

**IN-SPAN FIBRE POINT OF INTERCONNECT AGREEMENT**

**BETWEEN**

**AND**

THIS AGREEMENT is made on

5 March,

2002

BETWEEN

(1)

(2)

RECITALS

- (A) The Parties have agreed to interconnect their Networks at the Common POI Points by way of an In-span Fibre according to the terms and conditions of this Agreement.
- (B) The Parties have agreed to provide Link Capacity for supporting the Common POI Points in order to pass interconnect traffic to each other according to the terms and conditions of this Agreement.

## OPERATIVE PROVISIONS

### 1. Definitions and Interpretation

1.1 The following terms used in this Agreement will have the following meaning, unless a contrary intention is specified :

**Agreed Use** in relation to an In-span Fibre means only:

- (a) to establish physical interconnection links between Initiating Party Switch Location and the ICG Exchange;
- (b) to carry interconnect traffic between the Initiating Party's Network and the Responding Party's Network which the Parties have agreed to pass under the Local Delivery Agreement dated 27 September 1995 or any subsequent Agreement thereto;  
or
- (c) using the In-span Fibre in a manner that is not in breach of clause 15.

**Applicable Law** means any law, rule or regulation of Hong Kong or any country (or political subdivision thereof) which is applicable to any Party, services provided under this Agreement; obligations under any telecommunications licence held by any Party or any person to whom a Party provides services; any lawful determination, decision or

direction of a Government Agency in Hong Kong or any country (or political subdivision thereof) which is applicable to a Party or the services provided under this Agreement; and any applicable international convention or agreement.

**Business Day** means a day other than a Saturday, Sunday and public holiday.

**Cable Work** means any type of work to be performed on any part of the In-span Fibre, including inspection, maintenance, realignment, rearrangement, removal and replacement.

**Capacity Available Date** means the date described in clause 13 of this Agreement.

**Capacity Forecast** means a forecast of transmission capacity required over an In-span Fibre, as provided by one Party to the other in accordance with clause 10 of this Agreement.

**Capacity Order** means an order for transmission capacity over an In-span Fibre made by Party A to Party B in accordance with clause 11 of this Agreement.

**Capacity Provisioning Date** means the date of a notice issued by Party B informing Party A that the installation and test of the Link Capacity is completed.

**Charges** means all charges payable by the Initiating Party to the Responding Party under this Agreement.

**Common POI Points** means the points of interconnection between the Networks of the Parties through which interconnect traffic between the Parties can be delivered from one Party to the other. The interconnect traffic delivery through this Common POI Point arrangement is an alternative to the existing arrangement under the POI Establishment Agreement. The Common POI Points with their locations are listed in Schedule 1, as amended from time to time by agreement in writing between the Parties.

**Connecting Facility** means the Responding Party's ducting facilities (including any access point) between the Connecting Piece and the Exchange Lead-in Chamber.

**Connecting Piece** means the Responding Party's duct not exceeding one (1) meter in length used to connect Responding Party Jointing Chamber and the Initiating Party Duct leading to an IS Jointing Chamber.

**Contract** means:

- (a) in relation to a Fibre Application, means the contract formed between the Parties in respect of an In-span Fibre when the Initiating Party accepts the Work Plan ("**Fibre Contract**"); and
- (b) in relation to a Capacity Order, means the contract formed between Parties when Party B accepts the Capacity Order from Party A ("**Capacity Contract**").

**Exchange Lead-in Chamber** means the Responding Party's lead-in access cable chamber in respect of an exchange.

**Exchange Lead-in Facility** in relation to an exchange means the Exchange Lead-in Chamber and the Responding Party's other facilities between the Exchange Lead-in Chamber and the Exchange Trunking Facilities, including lead-in duct and cable chamber in relation to that exchange.

**Exchange Trunking Facilities** in relation to an exchange means the trunking, riser, trays, other suitable fixture and other space in the exchange for accommodating cables that run from the Exchange Lead-in Facility to the Responding Party Interconnect Equipment.

**Facilities** means the Responding Party Facilities and/or the Initiating Party Facilities.

**Feasibility Study** means desktop study and physical survey, including but not limited to duct rodding, conducted by the Responding Party as to whether there is available Connecting Facility, Exchange Lead-in Facility and Exchange Trunking Facility, whether a Connecting Piece can be installed, and to locate suitable facility and cable route for the In-span Fibre proposed in a Fibre Application.

**Fibre Application** means a written application made by the Initiating Party in accordance with this Agreement to the Responding Party to interconnect the Initiating Party Fibre at the Common POI Points to the Responding Party Fibre.

**Fibre Splice** means the cable splice located in an IS Jointing Chamber for connecting the Initiating Party Fibre to the Responding Party Fibre.

**Force Majeure** means anything outside reasonable control of a Party including but not limited to acts of God, industrial disputes of any kind, war declared or undeclared, blockade, disturbance, lightning, fire, natural disaster such as earthquake, storm, flood, explosion or meteor, law or any power lawfully exercised by a Government Agency, any change in any Applicable Law, inability or delay in granting governmental or other approvals, consents, permits, licenses or authorities, or telecommunication network outage or degradation.

**FTNS Licence** means a Fixed Telecommunication Network Services Licence.

**Government Agency** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world and includes the Telecommunications Authority.

**Hong Kong** means the Hong Kong Special Administrative Region of the People's Republic of China.

**ICG Exchange** means Responding Party's switching facilities as set out in Schedule 1, as amended from time to time by agreement in writing between the parties, required to support the Common POI Points between the Responding Party and the Initiating Party.

**Initiating Party** means the Party who makes an application for interconnection at a Common POI Point by way of an In-Span Fibre arrangement under this Agreement.

**Initiating Party Duct** means a duct built by the Initiating Party used to connect the Responding Party Jointing Chamber to the IS Jointing Chamber.

**Initiating Party Facilities** means Initiating Party Fibre and other facilities in the IS Jointing Chamber for the connection of Responding Party Fibre.

**Initiating Party Fibre** means that portion of the In-span Fibre extending from the IS Jointing Chamber to the Initiating Party Switch Location.

**Initiating Party Switch Location** means the location of the Initiating Party's switching facilities, or any other agreed point for termination of the Initiating Party Link, as set out in Schedule 1 enclosed hereto.

**Initiating Party Terminating Equipment** means the Initiating Party's telecommunication apparatus and equipment located at the Initiating Party Switch Location for terminating the Initiating Party Fibre in support of an In-span Interconnect Link.

**Initiating Party Works** means all work necessary to connect the Initiating Party Duct to the Connecting Piece and incidental sealing and civil work, pulling the Responding Party Fibre to the IS Jointing Chamber, and other work to be performed by the Initiating Party as agreed between the Parties.

**In-span Fibre** means an optical fibre cable of diameter less than or equal to 25mm installed in accordance with the terms and conditions of this Agreement, used solely for the Agreed Use and consisting of:

- (a) the Initiating Party Fibre on the side of the IS Jointing Chamber further away from the ICG Exchange; and
- (b) the Responding Party Fibre on the side of the IS Jointing Chamber closer to the ICG Exchange.

**In-span Interconnect Link** means the end to end transmission capacity between the Responding Party Terminating Equipment and the Initiating Party Terminating Equipment over an In-span Fibre and passing through an IS Point of Connection.

**In-span Interconnect Manual** means the manual which sets out the technical provisions and maintenance procedures to support IS Point of Connection and In-span Interconnect Links to be developed by the Parties.

**In-span Specifications** means the technical specifications as set out in Schedule 2 to this Agreement which apply to:

- (a) the In-span Fibre; and
- (b) the Responding Party Terminating Equipment; and
- (c) the Initiating Party Terminating Equipment.

**IS Jointing Chamber** means the duct access point of the Initiating Party which accommodates the Fibre Splice and is identified in the Work Plan with a distance not exceeding ten (10) meters from the Responding Party's Jointing Chamber.

**IS Point of Connection** means a designated point of that portion of the In-span Fibre located inside a Connecting Piece which will serve as the agreed demarcation point between the respective Networks of the Responding Party and the Initiating Party.

**Link Capacity** means the transmission capacity supported by the In-span Interconnect Link.

**Local Delivery Agreement** means the agreement between the Parties for interconnection between their respective Networks and provision of local delivery services dated 27 September 1995.

**Loss** means loss, loss of revenue, cost, damage, expense, liability and charge.

**Minimum Contract Period** means:

- (a) in relation to an In-span Fibre, means a period of three (3) years commencing on the Preparation RFU Date for that In-span Fibre ("**Minimum Fibre Contract Period**"); and
- (b) in relation to a Link Capacity, means a period of three (3) years commencing on the Capacity Available Date of that Link Capacity ("**Minimum Capacity Contract Period**").

**Network** means the telecommunication or other fixed network which a Party is entitled to establish and maintain in Hong Kong pursuant to its FTNS Licence granted under the Ordinance.

**Ordinance** means the Telecommunications Ordinance (Cap. 106) of Hong Kong.

**Party** means either \_\_\_\_\_ or \_\_\_\_\_ and Parties means both of them.

**Party A** has the meaning ascribed in clause 11 of this Agreement.

**Party B** has the meaning ascribed in clause 11 of this Agreement.

**POI Establishment Agreement** means the POI agreement between the Parties dated 30 June 1995.

**Preparation RFU Date** means the date of a notice issued by the Responding Party informing the Initiating Party that the Preparation Work is completed.

**Preparation Work** means the work to be conducted by the Responding Party, at the request of the Initiating Party to make ready facilities and to install the In-span Fibre including, without limitation,:

- (a) installing the Connecting Piece; and
- (b) preparing the Connecting Facility, Exchange Lead-in Facility and the Exchange Trunking Facility for pulling the In-span Fibre through, including clearing blockages, repair and reinforcement work, incidental civil and sealing work; and
- (c) modifying, altering, moving or relocating facilities or equipment of the Responding Party, or any third party located within the Connecting Facility, Exchange Lead-in facility and the Exchange Trunking Facility which could be damaged, interfered with or otherwise adversely impacted by the installation and operation of the In-span Fibre; and
- (d) pulling the Responding Party In-span Fibre through the Responding Party's Facility; and
- (e) supervising the Initiating Party's Work for pulling the Responding Party Fibre to the IS Jointing Chamber; and
- (f) any other work to be undertaken by the Responding Party as agreed between the Parties in the Work Plan.

**Responding Party** means the Party who receives an application for interconnection at a Common POI Point by way of an In-Span Fibre arrangement under this Agreement.

**Responding Party Facilities** means the Connecting Piece, Responding Party Jointing Chamber, the Connecting Facility (if applicable), the Exchange Lead-in Facility, and the Exchange Trunking Facility used for accommodating the Responding Party Fibre.

**Responding Party Fibre** means the portion of the In-span Fibre extending from the IS Jointing Chamber to the relevant ICG Exchange.

**Responding Party Jointing Chamber** means the duct access point of the Responding Party (as identified in the Work Plan) that connect with the Connecting Piece and the Initiating Party Duct leading to an IS Jointing Chamber.

**Responding Party Terminating Equipment** means the Responding Party's telecommunication apparatus and equipment located in the ICG Exchange for terminating the Responding Party Fibre in support of an In-span Interconnect Link.

**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** or **TA** has the meaning given to the term “Authority” in section 2 of the Ordinance.

**Work Plan** means the plan prepared by the Responding Party described in clause 5.2

1.2 In this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) the word “person” includes a body corporate, an unincorporated association or an authority;
- (d) a reference to a document includes any amendment, replacement or innovation of it;
- (e) a reference to a statute, ordinance or by-law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) 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;
- (g) derivatives of a defined term have the same meaning ascribed to that defined term with necessary alterations or changes;
- (h) the provisions listed after the word “including” in any clause is to be interpreted as being without limitation to the generality of that clause;
- (i) a reference to “days” means calendar days unless otherwise stated in this Agreement;
- (j) 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;
- (k) a reference to dollars or “\$” is to Hong Kong dollars; and

a reference to a clause shall, unless the context otherwise required, means a reference to a clause in this Agreement.

1.3 If there is any inconsistency between clauses 1 to 26 of this Agreement and a Schedule or between any Schedule, the inconsistency will be resolved in the following order of preference;

- (a) clause 1 to 26 of this Agreement;
- (b) the Schedules.



1.4 This Agreement does not in anyway vary or affect the validity of the POI Establishment Agreement except to the extent expressly provided for in this Agreement.

## **Part A - Fibre Work**

### **2. FIBRE APPLICATION**

2.1 If either Party wishes to interconnect its Network to the other Party's Network at a Common POI Point, it shall make a Fibre Application to the other Party (the Responding Party) pursuant to the terms and conditions of this Agreement. The Parties agree that the Initiating Party must initially make a Fibre Application in relation to each Common POI Point listed in Schedule 1 of this Agreement.

2.2 Each Fibre Application for a Common POI Point must be in respect of one In-span Fibre. Each Fibre Application must be in writing in a format set out in Annex 1, and incorporate maps where necessary. For the avoidance of doubt, nothing in this Agreement prevents the Initiating Party from making simultaneous Fibre Applications in respect of the same Common POI Point.

2.3 The Initiating Party is deemed to have included in each Fibre Application a confirmation that:

- (a) the Initiating Party Work and Initiating Party Fibre conforms with the In-span Specifications;
- (b) the In-span Fibre will be used only for an Agreed Use; and
- (c) the Initiating Party will pay all costs incurred by the Responding Party in preparing the Feasibility Study and Work Plan in the event that the Initiating Party subsequently withdraws or cancels the Fibre Application or rejects the Work Plan unless such withdrawal or cancellation is directly attributable to a material breach of this Agreement by the Responding Party.

### **3. RECEIPT OF FIBRE APPLICATION**

3.1 After the receipt of a Fibre Application from the Initiating Party, the Responding Party will within ten (10) Business Days:

- (a) acknowledge receipt of the Fibre Application; or
- (b) notify the Initiating Party:
  - (i) if there are any apparent errors or inconsistencies in the Fibre Application;
  - (ii) of any further information that is reasonably required by the Responding Party for the purpose of assessing the Fibre Application; and

(iii) of any factors that may make it not reasonably practical to fulfil the Fibre Application in accordance with its terms.

3.2 Within ten (10) Business Days of the Responding Party's notification under clause 3.1(b), the Initiating Party must provide the Responding Party with such further information as requested by the Responding Party under clause 3.1(b).

3.3 Subject to a Fibre Review Event as set out in clause 4.3, the Responding Party will inform the Initiating Party in writing of the costs for preparing the Feasibility Study within ten (10) Business Days of the acknowledgement under clause 3.1(a) or of receipt of the information requested under clause 3.1(b).

3.4 Upon the Initiating Party's written acceptance of the costs for the Feasibility Study, the Responding Party will carry out the Feasibility Study and will inform the Initiating Party of the results of the Feasibility Study within twenty (20) Business Days of the receipt of the Initiating Party's acceptance. For the avoidance of doubt, the Initiating Party is not required to pay for the costs of the Feasibility Study unless it cancels or withdraws the Fibre Application pursuant to Clause 3.6.

3.5 The period of twenty (20) Business Days provided in clause 3.4 above may be extended by the Responding Party if:

(a) the Responding Party receives more than two Fibre Applications in respect of an area (being either Hong Kong Island, Kowloon or New Territories) from the Initiating Party and third parties within any four (4) week period;

(b) special requirements such as duct rodding are required in conducting the Feasibility Study; or

(c) any third party approval is required to carry out any aspect of the Feasibility Study;

in which case the Responding Party may, without liability to the Initiating Party, defer assessment of a Fibre Application until such time as the number of pending Fibre Applications in respect of an area falls to two (2) or less, third party approval is granted or the special requirements are fulfilled. The Responding Party will give the Initiating Party a written explanation and the expected reply date.

3.6 If the Initiating Party cancels or withdraws the Fibre Application (unless such withdrawal or cancellation is directly attributable to a material breach of this Agreement by the Responding Party), the Responding Party is entitled to issue an invoice for costs incurred by the Responding Party in carrying out the Feasibility Study irrespective of the results of the Feasibility Study and whether or not the relevant Fibre Application was approved. The Initiating Party shall settle such invoice within thirty (30) days of receipt.

#### **4. FEASIBILITY**

4.1 Notwithstanding anything else contained in this Agreement, the Responding Party may reject a Fibre Application if:

- (a) the Fibre Application does not meet all the requirements set out in clause 2 above;
- (b) accommodating the In-span Fibre could not be achieved without the likelihood of the Responding Party infringing a right of a third party or being in breach of its obligation towards another party with in situ cable or equipment;
- (c) approving a Fibre Application would in the reasonable opinion of the Responding Party, result in the Responding Party breaching the Applicable Law, licence, permit or approval issued by any Government Agency, or infringing the right of the owner of the land in which the facilities for the In-span Fibre are proposed to be accommodated, or breaching any arrangement with a third party who has a property interest in such land;
- (d) there is any technical reason including site constraints, engineering, technical feasibility, operating or safety issues which renders it not practicable to install a suitable Connecting Piece or to accommodate the In-span Fibre in the Responding Party's Facilities under the circumstances;
- (e) there is no space available to accommodate the In-span Fibre in the Responding Party's Facility;
- (f) the Initiating Party is in arrears to the Responding Party for any payments due under this Agreement; or
- (g) a suspension or termination notice has been issued under this Agreement.

4.2 For the purpose of clause 4.1(e) above, space or facilities is considered as available if all the conditions set out in the following paragraphs are satisfied:

- (a) there is sufficient currently unused space in the Responding Party's Facilities after taking into consideration space and facilities that are required for the normal operational requirements of the Responding Party, and such space and facilities are:
  - (i) not required by the Responding Party for its reasonable maintenance and is not reasonably required by the Responding Party during the period of five years after the installation date proposed in the Fibre Application, on the basis of the Responding Party's current network plan as at the date of receipt of that Fibre Application; and
  - (ii) not the subject of a Fibre Application made by a third party on or before the date of receipt of the Fibre Application by the Responding Party;
- (b) the Responding Party considers that accommodating the In-span Fibre would leave sufficient space or facilities for the requirements of third parties.

4.3 The Responding Party will notify the Initiating Party in writing if any of the following matters affect a Fibre Application ("**Fibre Review Event**"):

- (a) the Fibre Application does not contain sufficient information for the Responding Party to consider the Fibre Application;

- (b) if the Initiating Party's In-span Fibre does not comply with the Installation and Connection Specifications or will otherwise be unsafe or is interfering with any in situ cable or equipment;
- (c) the Responding Party requires more time to complete the Feasibility Study because the Responding Party has received more than two (2) Fibre Applications in respect of an area (being either Hong Kong Island, Kowloon or New Territories) from the Initiating Party and third parties within any four (4) week period; or
- (d) any matter set out in clause 4.1 above.

If the Fibre Review Event set out in clause 4.3 (c) applies to a Fibre Application, the Parties will discuss in good faith on extending the time available to the Responding Party to conduct the Feasibility Study.

If a Fibre Review Event set out in clause 4.3 (a), (b) or (d) applies to a Fibre Application, the Parties will discuss in good faith on resolution of the problems.

## **5. DESIGN PHASE**

- 5.1 If the Feasibility Study indicates that the Fibre Application is feasible, the Parties will arrange a meeting within five (5) Business Days to discuss the Fibre Application and the Initiating Party's Work.
- 5.2 When the Parties have agreed on all technical matters relevant to the planning and design for accommodating the In-span Fibre, the Responding Party will, within twenty (20) Business Days, prepare and send to the Initiating Party a Work Plan setting out information on:
  - (a) the location of the Responding Party Jointing Chamber;
  - (b) the location of the Connecting Piece;
  - (c) the location of the IS Jointing Chamber;
  - (d) the Preparation Work;
  - (e) the estimated costs for preparing the Work Plan payable by the Initiating Party if the Work Plan is rejected or the Fibre Contract is cancelled by the Initiating Party (unless such rejection or cancellation is directly attributable to a material breach of this Agreement by the Responding Party);
  - (f) the Initiating Party's Work; and
  - (g) the proposed Preparation RFU Date.

The Responding Party will inform the Initiating Party of any change required to the Work Plan, and until the Parties agree on such change the Responding Party will not proceed with the preparation of the Work Plan or the Preparation Work.

5.3 In the event that the Initiating Party requires a change to the Work Plan:

- (a) the Initiating Party shall inform the Responding Party of the required change within five (5) Business Days of receiving the Work Plan;
- (b) the Parties will discuss in good faith the time required for the Responding Party to inform the Initiating Party of the feasibility of the requested change to the Work Plan and any charge for making the requested change to the Work Plan; and
- (c) the Responding Party shall inform the Initiating Party of the feasibility of the requested change to the Work Plan and any charge for making the requested change to the Work Plan within the time frame agreed in accordance with clause 5.3(b).

Until the Parties agree on such change and the charge for such change (or that there should be no change) the Responding Party will not proceed with the preparation of the Work Plan or the Preparation Work.

## **6. FIBRE CONTRACT AND PREPARATION WORK**

6.1 The Initiating Party shall accept the Work Plan in writing within ten (10) Business Days of the receipt thereof. The Fibre Contract in respect of the In-span Fibre specified in the Fibre Application is deemed to have been formed between the Parties and the Work Plan and the terms and conditions of this Agreement are deemed to form part of the Fibre Contract upon such acceptance.

6.2 If the Initiating Party does not accept a Work Plan in its entirety and such rejection is not due to the error in the Work Plan made by the Responding Party, it is deemed to have rejected the Work Plan, in which case the Responding Party is entitled to issue an invoice for costs incurred by the Responding Party in carrying out the Feasibility Study and preparing the Work Plan. The Initiating Party shall settle such invoice within 30 days of receipt.

6.3 The Responding Party is under no obligation to commence any Preparation Work until the Fibre Contract is formed.

6.4 If the Initiating Party wishes to vary any part of the Fibre Contract after its formation, the Responding Party will consider whether the requested variation can reasonably be implemented and whether there should be any associated changes and variation charges. If the Parties cannot agree to the variation and the associated charges within ten (10) Business Days of the request for variation, the Initiating Party may within a further five (5) Business Days by notice in writing to the Responding Party either cancel the Fibre Contract or withdraw its request for variation. If the Initiating Party fails to notify the Responding Party within fifteen (15) Business Days of the request for variation, the Initiating Party is deemed to have cancelled the Fibre Contract. If a Fibre Contract is cancelled or deemed to be cancelled in accordance with this clause, the Responding Party

is entitled to issue an invoice for costs incurred by the Responding Party in carrying out the Feasibility Study, preparing the Work Plan, carrying out any Preparation Work and any work required to reinstate roads and facilities necessitated by the Preparation Work and for all other charges payable under the Fibre Contract up to and including the date of cancellation. The Initiating Party shall settle such invoice within thirty (30) days of receipt.

6.5 After the formation of the Fibre Contract, the Initiating Party will perform splicing the Initiating Party In-span Fibre with the Responding Party In-span Fibre inside the IS Jointing Chamber.

6.6 The Responding Party will not be liable for any delays or failure in undertaking the Preparation Work where such delay is a result of the issuance or non-issuance of any approval or permit by a Government Agency or the relevant third party, or a failure or delay of any part of the Initiating Party's Work.

6.7 The Responding Party will upon completion of the Preparation Work issue a notice to the Initiating Party stating that the installation of the In-span Fibre is completed. The issuing date of such notice is the Preparation RFU Date.

## **7. THE INITIATING PARTY WORK**

7.1 The Initiating Party must, at its own cost:

- (a) undertake the Initiating Party Work in accordance with the Work Plan; and
- (b) perform splicing of the Initiating Party Fibre with the Responding Party Fibre at the IS Jointing Chamber.

7.2 The Initiating Party must:

- (a) comply with any reasonable procedures and instructions of the Responding Party relating to the Initiating Party Work for the jointing of the Initiating Party Duct to the Connecting Piece leading to the wall of the Responding Party Jointing Chamber;
- (b) co-operate with the Responding Party in co-ordinating the Initiating Party's Work and the Preparation Work; and
- (c) not perform any Initiating Party Work consisting of modifying, altering, moving or relocating In-span Fibre or Responding Party Facilities or equipment of the Responding Party without supervision or authorisation by the Responding Party.

7.3 Each Party is responsible for obtaining any necessary approvals, licences or permits from the relevant Government Agency or land owner that may be required to conduct their respective work.

7.4 The Initiating Party must be responsible for civil work arrangements between the Jointing Chambers of the Initiating Party Duct and the Responding Party Jointing Chamber.

7.5 The Parties will share on an equal basis the associated charges, fees and expenses as may be incurred:

- (a) in the civil work arrangements carried out by the Initiating Party under clause 7.4, subject to the Parties agreeing on an acceptable quotation for the works to be carried out; and
- (b) in obtaining the necessary approvals, traffic impact assessments, licences and permits required to perform the work carried out by the Initiating Party under clause 7.4;

to the extent that those associated charges, fees and expenses related to the work carried out from a distance of 2 metres from the Responding Party Jointing Chamber. The Initiating Party shall be responsible for the costs of any nature which relate to work carried out at a distance beyond 2 metres from the Responding Party Jointing Chamber

## **8. MAINTENANCE**

- 8.1 The maintenance responsibility of the In-span Fibre will be demarcated at the IS Point of Connection. The Responding Party will clear blockages in and perform remedial work to the Connecting Piece, the Connecting Facility (if applicable) and the Exchange Lead-in Chamber. The Initiating Party will clear blockages in and perform remedial work to the Initiating Party Duct, IS Jointing Chamber and Initiating Party Facilities.
- 8.2 Neither Party will have any liability for any service interruption that is incidental to any part of this clause 8.

## **9 MOVEMENT OF CABLES**

- 9.1 If in the reasonable opinion of the Responding Party, the In-span Fibre located in the Responding Party Facilities must be moved to perform installation, operational or maintenance work to any part of the Responding Party Facilities, or to enable the Responding Party or a third party to install or access its property in the Responding Party Facilities, or to comply with a lawful direction of any Government Agency (such as a requirement to move any duct or access point), or if the Responding Party Facilities may be damaged by work contemplated in section 16 of the Ordinance or by road works, development, redevelopment or other works in the vicinity of the Responding Party Facilities, and that no other reasonably practicable alternative is available, the Responding Party may inform the Initiating Party by giving not less than ten (10) Business Days notice in writing or by giving an oral notice followed by a fax in the case of an emergency, that the In-span Fibre will be moved. The Initiating Party must co-operate with the Responding Party for such movement work and the Responding Party will not be liable for any expenses incurred by the Initiating Party.
- 9.2 If in the reasonable opinion of the Responding Party, the rearrangement or realignment of the Responding Party Fibre within the Responding Party's Facilities is required, the Responding Party may give the Initiating Party not less than ten (10) Business Days written notice or an oral notice followed by a fax in the case of an emergency of such realignment work to be done. The Initiating Party must co-operate with the Responding

Party for such realignment work and the Responding Party will not be liable for any expense incurred by the Initiating Party.

- 9.3 The Parties shall use their best endeavours to minimise any service interruption that is incidental to any part of clauses 9.1-9.2. Notwithstanding the forgoing, the Responding Party will have no liability for any service interruption that is incidental to any part of clauses 9.1-9.2.
- 9.4 If in the reasonable opinion of the Initiating Party, the Initiating Party Fibre located in the IS Jointing Chamber must be moved to perform installation, operational or maintenance work to any part of the Initiating Party Facilities, or to enable the Initiating Party or a third party to install or access its property in the Initiating Party Facilities, or to comply with a lawful direction of any Government Agency (such as a requirement to move any duct or access point), or if the Initiating Party Facilities may be damaged by work contemplated in section 16 of the Ordinance or by road works, development, redevelopment or other works in the vicinity of the Initiating Party Facilities, and that no other reasonably practicable alternative is available, the Initiating Party may inform the Responding Party by giving not less than ten (10) Business Days notice in writing or by giving an oral notice followed by a fax in the case of an emergency, that the Initiating Party Fibre will be moved. The Responding Party must co-operate with the Initiating Party for such movement work. The Initiating Party will not be liable for any expense incurred by the Responding Party.
- 9.5 If in the reasonable opinion of the Initiating Party, the rearrangement or realignment of the Initiating Party Fibre within the Initiating Party Facilities is required, the Initiating Party may give the Responding Party not less than ten (10) Business Days written notice or an oral notice followed by a fax in the case of an emergency of such realignment work to be done. The Responding Party must co-operate with the Initiating Party for such realignment work. The Initiating Party will not be liable for any expense incurred by the Responding Party.
- 9.6 The Parties shall use their best endeavours to minimise any service interruption that is incidental to any part of clauses 9.1-9.2. Notwithstanding the forgoing, the Initiating Party will have no liability for any service interruption that is incidental to any part of clauses 9.4-9.5.

### **Part B - Link Capacity**

#### **10. CAPACITY FORECAST**

- 10.1 For the purposes of Network planning, each Party shall provide forecasts to the other Party in respect of the following types of traffic:
- (a) indirect traffic terminating to operators such as VAS and ETS who are connected to the first Party; and
  - (b) direct traffic coming from the first Party (either originated from or transiting via the first Party).



## 10.2 The forecast shall

- (a) include transmission link and switched interconnect Network requirements in the form of a two (2) year rolling forecast with breakdown as follows:

Year One – monthly

Year Two – quarterly; and

- (b) subject to clause 10.3, be submitted to the other Party every three (3) months, no later than the last day of September, December, March and June.

## 10.3 Within thirty (30) days of the execution of this Agreement, each Party shall provide forecasts to the other Party in respect of the following types of traffic:

- (a) indirect traffic terminating to operators such as VAS and ETS who are connected to the first Party; and
- (b) direct traffic coming from the first Party (either originated from or transiting via the first Party)

(“**Initial Forecast**”).

## 10.4 The Parties will utilise the information contained in such forecasts for ordering and provisioning of capacity within their Networks.

## 10.5 For the avoidance of doubt, neither Party shall be bound under this Agreement by any forecast for Link Capacity required by this Agreement (whether or not those forecasts are binding under any other agreement between the Parties).

# 11. LINK CAPACITY ORDER

## 11.1 Either Party may place a Capacity Order (“**Party A**”) with the other Party (“**Party B**”) from time to time in accordance with the ordering procedures set out in the following provisions:

- (a) each Capacity Order must be in writing in the format set out in Annex 2 (“Link Capacity Order Application Form”) and
- (b) a Capacity Order must not exceed the transmission capacity that is available over the relevant In-span Fibre for such purpose. Transmission capacity becomes unavailable if it is subject to a Capacity Order or has been commissioned for use by a Party under this Agreement.

## 11.2 A Capacity Order must be reasonably consistent with the forecast of Link Capacity provided by the Initiating Party to the Responding Party twelve (12) months prior to the requested Link Provisioning Date.

## 12 RECEIPT OF CAPACITY ORDER

12.1 Party B will within five (5) Business Days of the receipt of the Capacity Order from Party A:

- (a) acknowledge receipt of the Capacity Order; or
- (b) notify the Party A:
  - (i) if there are any apparent errors or inconsistencies in the Capacity Order;
  - (ii) of any further information that is reasonably required by Party B for the purpose of assessing the Capacity Order; and
  - (iii) of any factors that may make it not reasonably practical to fulfil the Capacity Order in accordance with its terms.

12.2 Within ten (10) Business Days of a notification from Party B in accordance with clause 12.1(b), Party A must provide Party B with such further information as was requested by Party B.

12.3 Subject to a Capacity Review Event (as set out in clause 12.4), Party B will:

- (a) carry out the Feasibility Study;
- (b) inform Party A of the results of the Feasibility Study; and
- (c) if the results of the Feasibility Study are positive, inform Party A in writing that the Capacity Order is accepted

within twenty (20) Business Days of the acknowledgement under clause 12.1(a) or of the receipt of all the sufficient information from Party A under clause 12.1(b). Party B acknowledges that the time period specified in this clause 12.3 is a maximum time period and agrees to use its reasonable endeavours to carry out the Feasibility Study and inform Party A of the results within a shorter time period where practicable.

12.4 Party B will notify Party A if any of the following matters affect a Capacity Order **“Capacity Review Event”**):

- (a) the Interconnect T1 Links of the Capacity Order are not reasonably consistent with the Capacity Forecast provided by Party A twelve (12) months prior to the requested Link Provisioning Date;
- (b) the requested Interconnect T1 Links will, in accordance with then current traffic measurements, result in an unbalanced geographical distribution of interconnect traffic among the Common POI Points, ICG Exchange, and/or Initiating Party Switch Location, therefore causing inefficiency in Network resource utilization;

- (c) Party B reasonably forms the opinion that, based on their current traffic measurements, the Order Link Capacity for the same traffic type will not be approaching 0.5% GOS if the Order Link Capacity were provisioned
- (d) Party B considers that the Initiating Party Terminating Equipment is not compatible with the Responding Party Terminating Equipment for interconnection and will affect the security and network manageability of the Network; or
- (e) Party B considers that the T1 switch port(s) is not available for the Capacity Order.

12.5 If the Capacity Review Events set out in clause 12.4 apply to a Link Capacity Application, the Parties will discuss in good faith on resolution of the problems.

### **13 PROVISIONING AND CAPACITY CONTRACT**

13.1 Upon the acceptance of a Capacity Order under clause 12.3 ("Acceptance Date"), a Capacity Contract in respect of the Link Capacity specified in the Capacity Order is deemed to have been formed between the Parties and the terms and conditions of this Agreement are deemed to form part of the Capacity Contract. Upon the formation of a Capacity Contract the Parties agree to negotiate in good faith regarding the proposed Capacity Provisioning Date. The Capacity Provisioning Date shall be 6 to 8 weeks after the Acceptance Date subject to any conditions which affect the ability of the Party B to supply the Capacity Order by that date, such as the quantity of Capacity Orders being handled by the Party B from Party A or from other FTNS operators, the capacity resources of Party B at the time of Capacity Order application and public holidays during the Capacity Order provisioning period.

13.2 Party A acknowledges that, although the Parties may have agreed that additional capacity is to be made available in connection with the Link Capacity, the ordering and installation of interconnect switch ports, datafill and associated equipment at any ICG is a matter for separate negotiation and is not affected by any arrangements concluded in connection with this Agreement. The Parties agree to negotiate in good faith the terms for the installation and provision of such interconnect switch ports, datafill and associated equipment.

13.3 When Party B completes installation and testing of the subject Link Capacity, it will issue a Capacity Available Notice, and the date of such notice will be the Capacity Provisioning Date.

13.4 Party A must give Party B all the assistance Party B may reasonably require, including the provision of information in the planning, ordering, installing, testing, commissioning and maintaining of the Interconnect Link.

13.5 The Parties will comply with the testing procedures set out in the In-span Interconnect Manual.

13.6 Each Party acknowledges that its ability to request or require the other to provide it with originating and terminating access on the other Operator's Network and to carry the other

Operator's traffic for that purpose is restricted by the capacity on the Interconnect Equipment to be commissioned by the other Operator pursuant to this Agreement.

#### **14. IN-SPAN INTERCONNECT LINK**

- 14.1 The Responding Party will maintain the In-span Interconnect Link on its side of the IS Point of Connection towards the ICG Exchange, including the Responding Party Fibre and the Responding Party Terminating Equipment.
- 14.2 The Initiating Party is responsible for maintaining the In-span Interconnect Link located on its side of the IS Point of Connection towards the Initiating Party Switch Location, including the Initiating Party Fibre and the Initiating Party Terminating Equipment.
- 14.3 The Initiating Party acknowledges that the Responding Party is under no obligation to receive fault reports from customers or other persons or to conduct any fault detection and rectification of the In-span Interconnect Link. Notwithstanding the foregoing, the Responding Party will give reasonable assistance to the Initiating Party reasonably required by the Initiating Party to conduct fault detection and rectification of the In-span Interconnect Link in regard to that part of the In-span Fibre on the Responding Party's side of the IS Point of Connection.
- 14.4 Services interruption may occur during the provisioning and maintenance activities under this clause 14. The Parties agree that any such service interruption will be limited to requirements reasonably necessary to maintain in accordance with this Agreement. Neither Party will proceed with work which may cause interruption until precautionary arrangement has been agreed by the Parties.

#### **15 AGREED USE AND WARRANTIES**

- 15.1 The Parties must not use or permit any other person to use the In-span Fibre for any purpose other than an Agreed Use as defined in clause 1.1 and must not:
- (a) directly or indirectly connect an In-span Fibre to any facility other than the Initiating Party Terminating Equipment located at the Initiating Party Switch Location (in the case of the Initiating Party) or the Responding Party Terminating Equipment located at an ICG Exchange (in the case of the Responding Party);
  - (b) use or permit the use of the In-span Fibre in any way which may threaten the safety or security of:
    - (i) any employee or customer of either Party; or
    - (ii) any third party;
  - (c) use or permit the use of the In-span Fibre in any way which may cause damage to:
    - (i) the property or Facilities of either Party; or

- (ii) the property or facilities of any third party;
- (d) use or permit the use of the In-span Fibre in any way which may interfere with the supply or potential supply of telecommunication services by either Party or any third party; or
- (e) use or permit the use of the In-span Fibre in any way which may jeopardise the integrity of and/or the confidentiality of communications within either Party's network or any third party's network.

15.2 The Initiating Party must comply with the requirements of all Government Agencies and insurers in relation to the safety of the jointing of the Initiating Party Duct to the Connecting Piece leading to the wall of the Responding Party Jointing Chamber. The Initiating Party must pay to the Responding Party the cost of any alterations to the Responding Party Facility which are necessary due to the Initiating Party's non-compliance with these requirements. The Responding Party will give the Initiating Party the maximum notice practicable in the circumstances of any alterations to the Responding Party Facility so required.

## **16 NO LIMITATION OF INTEREST**

16.1. Each Party acknowledges that the other Party gives no warranties or representations in relation to any part of the Facilities or its use.

16.2 Each Party acknowledges that the other Party retains all rights, title and interests in its Facilities, and nothing in this Agreement is to be construed as vesting in the other Party with:

- (a) any right, title or property interest in any part of the other Party's Facilities; or
- (b) any right (including access or use) in respect of any part of the other Party's Facilities, the grant or enjoyment of which would contravene any Applicable Law, or breach any licence, permit or approval issued by any Government Agency, or any arrangement with a third person in respect of that part of the other Party's Facilities made prior to the Capacity Contract, or infringe any right of or breach any arrangement with a third person (including the building owner or a third party with property interest).

16.3 Nothing in this Agreement is to be construed as affecting or limiting the right of a Party to enter into arrangements with third parties relating to any part of the Party's Facilities.

16.4 This Agreement does not confer on the Parties the right to and the Parties (including their employees, agents and contractors) must not access or attempt to gain access to any part of each other's Facilities.

16.5 Each Party acknowledges that this Agreement:

- (a) does not in any way grant it a right to access or use any of the other Party's ducts, access points or other facilities that are connected to the other Party's Facilities in any manner not provided for in this Agreement; and
- (b) shall not in any way prejudice any current or future negotiations between the Parties in relation to access and use of any facilities belonging to the other Party.

## **17 TERMINATION OF CONTRACT**

- 17.1 Any Party may terminate a Contract by giving the other Party twelve (12) month's written notice three (3) years after the Preparation RFU Date of a Fibre Contract or Capacity Provisioning Date of a Capacity Contract.
- 17.2 Any Party may terminate a Contract with immediate effect if:
- (a) the other Party uses or permits any other person to use the In-span Fibre which is the subject matter of the Contract for any use other than an Agreed Use specified in clause 15 above or in any other manner which is in breach of clause 15;
  - (b) the other Party's In-span Fibre causes operational interference to any other cable or equipment located in the terminating Party's Facility and the other Party fails to eliminate that interference within one (1) Business Day of the receipt of a written notice by the terminating Party specifying the problem and requiring its remedy;
  - (c) in the reasonable opinion of the terminating Party, the relevant In-span Fibre is unsafe, dangerous or will cause damage to property or equipment of the terminating Party;
  - (d) the other Party is in material breach of the terms and conditions of the Contract and that breach is not remedied within twenty (20) Business Days to the satisfaction of the Responding Party of issuance a written notice to do so; or
  - (e) any charges remain overdue and outstanding under this Agreement due to the other Party's failure to make settlement without raising dispute or without following the results of dispute resolution in accordance with the terms of this Agreement.
- 17.3 If at any time in the reasonable opinion of the Responding Party, granting any Contract constitutes a contravention of an Applicable Law, or a breach of any licence, permit or approval granted or deemed to have granted by any Government Agency, the Responding Party may by giving thirty (30) days written notice to the Initiating Party terminate the affected Contract. Each Party shall bear its own cost in applying for any necessary licence, permit or approval from any Government Agency in relation to making its Facility available for the purposes of this Agreement.
- 17.4 If a terminating event for this Agreement also constitutes a terminating event for any Contract then that Contract may be terminated in accordance with its own terms. The notice of termination of this Agreement will be deemed as a notice for termination of each Contract affected by the same terminating event if such notice specifies the grounds of termination of the Contract.

17.5 If a notice of termination of this Agreement (as opposed to a Contract) has been served, the Responding Party is not obliged to:

- (a) approve any new Application from the Initiating Party
- (b) fulfill any existing Application which has not been approved, or
- (c) to commence or continue with any Preparation Work.

## **18 GENERAL TERMINATION**

18.1 Any Party may terminate this Agreement immediately upon:

- (a) giving the other Party twelve (12) months written notice three years after the date of execution of this Agreement; or
- (b) the expiry or termination of the Local Delivery Agreement.

18.2 A Party may terminate this Agreement or a Contract with immediate effect by giving the other Party notice in writing to that effect where:

- (a) the other Party has entered into any scheme of arrangement with its creditors;
- (b) the other Party has a receiver, a receiver and manager, a liquidator, a provisional liquidator, an administrator or other like person appointed for the whole or any part of its assets or business and where such appointment is for the amalgamation and reconstruction of that other Party;
- (c) the other Party becomes subject to any form of insolvency administration or winding-up, unless there is a bona fide dispute between that Party and the person(s) seeking to its insolvency administration or winding-up;
- (d) a Force Majeure, substantially and adversely affecting the ability of either Party to perform its obligation under this Agreement continues for a period of sixty (60) days or more; or
- (e) the TA revokes the other Party's \_\_\_\_\_ and does not immediately grant a similar licence; or
- (f) the authorisation or licence granted by a Government Agency to Initiating Party in respect of laying cables is revoked, terminated or expired.

18.3 Each Party may terminate this Agreement by:

- (a) giving five (5) months notice to the other when that other Party has requested the TA to make; or

- (b) giving two (2) months notice to the other after the date the TA informs a Party that the TA has made;

a determination or direction under the Ordinance regarding the FTNS Licence of either Party or otherwise in relation to this Agreement or the Local Delivery Agreement or the subject matter of this Agreement or the Local Delivery Agreement.

- 18.4 If any provision of this Agreement is in breach of any Applicable Law the Parties must negotiate in good faith such amendments to the Agreement that are necessary or appropriate to ensure the conformity of this Agreement with the Applicable Law.
- 18.5 Subject to Clause 18.6, the Parties will negotiate in good faith such amendments to this Agreement that are necessary or appropriate in the opinion of either of the Parties taking into consideration the outcome of any future review, statement, direction or determination made by the TA.
- 18.6 The Parties do not have to implement a determination whilst it is subject to a bona fide legal dispute by either Party that the determination is unlawful, invalid or unenforceable.
- 18.7 The provisions of this Agreement remain in full force and effect during any negotiations under this clause 18 until the commencement of an agreement replacing or amending this Agreement.
- 18.8 If the Parties are unable to mutually reach agreement to replace or amend this Agreement within sixty (60) days of commencing negotiations under this clause 18, or within sixty (60) days of any disagreement as to whether or not to commence negotiations under this clause 18, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party.
- 18.9 If a Party gives a notice to terminate this Agreement, the Responding Party may give notice to terminate a Contract with the effect on the date of the expiration of the Minimum Contract Period. If no such notice is given, this Agreement shall continue to apply to any Contract existing at the time of termination of the Agreement until termination of that Contract in accordance with other provisions of this Agreement.
- 18.10 Termination of this Agreement or a Contract does not extinguish or otherwise affect any rights of any Party against the other which:
  - (a) have accrued before the date of termination of the Contract or this Agreement (as applicable); or
  - (b) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under the Contract or this Agreement (as applicable) which occurred before the date of termination of the Contract or this Agreement.



## 19 SUSPENSION

19.1 Any Party may suspend (until further notice to the other Party) all or part of the rights of the other Party and all or part of the first Party's obligations under the relevant Contract:

- (a) of which the other Party is in breach of clause 15; or
- (b) if in the reasonable opinion of the first Party, suspension is necessary to:
  - (i) carry out planned maintenance, repair or upgrading of any equipment or facility forming part of its Network and the Party has given the other Party as much notice as is reasonably practicable in the circumstances (which notice may be oral if subsequently confirmed in writing); or
  - (ii) protect the integrity of its Network, or to carry out unplanned maintenance, repair or upgrading of any equipment or facility forming part of the first Party's Network and the Party has given the other Party as much notice as is reasonably practicable in the circumstances.

19.2 Any Party may suspend all or part of the rights of the other party and all or part of the Party's obligations under this Agreement until further notice to the other Party:

- (a) if the other Party is in breach of clause 15 of this Agreement; or
- (b) if a Party exercises its right of termination under clause 17 of this Agreement.

19.3 In addition to and without prejudice to clause 17 of this Agreement, if a Party exercises its right of suspension as a result of the other Party being in breach of clause 15, the other Party must immediately cease to use the In-span Fibre.

19.4 Notwithstanding the other clauses of this Agreement, the Responding Party will not be obliged to entertain any Fibre Application:

- (a) if the Responding Party exercises its right of suspension or termination pursuant to the Initiating Party's breach of clause 15;
- (b) if there is outstanding payment of any Charges from the Initiating Party due to the Initiating Party's failure to make settlement without raising dispute or without following the results of dispute resolution in accordance with the terms of this Agreement; or
- (c) if either Party exercises its right of termination under clause 17.

19.5 Without limiting the exclusions or limitations of liability in clause 21, neither Party shall be liable to the other nor to any third person for any Loss resulting from or in connection with a suspension under this clause 19.

19.6 The exercise of a Party's right to suspend under this clause 19 is without prejudice to any other remedy available to the Party under this Agreement or any Contract and does not constitute a waiver of the Party's right to subsequently terminate this Agreement.

## **20 CONSEQUENCES OF TERMINATION**

20.1 Without prejudice to other parts of this Agreement upon termination of any Contract, the Initiating Party must within fourteen (14) Business Days of termination:

- (a) cease to use the In-span Fibre;
- (b) disconnect the Initiating Party Duct from the Connecting Piece;
- (c) allow the Responding Party to remove the Responding Party Fibre from the IS Jointing Chamber upon five (5) Business Day's prior notice given by the Responding Party; and
- (d) pay to the Responding Party immediately all charges (whether or not due) which have accrued up to the date of termination and remain unpaid.

20.2 Termination of this Agreement or any Contract will:

- (a) not operate as a waiver of any breach; or
- (b) not extinguish or otherwise affect any rights of either Party against the other which:
  - (i) have accrued before the date of termination of this Agreement or the Contract; or
  - (ii) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this Agreement or that Contract which occurred before the date of termination of this Agreement or that Contract.

20.3 This clause 20 survives termination of any Contract and this Agreement.

## **21 LIMITATION OF LIABILITY AND INDEMNITY**

21.1 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 Applicable 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 to 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.

21.2 Notwithstanding clauses 21.4 and 21.5 or any other provision of this Agreement, each Party excludes all liability to the other Party (whether under contract, tort, statute or otherwise) for the following in relation to all Contracts and this Agreement:

- (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 or 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 21.4(a) and 21.5(a));
  - (ii) direct Loss of that third party other than direct Loss referred to in clause 21.4(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.

21.3 Other than Loss referred to in clause 21.4 below, the liability of one Party to the other in contract, tort or otherwise (including any liability for negligence) arising by reason of or in connection with this Agreement is limited to \_\_\_\_\_ for any one incident or series of events arising from a single incident or common cause and in no case will a Party be liable for aggregate amount of in excess of \_\_\_\_\_ for all liability arising by reason of or in connection with this Agreement.

21.4 Subject to clause 21.2, 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 arising from 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 arising from 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 or any fraud.

21.5 Subject to clause 21.2 each Party ("**Indemnifying Party**") indemnifies the other Party ("**Innocent Party**") against all:

(a) Loss of the Innocent Party arising from any claim against the Innocent Party in relation to 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 arising from 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 or any fraud.

21.6 The limitations of liability under this clause do not apply to any liability to pay any charges under this Agreement.

21.7 This clause 21 survives termination and suspension of any Contract and this Agreement.

## **22 DISPUTE RESOLUTION**

### **Working group**

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

## **Technical matters**

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 fourteen (14) days from the date on which the dispute was referred to it, the Parties will refer the dispute to the senior management of both Parties for resolution.

## **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.

## **23 NOTICES**

23.1 A notice, consent, request or any other communication under this Agreement (“**Communication**”) must be in writing and must be left at the address of the recipient, or sent by prepaid post (airmail if posted to or from a place outside Hong Kong) to the address of the recipient or sent by facsimile to the facsimile number of the recipient.

23.2 A communication is deemed to be received:

- (a) if by hand delivery, when it is delivered;
- (b) if a letter, three (3) days after posting (seven,(7) 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.

23.3 If a Party intends that communications on operational issues be sent to another address or facsimile number, it may notify the other Party of the same by issuing a notice in the manner stated above in clause 23.1.

## **24 FORCE MAJEURE**

24.1 A Party does not breach the Agreement and is not liable to the other Party for a delay or failure to perform an obligation (except an obligation to pay money) resulting from a Force Majeure event. The Party affected by the Force Majeure event will be granted a reasonable extension of time to perform the obligation, if:

- (a) it notifies the other Party as soon as reasonably practicable of the Force Majeure event and the period for which it expects the performance of its obligations to be delayed or prevented; and
  - (b) it takes reasonable steps to avoid or limit the Force Majeure event.
- 24.2 If a delay or failure to perform a Party's obligation due to a Force Majeure event exceeds sixty (60) days, the other Party may immediately terminate this Agreement or any Contract on notice to the first Party, but only if that Party has otherwise complied with the terms of this Agreement and the relevant Contract.

## **25 CONFIDENTIALITY**

The Parties to this Agreement agree to incorporate the terms and conditions of the Confidentiality Agreement, and such terms and conditions will apply to all confidential information disclosed by one Party to the other Party in relation to this Agreement.

## **26 GENERAL**

### **Acknowledgement**

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

### **Cumulative rights**

- 26.2 The rights, powers and remedies of a Party under this Agreement are cumulative with the rights, powers or remedies provided by law independently of this Agreement.

### **Exercise of rights**

- 26.3 A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or of any other right, power or remedy.

### **Waiver and variation**

- 26.4 A provision or a right under this Agreement may not be waived except in writing signed by the Party granting the waiver, or varied except in writing signed by the parties.
- 26.5 Failure or delay of any Party at any time to take action against the other Party as provided in this Agreement will not affect such first-mentioned Party's right to require full performance of this Agreement at any time thereafter. Waiver by any Party of a breach of any provision of this Agreement will not constitute a waiver of any subsequent breach nor in any way affect any right, power or remedy of that Party under this Agreement.

### **Approvals and consents**

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

### **Further assurances**

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

### **Entire agreement**

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

### **No other relationships**

26.9 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**

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

### **Taxes**

26.11 Each Party must pay its own Taxes incurred in relation to this Agreement and the transactions evidenced by this Agreement.

### **Assignment**

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

### **Governing Law and Jurisdiction**

26.14 This Agreement is governed by the laws of Hong Kong.





## SCHEDULE 1

**Common POI Points** The locations of Common POI Points shall be at the joint of the Connecting Piece leading to the Responding Party's joint box and the Initiating Party Duct leading to the IS Jointing Chamber. The initial locations of Common POI Points shall be inside the exchange boundary of the following eight (8) ("Initial Common POI Points"):

<u>No.</u>	<u>Exchange</u>	<u>Responding Party Jointing Chamber</u>	<u>Location</u>

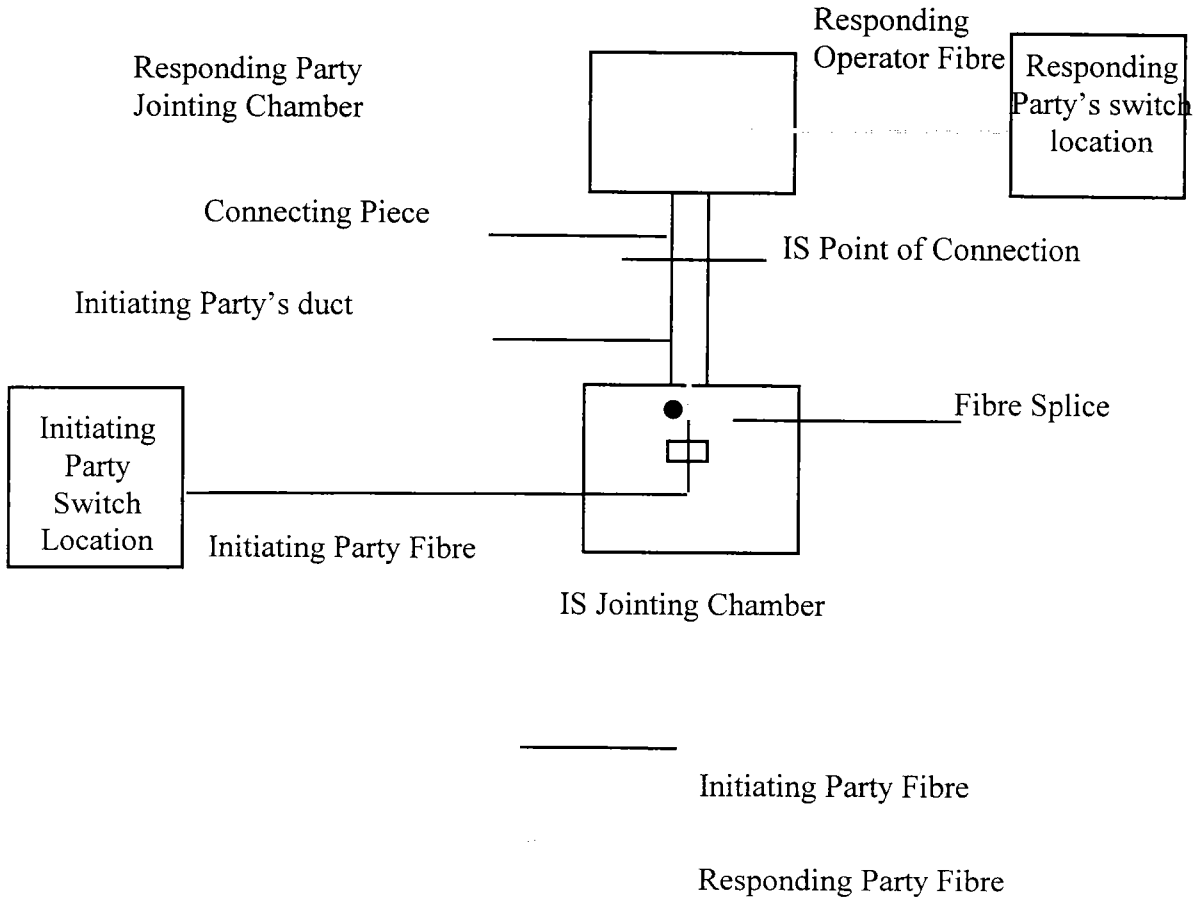
**ICG Exchanges for**

**Switch Locations for \_\_\_\_\_**

The Parties will negotiate in good faith and agree for additional Common POI Points, ICG Exchanges or Initiating Party Switch Locations to meet the growth of interconnect traffic in future.

## SCHEDULE 2:

### 1. Schematic of In-span Fibre Point of Interconnect



### 2. Technical Specification of the In-span Fibre

See Appendix A.

### 3. Technical Specification of Terminating Equipment

The technical specification is SONET OC-3 optical level interconnect between the Parties and drop to T1 electrical level at the respective Party's Terminating Equipment. The Parties will negotiate in good faith and agree to include other technical specification when new technology is raised in future.

- END -

## **APPENDIX A: SPECIFICATION FOR SINGLE MODE OPTICAL FIBRE CABLE IN-SPAN FIBRE**

### 1. Single Mode Fibre Specification for In-span Fibre

1.1 The fibre shall be capable of operating simultaneously in the following wavelength regions.

(i) 1260 ~ 1360nm

(ii) 1480 ~ 1580nm

1.2 The fibre shall be made of silica glass, single mode, matched cladding step index type.

1.3 The fibre shall be coated with two layers of Urethane acrylate or equivalent material which is readily removable for fibre splicing.

1.4 The nominal dimensions of the fibre are shown in Table 1.

<b>Table 1</b>	
Item	Specification
Mode Field Diameter @1310nm	9.5 ± 0.95 μm
Cladding Diameter	125 ± 2 μm
Non Circularity Of Cladding @1310nm	Less than 2%
Mode Field Concentricity Error @1310nm	Maximum 1μm
Operating Temperature Range	-10°C to 65°C

1.5 The optical attenuation requirements for the fibre are shown in Table 2.

<b>Table 2</b>	
Item	Specification
Attenuation Coefficient	Maximum 0.5dB/km at 1285~1330 nm Maximum 0.35dB/km at 1525~1575 nm

1.6 The chromatic dispersion values requirements for the fibre are shown in Table 3.

Table 3	
Item	Specification
Chromatic Dispersion Coefficient	Maximum 3.5 ps/nm.km at 1288~1339 nm Maximum 5.3 ps/nm.km at 1271~1360 nm Maximum 19 ps/nm.km at 1525~1575 nm
Zero Dispersion Wavelength ( $\lambda_0$ )	Minimum $\lambda_0$ : 1300 nm Maximum $\lambda_0$ : 1324 nm
Zero Dispersion Slope ( $S_0$ )	Maximum 0.093 ps/nm <sup>2</sup> .km

1.7 The polarisation mode dispersion (PMD) value at 1550 $\mu$ m is equal to or less than 0.5ps/ $\sqrt$ km.

1.8 The cabled cut-off wavelength ( $\lambda_{cc}$ ) of primary coated fibre is in the range of 1260 ~ 1330nm.

## 2. Mechanical Properties of In-span Fibre

2.1 The mechanical properties of bare fibre shall comply with those listed in Table 4.

Table 4			
Item		Test Conditions	Specification
Bare Fibre	Proof Testing	1% strain for 1 second	No breaking
	Winding Test	Ten rounds on cylinder of 5mm radius for 10 minutes	No breaking
	Breaking Load	Specimen length : 300mm Pulling rate : 100 $\pm$ 10mm per minute	$\geq$ 4.5 Kgf

- 2.2 The mechanical properties of the fibre cables shall be tested in accordance with the methods set out in Part 1 Section 3 (Measuring Methods For Mechanical Characteristics) of the Specification No. 794 issued by the International Electrotechnical Commission (IEC). Table 5 summarizes the methods and requirements.

<b>Table 5</b>		
Item	Test Condition	Specification
Tensile Performance		Increase in attenuation shall be less than 0.2dB at 1310nm.
Repeated bending		(1) Increase in attenuation shall be less than 0.1dB at 1310nm. (2) No ripple found on aluminium laminated sheath.
Impact		(1) Increase in attenuation shall be less than 0.2dB at 1310nm. (2) No ripple found on aluminium laminated sheath.
Torsion		Increase in attenuation shall be less then 0.2dB.
Crush		Increase in attenuation shall be less than 0.2dB.

- 2.3 The minimum cable bending radius is :

- (i) 10D during no load condition (static)
- (ii) 20D during installation (dynamic)

where D = Diameter of cable

- END-

**SCHEDULE 3**  
**IMPLEMENTATION PLAN FOR EIGHT (8) INITIAL**  
**COMMON POI POINTS**

1. **General**

1.1 This Schedule outlines the implementation plan and preparation work for the eight (8) Initial Common POI Points set forth in Schedule 1 of this Agreement.

1.2 This Schedule will become effective upon the signing date of this Agreement or such later date as is agreed in writing between the Parties.

1.3 This Schedule is intended as an interim implementation schedule only. The Parties acknowledge that this Schedule:

(a) shall not in any way prejudice any current or future negotiation between the Parties on issues concerning the Common POI Points; and

(b) shall not form a precedent for the implementation of Common POI Points different to the eight (8) Initial Common POI Points set out in Schedule 1 as at the date of signing of this Agreement. For the avoidance of doubt, all Fibre Applications made by the Initiating Party in respect of Common POI Points different to the eight (8) Initial Common POI Points set out in Schedule 1 as at the date of signing of this Agreement shall be made and dealt with in accordance with clauses 1-26 of the Agreement unless otherwise agreed in writing by the Parties.

1.4 This Schedule is subject to the terms and conditions contained in clauses 1-26 of the Agreement. Any revision, amendment or addition to the main body of the Agreement (currently clauses 1-26 of the Agreement), whether made by agreement in writing between the Parties or by Determination of the TA, will apply to this Schedule as appropriate. Without limiting the foregoing, in relation to the eight (8) Initial Common POI Points set out in Schedule 1 as at the date of signing of this Agreement, this Schedule 3 shall prevail to the extent of any inconsistency with the terms and conditions contained in the main body of the Agreement.

2. **Implementation Plan**

2.1 The Parties agree that the eight (8) Initial Common POI Points will be implemented in two (2) phases. Each phase shall consist of the implementation of four (4) Common POI Points at the locations within the boundaries of the following eight (8) exchanges as set out below:

<u>Phase</u>	<u>Exchanges</u>	<u>Responding Party Jointing Chamber</u>	<u>Location</u>

2.2 Implementation times shall differ depending on the Jointing Chamber locations within the boundary of Responding Party exchanges and shall be in accordance with the time frame set out in Appendix B, Initial Common POI Points Implementation Schedule, as amended from time to time by agreement in writing between the Parties.

**3. Scope of Implementation Work**

3.1 The work to be performed in each implementation phase shall consist of:

- (a) Submission of Fibre Applications for the relevant four (4) Initial Common POI Points by the Initiating Party in accordance with clause 2 of the Agreement;
- (b) Receipt of the Fibre Applications by the Responding Party in accordance with clause 3 of the Agreement;
- (c) Evaluation of the feasibility of the Fibre Applications by the Responding Party in accordance with clause 4 of the Agreement;



- (d) Implementation of the design phase including the reaching of an agreement on the Work Plan for each feasible Fibre Application in accordance with clause 5 of the Agreement;
- (e) For each Initial Common POI Point in respect of which the Responding Party has accepted the Work Plan, the installation of 2 x 48-core fibre cables at each Initial Common POI Point (1x 48-core fibre cable is to be installed at each of the two (2) IS Jointing Chambers at each Initial Common POI Point).

However, the overall implementation leadtimes for the Initial Common POI Points shall be subject to the timeframe set out in Appendix B, which may be amended from time to time by agreement in writing between the Parties.

3.2 In relation to the work to be performed under paragraph 3.1(e) of this Schedule, the Initiating Party shall be responsible for the following:

- (a) All works necessary for laying the Initiating Party Duct up to the wall of the Responding Party Jointing Chamber for each Initial Common POI Point;
- (b) Advising the Responding Party by facsimile not less than twenty-four (24) hours in advance of the planned commencement of any work described in paragraph 3.2(a) of this Schedule; and
- (c) Constructing the Fibre Splice and carrying out the splicing work required to connect the Initiating Party Fibre to the Responding Party Fibre at the IS Jointing Chamber.

3.3 Subject to compliance by the Initiating Party with paragraph 3.2 of this Schedule, in relation to the work to be performed under paragraph 3.1(e) of this Schedule, the Responding Party shall be responsible for the following:

- (a) Upon receipt of the Initiating Party's notice under paragraph 3.2(b) of this Schedule, the Responding Party will connect the Initiating Party Duct to the Responding Party Jointing Chamber. Such connection work will include breaking through the concrete wall of the Responding Party Jointing Chamber and then repairing such wall;
- (b) Preparing the Exchange Lead-in Facility and Exchange Trunking Facilities for pulling the In-span Fibre through, including clearing blockages, repair and reinforcement work, incidental civil and sealing work;
- (c) Modifying, altering, moving and/or relocating facilities or equipment of the Responding Party, or that of any third party within the Exchange Lead-in Facility and Exchange Trunking Facilities which could be damaged, interfered with or otherwise adversely impacted by the installation and operation of the In-span Fibre; and


- (d) Pulling the cable to be used as the In-span Fibre from the Fibre Splice at the IS Jointing Chamber and terminating the cable at the transmission equipment of the Responding Party at the relevant Initial Common POI Point.

4. **Interworking Test and other Testing and Commissioning**

- 4.1 Both Parties agree to conduct an interworking test prior to the implementation of each Initial Common POI Point.
- 4.2 The Parties agree that the following test centers shall be employed for the interworking test:
  - 4.3 Procedures for testing and commissioning will be subject to the results of the interworking test(to be confirmed).

- END -

**APPENDIX B: EIGHT (8) INITIAL COMMON POI POINTS - IMPLEMENTATION SCHEDULE**

 Responding Party performs Preparation Work ..... Responding Party work completion (total three and a half (3.5) – four (4) months)\*+

+Actual time required may be longer than estimate due to factors beyond the control of the Responding Party such as delays in receiving permits for the work or the occurrence of duct blockages.

\* The Parties agree to discuss in good faith any necessary amendments to this Appendix and the procedures for making such amendments.

- END -