.
- (e) For the first 3 Exchanges Sites specified in Part A of Schedule 3, the space occupied by the partition in separating the Requester Equipment Space from

the rest of an Exchange Site is not included in the calculation of the Site Occupation Charge and Building Management Charge. The above space will be included in the calculation in all other Exchange Sites.

- (f) The Site Occupation Charge and Building Management Charge for any Exchange Sites other than the Exchange Sites specified in Part A of Schedule 3 shall be calculated at the monthly rate set out below:

	Exchange Site located in commercial districts	Exchange Site located in other districts
Monthly Site Occupation charge per square meter	HK\$475	HK\$205
Monthly Building Management charge per square meter	HK\$50	HK\$50

- (g) The amounts stated in clause 3.1(a) and 3.1 (f) will be adjusted annually based on the market rent of commercial buildings.

3.2 Site Facilities Charges

- (a) 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 the Service Requester at an Requester Equipment Space	Monthly Charges payable by Service Requester	Annual Adjustment
(i)	Basic facilities : routine maintenance of basic facilities (including air-conditioning, fire detection and fighting system) by the Service Provider	\$150 per square meter	CPI
(ii)	Capacity for AC Power : routine maintenance of AC power distribution system by the Service 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

(iii)	Usage of AC Power : AC power consumed by the Service Requester	Quoted by Service Provider based on half of the AC Power Capacity and to be reviewed 6 months after site Ready for Use	Quoted by Service Provider with reference to the adjustment made by electricity company
(iv)	Capacity for DC Power : routine maintenance of DC power generation and distribution system by Service Provider (Note: priority access to DC back-up power is not covered)	\$1,130 per kW (note any necessary facility upgrading to accommodate Requester Equipment is subject to additional charges)	CPI
(v)	Usage of DC Power : DC power consumed by the Service Requester	Quoted based on the Requester Equipment load	Quoted by Service Provider with reference to the adjustment made by electricity company
(vi)	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
(vii)	Others : any other facilities or services agreed by the Parties in finalising the Plan for a Requester Equipment Space	As may be agreed in the Plan	As may be agreed in the Plan

- (b) The amounts stated in clause 3.2(a) as being subject to CPI adjustment will be revised each year in accordance with clause 9.
- (c) In addition to the adjustments described in clause 3.2(a), the Service Provider may, by 1 month's prior notice to the Service Requester, increase the Site Facilities Charge if :
- (i) the DC power consumption of the Requester Equipment located in a Requester Equipment Space exceeds 3.2KW; or
 - (ii) the heat dissipated by the Requester Equipment located in a Requester Equipment Space exceeds 3.12KW; or
 - (iii) the AC power consumption of the Requester Equipment located in a Requester Equipment Space exceeds 5KVA.

4. **Site Supervision Charge**

- 4.1 The Service Provider will invoice the Service Requester for Site Supervision Charge based on the actual number of man-hours spent by the representative(s) of the Service Provider to supervise access by the Service Requester to the Requester Equipment Space during the period identified in the invoice.
- 4.2 The Site Supervision Charge will be calculated by multiplying the actual number of man-hours spent by the representative(s) of the Service Provider with the prevailing man-hour rate charged by the Service 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.

4A. **Man-hour Rates**

4A.1 As of 1st July 1996, prevailing man-hour rates are as follows :

Work Done by	Rate per man-hour
(a) during normal working hours	HK\$285
(b) outside normal working hours	HK\$361

Service Provider shall notify Service Requester of the prevailing man-hour rates from time to time and on request by Service Requester.

4A.2 In respect of each occasion of work performed by Service Provider under clause 4A.1(b), Service Requester must pay for a minimum of 2 man-hours and any travelling expenses incurred to perform such work during the hours specified in that paragraph.

5. **Site Cancellation Charge**

- 5.1 If the Service Requester cancels an Accepted Site Application after the Service Provider has commenced design and planning work but before the Parties have agreed to the design, the Service Requester will pay the Service Provider for the work done up to the time of cancellation.
- 5.2 If the Service Requester cancels an Accepted Site Application after the Parties have agreed to the design for the Requester Equipment Space, the Service Requester must pay Cancellation Charge as follows:

<u>Cancellation of Site</u>	<u>Site Cancellation Charge</u>
more than 8 weeks before Planned RFU Date	20% of Site Set-up Charge
6 to 8 weeks before Planned RFU Date	50% of Site Set-up Charge

4 to 6 weeks before Planned RFU Date	75% of Site Set-up Charge
less than 4 weeks before Planned RFU Date	100% of Site Set-up Charge

5.3 If the Service Requester cancels the Requester Equipment Space after the Actual RFU Date for that space and within the Site Minimum Commitment Period, it must pay the Site Set-up Charge and the unpaid balance of the total amount of Site Management Charge that would otherwise be payable for the duration of the Site Minimum Commitment Period.

6. Basic Service Charge and Service Charges

6.1 The Basic Service Charge and the Service Periodic Charge are the monthly amount payable for each Exchange Site in respect of which an Accepted Site Application has been issued in accordance with the Agreement, as set out below:

(a) Basic Service Charge of HK\$9,000 per month is payable for the first 10 square meters of Requester Equipment Space for the first 5,000 LAL at an Exchange Site. The Parties will discuss in good faith the charges in the event that the number of LALs exceeds or expected to exceed 5,000 LALs and will agree those charges before any of those LALs are provisioned. However, if the actual period of occupation of an Exchange Site is shorter than the Site Minimum Commitment Period, the Service Requester must pay the Basic Service Charge for the entire Site Minimum Commitment Period. The full amount is payable irrespective of whether the Service Requester orders or uses any LAL in the relevant batch.

(b) Service Periodic Charge of HK\$100 is payable for each Voice Grade LAL from an Exchange Site.

6.2 The Basic Service Charge will become payable on the earlier of (i) one week after the Actual RFU Date for the initial 2 Leased Circuits, and (ii) six weeks after the Actual RFU Date for the Requester Equipment Space, in relation to every batch of 5,000 LAL of the relevant Requester Equipment for each Exchange Site. The Service Periodic Charge in relation to a LAL will become payable on the actual RFU date of the LAL.

6.3 The amounts payable for Service Connection Charge in relation to a LAL within Urban Area are as set out below.

No of LALs installed in the same Customer Building at the same time ***	Voice Grade LAL	Data Grade LAL
1 to 4 LALs	HK\$580	Note **
5 to 20 LALs	HK\$500	Note **
21 LALs or more	HK\$440	Note **

Note ** - the above charges in relation to Data Grade LAL to be agreed by the Parties and the Parties will use their reasonable endeavours to agree those charges within 2 months of the date of the Agreement.

Note *** - to qualify for the quantity installation rates, the Service Requester will need to provide the orders of LALs installed in the same Customer Building at the same time as a single batch.

6.4 The amounts payable for Service Connection Charge and Service Periodic Charge in relation to Data Grade LAL circuits are as set out below.

	Service Connection Charge (one-off amount)	Service Periodic Charge (per month)
Urban Area	Note **	Note **

Note ** - the above charges in relation to Data Grade LAL to be agreed by the Parties and the Parties will use their reasonable endeavours to agree those charges within 2 months of the date of the Agreement.

6.5 The amounts stated in clause 6.1, 6.3 to 6.4, 6.8 and 6.9 will be revised each year in accordance with the CPI adjustment set out in clause 9.1 and 9.2.

6.6 The rates stated in this clause 6 are applicable for LAL to be provisioned from Exchange Sites listed in Schedule 3 as of the date of the Agreement and for additional Exchange Sites within the Urban Area along the MTR routes existing as of the date of the agreement. The parties will negotiate in good faith for rates applicable to any other Exchange Sites on a case-by-case basis.

6.7 Notwithstanding the above, the Service Requester may by advance written notice to the Service Provider of at least 1 billing period after the end of the billing period in which the notice is given elect to replace :

- (a) the base rates (set out in clause 6.1) by one of the Service Options, or
- (b) Service Option A by Service Option B

as specified in clause 6.8 below in relation to a specified Exchange Site. The Service Option will be effective from the first day of the relevant calendar month following that advance notice period.

6.8 Service Options:

Service Option	Basic Service Charge (per month)	Service Periodic Charge (per LAL per month)	
		Voice Grade LAL	Data Grade LAL

Base rates	(HK\$9,000)	HK\$100	Note **
Option A	(HK\$20,000)	HK\$75	Note **
Option B	(HK\$40,000)	HK\$65	Note **

Note ** - the above charges in relation to Data Grade LAL to be agreed by the Parties and the Parties will use their reasonable endeavours to agree those charges within 2 months of the date of the Agreement.

6.9 Relocation Charges:

The amounts payable for relocating LAL circuits within urban area are as set out below.

	Voice Grade LAL (one-off amount)	Data Grade LAL (one-off amount)
Relocation within the same Customer Building	HK\$300	Note **
Relocation to other Customer Building	HK\$580	Note **

Note ** - the above charges in relation to Data Grade LAL to be agreed by the Parties and the Parties will use their reasonable endeavours to agree those charges within 2 months of the date of the Agreement.

6.10 The Parties will negotiate in good faith to agree on the charges in relation to Data Grade LAL within 2 months after the signing of the Agreement. The Parties acknowledge that no Data Grade LAL will be provisioned until such charges are agreed.

7. Service Cancellation Charge

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

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

8. Service Minimum Commitment Charge

8.1 Following the end of each period specified in Part 3 of Schedule 1 the Service 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 per-exchange quantity of total of Voice Grade LAL of the relevant Exchange Site, if the actual quantity ordered and paid for by the Service 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 Voice Grade LAL)

- (b) In respect of the aggregate quantity of Voice Grade LAL, if the actual quantity ordered and paid for by the Service 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 - sum of additional quantity per exchange) x (Periodic Charge for Voice Grade LAL)

Where "additional quantity per exchange" is the amount :

(minimum quantity - actual quantity) of the relevant Exchange Site that has already been accounted for in (a) above.

8.2 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.

8.3 The Parties will agree the minimum commitment charges for Data Grade LAL before any Data Grade LALs are provisioned.

9. CPI Adjustment

9.1 Charges specified in this Schedule 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 (although no adjustment will be made if it results in a decrease in those charges):

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

9.2 If the Parties are not able to agree new Charges before 1st July 1998, , then each item of Charges (whether in respect of an order which commences before or after 1st July 1998) will be increased in accordance with the following formula on and from 1st

July 1998 until the next Review Date (although no adjustment will be made if it results in a decrease in those charges):

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

9.3 For the purpose of clauses 9.1 and 9.2, 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 1st July 1996, 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 1st July of each year.

The average figure of the CPI(A) over the relevant 12 month period will be used for the purpose of clause 9.

9.4 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.

9.5 If any adjustments are made in accordance with this clause, and the adjustment commences on a date other than the first calendar day of a calendar month, the charges due for that month should be re-calculated, pro-rata, on a 30-calendar day month basis.

10. Billing

10.1 The Service Provider will issue and send invoices to Service 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
- (b) invoice due date
- (c) any brought forward amount of previous invoices
- (d) amount payable for each category of Charges and (where applicable) a breakdown of the number of man-hours included in the calculation in respect of the month covered by invoice
- (e) interests on any overdue amounts

- (f) total amount payable
- (g) the amount of any credit arising from any disputed amount which was paid

10.2 The following billing principles are applicable to this Schedule :

- (a) Charges that are recurrent will be payable one month in advance and will be billed on a monthly basis.
- (b) An invoice for all Charges (other than Charges that are recurrent) payable in respect of any calendar month will be issued at the beginning of the immediately following month.
- (c) Service Provider will issue a consolidated invoice for all Charges payable in respect of a specified month and will provide a breakdown on a per exchange basis as soon as such alternative is available within the Service Provider's system.
- (d) Invoices will be issued on or before the 10th calendar day of each calendar month.

11. Payment

- 11.1 All invoices must be settled in Hong Kong dollars by company cheques made payable to Service Provider or by electronic transfer to the nominated bank account of Service Provider. Payment must be credited to Service Provider on or before the invoice due date.
- 11.2 Invoiced amounts, other than overdue interests, are due in full within 30 calendar days from the date of issue of the invoice or next working day if it is a holiday. Each invoice issue date should not be earlier than the dispatch date of that invoice. Overdue interests are due immediately.
- 11.3 If an invoice is not paid by the invoice due date, Service Requester must pay interest in respect of the overdue amount. Overdue interest will be calculated at the rate (the "Interest 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 Service Provider. Interest will continue to accrue despite termination of the Agreement.
- 11.4 If Service Requester pays an amount which is subsequently resolved under clause 12 not to have been due, Service Provider shall credit Service Requester for that amount plus interest calculated in accordance with clause 11.3 of this Schedule from the date of actual payment to the date of the credit in the next invoice following that resolution.

12. Dispute Resolution

- 12.1 If Service Requester bona fide disputes the whole or part of an invoice, Service Requester 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 by Service Requester until the dispute is resolved (provided that Service Requester complies with the terms set out in this section) and provided the resolution of the dispute determines that Service Requester should pay the disputed amount. Without prejudice to the Agreement and for the avoidance of doubt, any matter relating to service levels and specifications does not constitute a subject matter for dispute under this clause 12.

12.2 If Service Requester disputes an invoice, Service Requester must notify Service Provider in writing specifying:

- (a) the invoice in dispute
- (b) the amount in dispute
- (c) reasons for dispute
- (d) supporting documentation as appropriate.

12.3 Notification of dispute must be delivered by hand or by post or by facsimile and must reach Service Provider within 25 calendar days from the date of receipt of the invoice by Service Requester. Any dispute raised after 25 calendar days from date of receipt of the invoice by Service Requester will not be considered, and the invoice must be settled in full by the invoice due date.

12.4 Dispute Investigation

- (a) 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. Such joint investigation is expected to be completed within 14 Business Days from the dispute notification date.
- (b) A dispute is not valid if there is no substantial error found in respect of the invoice in dispute within 14 Business Days from the dispute notification date. If the dispute is not valid, Service Requester must pay overdue interest on the disputed amount commencing from the original invoice due date.

12.5 Non-settlement of Dispute

The parties must use their reasonable efforts to promptly resolve any dispute notified under this section. If the parties are unable to resolve any dispute in relation to the accounting process which affects the amount in dispute within 14 calendar days after notification of the dispute, the Parties will refer the dispute to the senior management of the Parties for resolution by any means they deem suitable which may include referring the matter to a certified chartered accountant to act as an expert.

12.6 Resolution

- (a) Following the dispute investigation, Service Requester must pay the amount resolved under clause 12.3 or 12.4 to be payable ("resolution amount") and overdue interest on the resolution amount to be calculated from the original invoice date to the actual payment date.
 - (b) Any resolution amount (including principle and interest) must be settled within 7 Business Days of the dispute resolution date.
- 12.7 If Service Provider does not receive the outstanding principle and interest within 7 Business Days from the dispute resolution day, it may include overdue interest in respect of these amounts in the next invoice issued to Service Requester.

- End -

SCHEDULE 5

IMPLEMENTATION PLAN AND PREPARATION WORK

Part I - Implementation Plan for the 3 Initial Exchange Sites set out in Schedule 3 as of the date of the Agreement

1. The implementation schedule for the 3 Initial Exchange Sites is specified in attachment 1 showing the planned Ready for Use Date for each Exchange Site (The implementation schedule for the Exchange Site at Admiralty is attached to this schedule and the implementation schedule for the other Exchange Sites will be agreed by the Parties as soon as practicable). The Parties will discuss in good faith the procedures for amending the implementation schedule.
2. The Requester Equipment layout within Requester Equipment Space at each Exchange Site is specified in attachment 2 (Layout plans of the Requester Equipment Space for the Exchange Site at Admiralty is attached to this schedule and the layout plans of the second and third Sites will be agreed by the Parties as soon as practicable).
3. Inventory check list and description of the Requester Equipment at ADM Exchange Site is listed in attachment 3.
4. Copy of indicative specifications for the Requester Equipment (including distribution frame and remote line concentration equipment) is attached in attachment 4.

Part II - Implementation Plan and Preparation Work by Service Provider

The Preparation Work to be performed for additional Exchange Sites by the Service Provider at Service Requester's cost includes:

- (a) design and planning support regarding the physical arrangement of the Requester Equipment Space;
- (b) constructing walls, ceilings, floors, doors and other facilities around the Requester Equipment Space to separate that space from space ordinarily accessed by the Service Provider's employees;
- (c) constructing walls, ceilings, floors, door and other facilities within the Exchange Site;
- (d) installing facilities for DC and AC power supply (including isolation fuses on any DC power feeds), air-conditioning equipment, AC sockets, earthing and lighting;
- (e) installing or augmenting fire protection equipment;
- (f) installing or augmenting security arrangements;
- (g) installing Tie Cables;

- (h) installing or extending cable trays and iron work; and
- (i) other requests by the Service Requester.

The Implementation Plan and the Preparation Work are to be agreed by the Parties in accordance with the terms of the Agreement.

Attachment 1 - Implementation Schedule

ID	Task Name
1	SIGNING OF AGREEMENT
2	
3	
4	
5	Clarification of Requirements
6	Design and Planning
7	Quotation of Site Set-up Charge
8	Construction Work for Site Set-up
9	Partition (12 sq m)
10	Racking and Power Provisioning (3.2kW DC power)
11	Tie Cabling and Termination (for initial 2,000 LAL)
12	Planned Ready for Use Date
13	Provision of first 2 x E1s
14	
15	
16	Charge Confirmation and Design Acceptance
17	Earliest Date for Equipment Installation
18	Equipment Installation (Earliest)
19	Equipment Commissioning
20	

Project: Date: 10/8/96	Task	Summary	Rolled Up Progress
	Progress	Rolled Up Task	
	Milestone	Rolled Up Milestone	

Attachment 1 - Implementation Schedule

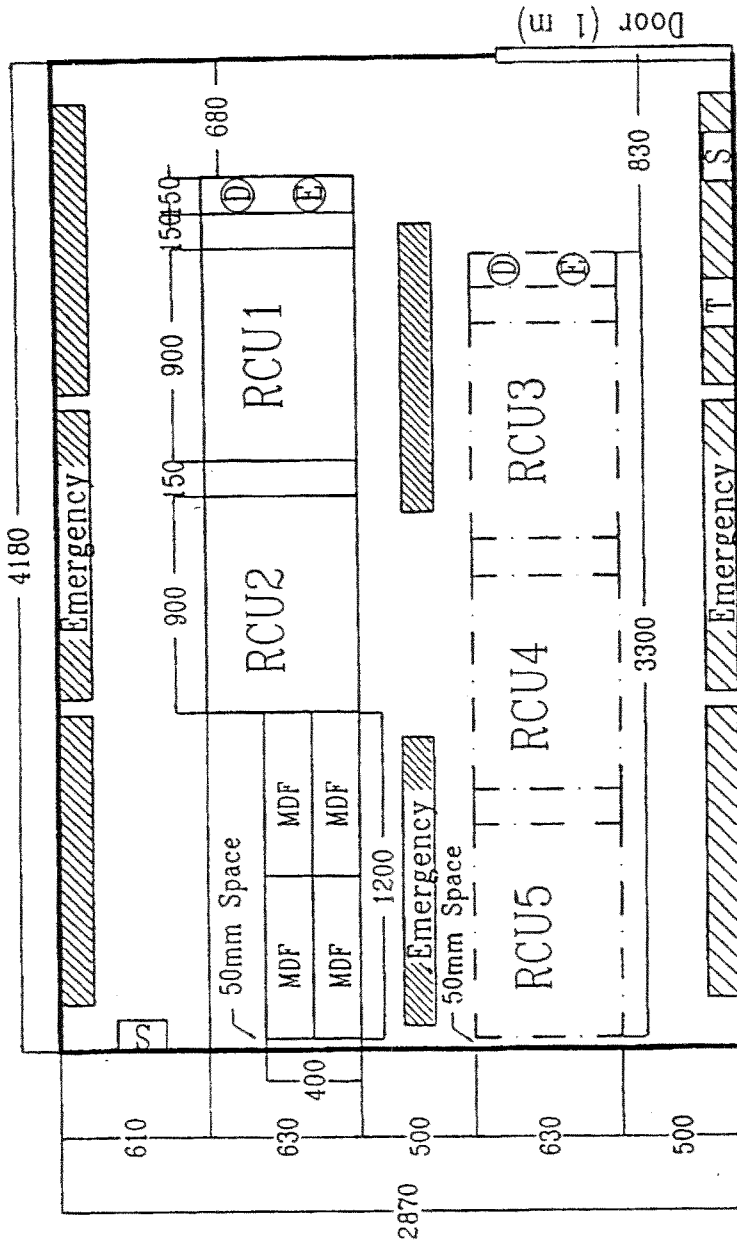
ID	Task Name
21	
22	
23	Clarification of Requirements
24	Desing and Planning
25	Quotation of Site Set-up Charge
26	Site Vacated
27	Construction Work For Site Set-up
28	(12 sq m, 3.2kW DC Power and 2,000 LAL)
29	Planned Ready for Use Date
30	
31	
32	Charge Confirmation and Design Acceptance
33	Equipment Installation
34	Equipment Commissioning
35	

Task	Summary	Rolled Up Progress
Progress	Rolled Up Task	
Milestone	Rolled Up Milestone	

Project:
Date: 10/8/96


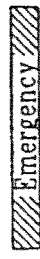




13/7/96

Attachment 2



All dimensions are in mm.
Area : 12m²

Legend :

-  Fluorescent Lamp
-  Emergency Lighting
-  13A Socket
-  Telephone Socket
-  D.C. Input Point
-  Earthing Point

TITLE : Floor Layout for

DRAWING NO. :

PROPOSED BY :

SCALE :

DATE : 20th July, 96

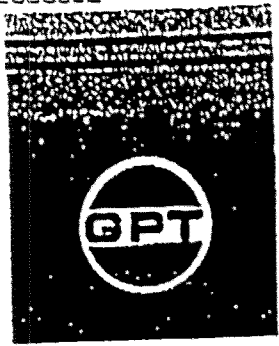
CHECKED BY :

DRAWN BY : JL

Attachment 3 - Inventory Check List and Description of the Requester Equipment for

The inventory check list for the Requester Equipment set out below is for the Exchange .

Equipment	Description	Initial Quantity (for initial 2,000 LAL)	Ultimate Quantity (for ultimate 5,000 LAL)
MDF		4	4
RCU Rack	19 inch Rack	2	5
RCU Control Shelf	Concentrator core equipment DSSS Mk3 FSK	1	3
RCU Auxiliary Shelf	Concentrator core extension equipment DSSS Mk3	1	3
RCU ALU	Universal line shelf DSSS Mk3	8	20
Analogue Line Equipment	Each package includes 8 analogue line card and 1 controller	24	60
Analogue DDI Line Equipment	Each package includes 8 DDI card and 1 controller	8	20



**Product
Description**

CONC600E

**SYSTEM X
Mk.3 CONCENTRATOR**

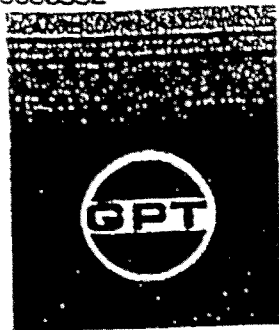
EQUIPMENT

GPT LIMITED
Telecommunications Systems Group,
Edge Lane, Liverpool,
United Kingdom, L7 9NW.
Tel: 0151-254-3000

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GPT LIMITED
Registered Address: New Century Park, PO Box 33, Coventry, United Kingdom, CV3 1HJ Tel: 01 203-562000



**Product
Description**

CONC600E

CONTENTS

Section	Title	Page
1	INTRODUCTION	3
2	FEATURES	3
2.1	Basic Features	3
2.2	Shelf Layout and Equipment Provisioning	3
2.3	Mechanical and Physical Characteristics	4
2.4	Electrical Characteristics	4
3	PREREQUISITES	5
4	ADDITIONAL INFORMATION	5
5	APPENDICES	5



Product Description

CONC600E

1. INTRODUCTION

This product provides the standard concentrator functionality together with the latest Mk.3 Concentrator innovations in TEP1-H equipment practice.

2. FEATURES

Basic Features

2.1

2.1.1

The product supports analogue line equipment for POTS and Direct Dial In/ Direct In Dialling (DDI/DID) circuit types. Basic Access ISDN circuits and Primary Rate Access (PRA) ports may be optionally equipped as defined in section 2.2.

2.1.2

160 auxiliary line circuits are also supported for use with analogue line equipment as defined in section 2.2.5 and 2.2.6.

2.1.3

The product is provisioned with Enhanced Module Controllers (CONC610E) and an Integrated Test Facility (ITF) (TEST300E).

2.1.4

The product supports reporting of alarm conditions to the host System X exchange and to a Remote Alarm Lamp Panel (RALP).

2.2

Shelf/Rack Layout and Equipment Provisioning

2.2.1

The standard physical layout of the CONC600E Concentrator is shown in Table 2.2.1.

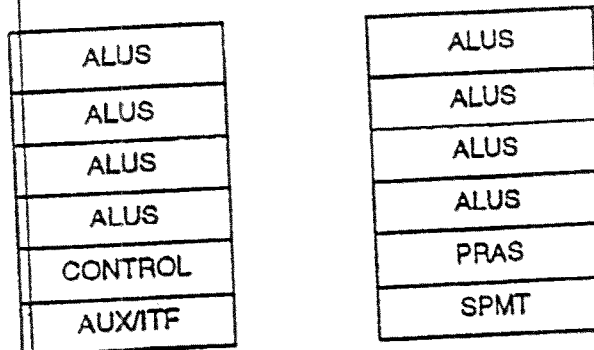
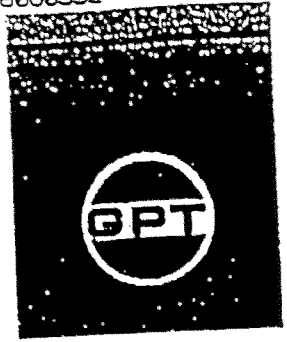


Table 2.2.1 Shelf/Rack layout for CONC600E Concentrator

- ALUS : Analogue Line Unit Shelf
- AUX/ITF : Auxillary/ITF shelf
- PRAS : Primary Rate Access Shelf
- SPMT : Subscriber's Private Meter Transformer



Product Description

CONC600E

- 2.2.2 Analogue line equipment is provisioned, in modules of 64 lines, as either POTS or Direct Dial In (DDI/DID) circuits.
- 2.2.3 Basic Access ISDN may be installed in modules of 32 circuits (16 lines) in any ALUS, as replacements for the 64-circuit analogue line modules.
- 2.2.4 The product may be provisioned with up to 32 x CONC620E PRA ports providing 960 x 64 kbit/s circuits in place of analogue line shelves.
- 2.2.5 The product may also be equipped with 32 x 30 kOhm Loop, and 32 P-wire auxiliary circuit types, together with 96 Subscriber's Private Meter (SPM) auxiliary circuits. Auxiliary circuits may be provisioned to any analogue line.
- 2.2.6 The maximum equipment provisioning options are shown in Table 2.2.2.

Line Provisioning	Auxiliary Provisioning			
	PRA Channels	SPM Loop	30 kOhm	P-Wire
Analogue Lines				
Note 1				
2,048	0	96	32	32
1,024	960	96	32	32

Table 2.2.2. CONC600E equipment provisioning.

Note: Analogue line provisioning is for POTS or DDI/DID. Provisioning of Basic Access ISDN lines is in modules of 32 circuits as described in the body text.

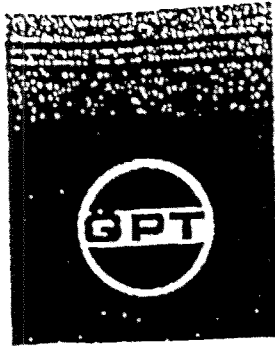
2.3 Mechanical and Physical Characteristics

The equipment practice at shelf and slide in unit level is TEP1-H compatible. The mechanical limitations are as defined in the appropriate GPT specifications.

2.4 Electrical Characteristics

2.4.1 Power Supply

The CONC600E Concentrator is designed to be used with the System X Power Equipment Rack.



Product Description

CONC600E

2.4.2

Power Requirements

The product has a typical power consumption of 2.5 kW, based on fully equipped shelves/racks containing equipment as outlined in the concentrator package. This figure is based on 0.08 Erlangs of analogue subscriber Line traffic. Note that this figure will vary if other Concentrator equipment configurations are used.

3.

PREREQUISITES

Not applicable.

4.

ADDITIONAL INFORMATION

4.1

ITF Equipping

Where multiple Concentrators are located within the appropriate cabling distance, ITFs may be shared over a number of Concentrators. However, this is dependent on the level of line equipment provisioning.

5.

APPENDICES

Not applicable.

End of Document

MDF
(2 pages)

Frameworks

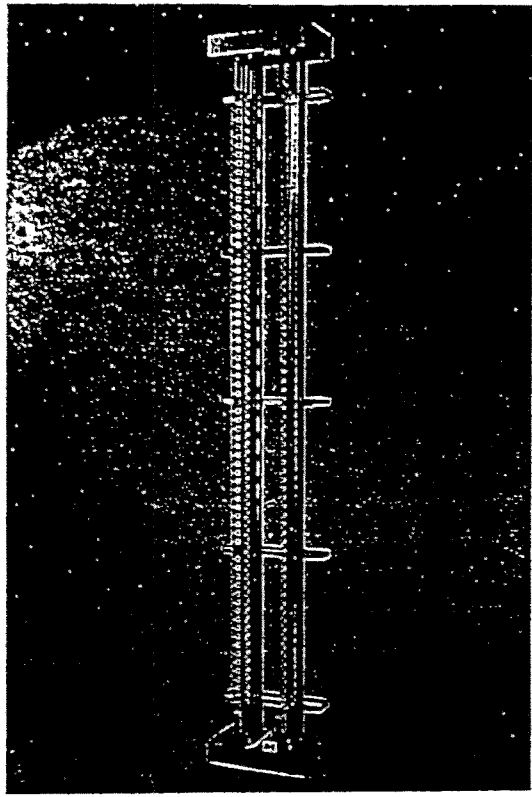
Module Mounting Frames



Description KRUNE No.

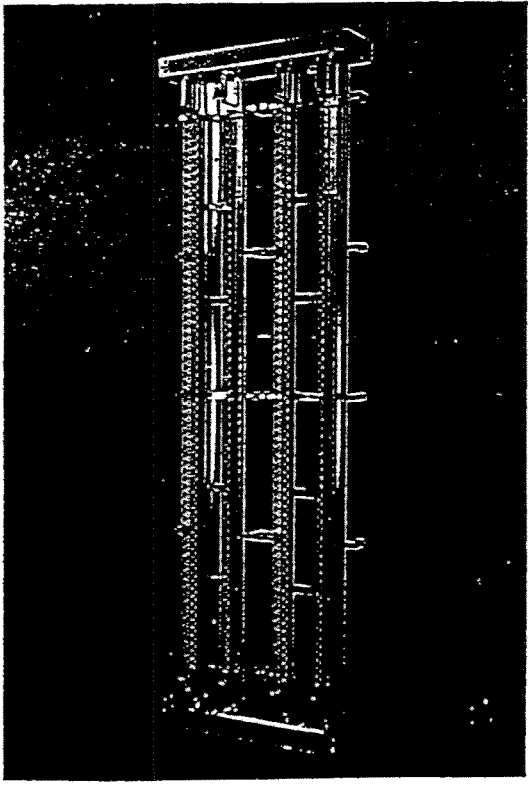
Single Vertical Frame 108A Type
Compact modular frame for 690 pairs using KRONE LSA-PLUS® modules. May be mounted back to back, side by side, wall mounted or allowed to free stand. Complete with detachable legs, and compatible with distribution frame 108A.
n Dimensions: 2004mmH x 285mmW x 150mmD

6420-1-050-00
Pack Qty: 1



Distribution Frame 108A
Modular frame for 1380 pairs, using KRONE LSA-PLUS® modules. May be mounted back to back, side by side, wall mounted or allowed to free stand. Complete with detachable legs.
n Dimensions: 2004mmH x 560mmW x 150mmD

6420-1-013-00
Pack Qty: 1

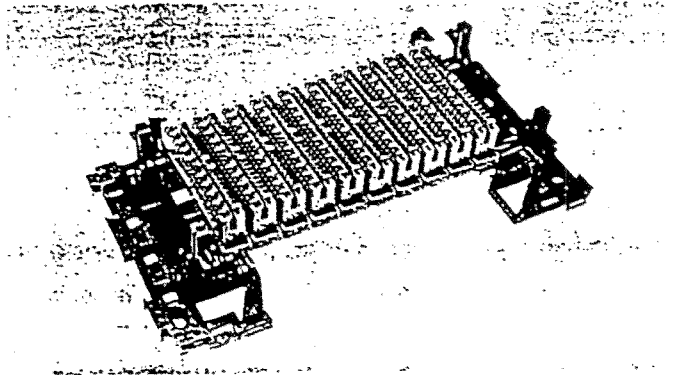


19" Mounting



Description KRONE No.

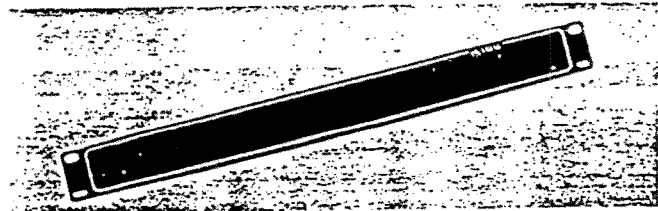
Jumperable Frames -
 100 pair frame for internal use as an
 E, IDF or FDP. (CD, 8D, FD). For the
 termination of LSA-PLUS Modules. Can be
 used at or beyond the network boundary.
 360 x W195 Comes complete with an
 identification strap.
 1 Way = 1 Module position or
 usually 10 pairs.
 Ways = 100 Pairs + 1 Way for a label
 position (11 Way Frames)
 Screws not included. Comes equipped
 with strap.



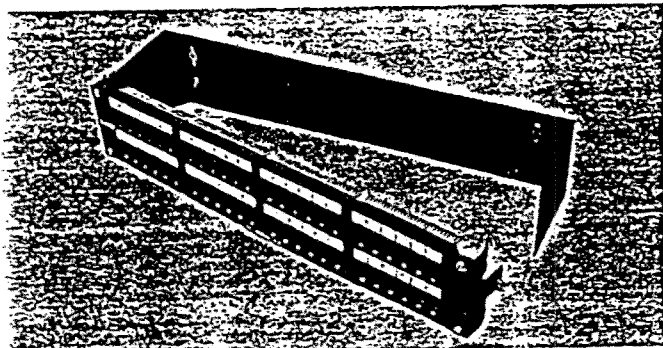
11 Way Profile Jumperable Frame 6455-2-039-00

22 Way Profile Jumperable Frame 6455-2-039-22
 Pack Qty: 1

Blank Panel 6499-1-008-00
 For unused patch panel position
 1 U (rack unit) = 44 mm
 Pack Qty: 1



Hinged Wall Mount Brackets
 The wall mount bracket is hinged to allow
 access to cable side of patch panel for
 easy retermination. bracket may be
 mounted for left or right swing opening. A
 push pull latch keeps the panel
 in the closed position.



Hinged Wall Mount Bracket 6653-2-701-00
 for two 1-U patch panels or one 2-U
 Pack Qty: 1

Dimensions 3 1/2" H x 19" W x 5" D
 89mmH x 482.6mmW x 127mmD

9 Framework & Enclosure

**SCHEDULE 6
PROVISIONING AND MAINTENANCE TARGETS**

1. STANDARD PROVISIONING TARGETS FOR LALs

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

- (a) 5 calendar days in the case of Voice Grade LALs for business premises;
- (b) 7 calendar days in the case of Voice Grade LALs for residential premises;
- (c) 20 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 Service Provider to meet the provisioning targets in paragraph 1.1:

- (a) a site visit is required;
- (b) the cabling facility for blockwiring at customer's building 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 Service Requester or customer is required; and
- (g) Customer Interface Point space is not readily accessible, or the LAL is located in a rural area, outlying island, restricted areas or hill tops.

2. STANDARD MAINTENANCE TARGETS FOR LALs

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

- (a) Voice Grade LALs for business premises - by the end of the next calendar day;
- (b) Voice Grade LALs for residential premises - by the end of the next calendar day;
- (c) Data Grade LALs for business premises - 8 hours;

2.2 The Parties acknowledge that the following factors may affect the ability of the Service Provider to meet the maintenance targets in paragraph 2.1:

- (a) customer premise is inaccessible

- (b) power failure at Customer Interface Point space
- (c) additional time awaiting approval from the Service 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 is not readily accessible as in outlying island, restricted areas or hill tops
- (i) replacement / removal of wiring is required
- (j) both parties cannot agree on a time for joint maintenance visit to customer premises if access to customer premises by the Service Provider is required.

* 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 REQUESTER EQUIPMENT SPACE

3.1 Service Provider 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 Service Requester - 2 weeks;
- (b) Design and Planning Work by the Service Provider - 2 weeks; and
- (c) Confirmation and Agreement with Service Requester - 1 week; and
- (d) Construction work for the set-up of Requester Equipment Space - 8 weeks.

3.2 The Service Requester acknowledges that the timescales as set out in paragraph 3.1 (a) may be affected by the availability of information required by the Service Provider in carrying out the Exchange Site preparation work from the Service Requester.

3.3 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 1 week as set out in clause 3.1 (c) after completion of the design and planning work.

3.4 The Service Requester acknowledges that the timescales as set out in paragraph 3.1 (d) is subject to a maximum of 1 Site Application each month and not more than 3 concurrent Exchange Sites undertaken preparation works at the same time.

3.5 The Parties will negotiate in good faith for situations other than those set out in clauses 3.2 to 3.4.

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 produce a draft within a maximum period of 3 months and conclude within a maximum period of 6 months after the date of this Agreement more detailed provisioning and maintenance procedures which will be included in the Operation and Maintenance Manual.

5. PROVISIONING OF JUMPERING

5.1 The Service Provider will provision the jumpering for each LAL at the MDF comprising the Exchange End Equipment provided that the Service Requester supplies the Service Provider with all information necessary to terminate the associated Tie Cable at the time the Service Order is placed.

SCHEDULE 7
ACCESS TERMS

1. DEFINITIONS

- 1.1 In this Schedule, defined terms have the same meaning used 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 Service Requester or an associated company of Service Requester duly authorised by it to physically access the Requester Equipment Space in accordance with the Agreement and this Schedule. Authorised Representative includes an employee, agent or contractor of a supplier of equipment to Service Requester.

"**Entry Notification**" means a written notice by Service Requester seeking physical access to Requester Equipment Space for one or more of the purposes to which access is permitted under the Agreement.

"**Exchange**" referred to in this Schedule means an Exchange Site in which an Requester Equipment Space has been established pursuant to the Agreement.

2. AGREED PURPOSE

- 2.1 Subject to the terms and conditions of this Schedule, the Agreed Purpose for the Service Requester's physical access to the Requester Equipment Space will be:
- (a) carrying out site visit prior to delivery of the Requester Equipment;
 - (b) delivering the Requester Equipment;
 - (c) performing planned installation, testing and maintenance work on the Requester Equipment;
 - (d) performing day to day operational work - inventory management and connection work on the Requester Equipment in accordance with the O&M Manual; and
 - (e) performing service restoration, network restoration or other emergency maintenance work in accordance with the O&M Manual.

2.2 The Agreed Purpose for the Service Requester's use of Requester Equipment Space will be the location and operation of Requester Equipment that is used for its Agreed Use in relation to a LAL or a Leased Circuit.

3. AUTHORISED REPRESENTATIVES

3.1 Service Requester must procure that its Authorised Representative:

- (a) will only access an Requester Equipment Space for delivering, performing installation and maintenance work on the Requester Equipment; and
- (b) has the skills and qualifications needed to carry out work required by Service Requester safely and competently; and
- (c) complies with the Agreement including this Schedule in all respects.

3.2 In accessing a Requester Equipment 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 Service Provider). Any Authorised Representative who is not an employee of Service Requester or an associated company of Service Requester will only be allowed access to an Requester Equipment Space if accompanied by an Authorised Representative who is an employee of Service Requester.

3.3 If any Authorised Representative breaches the Agreement or this Schedule, Service Provider will notify in writing to the Service Requester of such breach and may decline in the future to provide access to that Authorised Representative.

3.4 Service Provider may require any Authorised Representatives to leave the Exchange if they commit a breach of the Access Terms and fail to rectify the same immediately when requested to do so.

3.5 All acts or omissions by the Service Requester's employee, agent or contractor seeking access to or accessing a Requester Equipment Space of any of the terms set out in this Schedule are deemed to be acts or omissions by the Service Requester. Any knowledge of the Service 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 Service Requester.

4. ACCESS TO EXCHANGES

4.1 Service Provider will grant Service Requester (including each of its Authorised Representatives) physical access to Requester Equipment Space during the normal working hours of Service Provider if:

- (a) such access is required for an Agreed Purpose; and
- (b) subject to clause 4.2 and 4.3, Service Requester has given the Entry Notification by facsimile to Service Provider no less than 6 Business Days before the requested date of access.

- 4.2 In the event that Service Requester must access an Requester Equipment Space for urgent maintenance work as part of Service Requester Maintenance, Service Requester may telephone Service Provider to provide information required in an Entry Notification.
- 4.3 If Service Requester wishes to have any Requester Equipment delivered to an Exchange, Service Requester must:
- (a) send an Entry Notification to Service Provider 14 Business Days before the proposed date of delivery; and
 - (b) have an Authorised Representative present at the Exchange to accept delivery of those materials.
 - (c) the Service Requester may postpone the proposed date of delivery by no more than 3 Business Days provided the Service Requester informs the Service Provider notice of the postponement at least 6 Business Days before the proposed date of delivery.
- 4.4 If the Service Requester requests to access a Requester Equipment Space for reason other than the Agreed Purpose, it must follow the procedures set out in clause 4.1 and must provide any further information reasonably requested by the Service Provider in relation to the purpose other than the Agreed Purpose of that access. The Service Provider will consider the request on a case-by-case basis.
- 4.5 An Entry Notification provided by Service 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 Service 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 detail;
 - (d) when, and an estimate of the time during which, physical access is requested; and
 - (e) the Requester Equipment Space to be accessed.
- 4.6 Entry Notification (oral or in writing) must be communicated to the Customer Access Fault Reporting Point (CAFRP) of Service Provider or any other department nominated by Service Provider in accordance with the O&M Manual.
- 4.7 Service Provider shall respond within 2 Business Days of receiving an Entry Notification given under clause 4.1, 4.3 or 4.4, and within 1 hour of receiving an Entry Notification given under clause 4.2. In its response, Service Provider must either:

- (a) state that the request for access is approved and confirm the time and date for access by Service Requester's Authorised Representatives;
- (b) request further information; or
- (c) deny the request for access stating the reason according to clause 4.8.

4.8 Service Provider may refuse Service Requester physical access to the Requester Equipment Space under this Schedule if :

- (a) Service Provider considers that the Requester Equipment Space is unsafe; or
- (b) Service Provider considers that Service Requester is, or is likely to be, in breach of the Agreement in respect of the Requester Equipment Space to which physical access is sought; or
- (c) no reason is given for the access sought or the reason is inconsistent with the Agreed Purpose.

4.9 If Service Provider denies a request for access, it must state the reason for the refusal.

5. PHYSICAL ACCESS PROCEDURES AND CONDITIONS

5.1 Service Requester may :

- (a) physically access an Requester Equipment Space only if a Service Provider representative is in attendance at all times;
- (b) physically access each Requester Equipment Space only through that part of the Exchange Site for which approval has been granted;

5.2 The Service Requester must :

- (a) in relation to any access, at its own cost, comply with:
 - (i) all requirements, safety standards and code of conduct of the Service Provider which are applicable to the Exchange and as advised by the Service Provider;
 - (ii) all relevant laws of or applicable to Hong Kong;
 - (iii) all security requirements and conditions, established and modified by Service Provider at its absolute discretion from time to time, which apply to Service Provider employees, agents and contractors at the corresponding Exchange and which has been notified by the Service Provider to the Service Requester; and
 - (iv) all reasonable instructions of Service Provider in relation to safety and security at the relevant Exchange.

- (b) promptly notify Service Provider of any fault, defect or problem with the Requester Equipment Space or its vicinity which comes to the attention of Service Requester;
- (c) ensure that Requester Equipment Space is left in a safe and clean condition on each occasion of access to the Requester Equipment Space, and that physical access to Requester Equipment Space is not blocked or otherwise obstructed by the Requester Equipment or any other material; and
- (d) comply with Service Provider's directions which are applicable at the relevant Exchange in relation to fire prevention, safety and security.

5.3 Service Requester must ensure that each of its Authorised Representatives physically accessing an Requester Equipment Space:

- (a) complies with the all of the terms and conditions imposed on Service Requester under this Schedule;
- (b) has been approved by Service Requester in respect of security status, skills and qualifications;
- (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 Requester Equipment Space is situated; and
- (d) promptly complies with the reasonable directions of Service Provider's representative in relation to safety, security and normal functioning of the relevant Exchange.

5.4 Service Provider is entitled to temporarily remove or copy the log book referred to in clause 5.2 for the purpose of checking the information recorded therein.

5.5 Service Requester's Authorised Representative must inform the Service Provider representative as soon as reasonably practicable after work in the relevant Requester Equipment Space has been completed and each Authorised Representative has left the Requester Equipment Space.

6. ACCESS RESTRICTIONS

6.1 Service Requester must not:

- (a) access or use the Requester Equipment Space in any manner inconsistent with the Agreement or for any purpose other than the Agreed Purpose;
- (b) bring any equipment, goods, or chattels into the Requester Equipment Space which are not reasonably necessary for an Agreed Purpose;
- (c) access any areas of the Exchange other than the Requester Equipment Space and that part of the Exchange Site for which approval has been granted by the Service Provider;

- (d) cause any nuisance, interference, disturbance, inconvenience, hazard or danger to neighbouring premises of the Requester Equipment Space or to any property in the neighbourhood of the Requester Equipment Space;
- (e) leave any flammable, explosive, or hazardous material in or around the Requester Equipment Space;
- (f) without the prior consent of Service Provider, display any signs or notices bearing any logo, name or other identification mark of Service Requester at the Requester Equipment Space, other than as permitted by the procedures set out in the O&M Manual;
- (g) extend or increase electrical power wiring within the Requester Equipment Space unless with the prior consent of Service Provider;
- (h) make any alteration to the Requester Equipment Space or alter the existing locks, bolts and fittings on the entrance door to the Requester Equipment Space, or install any additional locks, bolts or fittings; or
- (i) inspect or record any image, notes or data of or in relation to any equipment at the Exchange other than the Requester Equipment.

6.2 Service Requester must not do or permit or suffer to be done or omit to do anything in connection with access or physical access to Requester Equipment Space under this Schedule that might reasonably be expected to:

- (a) threaten the safety or security of:
 - (i) employees or customers of Service Provider; or
 - (ii) any third person or employees or customers or any third person; or
 - (iii) property of Service Provider; or
 - (iv) the property of any third person; or
- (b) cause damage to:
 - (i) the property of Service Provider; or
 - (ii) the property of any third person; or
- (c) interfere with the delivery of telecommunications service supplied or to be supplied by Service Provider or any other third person; or
- (d) adversely affect the integrity or confidentiality of communications within the network of Service 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 Service Provider provided that the

relevant requirement under the insurance policy has been notified by the Service Provider to the Service Requester.

7. GENERAL

- 7.1 Nothing in this Schedule is to be construed as vesting in Service Requester any right, title, possessory or proprietary interest in any Requester Equipment Space, and does not create any lease or analogous right with respect to the Requester Equipment Space.
- 7.2 Service Requester must not grant a person other than an Authorised Representative, either physical access to, or a right to locate third person's equipment in an Requester Equipment Space
- 7.3 Any rights which Service Requester may have under this Schedule are not assignable to any other person other than as an integral part of an assignment permitted and duly made in accordance with the Agreement.
- 7.4 If Service Provider must alter the sprinkler, fire alarm, fire prevention, security system, power supply or other facilities at an Exchange as the result of anything done, permitted or omitted to be done by Service Requester in breach of this Schedule which is detrimental to those facilities within that Exchange in the course of physically accessing the relevant Requester Equipment Space, Service Requester must bear the reasonable costs of such alteration.
- 7.5 This Schedule may be amended from time to time by the written notification from a representative of Service Provider to a representative of Service Requester who are listed as Contact Points in the O&M Manual. The form of written notification may be by letter which is signed by Service Provider's representative.

- End -

SCHEDULE 8
LEASED CIRCUITS

Part A - Specifications for Leased Circuit

The E1 transmission capacity over the Leased Circuit will comply with the following specifications:

Electrical characteristics :	To comply with CCITT (Blue Book) Rec G.703 (Section 6) and G.823
Bit rate :	2.048Mb/s ±50 ppm
Line Code :	HDB3 G.703 Annex A
Framing :	G.704 Sections 2.3 and 5.1, Annex A.3
Pulse Shape :	G.703 Section 6.3.4
Over-voltage protection :	G.703 Annex B

Part B - Capacity Threshold

- Each Leased Circuit can support 30 channels and each channel can be used in association with 7 LALs. For the purpose of provisioning Customer Access Service at an Exchange Site, the capacity is calculated as follows:

$$(\text{number of Leased Circuits which are Ready For Use}) \times 7 \times 30$$

- The Service Requester may order additional Leased Circuit at that Exchange Site if the total number of LALs which the Service Requester has ordered but not yet provisioned or cancelled, or which the Service Provider has provisioned but not yet terminated meets the Capacity Threshold requirements set out below:

Number of Leased Circuit provisioned	Capacity Threshold	The additional Leased Circuit to be ordered
Initial 2 Leased Circuits	300	3rd Leased Circuit
3 Leased Circuits	510	4th Leased Circuit
4 Leased Circuits	720	5th Leased Circuit
5 Leased Circuits	930	6th Leased Circuit
6 Leased Circuits	1140	7th Leased Circuit

7 Leased Circuits	1380	8th Leased Circuit
8 Leased Circuits	1590	9th Leased Circuit
9 Leased Circuits	1800	10th Leased Circuit
10 Leased Circuits or more	capacity as calculated in clause 1 minus 90	the next Leased Circuit

Part C - Leased Circuit Provisioning Period

1. In respect of each of the initial 2 Leased Circuits ordered or deemed ordered under the Agreement for each of the Exchange Site and Requester Switch Site set out in Schedule 3 on the date of the Agreement, the Leased Circuit Provisioning Period is 3 months.
2. In respect of the initial 2 Leased Circuits ordered or deemed ordered under clause 9.3 of the Agreement, the Service Requester may vary the planned RFU date for the 2 Leased Circuits after acceptance of order provided that (i) the Service Requester provides written notice to the Service Provider at least one month before the original planned RFU date, and (ii) the newly proposed RFU date will not be earlier than the original planned RFU date and not later than the original planned RFU date by more than 1 month.
3. With respect to Leased Circuits in addition to the 2 Leased Circuits specified in Part B clause 2, for each Leased Circuit for an Exchange Site, the Leased Circuit Provisioning Period is :
 - (a) 3 months if between 1 to 15 Leased Circuits are ordered for provisioning within a period of 1 calendar month.
 - (b) the Parties will negotiate in good faith for the provisioning period if 16 Leased Circuits or more are ordered within a period of 1 calendar month.
4. The Leased Circuit Provisioning Period set out in this clause does not apply if :
 - (a) the cabling facility at Requester Switch Site end is not available
 - (b) permission of building management at Requester Switch Site is required for installing building cables
 - (c) diversity of Leased Circuit is required
 - (d) Leased Circuit removal or upgrade
 - (e) road digging permit is required

- (f) works by the Service Requester or Service Requester's agent are required
- (g) Requester Switch Site is not readily accessible
- (h) the Requester Switch Site is more than 2km away from the Exchange Site (other than New World's Chai Wan Switch Site which has been accepted despite being located outside this area)
- (i) expansion of Service Provider Switch Site Equipment or core network is required
- (j) expansion of the Requester Equipment or Requester Switch is required

The Parties will negotiate in good faith for alternative provisioning period if any of the above events arise.

Part D - Leased Circuit O&P Procedures

1. Ordering

- 1.1 The Service Requester may place orders for a Leased Circuit in accordance with the Agreement which Order must be in writing and may be sent by facsimile transmission, and must contain the following information:
 - (a) the address of the Requester Switch Site;
 - (b) the proposed Exchange Site;
 - (c) the number of Leased Circuits (which must comply with the provisions in Part B);
 - (d) the requested RFU Dates for each Leased Circuit;
 - (e) contact person at the Service Requester;
 - (f) such other information that may reasonably be required to enable the Service Provider to fulfill the order.
- 1.2 Within 10 Business Days of receiving an order for Leased Circuit, the Service Provider must either :
 - (a) inform the Service Requester that the order is accepted,
 - (b) request that the Service Requester provide such further reasonable information, or

- (c) inform the Service Requester that it is not reasonably practical in all relevant circumstances to fulfill the order.
 - (d) inform the Service Requester that the order is not accepted as the Capacity Threshold specified in Part B clause 1 is not met.
- 1.3 If the Service Provider does not respond within that 10 Business Days of the date of receipt of an order for Leased Circuit, the Service Provider is deemed to have accepted the Order.
- 1.4 If the Service Provider requires further information under clause 1.2, the Service Requester must provide the further information requested by the Service Provider within 10 Business Days of receiving the request. If the Service Requester fails to provide that information within that time period, the relevant order will be deemed withdrawn by the Service Requester.
- 1.5 The Service Provider must, within 5 Business Days after receiving the requested further information, inform the Service Requester if the order is accepted or rejected. If the Service Provider does not respond within the above time period, the Service Provider is deemed to have accepted the order.
- 1.6 If the proposed RFU Date requested in an order for Leased Circuit is a date before the date calculated by adding the Leased Circuit Provisioning Period to the date of acceptance of that order, the Service Provider may as part of the information requested under clause 1.2 provide another proposed RFU Date. The Service Requester must, within 10 Business Days after receiving the proposal, inform the Service Provider whether it accepts the proposed date. The Order is deemed to have been made and accepted when the Service Provider is informed that the Service Requester accepts the proposed date. If a proposed RFU Date cannot be agreed within a reasonable period, the relevant order for Leased Circuit will be deemed to be withdrawn by the Service Requester.
- 1.7 If the Service Provider does not accept an order for a Leased Circuit because it is not reasonably practical to do so as stated above the Service Provider will use its reasonable endeavours to discuss with the Service Requester alternatives for overcoming its objection to the order.

2. Acceptance of Orders and Provisioning

- 2.1 Acceptance by the Service Provider of orders for Leased Circuits will be conditional upon arrangements being made for space and facilities to be available in accordance with the Agreement for the Service Provider to install its Switch Site Equipment at the Requester Switch Site.
- 2.2 If the Service Provider accepts an order for Leased Circuits, it will provide the Service Requester with a written notice on site requirements at the Requester Switch Site in accordance with the O&M Manual, including specifications for floor space, power supply and environment for the Switch Site Equipment.

- 2.3 The Service Provider will notify the Service Requester of the date on which a Leased Circuit is expected to become Ready For Use at least 5 Business Days prior to that date. When provisioning of a Leased Circuit is completed by the Service Provider, it will issue a RFU Notice in respect of that Leased Circuit. The Service Provider will ensure that a Leased Circuit complies with the specifications for Leased Circuits before issuing a RFU Notice.

Part E - Minimum Required Capacity and Minimum Service Period

1. Each Leased Circuit ordered and provisioned in accordance with Clause 9 of this Agreement and this Schedule will be applied towards the relevant Minimum Required Capacity in the TNA Agreement as follows:

- (a) The end of one Leased Circuit terminating at the New World Switch Site will be counted as one E1 end towards the relevant Minimum Required Capacity; and
- (b) The end of one Leased Circuit terminating at the Exchange Site will be counted as one E1 end towards the relevant Minimum Required Capacity provided that the Exchange Site is one of the 8 Transmission Exchanges under the TNA Agreement.

2. Minimum Service Period

Each Leased Circuit ordered and provisioned in accordance with Clause 9 of this Agreement and this Schedule will be subject to a Minimum Service Period under the TNA Agreement of 84 months commencing from 1st January 1996.

- End -

In accordance with the Agreement, the following charges are applicable from the Review Date on 1 July 1997:

3.2 Site Facilities Charges

- (a) 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 the Service Requester at an Requester Equipment Space	Monthly Charges payable by Service Requester	Annual Adjustment
(i)	Basic facilities : routine maintenance of basic facilities (including air-conditioning, fire detection and fighting system) by the Service Provider	\$159 per square meter	CPI
(ii)	Capacity for AC Power : routine maintenance of AC power distribution system by the Service Provider (Note: priority access to AC back-up power is not covered)	\$318 per 5kVA of non-essential AC power capacity \$635 per 5kVA of essential AC power capacity	CPI
(iv)	Capacity for DC Power : routine maintenance of DC power generation and distribution system by Service Provider (Note: priority access to DC back-up power is not covered)	\$1,196 per kW (note any necessary facility upgrading to accommodate Requester Equipment is subject to additional charges)	CPI

6. Basic Service Charge and Service Charges

6.1 The Basic Service Charge and the Service Periodic Charge are the monthly amount payable for each Exchange Site in respect of which an Accepted Site Application has been issued in accordance with the Agreement, as set out below:

(a) Basic Service Charge of HK\$9,527[✓] per month is payable for the first 10 square meters of Requester Equipment Space for the first 5,000 LAL at an Exchange Site. The Parties will discuss in good faith the charges in the event that the number of LALs exceeds or expected to exceed 5,000 LALs and will agree those charges before any of those LALs are provisioned. However, if the actual period of occupation of an Exchange Site is shorter than the Site Minimum Commitment Period, the Service Requester must pay the Basic Service Charge for the entire Site Minimum Commitment Period. The full amount is payable irrespective of whether the Service Requester orders or uses any LAL in the relevant batch.

(b) Service Periodic Charge of HK\$106 is payable for each Voice Grade LAL from an Exchange Site.

6.3 The amounts payable for Service Connection Charge in relation to a LAL within Urban Area are as set out below.

No of LALs installed in the same Customer Building at the same time ***	Voice Grade LAL	Data Grade LAL
1 to 4 LALs	HK\$614 ✓	Note **
5 to 20 LALs	HK\$529	Note **
21 LALs or more	HK\$466	Note **

6.8 Service Options:

<u>Service Option</u>	<u>Basic Service Charge</u> <i>(per month)</i>	<u>Service Periodic Charge(per LAL per month)</u>	
		<u>Voice Grade LAL</u>	<u>Data Grade LAL</u>
Base rates	HK\$9,527	HK\$106	Note **
Option A	HK\$21,170	HK\$79	Note **
Option B	HK\$42,340	HK\$69	Note **

Note ** - the above charges in relation to Data Grade LAL to be agreed by the Parties and the Parties will use their reasonable endeavours to agree those charges within 2 months of the date of the Agreement.

6.9 Relocation Charges:

The amounts payable for relocating LAL circuits within urban area are as set out below.

	<u>Voice Grade LAL</u> <i>(one-off amount)</i>	<u>Data Grade LAL</u> <i>(one-off amount)</i>
Relocation within the same Customer Building	HK\$318	Note **
Relocation to other Customer Building	HK\$614	Note **

Note ** - the above charges in relation to Data Grade LAL to be agreed by the Parties and the Parties will use their reasonable endeavours to agree those charges within 2 months of the date of the Agreement.

PREVAILING MAN-HOUR RATES

I am pleased to advise that the prevailing man-hour rates for have been revised with effect from 1 July 1997. The following charges are based on the prevailing man-hour rates and are revised with effect from the same date accordingly.

Site Supervision Charges under the Customer Access Agreement dated 10 August 1996

I attach the detailed revised charges for the above agreement for your easy reference. will issue invoice to in accordance with the revised charges from the coming statement onwards.

Please feel free to contact us if need more information.

Yours sincerely,

EDITORIAL AMENDMENT TO THE CUSTOMER ACCESS AGREEMENT

I refer to the clause 8.2 of the Customer Access Agreement dated 10th August 1996. A typing mistake is found in line 3 of the paragraph. The original statement is mistakenly typed as :-

"... to pay the Site Minimum Commitment Charge for that period ..."

This letter serves as a memorandum to amend the above editorial error in the above sentence to :-

"... to pay the Service Minimum Commitment Charge for that period ..."

I would be grateful if you could confirm the above amendment as agreed in our previous discussion by returning a signed copy of this letter to me for record.

Yours sincerely,

On behalf of
and

, I agree to the editorial amendments to the
as stated in the content of

COMMERCIAL IN CONFIDENCE

In accordance with the Customer Access Agreement, the following charges are applicable with effect from

Schedule 4 - Charges Schedule

4. Man-hour Rates

4A.1 As of 1st July 1997, prevailing man-hour rates are as follows :

- | | | | |
|-----|---------|----------------------|---------|
| (a) | during | normal working hours | HK\$301 |
| (b) | outside | normal working hours | HK\$381 |

4A.2 In respect of each occasion of work performed by Service Provider under clause 4A.1(b), Service Requester must pay for a minimum of _____ and any travelling expenses incurred to perform work during the hours specified in that paragraph.