



## 1. DEFINITIONS

**Business Day** means Monday to Friday, except public holidays in Hong Kong.

**Cable System** means each cable system landing at which may be connected to the Mid-Span Fibre via cross connects as more fully described in the *Service Terms for International Cable Interconnection* – signed by the parties.

**Charges Section** means the section of the Customer Order setting out the Charges applicable to the Service.

**Customer's Manhole** means the manhole constructed by the Customer pursuant to clause 2.3 on within 10m of the interconnect manhole.

**Customer Order** means standard customer order as provided for use by the Customer from time to time subject to the terms and conditions of this Agreement.

**Day** means a calendar day.

**Duct Jointing Point or DJP** the point at which the duct from interconnect manhole meets the duct from the Customer's Manhole.

**Emergency Maintenance** means maintenance which is required to be performed urgently in order to prevent loss or damage to or any equipment or services of any party using .

**Fibre O&M Service** has the meaning given to this term in clause 2.8.

**Licensed External Facilities Services Provider** means a person which holds a 'Fixed Telecommunications Network Services (FTNS) Licence', a 'Fixed Carrier Licence', or a 'Unified Carrier Licence' for the provision of cable-based External FTNS issued pursuant to the Telecommunications Ordinance.

**Mid-Span Fibre** means the mid-span fibre used for the Mid-Span Fibre Service as described more particularly in clause 2.1.

**Month** means a period of time covered by the Statement.

**Monthly Recurring Charge (MRC)** means the fixed monthly recurring charge for the Service as stated in the Charges section of the Customer Order.

**Non-Recurring Charges (NRC)** means collectively the one-off charges as set out in the Customer Order for the Service.

**Office Hours** means the hours between 9 am and 5 pm on Business Days.

**ODF** means the ODF inside the Building

**Representative** of a party includes an employee, agent, officer, director, adviser, contractor or sub-contractor of that party.

**Scheduled Maintenance** means those activities which may undertake to repair and/or change the Network and/or the Cable Station and/or Ducts and/or the Mid-Span Fibre such that there is or is likely to be an unavailability of the Service, and has notified the Customer of the details of the activities (scope, duration, impact, etc.) at least Days in advance.

**Service** means each of the Mid-Span Fibre Service and the Fibre O&M Service provided by pursuant to these Service Terms and the Customer Order.

**Service Commencement Date** means the date on \_\_\_\_\_ notifies the Customer that the which Service is ready for use or shall commence.

\_\_\_\_\_ means the submarine cable station operated by \_\_\_\_\_.

Building means the main cable station building at \_\_\_\_\_.

## 2. SERVICE

### Mid-Span Fibre Service

- 2.1 \_\_\_\_\_ shall provide to the Customer a mid-span fibre from the DJP to the \_\_\_\_\_ ODF at \_\_\_\_\_ for the sole purpose of connection to the Customer's circuits in the Cable Systems landed at \_\_\_\_\_, or as otherwise agreed ("Mid-Span Fibre Service"). \_\_\_\_\_ shall take all reasonable steps to ensure the technical standards and methods of operation for the provision of the Services conform to the industry standards.
- 2.2 The Service excludes acquisition of capacity in the Cable System, interconnection arrangements and related circuit restoration and re-configuration. The Customer has to arrange its own rights of use of circuit capacity in the Cable System. \_\_\_\_\_ may agree to provide the interconnection arrangement between the Mid-Span Fibre and capacity acquired by the Customer in a Cable System, subject to the relevant Service Terms.
- 2.3 The Customer shall construct its own manhole(s) at its own cost outside on \_\_\_\_\_ outside \_\_\_\_\_.
- 2.4 The Customer shall also construct the duct at its own cost from the Customer's Manhole(s) towards the recommended manhole(s) and terminate at approximately 1 meter distance from the recommended manhole.
- 2.5 \_\_\_\_\_ will construct a duct at the Customer's cost from the \_\_\_\_\_ recommended interconnect manhole to the Customer's duct, which will be about 1 meter in length. The meeting point of \_\_\_\_\_ and the Customer's duct is the Duct Jointing Point ("DJP").
- 2.6 \_\_\_\_\_ shall provide and run the Mid-Span Fibre at the cost of the Customer from the \_\_\_\_\_ ODF to \_\_\_\_\_ manhole near the DJP then pass the fibre through the DJP to the Customer's Manhole. The Customer is responsible for the splicing and connection of the Mid-Span Fibre at the Customer's Manhole. Inside the \_\_\_\_\_ Building \_\_\_\_\_ will terminate the Mid-Span Fibre to the \_\_\_\_\_ ODF.
- 2.7 The splicing of the Mid-Span Fibre within the Customer's Manhole is the responsibility of the Customer.

### Fibre Operations & Maintenance

- 2.8 \_\_\_\_\_ shall provide operation and maintenance services for the Mid-Span Fibre in accordance with this clause 2 ("Fibre O&M Service").
- 2.9 \_\_\_\_\_ responsibility to maintain the Mid-Span Fibre excludes normal wear-and-tear of the Mid-Span Fibre. The Customer will bear all the reasonable costs of replacement if replacement of the Mid-Span Fibre is required after the initial installation, except where the replacement is required due to defective materials or workmanship or the negligent act of \_\_\_\_\_. The Fibre O&M Service shall cover inspection and fault finding services. Repairs or replacement will be charged separately at the cost of the Customer as quoted by \_\_\_\_\_ in advance.
- 2.10 Save for in cases of emergency (in which case \_\_\_\_\_ shall give the Customer as much notice in advance as practicable in the circumstances), \_\_\_\_\_ shall not rearrange, disconnect, remove, repair or otherwise interfere with the Mid-Span Fibre Service unless agreed by the Customer or otherwise provided for under this Agreement.

### 3. TERMS AND CONDITIONS OF SERVICE

- 3.1 The Mid-Span Fibre is owned by . Nothing in this Agreement transfers any rights of ownership to any part of the Mid-Span Fibre to the Customer.
- 3.2 The Customer must ensure that its equipment, wherever placed, will not interfere with equipment inside . If reasonably considers that the Customer's equipment has interfered or is likely to interfere with equipment, it may:
- (a) in the case of a minor interference request the Customer to produce a resolution plan to rectify any faults by a certain time. If the Customer fails to produce such resolution plan by the requested time to satisfaction, may disconnect the Mid-Span Fibre Service on Business Days notice to the Customer; or
  - (b) in the case of significant interference or a safety hazard disconnect the Mid-Span Fibre Service with as much notice as reasonably practicable, if any.
- 3.3 The Customer must not resell or sublease, or purport to resell or sublease, all or any part of the Service or the Mid-Span Fibre. For the avoidance of doubt, this clause is applicable to the resell or sublease at the physical fibre level only.
- 3.4 The Customer may use the Mid-Span Fibre Service for the purpose of entering into arrangements with a third party, whether or not that third party is a Licensed External Facilities Services Provider to transit traffic into and out of Hong Kong routed through submarine cable capacity owned by that third party provided that:
- (a) the transit traffic is only routed into and out of Hong Kong and is not terminated by, or delivered to end customers of, the Customer or any other party in Hong Kong; and
  - (b) the transit traffic is routed through dedicated circuits of the Customer and adequate measures, in the reasonable opinion of , are taken by the Customer to ensure that breakout of the traffic into Hong Kong will not be permitted or otherwise occur; and
  - (c) all necessary approvals, instructions and notifications from the relevant cable system consortium, to the extent they are required, and that third party for the landing of the submarine cable capacity in Hong Kong in connection with the transit arrangement have been obtained by the Customer.
- 3.5 The use of the Mid-Span Fibre Service for the purpose of routing transit traffic under clause 3.4 is subject to:
- (a) agreement being reached between and the Customer on the terms and conditions of the transit routing;
  - (b) the Customer receiving written consent to the transit routing from ; and
  - (c) the Customer receiving written consent from the third party cable capacity owner, and such consent is evidenced to if requested.
- 3.6 The Customer may use the Mid-Span Fibre Service, in accordance with the terms and conditions of this Agreement for the purpose of operating external telecommunications circuits using submarine cable capacity that has been acquired, leased or otherwise from a third party whether or not that third party is a Licensed External Facilities Provider, provided that:
- (a) all necessary approvals, instructions and notifications from the relevant cable system consortium, to the extent they are required, have been obtained by the Customer;
  - (b) the Customer has obtained all rights of use for the relevant submarine cable capacity from the third party owner; and
  - (c) the Customer complies with all laws and regulations, and has obtained all permits and licences related to the operation of such external telecommunications service.
- 3.7 The Customer agrees to indemnify, defend and hold , its related entities, employees, agents and representatives harmless from damages, liabilities, losses or expenses (including reasonable legal fees and expenses) suffered, incurred or paid to the extent arising from or in connection with:

- (a) the Customer's use of the Mid-Span Fibre Service;
- (b) the proper performance by of any work, activities or maintenance requested by Customer, including the Fibre O&M Service; and
- (c) Customer's negligence, act or omission under these Service Terms.

For the avoidance of doubt, the liabilities specified in this clause 3.7 include liabilities that may arise in respect of obligations under any cable system consortium agreements, to which it or its related entities are a party.

- 3.8 may, upon giving months' prior written notice to the Customer setting out reasons, change the location or routing of the Mid-Span Fibre from time to time. must ensure that the implementation of any such change causes minimal service interruption to the Customer. may change the Customer a proportion of its reasonable costs of implementation of any such change.
- 3.9 The Customer shall not access the portion of the Mid-Span Fibre from the DJP to the Building. However, the Customer may request to conduct all types of work to be performed on any part of the Mid-Span Fibre from the DJP to the Building as is considered reasonably necessary by the Customer for the operation of the Mid-Span Fibre Service, including Inspection, realignment, removal and replacement. Any such work, and the costs of such work must be agreed by the parties in advance.
- 3.10 If reasonably determines that the part of the Mid-Span Fibre from the DJP to the Building must be moved and no other practicable alternative is available, it will provide Business Days advance notice or hours oral notice in case of emergency to the Customer that this part of the Mid-Span Fibre cable will be moved at the Customer's expense. If necessary resources are available, will use its reasonable endeavours to minimize disruption to the Customer's equipment during the course of movement and will also use reasonable endeavours to minimize the costs to the Customer. However will have no liability for any accompanying service interruption that is incidental to the cable movement under this clause 3.10.

#### 4. CHARGES

- 4.1 Upon the Customer's request, shall provide a quotation to the Customer for the one-off set-up Charges for the preparation and implementation of the Mid-Span Fibre Service and the Fibre O&M Service.
- 4.2 To order the Service, the Customer shall sign a Customer Order based on a quotation provided by in clause 4.1. The Customer Order shall set out both the NRC and MRC. shall notify the Customer as soon as reasonably practicable after receipt of a Customer Order that it either accepts or rejects the Customer Order. If accepts the Customer Order, the Customer Order shall be effective as at the date of such notification.
- 4.3 The NRC shall be invoiced by upon the effective date of the Customer Order. The MRCs are invoiced monthly in advance on and from the Service Commencement Date. Charges are payable in accordance with the General Terms.
- 4.4 Customer will pay the following recurrent charges upon the Service Commencement Date:
- (a) the Fibre Operations and Maintenance Service Charges (which covers inspection and fault finding services and repairs or replacement will be charged separately at the cost of the Customer); and
  - (b) the Mid-Span Fibre Service Charge.
- 4.5 The initial Operations and Maintenance Service Charge and the In-Span Fibre Service Charge shall be set out in the Customer Order.
- 4.6 Other Charges as may be agreed between and the Customer from time to time including one-off Charges to cover non-standard procedures, non-office hour working, rescheduled operations, variation and cancellation requests and other additional work requested by the Customer and agreed by from time to time. The Charges will be quoted by on a case-by-case basis.
- 4.7 Other Charges may include:

- (a) a feasibility study charge to cover \_\_\_\_\_ cost in desktop and physical survey work. The charge is quoted on a case-by-case basis and is payable by the Customer to \_\_\_\_\_ irrespective of the study results; and
  - (b) an installation charge which will be quoted by \_\_\_\_\_ after the feasibility study shows the installation is feasible.
- 4.8 If the Customer cancels its request for the Service at any time before the Service Commencement Date, the Customer must pay \_\_\_\_\_ of the Non-Recurring Charges as a genuine pre-estimate of loss and not as a penalty. If the Non-Recurring Charges have already been paid in full by the Customer, the Customer is not entitled to a refund of the Non-Recurring Charges.
- 4.9 Unless otherwise specified in the Customer Order the Minimum Commitment Period for the Service is \_\_\_\_\_ years commencing from the Service Commencement Date of the Service.
- 4.10 After the Minimum Commitment Period, the Service shall continue indefinitely until terminated by either party at any time upon at least \_\_\_\_\_ months written notice to the other party.
- 4.11 If a Customer Order is terminated after the Service Commencement Date but before the expiry of the Minimum Commitment Period of the Service:
- (a) by the Customer for convenience; or
  - (b) by \_\_\_\_\_ for the Customer's breach;

the Customer must pay Cancellation Charges calculated by multiplying the months (including parts thereof) remaining in the Minimum Commitment Period by the MRC for all or part of the Service cancelled.

#### Charge Adjustment

- 4.12 The MRCs set out in the Customer Order may be increased by \_\_\_\_\_ at start of each calendar year, regardless of the Minimum Commitment Period or clause 2.1 of the General Terms, in accordance with this clause.
- 4.13 If \_\_\_\_\_ increases the charges set out in clause 4.12 above, \_\_\_\_\_ will do so in accordance with the increase in the Composite Consumer Price Index (CPI) in Hong Kong as published by the Census and Statistics Department of Hong Kong.
- 4.14 If \_\_\_\_\_ increases the Charges in accordance clause 4.12 the revised charges will apply from 1 January each year based on the CPI increase during the previous 12 months from 1 September to 31 August rounded up to the nearest HK\$100.
- 4.15 For example revised pricing to apply from \_\_\_\_\_ would be calculated as follows:  
If  $B > A$  then Revised Charge = Current Charge  $\times (B/A)\%$  rounded up to nearest HK\$100
- Where:  
A \_\_\_\_\_ is the CPI Index figure for \_\_\_\_\_  
B \_\_\_\_\_ is the CPI Index figure for \_\_\_\_\_
- 4.16 No adjustment will be made if the charges calculated in accordance with the adjustment would be lower than the amount prior to the adjustment.
- 4.17 For the avoidance of doubt, the parties acknowledge that nothing in this Agreement obliges \_\_\_\_\_ to extend the Mid-Span Fibre Service or Fibre O&M Service in future. The charge and terms for any future expansion will be agreed by the parties.

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