

<b>GENERAL TERMS ID No.</b>
<b>SERVICE TERMS ID No.</b>

## **CABLE STATION COLOCATION AGREEMENT**

### **PARTIES**

1.

2.

### **RECITALS**

- A.** The Customer is a telecommunications provider in Hong Kong who wishes to collocate certain telecommunications equipment at the Cable Station, where the sole purpose of such Equipment is to provide Hong Kong termination or transit of international cable capacity.
- B.** is the owner of the Cable Station and agrees to provide to the Customer such collocation and collocation services in accordance with the terms and conditions of this Agreement.
- C.**

### **OPERATIVE TERMS**

#### **1. Scope of Agreement**

- 1.1 shall provide the Colocation Space and Colocation Services to the Customer for the Customer to install and collocate its Equipment for the sole purpose of connecting its circuits in the Cable Systems landed at the Cable Station to backhaul.
- 1.2 The Colocation Services exclude 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 Customer's Equipment to the capacity acquired by the Customer in each Cable System, subject to a separate agreement.

- 1.3 The Customer acknowledges that its interconnection with any telecommunications system is subject to the agreement of, and conditions imposed by, the operator of that telecommunications system.

## **2. Intentionally omitted**

## **3. Resale and Sublease Prohibition**

- 3.1 Except to the extent expressly permitted under this Agreement, the Customer must not resell, sublease or share (or permit to be resold or shared) the Colocation Space and Colocation Services to or with any third party without prior written consent.

- 3.2 Notwithstanding its discretion under clause 3.1, agrees that it shall provide its reasonable consent in accordance with clause 3.1, provided that:

- (a) Customer ensures that such resale or sublease is for the sole purpose of terminating or backhauling of submarine cable capacity activated by a Licensed External Facilities Services Provider with proper approvals from the relevant consortium or owner of the submarine cable system;
- (b) the terms and conditions in respect of the charges and allocation of liability for the resale or sublease are agreed between and the Customer before the Customer resells or subleases to the Licensed External Facilities Services Provider; and
- (c) has received written evidence of and is satisfied with the resale or sublease arrangement between the Customer and the Licensed External Facilities Services Provider before the arrangement becomes effective.

- 3.3 The Customer may use the Colocation Space and Colocation Services provided under the Agreement 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.

- 3.4 Not used.

- 3.5 The Customer may use the Colocation Space and Colocation Services 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.

#### **4. Installation and Equipment**

##### **Customer's Right to Install**

- 4.1 Upon the Service Commencement Date, subject to clause 4.2, grants Customer a right to install, operate, maintain and repair Equipment in the Colocation Space. Customer must not damage or impair the Colocation Space and must ensure that any person accessing or using the Colocation Space complies with the requirements of this Agreement.

##### **Installation obligations**

- 4.2 Prior to any Installation, Customer will obtain consent to the Equipment being placed at the Cable Station, and the dates, times and other arrangements for the Installation.
- 4.3 The Customer will advise of the details of all Equipment located at the Cable Station from time to time.
- 4.4 Customer will provide the labour, materials, tools, apparatus and instruments required to carry out the Installation and any testing of the Equipment and, if requested by will inform the results of any tests on the Equipment and any interconnection with the Equipment.
- 4.5 Upon request by Customer will provide to all necessary and relevant information regarding the progress of the Installation and any other information required by for to comply with its obligations under this Agreement.
- 4.6 The Customer must ensure that the Equipment meets the Colocation Specifications. The Customer must ensure that the floor loading imposed by the Equipment is within the loading capacity of the Cable Station as set out in the Colocation Specifications, and if requested by the Customer must provide the appropriate certification from a registered professional satisfactory to to certify as such.
- 4.7 The Customer must ensure that the Equipment will not interfere with equipment and will not jeopardise the safety of the personnel working inside the Cable Station. If reasonably considers that the Equipment has interfered or is likely to interfere with equipment, or has jeopardised or is likely to jeopardise the safety of any such personnel, 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 to satisfaction; or
  - (b) in the case of significant interference or safety hazard disconnect the Equipment with as much notice as reasonably practicable, if any.
- 4.8 If the Customer fails to produce such resolution plan by the requested time to satisfaction under clause 4.7(a), may disconnect the Equipment from equipment on Business Days notice to the Customer.

##### **Liability for Contractors**

- 4.9 If the Customer uses contractors for the Installation or any other work or activities under this Agreement, the Customer warrants that these contractors will:
- (a) be suitably qualified and experienced and shall exercise due skill and care;
  - (b) work in compliance with all Applicable Laws; and
  - (c) be informed of, and work in accordance with, the Access Terms and all applicable industry, occupational health and safety and other relevant standards, in performing any such work or activities

4.10 The Customer is liable for the defaults, acts and omissions of the contractors under clause 4.9, and their employees and agents, including any damage caused to the Cable Station or any equipment in the Cable Station, in the performance of any work or activities under this Agreement as if they were those of the Customer.

## **5. Customer's Responsibilities**

### **Information**

5.1 Customer warrants that:

- (a) all Information it provides to \_\_\_\_\_ under this Agreement is accurate and complete; and
- (b) \_\_\_\_\_ will be entitled to rely on all decisions and approvals of Customer.

### **Permits**

5.2 Unless specified otherwise in this Agreement:

- (a) Customer will obtain and maintain for the duration of this Agreement any and all Permits required for any Installation or Permits required to use the Colocation Space or Colocation Services; and
- (b) Customer will provide and maintain any notification, payment, guarantee, undertaking or security required by any government authority, any environmental or local bodies representing affected persons or special interests, or under any Applicable Laws or regulations in connection with the Permits, the provision of the Colocation Space, performance of the Colocation Services, any Installation, or any use of any services provided in connection with this Agreement.

5.3 Customer will inform \_\_\_\_\_ on a regular basis and upon request of the progress in obtaining, renewing, or any changes to, any and all Permits and must inform \_\_\_\_\_ promptly upon the occurrence of any delays or adverse conditions that may affect Customer's ability to obtain or maintain the Permits by the required dates.

## **6. Policies and Guidelines**

6.1 Customer must follow \_\_\_\_\_ policies and guidelines as notified to the Customer by \_\_\_\_\_ including but not limited to those concerning:

- (a) the delivery of Equipment to, and the collection of Equipment from, the Cable Station; and
- (b) the use of the Colocation Space.

6.2 The Customer must ensure that it, its representatives and contractors, comply with the Access Terms at all times when accessing the Cable Station for whatever reason.

## **7. Exclusions to \_\_\_\_\_ liability**

7.1 \_\_\_\_\_ shall not be liable for any theft, damage or loss to Customer Equipment while located within the Cable Station, except to the extent caused by \_\_\_\_\_ negligence and willful misconduct.

7.2 \_\_\_\_\_ shall not be liable under this Agreement for any Colocation Service delay, degradation or unavailability due to:

- (a) suspension of the Colocation Service in accordance with this Agreement;
- (b) the Customer failing to release or make available the Colocation Service for maintenance;
- (c) faults or delays caused by the Customer or Third Party Operators' equipment;
- (d) scheduled maintenance notified in accordance with this Agreement or any other interruptions or service changes agreed by \_\_\_\_\_ and the Customer;
- (e) any act or omission by the Customer, its agents, or contractors including failure to comply with and observe \_\_\_\_\_ procedures or service guides or unavailability of relevant personnel at times necessary for testing or connection; or
- (f) for the avoidance of doubt, Force Majeure Events and Regulatory Events.

## **8. Payments**

8.1 Not used.

8.2 Not used.

## **Charges**

- 8.3 In consideration for the performance of \_\_\_\_\_ obligations under this Agreement, the Customer must pay the Charges to \_\_\_\_\_ as set out in Schedule 5.
- 8.4 The Charges may be adjusted by \_\_\_\_\_ in the manner set out in Schedule 5. No adjustment under this Agreement will be made if any charges calculated in accordance with the adjustment would be lower than the amount prior to the adjustment.
- 8.5 All access by the Customer's representatives must be supervised by \_\_\_\_\_ staff \_\_\_\_\_ may charge the Customer for the man-hours spent by \_\_\_\_\_ staff for the supervision of access, at \_\_\_\_\_ man-hour rates and terms prevailing at the time of access.

## **Tax**

- 8.6 The Charges do not include any Tax. \_\_\_\_\_ shall be entitled to charge an additional amount equal to any Tax applicable to the Service or Charges.
- 8.7 The Customer shall make each payment of Charges to \_\_\_\_\_ without any set off or counterclaim, unless the parties agree and execute a separate set off arrangement which allows the Customer to set off such payments, and without deduction or withholding of any Taxes. If at any time an Applicable Law obliges the Customer to make a deduction, withholding or payment in respect of Taxes from any amount paid or payable to \_\_\_\_\_ the Customer shall:
- (a) notify \_\_\_\_\_ of the obligation as soon as the Customer becomes aware of it;
  - (b) ensure that the deduction, withholding or payment does not exceed the minimum amount required by the Applicable Law;
  - (c) pay to the relevant government agency the full amount of the deduction, withholding or payment by the due date and promptly deliver to \_\_\_\_\_ a copy of any receipt, certificate or other proof of payment satisfactory to \_\_\_\_\_ and \_\_\_\_\_
  - (d) indemnify \_\_\_\_\_ against the deduction, withholding or payment in respect of any amount paid or payable to \_\_\_\_\_ by paying \_\_\_\_\_ at the time that the payment to \_\_\_\_\_ is due, an additional amount that ensures that, after the deduction or withholding is made, \_\_\_\_\_ receives a net sum equal to the sum it would have received if the deduction or withholding had not been made.
- 8.8 The indemnification in clause 8.7(d) shall not apply to any Tax deduction or withholding that is entitled to subsequently recover from the relevant government agency.

## Billing and Invoicing

- 8.9 The Customer shall pay the whole amount of the Charges shown on each Statement:
- (a) directly by electronic transfer to the bank account notified by \_\_\_\_\_ or such other means as the parties may agree in writing;
  - (b) within \_\_\_\_\_ days of the date of the Statement; and
  - (c) in Hong Kong dollars unless otherwise specified on the Customer Order.
- 8.10 The Customer shall pay interest, calculated daily at the Interest Rate, on any overdue amount owed to \_\_\_\_\_ from the date payment is due until payment in full is made.
- 8.11 \_\_\_\_\_ may include Charges omitted from an earlier Statement in a subsequent Statement within \_\_\_\_\_ months of such omission.
- 8.12 \_\_\_\_\_ may deduct from any money owed by \_\_\_\_\_ to the Customer any amount owed by the Customer to \_\_\_\_\_

## Billing Disputes

- 8.13 The Customer shall notify \_\_\_\_\_ of any Billing Dispute ("**Billing Dispute Notice**") by specifying:
- (a) the Statement in dispute;
  - (b) the Charges which are the subject of the Billing Dispute ("**Disputed Amount**"); and
  - (c) the reasons for the Billing Dispute and the facts on which the Customer relies.
- 8.14 The Billing Dispute Notice must be received by \_\_\_\_\_ within \_\_\_\_\_ days of the date of the Statement, otherwise the relevant Statement is deemed accepted.
- 8.15 Where a Billing Dispute is notified under clause 8.13:
- (a) the Customer may withhold the Disputed Amount but shall pay the balance of the Statement;
  - (b) \_\_\_\_\_ shall review the Billing Dispute Notice in good faith in order to resolve the Billing Dispute as soon as practicable; and
  - (c) the Customer shall provide all cooperation reasonably requested by \_\_\_\_\_ in order to review and evaluate the Billing Dispute.
- 8.16 \_\_\_\_\_ will notify the Customer of its determination within \_\_\_\_\_ days of receipt of the Billing Dispute Notice ("**Billing Dispute Response**"), provided that \_\_\_\_\_ failure to notify the Customer of a Billing Dispute Response shall not constitute acceptance of the Disputed Amount or a waiver of any of \_\_\_\_\_ rights under this Agreement.
- 8.17 If the dispute is not resolved by the Billing Dispute Response, either party may enforce its rights and seek any remedy it has under this Agreement, subject to clause 18.
- 8.18 Where a Statement is accepted (whether deemed or otherwise), then \_\_\_\_\_ may sue upon the amount due ("**Debt**") in any court of competent jurisdiction and, at \_\_\_\_\_ option, under the law of that jurisdiction without reference to its conflicts of law principles.
- 8.19 Any Disputed Amount determined to be payable to \_\_\_\_\_ in whole or in part, shall accrue interest at the Interest Rate from the date originally due until paid in full.
- 8.20 Where a Statement has been accepted (whether deemed or otherwise) and the Customer has reason to believe there has been a billing error in that Statement, the Customer may, within \_\_\_\_\_ months of the date of the Statement, make a claim for the error to be corrected by amendment to a subsequent Statement, in accordance with clause 18 (Dispute Resolution). If no claim is made within \_\_\_\_\_ months of the date of a Statement, the Customer agrees to waive any such claims relating to the Statement.

## 9. Suspension

- 9.1            may, upon giving            months' prior written notice to the Customer setting out reasons, change the location of the Colocation Space from time to time.            must ensure that the implementation of any such change causes minimal service interruption to the Customer.            may charge the Customer a proportion of its reasonable costs of implementation of any such change unless the cause of such change is purely due to convenience.
- 9.2            may exercise any Remedy with respect to the Colocation Space or Colocation Services:
- (a)    on as much notice as is reasonably practicable (if any) until further notice to the Customer in the following circumstances:
- (i)    to comply with an order, instruction or request of a government agency, emergency service or other competent authority; or
- (ii)   to reduce or prevent fraud or interference within the            Network; or
- (iii)  in respect of a Regulatory Event, the parties have been unable to negotiate variations to this Agreement as may be required by a Regulatory Event or            reasonably believes that continued supply of the Colocation Space or Colocation Services would, as a result of the Regulatory Event, expose            to significant risk of adverse legal or economic consequences;
- (iv)  to carry out or comply with            obligations as a landing party for an international submarine cable system or            interconnection or facilities access obligations under any Applicable Laws, including, if no other suitable space is available in the Cable Station, to provide Colocation Space in the Cable Station to facilities-based telecommunication service providers for the purpose of interconnecting with capacity on any international submarine cable system at the Cable Station; or
- (v)  to carry out repairs, maintenance, servicing or upgrading of any equipment, software or facility forming part of            Network, whether planned or required due to an emergency, provided that            shall have no right to terminate the Colocation Services in order to carry out such activities.
- 9.3    In the event of any suspension, de-activation restriction or termination pursuant to clause 9.2,            shall use reasonable endeavours to minimize disruption to the Customer.
- 9.4    If            exercises its rights pursuant to clause 9.2(a)(iv),            shall provide Customer with            months' advance written notice for the Customer to remove and relocate Customer Equipment.
- 9.5    For a breach of this Agreement involving payment of Charges by the Customer:
- (a)    if the breach continues for            Business Days after            has given notice of the breach,            may:
- (i)    suspend any or all Colocation Service; or
- (ii)   prevent the Customer's access to the Colocation Space immediately with no further notice; and
- (b)    if the breach continues for            days after            has given notice of the breach,            may terminate this Agreement (including all or some Colocation Services, at discretion)            on notice to the Customer.

9.6 If \_\_\_\_\_ exercises its right of termination for breach pursuant to clause 9.5(b) prior to the end of the Minimum Agreement Period in respect of any particular Service, then the Customer shall pay the applicable Cancellation Charge(s) for that Service as a genuine pre-estimate of loss and not as a penalty.

9.7 If \_\_\_\_\_ exercises a Remedy under this Agreement, including under clause 9.5, \_\_\_\_\_ may charge the Customer a Reconnection Fee to reverse any action taken under a Remedy.

## 10. Force Majeure

10.1 If a party is unable to perform any obligation under this Agreement because of a Force Majeure Event, that party shall have no liability to the other party for the failure to perform, unless the failure to perform is a failure to pay Charges. The party unable to perform shall notify the other party as soon as practicable, and shall use all reasonable endeavours to avoid, mitigate and remedy the consequences of the Force Majeure Event.

10.2 \_\_\_\_\_ shall have no liability to the Customer for failing to supply a Service in the event of:

(a) a refusal or delay by a third party through no fault of \_\_\_\_\_ to supply a telecommunications service to \_\_\_\_\_ and where there is no alternative service available at reasonable cost; or

(b) a Regulatory Event.

## 11. Removal of Equipment

11.1 Subject to clause 11.2, Customer must, at its own expense, remove all Equipment from the Cable Station within \_\_\_\_\_ Business Days after the date of expiry or termination of this Agreement if the Colocation Space is not subject to a subsequent agreement. Customer shall reinstate and return the Colocation Space to \_\_\_\_\_ in the same condition as it was on the Service Commencement Date, normal wear and tear excepted.

11.2 \_\_\_\_\_ is entitled to retain Equipment until Customer pays all outstanding amounts owed to \_\_\_\_\_  
If \_\_\_\_\_ terminates this Agreement as a result of Customer's failure to pay the Charges, a written notice will be sent to Customer and the title to and all ownership rights in Equipment (which is not subject to a mortgage or legal security interest in favour of a third party) will immediately transfer to \_\_\_\_\_ for no payment.

11.3 Title to and all ownership rights in Equipment (which is not subject to a mortgage or legal security interest in favour of a third party) will transfer to \_\_\_\_\_ for no payment if Equipment is not removed from the Cable Station by Customer within \_\_\_\_\_ days after expiry or termination of this Agreement if the Colocation Space is not subject to a subsequent agreement.

11.4 \_\_\_\_\_ may dispose of Equipment which is transferred to \_\_\_\_\_ in accordance with clauses 11.2 and 11.3 as it sees fit and may charge Customer for any costs of disposal.

## 12. Transition

12.1 The Charges for the Colocation Space and Colocation Services that exist prior to \_\_\_\_\_ shall be revised to the levels as set out in Schedule 5.



### **13. Confidentiality**

- 13.1 This Agreement and all information in whatever form disclosed by one party to the other in connection with this Agreement, or during the negotiations preceding this Agreement (“**Confidential Information**”) shall be kept secret and confidential and treated at least as securely as the receiving party's own confidential information and may only be disclosed or used with the prior consent of the disclosing party.
- 13.2 Despite clause 13.1, the receiving party may:
- (a) disclose the Confidential Information to its officers, employees, contractors, professional advisers or Affiliates, provided that they do not further disclose the Confidential Information except in accordance with this clause 13; and
  - (b) use the Confidential Information for the purposes of this Agreement.
- 13.3 A party may disclose or use the Confidential Information without consent of the other party if the Confidential Information is:
- (a) lawfully in the possession of the receiving party through sources other than the disclosing party; or
  - (b) generally and publicly available (except where such availability is due to a breach of the Agreement); or
  - (c) such disclosure or use is:
    - (i) required or authorised by an Applicable Law; or
    - (ii) required by the listing rules of a stock exchange on which the receiving party's securities or the securities of an Affiliate of the receiving party are or will be listed or quoted; or
    - (iii) strictly required in connection with legal proceedings or a dispute resolution procedure relating to this Agreement..

### **13A. No encumbrances**

As between Customer and \_\_\_\_\_ exclusively owns the Cable Station. The Customer must not cause or permit the Cable Station or any other property, rights or interests of \_\_\_\_\_ to become subject to any lien, trust, pledge or security interest arising out of any work performed, facilities or materials furnished, or obligations incurred by or for Customer. Nothing contained in this clause will limit Customer's right to subject its own property and Equipment to liens, trusts, pledges or security interests of any kind.

### **14. Limitation of Liability**

- 14.1 Nothing in this Agreement shall limit either party's liability for death or personal injury resulting from its negligence or the negligence of its Representatives while acting in the course of their employment.
- 14.2 Except as expressly provided herein, \_\_\_\_\_ makes no warranty, express or implied by statute, common law or otherwise, to Customer or any end user as to quality, merchantability or fitness for any particular purpose of the Colocation Space or Colocation Services or as to any other matter. All such warranties are hereby expressly excluded and disclaimed to the fullest extent permitted by Applicable Law.

14.3 Subject always to the contractual obligations to make payments pursuant to the terms of this Agreement, neither party shall be liable to the other party in contract, tort or otherwise, including, without limitation, any liability for negligence or for breach of statutory duty for:

- (a) any loss of revenue, business, contracts, profits, cost of cover or anticipated savings; or
- (b) any indirect, incidental, special or consequential damages or loss of goodwill, howsoever arising.

14.4 Notwithstanding anything to the contrary in this Agreement, except in the case of death or personal injury, maximum aggregate liability arising out of or in connection with this Agreement shall be limited to an amount equal to paid by Customer for all liability arising out of or in connection with this Agreement. If a number of events give rise substantially to the same loss, then they shall all be regarded as giving rise to only one claim under this Agreement.

## 15. Indemnity

15.1 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) any use of the Colocation Space or Colocation Services, provided by under this Agreement and any use of the Equipment, whether or not such use is authorized by Customer;
- (b) any bodily injury to any person, or loss or damage to any tangible property or facilities of Customer, an end user and third parties at the Cable Station due to any act or omission of Customer or any end user;
- (c) any claim or penalty arising out of any violation by Customer or any end user of any terms and conditions of the Permits or any Applicable Law;
- (d) the proper performance by of any work, activities or maintenance requested by Customer; and
- (e) Customer's breach, negligence, acts or omission including but not limited to clauses 3 and 5.

## 16. Term and Termination

16.1 This Agreement commences on the Effective Date and continues for a term of years ("Minimum Agreement Period") and will terminate thereafter unless terminated earlier in accordance with this Agreement.

16.2 The Customer may terminate this Agreement for convenience upon months' notice to provided the Customer pays the Cancellation Charges.

## 17. Governing Laws

17.1 The Agreement is governed by the laws of Hong Kong. The parties irrevocably submit to the exclusive jurisdiction of the courts of Hong Kong.

## 18. Dispute Resolution

18.1 The parties shall seek to resolve any Dispute in accordance with the procedures set out in this clause 18.

18.2 Subject to the other provisions of this Agreement, the parties shall continue to comply with their respective obligations during the pendency of a Dispute.

- 18.3 A party shall not use information obtained in the course of any procedure established by this clause 18 for any purpose other than to resolve the particular Dispute.
- 18.4 The parties shall make reasonable, good faith efforts to resolve any Dispute arising out of the Agreement within \_\_\_\_\_ days of receipt of a party's notice of the Dispute as follows:
- (a) the parties will attempt initially to resolve a Dispute through discussions at an operational level for \_\_\_\_\_ days;
  - (b) in the event that the parties do not resolve the Dispute at the operational level within \_\_\_\_\_ days of the notice, the Dispute shall be escalated and negotiated for a further \_\_\_\_\_ days between legal counsel and/or senior executives of each party who have the requisite authority to settle the Dispute.
- 18.5 Each party shall be responsible for and bear its own costs associated with resolution of the Dispute pursuant to this clause 18.
- 18.6 If a Dispute remains unresolved despite the reasonable, good faith efforts of the parties to resolve the Dispute under clause 18.4, either party may exercise its rights and seek any remedy it has under this Agreement.

## **19. Notices**

- 19.1 Any notice or consent required to be given under this Agreement shall be effective only if it is in writing and addressed to the person specified as follows, unless otherwise notified by the relevant party:
- 19.2 For the avoidance of doubt, any communication other than a notice or consent required to be given under this Agreement is not subject to this clause 19.
- 19.3 The notice or consent shall be deemed to be received:
- (a) if delivered personally, on delivery;
  - (b) if sent by courier, \_\_\_\_\_ days after dispatch, unless actually received earlier; and
  - (c) if sent by regular post, \_\_\_\_\_ days after the date of posting, unless actually received earlier.

19.4 Communications received by a party outside of normal working hours in the place in which such communications are received (being 9:00am to 6:00pm on any Monday to Friday excluding recognised public holidays) will be regarded as being received on the working day immediately following.

## **20. General**

### **Variation and assignment**

20.1 This Agreement can only be varied, supplemented or replaced by another document signed by both parties.

20.2 Except as provided in clauses 20.3, neither party can assign or otherwise transfer its rights, interests or obligations under this Agreement without the other party's prior consent, which consent shall not be unreasonably delayed, or withheld.

20.3            may assign or otherwise transfer its rights or interests under the Agreement to an Affiliate of            without obtaining the prior consent of the Customer.

### **Relationship of Parties**

20.4 No provision of this Agreement constitutes a joint venture, partnership or agency between the parties or merges the assets, liabilities and undertakings of the parties and neither party has the authority to bind the other in any way.

### **Operation of the Agreement**

20.5 This Agreement supersedes all previous agreements between the parties in relation to the Colocation Space and Colocation Services and contains the parties' entire agreement in relation to the Services provided from time to time to the Customer.

20.6 Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

### **Waiver**

20.7 A right may only be waived in writing, signed by the party granting the waiver, and

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent the further exercise of that right or any other right.

### **Execution**

20.8 The Agreement may be executed in counterparts.

## **21. Interpretation**

21.1 In this Agreement unless the contrary intention appears:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a word importing the singular includes the plural and vice versa;
- (c) a reference to:
  - (i) a day, week or month means a calendar day week or month;
  - (ii) a party to the Agreement or to any other document or agreement includes a successor or permitted substitute or permitted assign of that party;

- (iii) a document includes any amendment or supplement to, or replacement or novation of, that document;
- (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity;
- (v) any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

## 22. Definitions

**"Access Terms"** means the standard terms of access set out in Schedule 4.

**"Affiliate"** means, in relation to any person:

- (a) any company or other entity which has Control, directly or indirectly, of that person;
- (b) any company or entity which is, directly or indirectly, under common Control with that person; and
- (c)

**"Applicable Law"** means:

- (a) any applicable law, rule or regulation of any jurisdiction;
- (b) any applicable lawful determination, decision or direction of a government agency in any jurisdiction;
- (c) any applicable obligations under any telecommunications licence, any binding industry standard or industry code; and
- (d) any applicable international convention or agreement.

**"Backhaul Interconnect Fibre"** means the fibre between the DJP to the Colocation Space used to connect to the Customer's backhaul system beyond the DJP.

**"Billing Dispute Notice"** has the meaning given to this term in clause 8.13

**"Billing Dispute Response"** has the meaning given to this term in clause 8.16.

**"Business Day"** means a day (not being a Saturday, Sunday or public holiday in that place) on which banks are open for general banking business in Hong Kong.

**"Cable Station"** means the cable station owned by \_\_\_\_\_ located at \_\_\_\_\_.

**"Cable Systems"** means the \_\_\_\_\_ cable system.

**"Cancellation Charges"** means the sum of all charges incurred up to and including the date of termination of the Services that are unpaid; and a charge calculated by multiplying the months (including part months) remaining in the Minimum Agreement Period on the date of termination of this Agreement by all the monthly recurring charges (except any charges based on metered usage of power) under Schedule 5 and payable as a single lump sum.

**"Charges"** means the charges payable by the Customer under this Agreement.

**"Colocation Services"** means the facilities and services provided to the Customer by \_\_\_\_\_ at the Cable Station pursuant to this Agreement, and set out in more detail in Schedule 2.

**"Colocation Space"** means the space provided to the Customer by \_\_\_\_\_ at the Cable Station pursuant to this Agreement, and set out in more detail in Schedule 1.

**"Colocation Specifications"** means the specifications of the Colocation Space as set out in Schedule 3.

**"Confidential Information"** has the meaning given to it in clause 13.1.

**"Dispute"** means a bona fide dispute, controversy or claim – other than a Billing Dispute or a Debt which is recoverable by – arising between the parties under or in relation to this Agreement.

**"Disputed Amount"** has the meaning given to this term in clause 8.13(b).

**"Duct Jointing Point"** or **"DJP"** is the mid-point between the agreed Customer manhole and Interconnect Manhole outside the cable station.

**"Equipment"** means only the telecommunications equipment, removable fixtures and other items provided by the Customer for Installation and operation in the Cable Station necessary for the sole purpose of connecting its circuits in the Cable Systems landed at the Cable Station.

**"Essential AC Power"** means power backup for alternating current provided by means of a generator.

**"Force Majeure Event"** or **"Force Majeure"** means an event beyond the reasonable control of the affected party, including but not limited to natural disasters, acts of God, terrorism or war (whether declared or not), mobilisation of armed forces, civil commotion or riot, industrial actions or labour disturbance, epidemics, currency restriction, embargo, governmental restraint, expropriation or prohibition, or a failure of public utility or telecommunications system.

**"Installation"** means the following activities when carried out by the Customer:

- (a) installing the Equipment in the Cable Station;
- (b) connecting the any cable or equipment to the Equipment; and
- (c) testing the Equipment to ensure that it meets the relevant performance requirements, and 'install' has the corresponding meaning.

**"Interconnect Manhole"** means the manhole outside the Cable Station where the Backhaul Interconnect fibre is passed through the DJP to the Customer.

**"Interest Rate"** means the Prime Lending Rate set by the Hong Kong and Shanghai Banking Corporation Limited for loans made in Hong Kong, plus per cent.

**"Lead-in Fibre"** means the fibre between the ODF in the Cable Station main building and the ODF in the Colocation Space.

**"Licensed External Facilities Services Provider"** means a person who 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* in Hong Kong.

**"Minimum Agreement Period"** has the meaning set out in clause 16.1.

**"MRC"** means the monthly recurring charge for the Colocation Space and Colocation Services as stated in the charges section of the relevant Customer Order for the Colocation Space and Colocation Services. The MRC effective as at is based on the Services set out in Schedule 5 Appendix 2.

**"Network"** means the telecommunication equipment, cables, facilities and network of Customer.

**"NRC"** means the non-recurring charges, which are the initial one-off charges for this Agreement or one-off charges for additional Services as stated in the charges section of the relevant Customer Order for the Colocation Space and Colocation Services.

**"Office Hours"** means 9 am to 5 pm on Business Days.

**"Permits"** means any and all necessary registration, licences, agreements, authorisations, notifications and permits which are required by any government authority or under any Applicable Laws or regulations or otherwise in connection with the performance of work, Installation, or operation of the Network or this Agreement.

**"Power Feed"** means an electrical power cable between the nearest local power distribution point (power distribution board) for the power system of the Cable Station to the Colocation Space where the Customer Equipment is located.

**"Power Service"** means the Power Feed(s) provided by \_\_\_\_\_ to Customer Equipment together with the associated electricity consumption (directly metered by power company) of the Customer Equipment through the Power Feed(s), unless otherwise specified in the Customer Order.

**"Reconnection Fee"** means any reasonable administrative and other direct costs incurred by \_\_\_\_\_ as a result of activities it performs to reverse a Remedy.

**"Regulatory Event"** means:

- (a) an amendment of or change in any Applicable Law;
- (b) the grant of an injunction against a party in relation to a breach or alleged contravention of an Applicable Law;
- (c) the making of a determination or direction by a competent authority;
- (d) failure to act or delay of any governmental authority in the granting of governmental, or other approvals, consents, permits, licenses, leases or authorisations; or
- (e) where a party reasonably believes that any event of the kind described in (a), (b), (c) or (d) above will occur.

**"Remedy"** means any or all or a combination of the following actions: to suspend, restrict, de-activate or to deny access to any space provided by \_\_\_\_\_ under this Agreement.

**"Representative"** includes with respect to a party, an employee, agent, officer, director, advisor, contractor or sub-contractor of that party.

**"Service Commencement Date"** means the date as notified to the Customer in writing by \_\_\_\_\_ on which the Colocation Space and Colocation Services are ready to be used by the Customer, and in the case of the existing services set out in Schedule 2 and Schedule 3 Appendix the Service Commencement Date shall be the Effective Date.

**"Statement"** means an invoice provided by \_\_\_\_\_ setting out the Charges payable for Services provided by \_\_\_\_\_

**"Tax"** means any present or future tax, levy, impost, deduction, charge, duty or withholding tax (together with any related interest, penalty, fine and expense in connection with any of them) including without limitation any goods and services tax, value added tax, or service tax or consumption tax, which is levied or imposed by any government agency, other than those imposed on overall income.

**Executed as an agreement.**



## Schedule 1 – Colocation Space

### 1. Colocation Space

- 1.1. shall continue to provide the existing Colocation Space and facilities as described in these Schedules to the Customer for the Customer to install and collocate the necessary equipment ("**Colocation Space**") for connection to the Customer's circuits in the existing Cable System landed at the Cable Station.
- 1.2. The provision of Colocation Space by will be subject to availability of space and facilities at the Cable Station. Space and facilities are deemed to be not available if requires the space and facilities within a reasonable period. Allocation of additional space will be subject to availability. Whereas, to the extent that it is possible and available, shall make contiguous space available to the Customer if it seeks to expand its existing Colocation Space.
- 1.3. Transmission links connecting the Customer's Equipment inside the Colocation Space to the Customer's backhaul and to the existing Cable System landed at the Cable Station are described in Schedule 2.
- 1.4. The parties agree that the terms and conditions in relation to the setup and leasing of space and facilities as set out in this Agreement may be applied to any future submarine cable systems landing in the Cable Station (if any) at discretion.
- 1.5. The Equipment to be installed in the Colocation Space by the Customer must be limited to those equipment necessary for the purpose of connection to the existing Cable System, and any future cable systems at the Cable Station, subject to clause 1.4 of this Schedule 1.
- 1.6. The Customer must ensure that its Equipment to be installed in the Colocation Space meets the conditions specified by as set out in Schedule 3. The Customer shall provide the appropriate certification from an appropriately registered professional to to certify that the floor loading imposed by the Customer's Equipment is within the loading capacity of the Colocation Space.

## Schedule 2 – Colocation Services

### 1. shall provide the following Colocation Services

#### 1.1. Building management

- (a) shall be responsible for the management of the Cable Station building including the Colocation Space.

#### 1.2. Basic Facilities Maintenance including routine maintenance of air-conditioning, fire fighting and detection system and lighting.

#### 1.3. Power Service

- (a) Power supplied by under the Service is limited to AC power.
- (b) The Power Service is provided by means of a Power Feed from the power distribution board for the power system of the Cable Station.
- (c) The Charges for the Power Service are set out in Schedule 5 and based on a monthly fixed charge based on the circuit breaker size and a usage charge directly billed to the Customer by the power company (the Customer is required to apply for its own AC power and AC meter from the relevant power company).
- (d) All power to the Colocation Space is provided by as Essential AC Power. will provide Essential AC Power covering the Customer's total power requirement based on circuit breaker size. will reserve generator power based on the circuit breaker size. Upgrade is subject to availability and discretion.
- (e) Provision of earthing busbar at the Colocation Space and earthing power cable to connect the busbar to the Cable Station earth.
- (f) does not provide Uninterruptible Power Supply (UPS) or DC power.

#### 1.4. Air-conditioning

- (a) provides air-conditions as set out in Schedule 3.
- (b) does not provide monitoring of the air-conditioning system.

#### 1.5. Fire Suppression

- (a) provides Fire Suppression as set out in Schedule 3.

#### 1.6. Ducting from the Colocation Space to the Interconnect Manhole and into the Cable Station main building.

- (a) Details of the ducting are set out in Schedule 3.

#### 1.7. Backhaul Interconnect Fibre

- (a) Details of the existing Backhaul Interconnect Fibre are set out in Schedule 3.

- (b)                    may provide additional Backhaul Interconnect Fibre at the cost of the Customer.
- (c)                    The Customer is responsible for the splicing and connection of the Backhaul Interconnect Fibre at Customer's manhole.
- (d)                    Inside the Colocation Space                    will terminate the Backhaul Interconnect Fibre to the                    ODF.
- (e)                    The Backhaul Interconnect Fibre (not including the connection of the cable to the Customer's ODF) is owned and shall be maintained by                    responsibility to maintain the cables excludes normal wear-and-tear of the cables. The Customer will bear all the costs of replacement if replacement of these cables is required after the initial installation.
- (f)                                       shall maintain the portion of fibre cable from DJP to the Colocation Space. For the avoidance of doubt, the connection and termination of the fibre cable within the Colocation Space beyond the                    ODF and the fibre cable beyond the DJP towards the Customer's manhole shall be maintained by the Customer.
- (g)                    The Customer shall not access the portion of the fibre cable from the DJP to the Colocation Space. However, the Customer may authorise                    to conduct all types of work to be performed on any part of the fibre cable from the DJP to the Colocation Space as is considered reasonably necessary by the Customer and notified to                    with advance written notice, including inspection, realignment, removal and replacement. The Customer must pay                    for the above work performed by
- (h)                    If                    reasonably determines that this part of the fibre cable 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 the fibre cable will be moved at the Customer's expense.                    will use its reasonable endeavours to minimize disruption to the Customer's equipment during the course of movement if necessary resources are available. However                    will have no liability for any accompanying service interruption that is incidental to the cable movement.
- (i)                                       will clear blockages in and perform normal remedial work to the Lead-in and Trunking facility. However other planned or unplanned remedial work will not be covered. The parties will discuss and share the cost for planned and unplanned remedial work when it becomes necessary.
- (j)                    Ownership of the Backhaul Interconnect Fibre remains with

#### 1.8. Lead in Fibre

- (a)                    Details of the existing Lead-in Fibre are set out in Schedule 3.
- (b)                                       may provide additional Lead-in Fibre at the cost of the Customer.
- (c)                                       shall prepare the ducting, trunking and other connecting facilities for the Lead-in Fibre.                    may also carry out modification, alteration, moving or relocation of such facilities as required at the cost of the Customer.
- (d)                    For the Lead-in Fibre                    will carry out the connection and termination work of the fibre cable to the                    ODF in the Colocation Space and the ODF inside the Cable Station main building at the cost of the Customer.

- (e) The Lead-in Fibre (not including the connection of the cable to the Customer's ODF) is owned and shall be maintained by \_\_\_\_\_ responsibility to maintain the cables excludes normal wear-and-tear of the cables. The Customer will bear all the costs of replacement if replacement of these cables is required after the initial installation.
- (f) The Customer shall not access the portion of the fibre cable from the Colocation Space to the Cable Station main building. However, the Customer may authorise \_\_\_\_\_ to conduct all types of work to be performed on any part of the fibre cable from the Cable Station main building to the Colocation Space as is considered reasonably necessary by the Customer and notified to \_\_\_\_\_ with advance written notice, including inspection, realignment, removal and replacement. The Customer must pay \_\_\_\_\_ for the above work performed by \_\_\_\_\_
- (g) If \_\_\_\_\_ reasonably determines that this part of the fibre cable 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 the fibre cable will be moved at the Customer's expense. \_\_\_\_\_ will use its reasonable endeavours to minimize disruption to the Customer's equipment during the course of movement if necessary resources are available. However \_\_\_\_\_ will have no liability for any accompanying service interruption that is incidental to the cable movement.
- (h) \_\_\_\_\_ will clear blockages in and perform normal remedial work to the Lead-in and Trunking facility. However other planned or unplanned remedial work will not be covered. The parties will discuss and share the cost for planned and unplanned remedial work when it becomes necessary.
- (i) Ownership of the Lead-in Fibre remains with \_\_\_\_\_

1.9. Any other requirements in relation to the provision of space and facilities as agreed between \_\_\_\_\_ and the Customer.

2. The Services set out in this Schedule are coterminous with the Colocation Space.

## **Schedule 3 – Colocation Specifications**

### **1. Specifications of Colocation Space**

#### **1.1. General facilities and environmental conditions:**

- (a) The clear height of the Colocation Space is 2.9 meters.

Note : The actual height which can be used by the Customer for equipment and cable racks may be less than this.

- (b) Environmental conditions:

- |      |                  |                            |
|------|------------------|----------------------------|
| (i)  | Temperature      | 26 °C, not exceeding 28 °C |
| (ii) | Heat Dissipation | 80 BTU/hr/sq ft, maximum   |

Note: The temperature figures refers to nominal values and may have long periods of deviations in case of air-conditioning plant failure.

- (c) Floor Loading Capacity is limited to 7.5kPa and Customer equipment shall not exceed this.

#### **1.2. Fire detection and suppression system:**

- (a) Fire fighting system, - CO2 sprinkler system;
- (b) Smoke and heat detection system; and
- (c) Manual fire fighting systems.

#### **1.3. Security:**

- (a) Access by the Customer must be under supervision of \_\_\_\_\_ and must be in accordance with the Access Terms specified in Schedule 4.

#### **1.4. Earthing:**

- (a) Earthing resistance is 3 ohms maximum.

## Schedule 3 Appendix 1

### 1. Colocation Specification

1.1	Cable Station	
1.2	Nature of Colocation Space	Shared with other access seekers
1.3	Space allocated to Customer	6.137 m <sup>2</sup>
1.4	Circuit Breaker on Power Feed	40 kVA
1.5	Lead-In Ducts	One shared duct
1.6	Ducts to Interconnect Manhole	Two shared ducts to cable station manhole and two shared ducts to the Interconnect Manhole.
1.7	Lead-in Fibre	2 cables
1.8	Backhaul Interconnect Fibre	2 cables

## **Schedule 4 – Access Terms**

### **1. GENERAL**

- 1.1 This Schedule 4 governs the terms and conditions for authorised representatives of the Customer to access the Colocation Space. This Schedule 4 may be amended from time to time by written notification from \_\_\_\_\_ to the Customer.
- 1.2 An “Authorised Representative” under this Schedule 4 means an employee, agent or contractor of the Customer duly authorised by it to physically access the Equipment in the Colocation Space.
- 1.3 The Customer must ensure that its Authorised Representative:
  - (a) only access the Colocation Space for the purposes of delivering Customer equipment, or performing Installation and maintenance work on the Customer equipment; and
  - (b) has the skills and qualifications required to carry out its work at the Colocation Space safely and competently; and
  - (c) complies with these Access Terms in all respects.
- 1.4 When accessing the Colocation Space, each Authorised Representative must produce a legal identification document with photograph (which may be a valid passport or a Hong Kong identity card), and a valid staff card (if requested by the \_\_\_\_\_. Any Authorised Representative who is not an employee of the Customer will only be allowed access if accompanied by an Authorised Representative who is an employee of the Customer.
- 1.5 All acts or omissions of all Authorised Representatives seeking access to or accessing the Colocation Space are deemed to be acts or omissions of the Customer for which the Customer is liable.

### **2. ACCESS TO THE COLOCATION SPACE**

#### **STANDARD ACCESS**

- 2.1 \_\_\_\_\_ will grant the Customer (including each of its Authorised Representatives) physical access to the Colocation Space during Office Hours if:
  - (a) such access is required in accordance with this Schedule 4; and
  - (b) subject to clause 2.2, the Customer has given prior notice in writing to \_\_\_\_\_ no less than \_\_\_\_\_ Business Days before the requested date of access.

#### **EMERGENCY ACCESS**

- 2.2 If the Customer must access the Colocation Space for urgent maintenance work (less than \_\_\_\_\_ Business Days prior notice), \_\_\_\_\_ may grant the Customer urgent access provided the Customer provides all reasonable information requested by \_\_\_\_\_ with respect to such access.

#### **EQUIPMENT DELIVERY**

- 2.3 If the Customer wishes to have any of its equipment delivered to the Cable Station and operation of a hoist is required for the delivery, the Customer must:

- (a) (provide written notice to \_\_\_\_\_ at least \_\_\_\_\_ Business Days before the proposed date of delivery; and
- (b) have an Authorised Representative present at the Cable Station to accept delivery of the equipment and materials.

#### NOTICE

- 2.4 For all access to the Colocation Space, the Customer must make a request to \_\_\_\_\_. A request by the Customer (whether orally or in writing) must include the following information:
- (a) the name, identification document number, staff card number and work title of all Authorised Representatives requesting access;
  - (b) the purpose for which physical access is requested, in detail; and
  - (c) the duration of access required.

#### ENTRY NOTICE

- 2.5 An Entry Notice must be communicated to the contact point at \_\_\_\_\_ as notified to the Customer from time to time.
- 2.6 \_\_\_\_\_ shall respond to an Entry Notice:
- (a) within \_\_\_\_\_ Business Days of receiving an Entry Notice for the purposes of access contemplated under clause 2.1;
  - (b) within \_\_\_\_\_ hour of receiving an Entry Notice for the purposes of access contemplated under clause 2.2 during Office Hours; and
  - (c) within \_\_\_\_\_ hours of receiving an Entry Notice for the purposes of access contemplated under clause 2.2 outside Office Hours.
- 2.7 In its response under clause 2.6, \_\_\_\_\_ must either:
- (a) state that the request for access is approved and confirm the time and date for access by the Customer's Authorised Representatives; or
  - (b) request further information; or
  - (c) deny the request for access stating the reason for the denial.
- 2.8 \_\_\_\_\_ may refuse or revoke its consent for the Customer to access to the Colocation Space if:
- (a) \_\_\_\_\_ reasonably considers that the Colocation Space is unsafe; or
  - (b) \_\_\_\_\_ reasonably considers that the Customer is, or is likely to be, in breach of the terms and conditions of this Agreement; or



- (c) no reason is given by the Customer for the access sought or the reason is inconsistent with the agreed purpose.

2.9 If \_\_\_\_\_ denies a request for access, it must state the reason for the refusal.

### 3. PHYSICAL ACCESS PROCEDURES AND CONDITIONS

3.1 The Customer may:

- (a) physically access the Colocation Space only if a \_\_\_\_\_ representative is in attendance at all times;
- (b) physically access the Colocation Space only to and through that part of Cable Station for which approval has been granted.

3.2 The Customer must:

- (a) in relation to any access, at its own cost, comply with:
  - (i) all requirements, safety standards and codes of conduct of \_\_\_\_\_ which are applicable to the Cable Station and as advised by \_\_\_\_\_
  - (ii) all relevant laws of the Hong Kong Special Administrative Region;
  - (iii) all security requirements and conditions, established and modified by \_\_\_\_\_ at its reasonable discretion and advised to the Customer from time to time; and
  - (iv) all reasonable instructions of \_\_\_\_\_ in relation to safety and security at the Cable Station.
- (b) promptly notify \_\_\_\_\_ of any fault, defect or problem with the Colocation Space or its vicinity which comes to the attention of the Customer;
- (c) ensure that the Colocation Space is left in a safe and clean condition on each occasion of access, and that physical access to the Colocation Space is not blocked or otherwise obstructed by the Customer's equipment or any other material;
- (d) comply with \_\_\_\_\_ directions in relation to fire prevention, safety and security; and
- (e) pay for access in accordance with the Charges set out in Schedule 1 to this Appendix or notified by \_\_\_\_\_ from time to time.

3.3 The Customer must ensure that each of its Authorised Representatives physically accessing the Colocation Space:

- (a) complies with all of the terms and conditions imposed on the Customer under this Appendix;
- (b) has been approved by the Customer 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 Cable Station; and
  - (d) promptly complies with the reasonable directions of \_\_\_\_\_ representative in relation to safety, security and normal functioning of the Cable Station.
- 3.4 The Customer is entitled to temporarily remove or copy the log book referred to in clause 3.3 for the purpose of checking the information recorded therein.
- 3.5 The Customer's Authorised Representative must inform \_\_\_\_\_ representative as soon as reasonably practicable after work in the Colocation Space has been completed and each Authorised Representative has left the Colocation Space.

#### **4. ACCESS RESTRICTIONS**

##### **4.1 The Customer must not:**

- (a) access or use the Colocation Space in any manner inconsistent with the Agreement or for any purpose other than agreed;
- (b) bring any equipment, goods, or chattels into the Colocation Space which are not reasonably necessary for the purpose agreed;
- (c) access any areas of Cable Station other than the Colocation Space without the approval of \_\_\_\_\_
- (d) cause any nuisance, interference, disturbance, inconvenience, hazard or danger to neighbouring premises of the Colocation Space or to any property in the neighbourhood of the Colocation Space;
- (e) leave any flammable, explosive, or hazardous material in or around the Colocation Space;
- (f) without the prior consent of \_\_\_\_\_ display any signs or notices bearing any logo, name or other identification mark of the Customer at the Colocation Space;
- (g) extend or increase electrical power wiring within the Colocation Space unless with the prior consent of \_\_\_\_\_
- (h) make any alteration to the Colocation Space or alter the existing locks, bolts and fittings on the entrance door to the Colocation Space, or install any additional locks, bolts or fittings; or
- (i) inspect or record any image, notes or data of or in relation to any equipment at the Cable Station or in the Colocation Space other than the Customer's equipment.

##### **4.2 Each party must not do or permit or suffer to be done or omit to do anything in connection with access or physical access to the Colocation Space under this Appendix that might reasonably be expected to:**

- (a) threaten the safety or security of:
  - (i) employees or customers of the other party; or
  - (ii) any third person or employees or customers or any third person; or
  - (iii) property of the other party; or
  - (iv) the property of any third person; or

- (b) cause damage to:
  - (i) the property of the other party; or
  - (ii) the property of any third person; or
- (c) interfere with the delivery of telecommunications service supplied or to be supplied by the other party or any other third person; or
- (d) adversely affect the integrity or confidentiality of communications within the network of the other party or a third person; or
- (e) cause any insurance on the Cable Station or Colocation Space against loss or damage by fire and other calamities and/or claims by third parties for the time being in force to be rendered void or voidable or whereby the premium thereof may be increased, as may be informed by the other party.

## 5. Man-hour Rates

### 5.1. Effective from

Escort Type	Time	Rate per hour
Standard Access - Notified 3 Business Days in advance	Office Hours	HK\$1,400
Standard Access Notified 3 Business Days in advance	Outside Office Hours	HK\$2,800
Emergency Access Notified less than 3 Business Days in advance	Office Hours	HK\$1,700
Emergency Access Notified less than 3 Business Days in advance	Outside Office Hours	HK\$3,400

Where:

- Access during Office Hours will be charged a minimum of 2 hours.
- Access outside Office Hours will be charged a minimum of 4 hours with a HK\$900 call out charge if travelling is required.

## 6. Charge Adjustment

The prevailing man-hour rates and terms set out in clause 5.1 of this Schedule may be adjusted on 1st July every year at sole discretion.

## Schedule 5 – Charges

### 1. Upon the Effective Date:

1.1. The Customer will pay the following recurrent charges:

- (a) Site Occupation
- (b) Building Management
- (c) Basic Facilities charge
- (d) Power Service
- (e) Essential Power
- (f) Air-conditioning usage
- (g) Duct, Lead-in and Trunking charges

The Customer shall pay for the dedicated and shared duct, Lead-in and Trunking facilities including:

- (i) the duct between the DJP and the Colocation Space;
- (ii) the Lead-in duct from the Colocation Space to the Cable Station main building;
- (iii) trunking facilities within Cable Station cable chambers and equipment floors for running of the fibre cable from the Lead-in to the optical distribution frame inside the Cable Station main building.

- (h) Fibre Operations and Maintenance charges

The Customer shall pay Fibre Operations and Maintenance charges for each:

- (i) Backhaul Interconnect Fibre cable; and
- (ii) Lead-in Fibre cable.

The initial operations and maintenance charges are set out in Appendix 1 to this Schedule 5. This covers inspection and fault finding services. Repairs or replacement will be charged separately at the cost of the Customer.

- (i) Rates, rents and other government charges
- (j) Other Charges as agreed

### 2. One-off Charges

2.1. One-off Charges cover the additional charges for 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.

2.2. One-off 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.

- (b) An installation charge which will be quoted by \_\_\_\_\_ after the feasibility study shows the installation is feasible.
- (c) Time Charges based on \_\_\_\_\_ man-hours rates and reasonable travelling expenses.

### **3. Charge Adjustment**

- 3.1. The Charges set out in this Appendix 1 may be increased by \_\_\_\_\_ at start of each calendar year in accordance with this clause.
- 3.2. If \_\_\_\_\_ increases the charges set out in clauses 1.1(a)-(b) above, \_\_\_\_\_ will do so in accordance with the increase in the PRIVATE OFFICE – RENTAL INDICES BY GRADE (ALL DISTRICTS) for "All Grades" of office space as published by the Ratings and Valuations Department.
- 3.3. If \_\_\_\_\_ increases the charges in accordance with clause 3 of this Schedule the revised charges will apply from 1 January each year based on the PRIVATE OFFICE – RENTAL INDICES BY GRADE (ALL DISTRICTS) for "All Grades" of office space increase during the preceding 12 month period from September to August rounded up to the nearest HK\$10.
- 3.4. Should data from the Ratings & Valuations Department be unavailable \_\_\_\_\_ will use an alternative benchmark based on the prevailing market rates or changes in market conditions.
- 3.5. If \_\_\_\_\_ increases the charges set out in clauses 1.1(c)-(h) 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.
- 3.6. If \_\_\_\_\_ increases the Charges in accordance clause 3 of this Schedule 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\$10.
- 3.7. No adjustment will be made if the charges calculated in accordance with the adjustment would be lower than the amount prior to the adjustment.
- 3.8. Rates, rents and other government charges may be charged and adjusted by \_\_\_\_\_ according to any adjustments made by the Government.

**Schedule 5 Appendix 1**

The following charging rates apply from

**1. TABLE A - SITE MANAGEMENT CHARGES**

Item	Space provided to the Customer at Cable Station	Monthly charges payable by the Customer
a)	Site occupation	HK\$1090 per square meter
b)	Building management	HK\$336 per square meter

**2. TABLE B - FACILITIES CHARGES**

Item	Facilities provided to the Customer at Cable Station	Monthly charges payable by the Customer	Adjustment
a)	Basic Facilities Maintenance charge for routine maintenance of air-conditioning, fire fighting and detection system#	HK\$233 per square meter	CPI
b)	Power Service	Basic charge of HK\$450 per 5 kVA – based on circuit breaker size billed by	CPI
		Usage charges are directly metered by power company*	
c)	Essential AC Power supply reservation (upgrade subject to availability)	HK\$1320 per 5kVA of AC power capacity – based on circuit breaker size	CPI
d)	Air-conditioning usage charges	HK\$579 per KW above 2KW	CPI
e)	Rates, rents and other government charges	Quoted based on evaluation by Government from time to time	According to adjustment by Government
f)	Other charges	As agreed	As may be agreed

# The facilities charges do not cover repair – any repair costs plus a basic admin charge payable to shall be borne by the Customer.

\* Subject to power company's agreement and approval, the power will be provided by the power company and charged in accordance with the power company's standard rates and adjustments.

**3. TABLE C - FIBRE, DUCTING, TRUNKING AND LEAD-IN CHARGES**

<b>Item</b>	<b>Services provided to the Customer at Cable Station</b>	<b>Monthly charges payable by the Customer</b>
a)	Per dedicated duct, e.g. Ducting from Co-location Space to Cable Station manhole, or ducting from Co-location Space to Cable Station	HK\$4520
b)	Per shared duct, e.g. from Cable Station manhole to DJP (shared)	HK\$1970
c)	Fibre O&M per cable up to 200 cores	HK\$1970



## Schedule 5 Appendix 2

The following charges apply from

### 4. TABLE A - SITE MANAGEMENT CHARGES

Item	Space provided to the Customer at Cable Station	Monthly charges payable by the Customer
a)	Site occupation	HK\$6690
b)	Building management	HK\$2070

### 5. TABLE B - FACILITIES CHARGES

Item	Facilities provided to the Customer at Cable Station	Monthly charges payable by the Customer
a)	Basic Facilities Maintenance charge for routine maintenance of air-conditioning, fire fighting and detection system#	HK\$1430
b)	Power Service	Basic charge of HK\$3600
		Usage charges are directly metered by power company
c)	Essential AC Power supply reservation (upgrade subject to availability)	HK\$10560

### 6. TABLE C - FIBRE, DUCTING, TRUNKING AND LEAD-IN CHARGES

Item	Services provided to the Customer at Cable Station	Monthly charges payable by the Customer
a)	Shared Lead-in Duct	HK\$3940
b)	Shared Backhaul Duct	HK\$3940
c)	Fibre O&M Lead-in Fibre	HK\$3940
d)	Fibre O&M Backhaul Interconnect Fibre	HK\$3940