

REFERENCE ACCESS OFFER

**ALLO TECHNOLOGY SDN. BHD.
[COMPANY NO. 19990126101 (501001-A)]**

JANUARY 2020

Version 2.0

This Reference Access Offer is issued pursuant to the Malaysian Communications and Multimedia Commission, Commission Determination on Access List, Determination No. 2 of 2015 and Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016 and Commission Determination on the Mandatory Standard on Access Pricing, Determination No.1 of 2017.

1. INTRODUCTION

This Reference Access Offer (“ALLO RAO”) specifies the terms and conditions for seeking access to any Facility and/or Service from ALLO TECHNOLOGY SDN. BHD. [Company 19990126101 (No. 501001-A)], (referred to as “ALLO”).

2. LEGAL BASIS

- 2.1 Pursuant to the Ministerial Direction to Determine a Mandatory Standard of Access, Direction No. 2 of 2003, the Commission in exercise of its powers conferred by Sections 55, 56, 104(2) and 106 of the CMA, had issued the Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016.
- 2.2. Further, pursuant to and in exercise of its powers under Sections 55 and 146 of the CMA, the Commission issued the Commission Determination on Access List, Determination No. 2 of 2015 (“Access List Determination”) which stipulates the Facilities and Services which must be provided on the terms and conditions of the MSA.
- 2.3. Subsection 5.3.3 of the MSA requires ALLO to prepare and maintain a reference access offer for each Facility and/or Service listed in the Access List Determination that are being offered by ALLO.
- 2.4. In accordance with the obligations imposed by Subsection 5.3.3 of the MSA, ALLO offers each Access Seeker, access to the Facilities and Services described and listed in Section 3.4 of this ALLO RAO.

3. SCOPE AND APPLICATION

- 3.1 This Section specifies the scope of the ALLO RAO, its application to the specified Access Services only and the eligible access seekers herein.
- 3.2 Only eligible access seekers may submit an Access Request and/or enter into an Access Agreement with ALLO.
- 3.3 An access seeker is an eligible access seeker if:
 - (a) it is a company incorporated under the laws of Malaysia;
 - (b) it holds the necessary licences issued under the CMA;
 - (c) such licences are still valid and subsisting; and
 - (d) no proceedings or actions are in place to suspend, revoke or cancel the licences.

- 3.4 This ALLO RAO is limited only to the provision of the Facilities and/or Service as listed below:
- (a) Layer 2 HSBB Network Service with QoS
 - (b) Wholesale Local Leased Circuit Service
 - (c) Duct and Manhole Access
- 3.5 This ALLO RAO does not apply to any other facility or service other than as provided for in Clause 3.4 above.
- 3.6 All ALLO RAO will contain a version number and an effective date and will be effective upon the date specified herein.

4. RIGHT TO AMEND ALLO RAO

- 4.1 ALLO may amend this ALLO RAO and shall, provide a copy of the amended ALLO RAO showing the amendments to the existing ALLO RAO to:
- (a) all Access Seekers who are being provided with access to the Access Services under the prior ALLO RAO and who have entered into an Access Agreement but such Access Agreement is pending registration by the Commission; and
 - (b) all Access Seekers (other than any such access seekers who have since indicated that it does not wish to proceed with its Access Request) who have, within three (3) months prior to the making of such amendments, requested access to the Access Services under the prior ALLO RAO.
- 4.2 Such copy of the amended ALLO RAO is to be provided to the entitled Access Seekers, within twenty (20) Business Days before the date the changes to the ALLO RAO will become effective.
- 4.3 Where Access Agreement exists;
- 4.3.1 Where there is an executed and enforceable Access Agreement between ALLO and an Access Seeker, the terms and conditions of such Access Agreement will prevail over the terms in the amended ALLO RAO. Save for that no amendments made to the ALLO RAO will vary, modify or change the terms of an executed and enforceable Access Agreement unless agreed in writing by ALLO and the Access Seeker.
- 4.3.2 Nothing herein obligates or is to be construed as obligating either Access Seeker or ALLO to agree to any amendment to an executed and enforceable Access Agreement when amendments are made to the ALLO RAO.
- 4.4 For the avoidance of doubt nothing in this ALLO RAO shall be construed as preventing an Access Seeker from initiating a bona fide dispute in relation to an amendment to the ALLO RAO made by an Access Seeker.
- 4.5 Within ten (10) Business Days after the amended ALLO RAO is published, ALLO will forward a copy thereof to the Commission.

- 4.6 If after the expiry of the twenty (20) Business Days referred to in clause 4.4 above, no disagreement is received by ALLO from the Access Seeker, the Access Seeker will be deemed to have agreed to the amendments and the amended ALLO RAO shall come into force and effect on the day following the expiry date.

5. NOTICES

- 5.1 All notices, forms, requests which are required to be sent by the provisions set out herein, shall be marked and sent to the following designated person at the following address and if also sent by email, to the designated email address below:

Chief Executive Officer
Cyberview Garden Villas, Persiaran Multimedia,
Cyber 7, 63000 Cyberjaya.
rodzi@allo.my

- 5.2 ALLO may from time to time change the address for correspondence on any matter affecting or concerning the ALLO RAO. Such change will be reflected in the ALLO RAO made available or published on its publicly accessible website. A change of address shall not be construed as an amendment to the ALLO RAO.

6. DEFINITIONS

- 6.1 The definitions used in this ALLO RAO has the meaning ascribed to them in Part 2 - Definitions and Rules of Interpretation.

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Articles of Agreement

ARTICLES OF THE AGREEMENT

THIS AGREEMENT is made on the _____ day of _____ 2020

BETWEEN:

(1) **ALLO TECHNOLOGY SDN. BHD. [Company 19990126101 (No. 501001-A)]**, a company incorporated under the laws of Malaysia and having its registered address at Tingkat 2, Pejabat Setiausaha Syarikat, Ibu Pejabat Tenaga Nasional Berhad, No. 129, Jalan Bangsar, 50470 Kuala Lumpur (“**ALLO**”) of the first part;

AND

(2) **COMPANY NAME (Company No. XXXXXX-X)**, a company incorporated under the laws of Malaysia and having its registered office at (“**The Access Seeker**”) of the second part.

RECITALS:

- A. ALLO is a licensed operator under the Act and pursuant to its licence(s) under the Act, the Access Provider may offer network facilities, network services and applications services within Malaysia.
- B. The Access Seeker is a licensed operator under the Act and pursuant to its licence(s) under the Act, the Access Seeker may offer network facilities, network services and applications services within Malaysia.
- C. This Agreement sets out bilaterally agreed terms and conditions on which Facilities and/or Services are offered by the Access Provider to the Access Seeker subject to the scope of their respective Licenses. This Agreement is entered into pursuant to the Access List Determination, Mandatory Standard on Access (MSA) Determination and Mandatory Standard on Access Pricing (MSAP) Determination.

NOW IT IS HEREBY AGREED AS FOLLOWS:

- 1. In consideration of the Operators’ mutual promises, the Operators agree that the provision of Facilities and/or Services by the Access Provider to the Access Seeker shall be governed by the terms of this Agreement.
- 2. **General Scope and Structure of the Agreement**
 - (a) This Agreement governs the terms and conditions to access the Regulated Facilities and/or Services. More specifically: -

Articles of Agreement

- (i) the Definitions and Rule of Interpretation are applicable to all documents consisting part of this Agreement unless otherwise stated;
 - (ii) the General Terms and Conditions govern the supply of Regulated Facilities and/or Services;
 - (iii) the Terms and Conditions for Technical Matters govern the technical matters pertaining to the Regulated Facilities and/or Services; and
 - (iv) the Terms and Conditions for Regulated Facilities and Services govern the supply of Regulated Facilities and/or Services unless otherwise stated.
3. The following documents shall be deemed to form and be read and construed as an integral part of this Agreement: -
 - (a) this Articles of Agreement;
 - (b) Terms and Conditions for Regulated Facilities and/or Services;
 - (c) the General Terms and Conditions and the Terms and Conditions for Technical Matters including all annexures, appendices and schedules referred to therein; and
 - (d) the Definitions and Rules of Interpretation.
4. In the event there is a conflict between or amongst the above stated documents in **Clause 3**, the documents shall take precedence according to the order in which they are listed. If there are any conflicts between a document incorporating any annexures, appendices or schedules (“**main document**”) and its annexures, appendices or schedules, the main document shall take precedence.
5. There shall be no order of precedence between the following: -
 - (a) the General Terms and Conditions and the Terms and Conditions for Technical Matters;
 - (b) the terms and conditions of the different Facilities and/or Services within a particular category; and
 - (c) the annexures, appendices and schedules unless expressly specified.
6. The definitions of all words used in this Agreement are contained in the Definitions and Rules of Interpretation.

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Articles of Agreement

IN WITNESS WHEREOF the Operators have hereunto set their hands the day and year first above written.

SIGNED by)
as authorised representative for)
ALLO TECHNOLOGY SDN. BHD.)
[Company No. 19990126101 (501001-A)])
in the presence of)

Signature of witness)

Name of witness)

NRIC No. of witness)

Occupation of witness)

By executing this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of ALLO TECHNOLOGY SDN. BHD. [Company No. 19990126101 (501001-A)]

SIGNED by)
as authorised representative for)
COMPANY NAME)
(Company No.))
in the presence of)

Signature of witness)

Name of witness)

NRIC No. of witness)

Occupation of witness)

By executing this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of COMPANY NAME. (Company No. XXXXXX-X)

**DEFINITIONS
AND
RULES OF INTERPRETATION**

Definitions and Rules of Interpretation

1.1 The following words have these meanings in this Agreement unless the contrary intention appears: -

“**Access Determinations**” mean collectively the Access List Determination, MSA Determination and the MSAP Determination;

“**Access List Determination**” means the Commission Determination on Access List, Determination No. 2 of 2015 which contains the list of network facilities and/or network services determined by the Commission from time to time pursuant to Chapter 3 of Part VI of the Act including any amendments thereto;

“**Access Provider**” means:

- (a) network facilities provider who owns or provides Facilities listed in Access List Determination; or
- (b) network service provider who provides Services listed in the Access List Determination; and
- (c) who is a licensee as defined in the Act;

For the purpose of this Agreement, Access Provider means Allo Technology Sdn Bhd;

“**Access Seeker**” means a network facilities provider, network services provider, an application service provider or a content application service provider and who is a licensee as defined in the Act and makes a written request for access to Facilities or Services or is being provided with Facilities and/or Services by the Access Provider under this Agreement;

“**Act**” means the Communications and Multimedia Act 1998 as amended and/or revised from time to time;

“**Agreement**” means this Agreement consisting of the documents set out in **Clause 3 of the Articles of Agreement**, including any modification, amendment or addition thereto as may be agreed in writing between the Operators from time to time;

“**Billing Dispute**” means the dispute of an Invoice prepared by an Operator to the other Operator which is made in good faith;

“**Billing Dispute Notice**” means the written notification made by an Operator to the other Operator in relation to a Billing Dispute in accordance with **Conditions 12.6.1 and 12.6.2 of the General Terms and Conditions**;

“**Billing Dispute Notification Period**” means the period specified in **Condition 12.6.1 of the General Terms and Conditions**;

Definitions and Rules of Interpretation

“**Billing Period**” means a one (1) calendar month period over which the supply of Facilities and/or Services is measured for the purposes of billing, unless otherwise agreed between the Operators;

“**Billing Representative**” means a representative of the Operator appointed in accordance with the billing procedures set out in **Condition 12.6.8 of the General Terms and Conditions**;

“**Billing System**” means a system to issue Invoices relating to Charges payable by each Operator under this Agreement;

“**Broadband Termination Unit**” or “**BTU**” means an access device that is capable of supporting multiple terminating equipment (TE) with multiple type of interfaces including but not limited to FE (RJ45), RJ11 and wireless via a single last mile connectivity;

“**Business Day**” means a day other than the following days:

- (a) where an activity is to be performed in a State where Sunday is observed as the weekly holiday and/or with respect to the performance of any payment obligations, Saturday, Sunday and a public holiday;
- (b) where an activity is to be performed in a State where Friday is observed as the weekly holiday (excluding the performance of any payment obligations), Friday and Saturday and a public holiday;

“**Capacity Allocation Policy**” has the meaning given to it in **Condition 2.29 Section III of the Terms and Conditions for Technical Matters**;

“**Charges**” means the sums payable by the Access Seeker to the Access Provider for accessing and/or being provided the Facilities and/or Services;

“**Churn**” means the processes which are required to be carried out by the Operators in relation to the provision of Services and transfer of Customers, whenever a Customer requests for a transfer from the Operator who has been providing the said Customer with one or more Services (Releasing Service Provider) to another Operator (Gaining Service Provider);

“**Churn Service**” means the Service which the Customer requests a Gaining Service Provider to provide;

“**Commission**” means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998;

“**Confidential Information**” means the type of information as defined in **Condition 8 of the General Terms and Conditions**;

Definitions and Rules of Interpretation

“**Creditworthiness Information**” means the information required by the Access Provider to assess the creditworthiness of the Access Seeker which are more particularly described in **Condition 3.2 of the General Terms and Conditions**;

“**Customer**” means in relation to an Operator, an end-user having a contractual relationship with the Operator for the provision of communications services;

“**Determination**” means any lawful determination made by the Commission and/or Minister, pursuant to the Act;

“**Direction**” means any lawful direction made by the Commission pursuant to Chapter 1 of Part V of the Act;

“**Due Date**” means, in respect of an Invoice, thirty one (31) days from the date of receipt of an Invoice;

“**Effective Date**” means the date the relevant portions of this Agreement requiring registration are duly registered with the Commission under section 150 of the Act;

“**End User**” means a customer and final recipient of the service, and includes an ultimate retail Customer of an Operator;

“**Equipment**” means any equipment (whether hardware or software), or device which is part of or within the Network;

“**Equivalence of Inputs**” is a concept that describes the Access Provider providing to itself and to the Access Seeker the same Facilities and Services on the same terms and conditions including at the same prices and service levels, using the same systems and processes and to the same timescales. For clarification, references to itself includes its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest or the other access seeker;

“**Facilities**” means Regulated Facilities;

“**Facilities Access**” in relation to Regulated Facilities and/or Services, means a service for the provision of access to network facilities and/or premises;

“**Forecast**” means a forecast made by The Access Seeker pursuant to **Section II of the Terms and Conditions for Technical Matters**;

“**Forecast Information**” has the meaning given to it in **Condition 2.2 Section II of Terms and Conditions for Technical**;

“**Forecast Request**” means a request by the Access Provider for Forecast Information from the Access Seeker, as described in **Condition 2.2 Section II of Terms and Conditions for Technical Matters**;

Definitions and Rules of Interpretation

“Force Majeure” means any cause which is not reasonably within the control of the Operator affected, but not limited to, an act of God, industrial disputes of any kind, war declared or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, explosion of meteor, governmental restraint and expropriation;

“High Speed Broadband Network” or “HSBB Network” means an IP-based network capable of providing services of at least 10 Mbps;

“Instrument” means any lawful instrument which is issued by the Minister and/or Commission pursuant to the Act;

“Intellectual Property” means all rights conferred under statute, common law and equity and in relation to trademarks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, Confidential Information, know-how and trade secrets and all rights and interests in them or licenses to use any of them;

“Interconnect Steering Group” or “ISG” means the inter-operator relations group established by the Operators;

“Invoice” means the invoice for amounts due in respect of the supply of Facilities and/or Services during a Billing Period;

“IP” or “Internet Protocol” means network-layer (Layer 2) protocol, as defined by the Internet Engineering Task Force, that contains addressing information and some control information that enables packets to be routed;

“ITU-T” means the Telecommunications Standardisation sector of the International Telecommunications Union (previously known as CCITT);

“Jitter” means the difference between the actual Latency of a packet and a reference Latency for a packet population of interest. The reference Latency of a population of packets is the minimum Latency for the packets within the population of interest. Jitter is a statistical sample, measured over a packet population of interest;

“Latency” means the one-way time interval between the moment the first bit of a IP packet crosses an entry point of a network and the moment the last bit of the same packet crosses an exit point of the network dimensioned in time;

“Layer 2 HSBB Network Service” shall have the meaning ascribed in **Section I of Part A of the Terms and Conditions for Regulated Facilities and/or Services**;

“Lead-In Duct” means a duct which extends from an End User location to the first manhole associated with such a duct;

“Licence” means an individual licence granted by the Minister pursuant to the Act for communications services;

Definitions and Rules of Interpretation

“Mainline Duct” means each duct or series of ducts, which extend(s) from one or more Lead-In Duct(s) to the closest exchange building associated with the duct(s);

“Minimum Value” for the purposes of calculating the Security Sum means the total estimated value of access to the Facilities and/or Services provided (based on the most recent amounts invoiced for those Facilities and/or Services’) or to be provided by the Access Provider to the Access Seeker for three (3) Billing Periods;

“Minister” means the Minister of Communications and Multimedia Malaysia, or, if different, the Minister administering the Act;

“MSA Determination” means the Commission Determination on the Mandatory Standard on Access (Determination No. 3 of 2016) as amended or superseded by the Commission from time to time;

“MSAP Determination” means the Commission Determination on the Mandatory Standard on Access Pricing (Determination No. 1 of 2017) as amended or superseded by the Commission from time to time;

“Network” means network facilities and/or network services comprising a system, or a series of systems within Malaysia, that carries or is capable of carrying communications by means of guided or unguided electromagnetic energy or both, and in relation to an Operator, means so much of the network as is owned or operated by the Operator;

“Network Boundary” has the meaning ascribed in Section 128 of the Act unless otherwise defined in this Agreement;

“Notice of Acceptance” means the Access Provider’s notice of acceptance of an Order provided to the Access Seeker pursuant to subsections 5.7.12 and 5.7.13 of MSA Determination;

“Notice of Receipt” means the acknowledgment of receipt of the Order from the Access Seeker, as described in subsections 5.7.5 and 5.7.6 of MSA Determination;

“Operational Support System” or “OSS” means the interactive operational support system provided, or to be provided, by the Access Provider to the Access Seeker to perform the functions required in respect of access to Facilities and/or Services including but not limited to the service fulfillment and service assurances operational support systems;

“Operator” means the Access Provider or the Access Seeker and **“Operators”** means the parties to this Agreement collectively;

“Order” means an order placed by The Access Seeker pursuant to **Section III of the Terms and Conditions for Technical Matters**;

Definitions and Rules of Interpretation

“**Packet Loss**” means the ratio of total lost IP packets to total transmitted packets in a population of interest. Total lost packet includes any delivered with errors or Latency greater than 3 seconds;

“**QOS**” means quality of service;

“**QoS Class**” or “**Quality of Service Class**” means a set of quality of service parameters as defined above as Latency, Jitter and Packet Loss, that are associated with Layer 2 connectivity;

“**QOS standards**” means the QOS standards in respect of certain services set out in this AGREEMENT and the documents referred to in **Section I of the Terms and Conditions for Technical Matters**;

“**Agreement**” or “**RAO**” means the Agreement issued by the Access Provider pursuant to the Access Determination as modified from time to time;

“**Regulated Facilities and/or Services**” means: -

- (a) network facilities and/or other facilities that are listed in the Access List Determination; and/or
- (b) network services and/or other services that are listed in the Access List Determination,

specified in this Agreement which facilitates the provision of network services or applications services including content applications services;

“**Residential Gateway**” or “**RG**” means a manageable access device with auto configuration, multiple interface, multi-service perceiving, bears services of different types at the same time and connects a home’s local area network to the Access Provider’s BTU;

“**RM**” means Ringgit Malaysia which shall be the monetary currency used in this Agreement unless otherwise provided;

“**SAO**” or “**Standard Access Obligations**” means the obligations which relate to access as referred to in section 149 of the Act;

“**Security Sum**” means the security in the form of a Bank Guarantee provided to, or to be provided by the Access Seeker to, the Access Provider for the supply of Facilities or Services under This Agreement;

“**Services**” means Regulated Services;

Definitions and Rules of Interpretation

“Service Gateway” or “SG” means, in relation to Layer 2 HSBB Network Services, an agreed location at the Access Provider's designated location which:

- (a) constitutes a point of demarcation between the Network of the Access Provider and the Access Seeker; and
- (b) is at the point at which communication occurs between the High Speed Broadband Network and the Access Seeker's Network by an agreed method;

“Service Ordering Procedures” means the procedures governing the forecasting, planning and ordering of relevant Regulated Facilities and/or Services as set out in this Agreement;

"Technical Specifications" means any technical parameters, specifications and procedures applicable to Interconnection of the Operators' Networks and provision of Access Services as agreed in writing between the Operators; and

“VLAN” or “Virtual Local Area Network” means a group of devices with a common set of requirements that communicate amongst themselves as if they were attached to the same physical connection regardless of their physical location.

1.2 In this Agreement except where the contrary intention appears;

- (a) the singular includes the plural and vice versa;
- (b) a document includes all amendments or supplements to that document, or replacements or novations of it;
- (c) a reference to a statute, ordinance, regulations, code or other law and other instruments under it, shall include any statute, ordinance, regulation, code and other law consolidating, amending, re-enacting or replacing of any of them from time to time relating thereto or in connection therewith;
- (d) the word “person” includes a firm, body corporate, unincorporated association or an authority;
- (e) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns;
- (f) if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day and any reference to acts that have to be done or to be done by or on or before a particular day or Business Day means by or on or before the close of business at 5.00pm on that particular day or Business Day;

Definitions and Rules of Interpretation

- (g) a reference to a related body corporate of an Operator has the same meaning as in the Companies Act 2016;
 - (h) a reference to a third person is a reference to a person who is not a party to this Agreement;
 - (i) headings are included for convenience and do not affect the interpretation of this Agreement; and
 - (j) no rule of construction and/or interpretation applies to the disadvantage and/or detriment of the Operator having control and/or responsible for the preparation of this Agreement.
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**GENERAL TERMS AND CONDITIONS
OF THE AGREEMENT**

General Terms and Conditions
Condition 1

CONDITION 1 – PRINCIPLES OF ACCESS AND INTERCONNECTION

1.1 Provision and Usage of Facilities and Services subject to Licence

1.1.1 The Regulated Facilities and/or Services provided by the Access Provider shall at all times be subject to Facilities and Services which the Access Provider is permitted to provide under its Licence. Concurrently, the Regulated Facilities and/or Services provided to the Access Seeker shall only be used in connection with an activity or activities in which the Access Seeker is authorised to provide under its Licence.

1.2 Principles of Access to Facilities and Services in the Access List Determination

1.2.1 **SAO:** In accordance with the Act and subject to exemptions determined by the Minister, the Access Provider shall provide access on reasonable terms and conditions to the Facilities and/or Services listed in the Access List Determination to any other:

- (a) network facilities provider;
- (b) network services provider;
- (c) applications service provider; or
- (d) content applications service provider;

who makes a written request to the Access Provider for access.

1.2.2 **Reasonableness:** The Access Provider may refuse a request if:

- (a) it is in accordance with Section 3.4.1 of this Agreement; or
- (b) supply of the relevant listed Facilities and/or Services would be reasonable, but the terms and conditions requested by The Access Seeker are not reasonable in accordance with the MSA Determination.

1.3 Principles of Non-Discrimination

1.3.1 The Operators agree and acknowledge that the governing principle of this Agreement is that the Operators are, in respect of the provision of Facilities and/or Services, in an operator-to-operator relationship.

1.3.2 Consistent with section 149(2) of the Act, access to Regulated Facilities and/or Services provided by the Access Provider to the Access Seeker shall be: -

- (a) of at least the same or more favourable technical standard and quality as the technical standard and quality provided for itself on the Access Provider's Facilities and/or Services; and
- (b) on an equitable and non-discriminatory basis and for the purpose of this Agreement, shall be subject to the basis of Equivalence of Input in **Condition 1.3.4** below.

General Terms and Conditions

Condition 1

1.3.3 However, nothing in this Agreement shall limit the Access Seeker' ability to freely request and agree on access to the Access Provider's Regulated Facilities and/or Services that are either superior or inferior (in terms of technical standard and quality) to that which the Access Provider provides to itself.

1.3.4 For the purpose of this Agreement, the non-discrimination principle and the term "non-discriminatory" apply on an Equivalence of Inputs basis and require a comparison of:

- (a) the basis on which a Facility and/or Service is provided by the Access Provider to the Access Seeker; with
- (b) the basis on which that Facility and/or Service is provided by the Access Provider to itself and or the other access seeker.

1.4 Application of non-discrimination principle

The non-discrimination principle contained in subsection 149(2) of the Act applies to, amongst others the following:

- (a) processing of applications for access;
- (b) acceptance or refusal of Access Requests;
- (c) provision of information required to provide Forecasts or place Orders;
- (d) provision of Facilities and/or Services;
- (e) allocation of constrained capacity;
- (f) fault reporting and fault rectification;
- (g) allocation of space at exchanges;
- (h) the purpose or use for which access is provided; and
- (i) access to Operational Support Systems in respect of service fulfilment and service assurance.

1.5 Customer Relationship Principles

1.5.1 The Operators also agree and acknowledge that the following customer relationship principles shall apply: -

- (a) the same person may be a Customer of more than one Operator: -
 - (i) in respect of the same or different Services provided by different Operators;

General Terms and Conditions
Condition 1

- (ii) in respect of the same or different Facilities provided by different Operators;
 - (iii) in respect of Facilities provided by one Operator and Services provided by another Operator.
- (b) The supply by an Operator to another Operator, which the latter Operator then utilises in providing Facilities and/or Services to its Customers, does not mean that those Customers are also Customers of the first-mentioned Operator.
- (c) For the avoidance of doubt, the Operators acknowledge that each Operator will be responsible for billing its own Customers, unless otherwise agreed in writing by the Operators.
- (d) A Customer will be regarded as a Customer of an Operator when the Customer utilises facilities and/or services provided to that Customer by the Operator.
- 1.5.2 The Operators agree and acknowledge that, unless otherwise specifically agreed and identified in this Agreement, the principle of non-discrimination also means that an Operator will treat its own Customers and Customers of the other Operator who are similarly situated on a non-discriminatory basis.
- 1.6 No exclusivity and no restriction on resale**
- 1.6.1 The Access Provider must not, in relation to the supply of a Facility and/or Service, include a term or condition in this Agreement preventing the Access Seeker from acquiring the same or any other Facility and/or Service from another Operator.
- 1.6.2 The Access Provider must not, in relation to the supply of a Facility and/or Service, include a term or condition in this Agreement preventing the Access Seeker from re-supplying that Facility and/or Service to any person.

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General Terms and Conditions
Condition 2

CONDITION 2 – PARAMETERS OF THE AGREEMENT

- 2.1 The scope of this Agreement is, unless otherwise specified in this Agreement, limited only to the provision of the Regulated Facilities and/or Services.
- 2.2 For the avoidance of doubt, this Agreement is intended to apply only to the provision of Facilities and/or Services by one Operator to the other and to related matters concerning the Operators and may not be construed as conferring benefits on third persons.
- 2.3 The Operators hereby agree and acknowledge that this Agreement shall be effective and enforceable upon the registration of the relevant portion of this Agreement (which requires registration) with the Commission pursuant to section 150 of the Act. The Operators hereby agree and acknowledge that those portions of this Agreement which do not require registration with the Commission, will not be lodged with the Commission for registration.
- 2.4 Each Operator shall notify the other Operator as soon as possible of all correspondences from the Commission pertaining to the registration of this Agreement. In the event that the Commission refuses or fails to register this Agreement or part thereof, the Operators shall negotiate in good faith to decide on the next course of action to be undertaken by the Operators.
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General Terms and Conditions
Condition 3

CONDITION 3 – PROCEDURES FOR REQUESTING NEW FACILITIES AND SERVICES

3.1 Application for Access to New Facilities and/or Services

3.1.1 The Access Seeker may request the Access Provider to supply network Facilities or network Services that are not currently specified in this Agreement by submitting an Access Request to the Access Provider.

3.1.2 The purpose of such Access Request is to provide the Access Provider with sufficient information to assess the Access Seeker' request for the supply of network Facilities or network Services requested by the Access Seeker that are not currently specified in this Agreement.

3.1.3 The Access Request must:

- (a) contain the name and contact details of the Access Seeker;
- (b) specify the network facilities or network services in respect of which access is sought;
- (c) indicate whether the Access Seeker wishes to accept the Access Provider's terms of offering for the requested network facilities and/or services as specified in the RAO, or negotiate different terms;
- (d) specify the ready for service date(s) for the Facilities and/or Services that is being sought by the Access Seeker;
- (e) contain the information (if any) as set out in **Condition 3.1.4** that the Access Seeker reasonably requires the Access Provider to provide for the purposes of the access negotiations;
- (f) where there is no such confidentiality agreement already in force, contain two (2) copies of confidentiality agreement properly executed by the Access Seeker in the form prescribed by the Access Provider;
- (g) preliminary information regarding the scale and scope of the Facilities and/or Services that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request;
- (h) provide the relevant information relating to the Access Seeker' Network and the functionality of its services, to the extent that the Access Seeker is aware that such information may affect the Access Provider's Network;
- (i) creditworthiness information in accordance with the Access Provider's requirements, as set out in **Condition 3.2**;
- (j) contain Insurance Information as set out in Condition 3.3;

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Condition 3

- (k) be accompanied by the Security Sum as set out in Condition 3.3A;
- (l) specify the type of communications licences held by the Access Seeker and a copy of the licence where a copy had not been previously provided;
- (m) contain relevant technical information relating to the interface standards of the Equipment of the Access Seeker; and
- (n) contain such other information that the Access Provider may reasonably request.

3.1.4 For the purposes of **Condition 3.1.3(e)**, the Access Provider must provide the following information to the Access Seeker within ten (10) Business Days of receipt of a written request and complete information and supporting documents from the Access Seeker, to the extent that it is not provided in the Access Provider's RAO:

- (a) the application forms required to be completed by the Access Seeker to apply for access to network facilities or network services;
- (b) any supplementary details of a network facilities and/or network services offered by the Access Provider not included in the RAO;
- (c) any supplementary access charges for access to network facilities and/or network services not included in the RAO;
- (d) all supplementary technical information relating to the network facilities and/or network services which may be the subject of the Access Request, which are not included in the RAO, including but not limited to any physical and logical interfaces of its network necessary to allow the development and deployment of communications services, value-added services and communications equipment that can interconnect to, and interoperate with, the Access Provider's Network;
- (e) supplementary details of the Access Provider's operational processes and procedures not included in the RAO;
- (f) supplementary details of the Access Provider's provisioning cycles not included in the RAO and any impact such cycles may have upon an Access Request by the Access Seeker;
- (g) details of the Access Provider's alternative quality of service targets not included in the RAO and actual achievements of service targets in respect of the network facilities and/or network services which may be the subject of the Access Request; and
- (h) The Access Provider's reason for failing to supply any of the information referred to in **paragraphs (a) to (g)** of this **Condition 3.1.4**.

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The provision of information under this **Condition 3.1.4** is subject to the Confidentiality Agreement as set out in **Condition 8**.

3.2 Creditworthiness Information

3.2.1 The Creditworthiness Information that is required to accompany an Access Request includes:

- (a) a letter, signed by the executive director/senior general manager/senior vice president of the Access Seeker, stating that the Access Seeker is not insolvent and is not under any external administration or under similar form of administration under any laws applicable to it in any jurisdiction;
- (b) a copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement; and
- (c) such other information as may reasonably requested by the Access Provider provided that such information are information which are publicly available.

3.3 Insurance Information

3.3.1 Subject to Condition 9.2, the Access Provider may request for additional insurances, the sum of which is to be specified by the Access Provider, prior to the provisioning of new facilities and/or services.

3.3A Security Sum

3.3A.1 The Access Provider may request for additional Security Sum to be specified by the Access Provider in accordance with Condition 5.3 prior to the provision of the new network facilities and/or network services.

3.4 Processing of Access Request

3.4.1 Acknowledgement of Receipt of Access Request

The Access Provider shall within ten (10) Business Days of receipt of the Access Request inform the Access Seeker in writing that it has received the Access Request and:

- (a) subject to **Condition 3.4.3**, request additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request; or
- (b) indicate whether it is willing to provide access to network facilities or network services subject to such terms of offering as specified in the RAO or, where the Access Seeker wishes to negotiate different terms, such terms to be mutually agreed in writing between the Operators.

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Condition 3

Subject to the additional information being received by the Access Provider within twenty (20) Business Days from the date of request, the Access Provider shall reconsider the Access Request in accordance with this **Condition 3.4.1** upon receipt of such additional information.

3.4.2 Resource Charge

The Access Provider:

- (a) may charge the Access Seeker a one-off non-refundable fee, to be determined by reference to the costs incurred by the Access Provider, for allocation of manpower and other resources to enable the Access Provider to test and fulfill an Order for new Facilities and/or Services, provided that such one-off fee is justified by the Access Provider to the Access Seeker as necessary for the Access Provider to provide the requested Facilities and/or Services; and
- (b) must specify the methodology and unit costs for calculating any fees under **Condition 3.3.2 (a)** above, and in its Agreement.

3.4.3 Request for information

Where the Access Provider requests for additional information pursuant to **Condition 3.4.1(a)**, the Access Provider shall not require the Access Seeker to provide any of the following information to the Access Provider unless otherwise agreed (whether as a condition of the provision of further information or as a condition of assessing the Access Seeker' application, or at any other time):

- (a) The Access Seeker' proposed service launch date (though the Access Provider may request the Access Seeker to specify any ready-for-service dates which the Access Seeker requires from the Access Provider in respect of the requested network facilities and/or network services);
- (b) details of the functionality of the Access Seeker proposed service, except to the extent that such functionality may affect the Access Provider's Network;
- (c) details of the Access Seeker's Network rollout plans, except to the extent that such rollout plans relate to ready-for-service dates requested by the Access Seeker;
- (d) details of the Access Seeker's current or proposed retail charges;
- (e) details of the Access Seeker's marketing strategy or proposed client base;
- (f) financial information relating to the Access Seeker's business, except to the extent that such information may be required pursuant to the creditworthiness requirements under this Agreement;

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- (g) details of any other supply arrangements or agreements to which the Access Seeker may be a party, except to the extent that such details are directly relevant to technical characteristics of the Access Request; or
- (h) any other commercially sensitive information of the Access Seeker which is not strictly required by the Access Provider to supply a requested network Facilities and/or network Services.

3.5 Assessment of Access Request

3.5.1 Reasons for Refusal

Without limiting any other grounds that may be relied upon under the Act, the Access Provider may refuse to accept an Access Request for the supply of a network facility or network service and accordingly may refuse to supply that network facility or network service to the Access Seeker for any of the following reasons:

- (a) in the Access Provider's reasonable opinion, the Access Seeker's Access Request was not made in good faith and the Access Provider shall set out the basis on which the Access Request was not made in good faith;
- (b) in the Access Provider's reasonable opinion, the Access Request does not contain the information reasonably required by the Access Provider hereunder provided that the Access Provider has sought the information from The Access Seeker under **Condition 3.4.1** and has not received that information within twenty (20) Business Days of making such a request;
- (c) The Access Provider does not currently supply or provide access to the requested network facilities and/or network services to itself or to any third parties (in which case it shall identify any alternative network facilities and/or network services which it does provide to itself or to any third parties, which may be acceptable substitutes), except where the Access Seeker compensates the Access Provider for the supply of access to such network facilities or network services;
- (d) it is not technically feasible to provide access to the requested network facilities and/or network services;
- (e) The Access Provider has insufficient capacity or space to provide the requested network facilities and/or network services;
- (f) there are reasonable grounds in the Access Provider's opinion to believe that the Access Seeker may fail to make timely payment for the supply of the relevant facilities and/or services and such concern cannot be addressed through a security requirement in accordance with the MSA Determination;
- (g) there are reasonable grounds in the Access Provider's opinion to believe that the Access Seeker would fail, to a material extent, to comply with this

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Agreement and the terms and conditions applicable to the supply of the network facilities and/or network services; or

- (h) there are reasonable grounds for the Access Provider to refuse access in the national interest.

3.5.2 Determination of technical infeasibility

For the purposes of determining technical infeasibility in **Condition 3.5.1(d)**, the Access Provider shall not reject an Access Request on the grounds of technical infeasibility unless the Access Provider establishes that there are substantial technical or operational concerns preventing the fulfillment of the Access Request. The following shall be taken into account in determining whether access is technically feasible:

- (a) economic, accounting, billing, space or site concerns shall be disregarded by the Access Provider except to the extent that space or site concerns may be taken into account in circumstances where there is no possibility of expanding the space available on the relevant site;
- (b) any requirement for the Access Provider to modify its facilities or Equipment in order to meet the Access Request will not, of itself, mean that the access is not technically feasible;
- (c) if the Access Provider asserts that meeting the Access Request would have an adverse impact on Network reliability, the Access Provider must provide evidence that provision of the requested facilities or services would result in a specific and significant adverse impact on Network reliability; and
- (d) The Access Provider must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this Condition) improvements that would allow the Access Provider to meet the Access Request (in whole or part and including for an interim period until any primary difficulties can be resolved).

3.5.3 Determination of capacity constraints

The Access Provider may only refuse an Access Request on the ground set out in **Condition 3.5.1(e)**, where the Access Provider notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is:-

- (a) already carrying traffic to capacity or near full capacity;
- (b) already reserved for future use by the Access Provider or another access seeker, where such future use shall commence not later than six (6) months from the date of the Access Request. If the reserved capacity is not subsequently used by the reserving operator within seven (7) months from the date of the Access Request, the Access Provider must promptly inform the Access Seeker and, if

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Condition 3

required by the Access Seeker, re-consider the Access Request in accordance with this **Condition 3**; and

- (c) in the case of both **Conditions 3.5.3(a) and (b)**, the Access Provider is unable to expand capacity to meet the requirements in the Access Seeker' Access Request.

3.5.4 Assessment of the Access Seeker' ability to pay for supply of relevant network facilities or network services

Reasonable grounds in which the Access Provider may refuse in accordance with **Condition 3.5.1(f)** includes evidence that the Access Seeker is not, in the reasonable opinion of the Access Provider, creditworthy and such creditworthiness concerns cannot be addressed through a security requirement in accordance with this Agreement.

3.5.5 Assessment of the Access Seeker' ability to comply with terms and conditions applicable to the supply of relevant network facilities or network services

Reasonable grounds in which the Access Provider may refuse in accordance with **Condition 3.5.1(g)** includes repeated failures by the Access Seeker to comply with the terms and conditions on which similar access to network facilities or network services being provided by the Access Provider to the Access Seeker.

3.6 Notification of Rejection to the Access Seeker

3.6.1 Where the Access Provider rejects the Access Request, the Access Provider shall:

- (a) notify the Access Seeker in writing within ten (10) Business Days from receipt of the Access Request or additional information requested pursuant to **Condition 3.4.1**, as the case may be;
- (b) provide reasons for rejection under **Condition 3.5** to the Access Seeker;
- (c) provide the basis for the Access Provider's rejection of the Access Request; and
- (d) indicate a date and time, not later than seven (7) Business Days from the date of the notice of rejection, at which representatives of the Access Provider will be available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request. At this meeting, the Access Seeker may request the Access Provider to substantiate its reasons for refusal, and if access has been refused on the basis of the ground in:
 - (i) **Condition 3.5.1(b)**, the Access Provider must reassess the Access Seeker' original Access Request considering any supplementary information provided by the Access Seeker;

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Condition 3

- (ii) **Condition 3.5.1(e)**, the Access Provider must identify when additional capacity is likely to be available; and
- (iii) **Condition 3.5.1(f)**, the Access Provider must identify the form of security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested network facilities and/or network services, its reasons for the security requirement and why it considers such concern cannot be addressed through a security requirement.

3.6.2 Where the Operators are unable to resolve their differences following the meeting held pursuant to **Condition 3.6.1(d)**, either Operator may request resolution of the dispute in accordance with **Condition 12**.

3.7 Acceptance of Access Request

3.7.1 Where the Access Provider agrees to provide access to the requested network facilities or network services to the Access Seeker in accordance with the terms and conditions of the RAO, the Access Provider shall within ten (10) Business Days of such response under **Condition 3.4.1(b)**, provide the Access Seeker with two (2) copies of a supplemental agreement to this Agreement.

3.7.2 the Operators shall ensure that their designated representative meet on one of the available dates notified in the Access Request and as agreed by both representatives and that such representative:

- (a) agree a timetable for the negotiations, including milestones and dates for subsequent meetings, required to meet the agreed target ready for service date provided that the representative of the Access Provider shall be available for an initial meeting with the representative of the Access Seeker no later than fifteen (15) Business Days from the Access Provider's response under **Condition 3.4.1(b)**;
- (b) agree on negotiation procedures including:
 - (i) calling and chairing meetings;
 - (ii) responsibility for keeping minutes of meetings;
 - (iii) clearly defined pathways and timetables for escalation and resolution by each Operator of matters not agreed in meetings;
 - (iv) procedures for consulting and including in the negotiating process relevant experts from the staff of each of the Operators; and
 - (v) procedures for preparing and exchanging position papers.
- (c) review the information requested and provided to date and identify information yet to be provided by each Operator; and

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Condition 3

- (d) identify what technical investigations, if any, need to be made and by whom such investigations should be made.
- 3.7.3 the Operators shall co-operate, in good faith and in a commercially reasonable manner, in negotiating and implementing the supplemental agreement with this Agreement. This includes avoiding unnecessary disputes and resolving disputes promptly and fairly. The Operators shall use their best endeavours to conclude the supplemental agreement within three (3) months of receipt of the draft supplemental agreement in **Condition 3.7.1** or such other period as may be mutually agreed in writing (“**Negotiation Period**”) and if negotiations are not concluded within the Negotiation Period:
- (a) the Operators may jointly apply to the Commission for an extension of time to negotiate and if the extension of time is not granted by the Commission, there shall be deemed to be a dispute between the Operators and the dispute resolution procedures in **Condition 12** shall take effect; or
- (b) either Operator may initiate the dispute resolution procedures in **Condition 12**.
- 3.7.4 For the purposes of this Condition, good faith requires that the Access Provider shall not:
- (a) refuse to negotiate terms of access not related to price for the reason that the rate, charge, charging principles or methodologies of access has not been agreed upon;
- (b) refuse to negotiate access to network facilities or network services because the Access Seeker has not agreed to acquire access to other network services or network facilities or because the Access Seeker has not agreed to acquire a particular configuration, option or feature of a requested network facilities or network services;
- (c) require the Access Seeker to enter into a confidentiality agreement the terms of which would preclude the disclosure of information requested by the Commission or required to be disclosed for the purposes of dispute resolution;
- (d) require the Access Seeker to warrant that supplemental agreements to this Agreement complies with all applicable laws;
- (e) refuse to include in supplemental agreement to this Agreement a provision permitting variation of this Agreement in the event of any change in rules, applicable laws or applicable regulations (including Commission decisions and Determinations);
- (f) make any negotiation conditional on the Access Seeker first obtaining any regulatory approval or consent;

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Condition 3

- (g) intentionally mislead or coerce the Access Seeker into reaching an Agreement, which would not otherwise have been reached if not for the misleading act or coercion;
- (h) intentionally obstruct or delay negotiations or any dispute resolution process;
- (i) fail to nominate representatives who have sufficient authority and with sufficient availability to progress negotiations in a timely and efficient manner;
or
- (j) fail to provide information that is necessary to conclude the supplemental agreement to this Agreement including, without limitation:
 - (i) information about the Access Provider's Network that the Access Seeker reasonably requires to identify the Network elements or network components to which it requires access; and
 - (ii) information about the basis of the determination of rates, charges or fees.

3.7.5 The Access Provider will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Facilities and/or Services until:

- (a) a supplemental agreement to this Agreement has been executed between the Operators and the terms in respect of Regulated Facilities and/or Services are registered with the Commission in accordance with section 150 of the Act.

3.8 Application of Condition 3 to facilities and/or services not listed in the Access List Determination

With respect to facilities and/or services which are not in the Access List Determination, the Operators agree that:-

- (a) the procedures and obligations under **Conditions 3.3, 3.4, 3.5 and 3.6** shall not apply to any Access Request for facilities and services not listed in the Access List Determination;
- (b) where an Access Request for facilities and/or services not listed in the Access List Determination has been made by the Access Seeker, the Operators will arrange to meet within ten (10) Business Days from the date of the receipt of Access Request or such other date to be mutually agreed, to discuss the Access Request made by The Access Seeker; and
- (c) where the Access Provider agrees to provide the facilities and/or services not listed in the Access List Determination, both Operators will negotiate the terms and such agreed terms and conditions shall be documented in a supplemental Agreement (which shall not be registered with the Commission).

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Condition 3

3.9 Fast Track Application Process

3.9.1 Notwithstanding and as an alternative process to that set out in Condition 3.1 to Condition 3.8, an Access Provider shall make available a fast-track application and agreement process for Access Seekers based on the following principles:

- (a) the fast-track process shall be limited to the criteria set out by the Access Provider in accordance with Condition 3.9.2;
- (b) the fast-track application form:
 - (i) shall be limited to gathering information from the Access Seeker as set out in Condition 3.1.3(a) and 3.1.3(b); and
 - (ii) in respect of any requirement to provide security, shall set out a process for determining the required security sums under Condition 5.4 within five (5) Business Days of the Access Provider's receipt of a fast-track application;
- (c) the Access Provider may only refuse the Access Seeker's fast-track application for the reasons set out in Conditions 3.5.1(c), 3.5.1(f) and 3.5.1(g);
- (d) the fast-track agreement between the Access Provider and the Access Seeker must be on the terms of the Access Provider's RAO; and
- (e) within ten (10) Business Days of the Access Provider's receipt of a fast track application, the Access Provider will provide the Access Seeker with two (2) copies of the RAO executed by the Access Provider, or a notice of refusal that sets out the grounds for refusal under Condition 3.6.1(c) (including the basis on which those grounds apply)

3.9.2 The Access Provider shall set up, and publish on its publicly accessible website, the criteria on which Access Seekers will be eligible for the fast-track application and agreement process according to the following principles:

- (a) the criteria must be determined and applied by the Access Provider on a non-discriminatory basis;
- (b) the fast-track process may be limited to the supply of Facilities and/or Services to the extent that such supplies do not have a material impact on the Access Provider's current level of network resources; and
- (c) the Facilities and/or Services which may be the subject of a fast track application may be limited to Layer 2 HSBB Network Services with QoS.

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General Terms and Conditions
Condition 4

CONDITION 4 - PROVISION OF INFORMATION

- 4.1 The obligations of each Operator to provide information to the other Operator are as set out in this Agreement or as otherwise agreed between the Operators and are subject to the requirements of confidentiality imposed by this Agreement.
- 4.2 An Operator must provide the other Operator on a timely basis with all agreed information reasonably required to determine rates and charges to be billed by each Operator to the other Operator or by each Operator to its Customers.
- 4.3 Information provided under this Agreement may only be used for the purpose for which it was given. Personal information about a Customer's credit worthiness, credit standing, credit history or credit capacity may only be used for the purposes permitted by, and in compliance with, Malaysian law.
- 4.4 If any of the information is used by an Operator for any purpose other than the purpose for which it was given, the providing Operator may deny the recipient Operator further access to the information for the period during which the non-observance or non-conforming use continues on notice specifying the non-observance or non-conforming use. The Operators will cooperate to resolve the providing Operator's reasonable concerns so that information exchange can be resumed as soon as possible.
- 4.5 The Operators acknowledge that when information (including, for the purposes of this Condition any updated information) required to be provided under this Condition is held on a database, the Operator entitled to receive the information will not be entitled to obtain direct access to the database. The precise method by which information is to be made available will be determined by the Operator having regard to the reasonable cost, convenience and security concerns of the Operators.
- 4.6 (a) Subject to the Act and any subordinate legislation, nothing in this Agreement may be construed as requiring an Operator at any time to disclose to the other Operator information which is at the date when this Agreement comes into force, the subject of a confidentiality obligation owed to a third person unless the third person consents to such disclosure. Where the consent of a third person is required, the Operator holding the information must use its reasonable endeavours to obtain the consent of that third person.
- (b) After this Agreement comes into force an Operator must use its best endeavours not to enter into any contract which would prevent it from making information available to the other Operator unless the contract includes a term which permits the contracting Operator to make the information available if directed to do so by the Commission.
- 4.7 All communication information and such other relevant information must be kept by both Operators for a period of three (3) years unless otherwise agreed in writing for the purposes of verification and audit.

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- 4.8 The Operators further agree that the information provided for the purpose of this Agreement shall be subject to the Confidentiality Agreement as set out in **Condition 8**.
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Condition 5

CONDITION 5 – BILLING AND SETTLEMENT

5.1 Billing

- 5.1.1 (a) In respect of any Charge due from an Operator, the invoicing Operator (“**Invoicing Operator**”) shall raise the Invoice for amount due for the supply of Facilities and Services.
- (b) Unless otherwise agreed in writing, the Invoicing Operator shall invoice in writing or in electronic form (as requested by the Operator receiving the Invoice (“**Invoiced Operator**”)), on an Operator to Operator basis, within thirty one (31) days from the end of the Billing Period for amounts due in respect of the supply of Facilities and Services during the Billing Period. The Invoicing Operator shall provide with each Invoice, such information as may be reasonably necessary for the Invoiced Operator to verify the rates and charges specified in the Invoice. In addition, the Invoiced Operator may request, in writing, for the billing report to be provided by the Invoicing Operator in an electronic format.
- (c) The Invoicing Operator shall provide the Invoiced Operator at the Invoiced Operator’s written request, with an aggregated summary of billings for access to the Facilities and/or Services provided to the Invoiced Operator.
- (d) The Operators shall, from time to time, inform each other of the mailing address and the department to which the Invoice should be sent to and also their respective bank account details for the purposes of enabling the other Operator to make payment. All Invoices shall be delivered by hand or post (either registered mail or courier) or email.
- 5.1.2 (a) If the Invoicing Operator is unable to submit an Invoice for actual charges for any network facilities and/or network services supplied in a Billing Period, then the Invoicing Operator may issue to the Invoiced Operator an Invoice for a provisional amount (“**Provisional Amount**”) based on the last Invoice provided that the amount of the Provisional Amount is no more than the average of the most recent three (3) Invoices. Where there have not been three (3) past Invoices for access to the Facilities and/or Services, the Invoicing Operator may issue a provisional Invoice up to the full value of the amount based on the most recent Invoice. The Invoiced Operator shall pay the Provisional Amount by the Due Date. The Provisional Amount will be adjusted in the next invoice or as soon as practicable but not later than sixty (60) days after the month in which the charges were incurred or such other time period as may be agreed in writing (“**Adjustment Period**”). If an adjustment is not made within the Adjustment Period, the Invoiced Operator shall treat the Provisional Amount as the actual Invoice.
- (b) The Invoicing Operator may invoice the Invoiced Operator for the Provisional Amount for a period of not more than three (3) successive Billing Periods.

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Condition 5

- 5.1.3 (a) If the actual amount for a particular Billing Period is higher than the Provisional Amount for the Billing Period, then the Invoiced Operator will pay in full such difference (free of interest) within thirty one (31) days from the receipt of the invoice to the Invoicing Operator.
- (b) If the actual amount for a particular Billing Period is lower than the Provisional Amount for the same Billing Period, the Invoicing Operator will reimburse in full such difference free of interest within thirty one (31) days from the receipt of the invoice to the Invoiced Operator. Such payment must be forwarded to the Invoiced Operator together with the relevant monthly statement.
- 5.1.4 Where appropriate, any taxes (including goods and service tax, sales and service tax, as applicable), duties or other imposts (as at the date of this Agreement or imposed after the date of this Agreement) shall be added to all or any Charges under this Agreement and be paid by the Operator responsible for making such payment.

5.2 Terms of Payment

- 5.2.1 (a) The Invoiced Operator must pay any amount due and owing to the Invoicing Operator on the Due Date unless otherwise agreed in writing by both Operators.
- (b) The Invoiced Operator to whom any Facilities and/or Service is provided under this Agreement must pay the Invoicing Operator the applicable rates and charges, and on the terms and conditions set out or referred to, as the case may be, in this Agreement.
- 5.2.2 All payments:
- (a) must be paid by electronic transfer to the Invoicing Operator or by cheque to the nominated account(s) of the Invoicing Operator;
- (b) must be accompanied by such information which is reasonably required by the Invoicing Operator to properly allocate payments received, failing which the Invoicing Operator shall have the absolute discretion to allocate payments received to any amounts due and payable; and
- (c) unless otherwise agreed by the Operators, shall not be subject to any set-offs except where the Invoiced Operator is in liquidation or at least three (3) invoices have been issued and such Invoices have not been paid (excluding disputed amounts which an Operator is authorised to withhold in accordance with **Condition 12.6.4**).
- 5.2.3 (a) Subject to **Condition 5.2.3(b)**, all invoices shall be stated in Ringgit Malaysia and payment must be made in Ringgit Malaysia; and

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Condition 5

(b) For invoices stated in foreign currency or other agreed forms in respect of Charges incurred for the utilisation of a foreign network, payment for such invoices shall be made in the currency nominated unless otherwise agreed.

5.2.4 It is hereby expressly agreed that the Invoicing Operator is entitled to the payment of interest without prejudice to any other rights of the Invoicing Operator. Interest on due and unpaid amounts is payable (as well as before judgment and after judgement) at the rate of two percent (2%) per annum above Malayan Banking Berhad Base Rate (BR) calculated daily from the Due Date until the date of actual payment. Payments which are overdue by more than sixty (60) days will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad BR (as well before judgment and after judgement) calculated from the Due Date until the date of receipt by the Invoicing Operator of full payment. Further, the BR rate to be used shall be the published rate prevailing on the date of payment. For clarification, Invoicing Operator shall not charge interest on an amount which is disputed by Invoiced Operator in good faith.

5.2.5 Where interest in respect of any due and unpaid amount is due to the Invoicing Operator under **Condition 5.2.4**, the Invoicing Operator may add the amount of such interest to its next invoice.

5.2.6 If the Invoicing Operator discovers an error in an invoice given to the Invoiced Operator under this **Condition 5**, it must notify the Invoiced Operator. The Invoicing Operator which made the error must make the necessary adjustment to correct that error (including adjusting any interest erroneously charged) in its next Invoice.

5.2.7 The Invoicing Operator may include omitted or miscalculated Charges from an Invoice at a later date provided that the Invoicing Operator is able to substantiate the Charges to the Invoiced Operator and the inclusion or amendment is made within three (3) months from the end of the Billing Period for the Facilities and Services provided. For the avoidance of doubt, in the event the Invoicing Operator fails, neglects, or omits to submit an omitted or miscalculated Charge in a later invoice, or fails, neglects or omits to submit an invoice for any Charges within the time period specified in this **Condition**, then the Operator shall be deemed to have waived and/or forfeited its right to make any further claims on the said omitted Charge.

5.2.8 Notwithstanding anything to the contrary, the Invoiced Operator shall be entitled to deduct or withhold such taxes, duties, levies or such other sums imposed by such governmental authorities (“**said taxes**”) from any sum or sums due to the Invoicing Operator in the event the Invoiced Operator is required by law to pay the said taxes for and on behalf of the Invoicing Operator.

5.3 Billing Disputes

5.3.1 Where there is a Billing Dispute, the Operators shall comply with the dispute resolution procedures in **Condition 12**.

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Condition 5

5.3.2 For the avoidance of doubt, the Invoiced Operator shall not use the dispute resolution procedure in **Condition 12** to avoid or delay payment due to the Invoicing Operator where there is no genuine dispute.

5.4 Security Sum

5.4.1 The Access Provider shall ensure that the amount of security imposed on the Access Seeker in its security policy, commensurate with:

- (a) The estimate of the value of access to the Facilities and/or Services to be provided to the Access Seeker by the Access Provider shall be equivalent to the Minimum Value;
- (b) The creditworthiness of the Access Seeker (including prior payment records of the Access Seeker); and
- (c) The Security Sum previously provided by the Access Seeker.

5.4.2 The Access Seeker shall have deposited or procured the deposit of the Security Sum as security for the performance of all the Access Seeker's obligation under this Agreement, unless otherwise waived in writing by the Access Provider.

5.4.3 The amount of the initial Security Sum shall be based on the Minimum Value calculated over a ninety (90) day period commencing from (the Effective Date or any other date wherein the Security Sum is to be imposed by the Access Provider subject to **Condition 5.4.4 (a)**). For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts to the Access Provider as they become due and payable, nor does it constitute a waiver of the Access Provider's right to suspend, disconnect, or terminate the relevant Facilities and/or Services due to nonpayment of any sums due or payable to the Access Provider.

5.4.4 (a) The Access Provider shall be entitled to revise the Security Sum on the occurrence of any of the following events: -

- (i) where, in the opinion of the Access Provider, the amount of the Security Sum is less than the Minimum Value calculated over a ninety (90) day period determined by the Access Seeker;
- (ii) where, in the opinion of the Access Provider, there is a material change in circumstances in relation to the Access Seeker's creditworthiness. In such cases, the Access Provider may request for additional security in addition to the Minimum Value to sufficiently and reasonably mitigate its risk in providing the Facilities and Services to the Access Seeker. For clarification, material change in circumstances includes, but is not limited to, failure to pay on the Due Date in respect of three (3) Invoices rendered in the preceding six (6) months, so long as those amounts have not been disputed in good faith;

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- (iii) upon the provisioning of new or additional Facilities and/or Services to the Access Seeker, to ensure that Security Sum is equivalent to the Minimum Value after taking into consideration the estimated value of new or additional Facilities and/or Services provided or to be provided over a ninety (90) day period; or
 - (iv) there is a change in the methodology of determining the Security Sum.
 - (b) Where the amount of the Security Sum is, at any time, less than the Minimum Value (including when a demand has been made by the Access Provider) calculated over a ninety (90) period determined by the Access Provider, the Access Seeker shall within twenty one (21) Business Days from the written request of the Access Provider, deposit a new security equivalent to the Minimum Value.
- 5.4.5 (a) The Security Sum deposited by the Access Seeker with the Access Provider and any interest thereon, shall only be used for the purposes set out in Condition 5.4.2. the Access Provider may at its discretion call upon or deduct the Security Sum at any time after the due date (other than that due to disputes in good faith) subject to Condition 5.4.4(i) or upon a breach of any of the Access Seeker's obligation.
- (b) Upon termination of this Agreement: -
 - (i) the Security Sum deposited with the Access Provider or parts thereof together with the interest thereon, (if any) shall be returned and/or refunded to the Access Seeker within sixty (60) days from the date of termination provided all other undisputed amounts payable by the Access Seeker to the Access Provider have been paid; and
 - (ii) The Access Provider shall immediately in writing unconditionally waive its rights under any guarantee provided as Security Sum in respect of future performance of this Agreement by the Access Seeker (if any), since this Agreement has been terminated. However, the guarantee shall remain in full force in respect of any antecedent breaches under this Agreement or in respect of any undisputed amounts payable by the Access Seeker to the Access Provider as at the date of termination;

without prejudice to the rights and remedies of the Access Provider under this Agreement (including but not limited to the right to claim for any or all amounts due and payable under this Agreement and/or to call upon the Security Sum) and/or under the law.

General Terms and Conditions
Condition 5

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General Terms and Conditions
Condition 6

CONDITION 6 - INTELLECTUAL PROPERTY RIGHTS

- 6.1 All right, title and interest in and to any:
- (a) Intellectual Property (in relation to matters which are the subject of this Agreement) developed or to be developed vests in the Operator who developed that Intellectual Property or for whom that Intellectual Property was developed by a third person; and
 - (b) improvements to or adaptations, versions or modifications of Intellectual Property (in relation to matters which are the subject of this Agreement) vest in the Operator who developed that Intellectual Property or on behalf of whom that Intellectual Property was developed.
- 6.2 The Operators will negotiate arrangements (including in respect of title) concerning Intellectual Property jointly developed in the course of performing or otherwise in connection with this Agreement.
- 6.3 Each Operator shall licence to the other Operator on a royalty-free basis, all Intellectual Property rights necessary for the on-going operation of this Agreement and the inter-operability of the Operators' Networks but shall be subject to any relevant third party licences. The Operators agree that such Intellectual Property rights accorded to them shall only be used for purposes of this Agreement and shall terminate upon termination of this Agreement unless otherwise agreed in writing.
- 6.4 Each Operator ("**Indemnifying Operator**") indemnifies the other Operator ("**Innocent Operator**") against all liability or loss arising directly from, and all reasonable costs, charges and expenses incurred by the Innocent Operator in connection with any claim, action, suit or demand alleging infringement of the rights of a third party arising from use by the Innocent Operator of Intellectual Property disclosed or licensed by the Indemnifying Operator under this Agreement. This indemnification will represent the only remedy and form of compensation available to the Innocent Operator in relation to the infringement of Intellectual Property licensed or disclosed by the Indemnifying Operator under this Agreement.
- 6.5 An Operator shall only use such Intellectual Property and information provided by another Operator for the purposes of providing or acquiring access to requested Facilities and/or Services. An Operator must not use such Intellectual Property or information for the development or marketing of other communications services or Equipment by that Operator, its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest, or third parties.
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General Terms and Conditions
Condition 7

CONDITION 7 - PROVISION OF FACILITIES AND SERVICES

- 7.1 The Access Seeker shall not use any Facilities and/or Services provided by the Access Provider and shall ensure that its Customers shall not use the Access Seeker' service provided by means of the Access Provider's Facilities and/or Services other than in accordance with all applicable laws, including but not limited to, the terms of any licence applicable to the Access Seeker, data privacy laws, the laws of copyright and intellectual property rights.
- 7.2 The Operators acknowledge and agree that, subject to the quality of standards stipulated in this Agreement, neither Operator has any control whatsoever over the accuracy, quality or integrity of the information, data or programs accessed or transmitted via its Network or for the loss of messages, information, data or images resulting from delays, non-deliveries, mis-deliveries or service interruptions.
- 7.3 (a) The Access Provider has no control whatsoever over the information, images or other content transmitted through its Network. As such, the Access Provider shall not be responsible for the content of any communication conveyed by making use of its Facilities and/or Services.
- (b) The Access Seeker has no control whatsoever over the information, images or other content transmitted through its Network save and except for information, imaged or other content created or owned by the Access Seeker. As such, the Access Seeker shall not be responsible for the content of any communications conveyed by making use of its Facilities and/or Services save and except for the content of any communications created or owned by the Access Seeker.
- 7.5 Save and except as expressly stipulated in this Agreement, the Access Provider does not warrant that the Facilities and/or Services will meet the Access Seeker' requirements or the requirements of any third party or that the operation of the Facilities and/or Services will be uninterrupted or error-free or that any defects in the Facilities and/or Services can be rectified.
- 7.6 The Access Seeker shall only offer its services to its Customers under its own brand without any use of, or reference to the Access Provider's brands. The Access Seeker agrees not to offer any service under any brand, including any trademark, trade name or company name, of the Access Provider unless the use of the brand(s) of the Access Provider is explicitly provided for under this Agreement or as agreed by the Access Provider.
- 7.7 The Access Seeker shall ensure that any equipment connected to the Access Provider's Network by the Access Seeker' Customers complies with the requirements specified by the Access Provider and are type approved.

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General Terms and Conditions
Condition 8

CONDITION 8 – CONFIDENTIALITY OBLIGATION

- 8.1 Each Operator shall keep confidential all Confidential Information of the other Operator which:
- (a) is disclosed, communicated or delivered to it by an Operator pursuant to this Agreement; or
 - (b) comes to its knowledge or into its possession in connection with this Agreement, in accordance with the Confidentiality Agreement..
- 8.2 The Operators agree that the terms and conditions of this Agreement shall be kept confidential in accordance with the Confidentiality Agreement in **Annexure 1**. For the purpose of this Agreement, the term “Confidential Information” shall have the same meaning defined in the Confidentiality Agreement.
- 8.3 All Confidential Information disclosed or communicated by one Operator to the other Operator or obtained by one Operator from the other Operator in connection with this Agreement including but not limited to the business and operations of an Operator and the terms of this Agreement shall be treated as Confidential Information unless the information:
- (a) is or become publicly available through no fault of the receiving Operator;
 - (b) which the receiving Operator can prove was in its possession or known to it prior to its receipt from the disclosing Operator without a duty of confidentiality;
 - (c) is or was rightfully received by the receiving Operator from a third party without a duty of confidentiality being owed by the receiving Operator to the third party, except where the receiving Operator has knowledge that the third party has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the disclosing Operator; or
 - (d) is independently developed by the receiving Operator without the use of the Confidential Information.
- 8.4 Each Operator’s Confidential Information shall be held in strict confidence by the other Operator, using no lesser security measures and degree of care as it uses to protect its own Confidential Information. In any event, the security measures and the degree of care it uses shall, as a minimum, comply with the standards imposed by the applicable laws including the Personal Data Protection Act 2010. The receiving Operator shall further ensure that the Confidential Information is secured from unauthorised access from internal and external parties and that all Confidential Information used, stored and/or processed shall be free from virus, malware or other malicious codes.
- 8.5 Neither Operator shall publicise or announce the execution of this Agreement or otherwise disclose the terms thereof without the prior written consent of the other save

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Condition 8

and except where its disclosure becomes mandatory pursuant to any laws or any acts of authority or is for the purposes of court proceedings in which case **Condition 8.4** shall apply.

- 8.6 The Confidential Information shall not be used, copied, reproduced, distributed or disclosed by the receiving Operator for any purpose except that:
- (a) it may be disclosed to its employees or its advisers strictly on a need to know basis to implement or perform this Agreement provided that its employees and advisers is subject to and maintains the confidentiality obligations under this Agreement; and/or
 - (b) its disclosure becomes mandatory pursuant to any laws or any acts of authority or rules of any stock exchange, or is for the purposes of court proceedings.
- 8.7 Where the receiving Operator is required to disclose any Confidential Information pursuant to any laws or any acts of authority or rules of any stock exchange, or is for the purposes of court proceedings, the receiving Operator:
- (a) shall where practicable and lawful give one (1) Business Day's notice to disclosing Operator that it is required to disclose the Confidential Information so that the disclosing Operator has an opportunity to protect the confidentiality of its Confidential Information; and
 - (b) provides the disclosing Operator with a copy of the Confidential Information that the receiving Operator is required to disclose.
- 8.8 Upon the expiry or termination of this Agreement, the receiving Operator shall promptly return to the disclosing Operator or, where instructed, destroy Confidential Information of the disclosing Operator at its own cost and immediately cease using all such Confidential Information. Where required by the disclosing Operator, the receiving Operator shall provide to the disclosing Operator a written undertaking confirming that it has fully complied with the requirements of this **Condition 8.6** and that it is not in possession or control of any of the disclosing Operator's Confidential Information.
- 8.9 The receiving Operator shall ensure that each of its personnel and advisers to whom the Confidential Information of the disclosing Operator is disclosed will strictly comply with the confidentiality obligations under this **Condition 8**.
- 8.10 Each Operator shall comply with all applicable privacy and personal data protection laws and regulations. Each Operator may be required to provide to the other Operator personal data (as defined in the Personal Data Protection Act 2010) of third parties (including but not limited to the Operator's contact persons and employees) as part of and/or for the performance of this Agreement. Each Operator represents and warrants that it has and will comply with any applicable laws to provide notices to or obtain consents from any such individuals to allow sharing of their personal data with the other Operator and/or their employees or agents to facilitate the performance of this Agreement and any other ancillary matters related to the performance of this Agreement

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including but not limited to the disclosure of their personal data to any other third parties on a need to know basis.

- 8.11 The obligations of the receiving Operator in this **Condition 8** shall survive the termination or expiry of this Agreement

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General Terms and Conditions
Condition 9

CONDITION 9 - LIABILITY AND INDEMNITY

9.1 General Principle

Save to the extent that another provision of this Agreement expressly provides for (or expressly excludes or limits) a remedy, a liability or a form of compensation in relation to an act, omission or event, this **Condition** shall regulate the liability (whether arising in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or any other cause) of an Operator to the other Operator under and in relation to this Agreement and in relation to any act, omission or event relating to or arising out of this Agreement.

9.2 Insurance

Without limiting or reducing each Operator's liability and responsibility as contained elsewhere in this Agreement, each Operator shall procure and maintain the following insurances applicable to its operations with respect to and for the duration of this Agreement provided that the Operators shall not be required to maintain additional insurances beyond **paragraphs (a) and (b)** below:-

- (a) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its employees employed on or in connection with the work covered by this Agreement and/or their dependants; and
- (b) Comprehensive General Liability Insurance or Public Liability Insurance of an amount which is not more than Ringgit Malaysia Twenty Million (RM20,000,000) for any one claim or series of claims arising out of an accident or occurrence in connection with this Agreement resulting in bodily injury and/or personal injury including death and property damage of an Operator which shall arise out of or in consequence of any acts or omission of the other Operator.

9.3 Damage to Property

Either Operator ("**defaulting Operator**") shall indemnify and hold the other Operator safe and harmless from and against all costs, expenses and claims relating to damage to or destruction or loss of all or any property beneficially and/or absolutely owned by the other Operator arising out of any act or omission of the defaulting Operator, its servants or agent in so far as such damage, destruction or loss arises out of or in the course of or by reason of the carrying out any works for or in relation to the interconnection or providing the communications services.

9.4 Death and Personal Injury

Subject to **Condition 9.6.4**, the defaulting Operator shall be absolutely liable for, and hereby indemnifies the other Operator from and against all costs, expenses and claims in respect of all injuries to, including the death of any and all employees of the other

General Terms and Conditions
Condition 9

Operator arising out of any act or omission of the defaulting Operator, its servants or agent.

9.5 Third Person Indemnity

Subject to **Condition 9.6.4**, the defaulting Operator shall indemnify and hold the other Operator safe and harmless from and against all costs, expenses and claims in respect of:-

- (a) all injuries to, including death of; and/or
- (b) loss of or damage to property of,

third parties arising out of or in connection with or in the course of or by reason of the defaulting Operator's breach or when due to any acts, omission or default of the defaulting Operator, its servants and/or agents in the carrying out of any works for or in relation to the interconnection or in providing the communications services.

9.6 Liability

9.6.1 Neither Operator excludes liability for death or personal injury attributable to its own negligence or the negligence of its servants and agents.

9.6.2 Subject to **Conditions 6.4 and 9.5**, an Operator shall not be liable to the other Operator or any other third party and shall not indemnify the other Operator for any claims, proceedings or actions brought or made by a third party against the other Operator, howsoever arising, including but not limited to:

- (a) the lack of or loss or interruption or any delays to access, interconnection transmission or otherwise; and
- (b) any claims, proceedings or actions brought or made against the other Operator by any person pursuant to a contractual relationship with the other Operator.

9.6.3 Notwithstanding **Conditions 9.3 and 9.5**, an Operator shall not be liable for damage to property due to hacking and the transmission of malicious codes and/or programs by third parties (other than its employees, agents, servants, contractors and/or other persons under its control) provided that presently available security solutions and anti-virus solutions have been put in place by the Operator.

9.6.4 Save to the extent where it is permitted under the laws, in no event will either Operator's liability under this Agreement exceed Ringgit Malaysia Twenty Million (RM20,000,000) only per event for any accident or occurrence in connection with this Agreement save that the limitation of liability set out in this Condition 9.6.4 shall not apply to death, damage to property and/or fraud caused by the operator and/or amounts due payable under an invoice.

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Condition 9

9.7 Exclusion of Warranties

- 9.7.1 Except as expressly set out in this Agreement, all representations, conditions and warranties (whether express or implied, statutory or otherwise) including but not limited to any implied warranty of merchantability, implied warranty of fitness for a particular purpose, implied warranty of non-infringement and implied warranty arising out of the course of dealing, custom or usage of trade with respect to any service provided by either Operator are expressly negative and excluded. The warranties set forth in this Agreement are the only warranties made by each Operator and will not be enlarged or diminished without that Operator's approval.
- 9.7.2 In no event will either Operator be liable to the other Operator or any other person for indirect loss of profits, loss of business, use of data or special, exemplary, indirect, incidental, consequential or punitive damages of any kind for any reason, including, without limitation, the breach of this Agreement or any termination of this Agreement, whether such liability is asserted on the basis of contract, tort (including negligence and strict liability) or otherwise, even if either Operator has been advised of the possibility of such damages. The essential purpose of this provision is to limit the potential liability of each Operator arising out of this Agreement.

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General Terms and Conditions
Condition 10

CONDITION 10 – TERMINATION AND SUSPENSION

- 10.1 This Agreement shall only take effect on the Effective Date and shall remain in force until the termination of this Agreement.
- 10.2 (a) An Operator (“**Notifying Operator**”) may terminate this Agreement or part thereof if:
- (i) the other Operator (“**Defaulting Operator**”) fails to remedy a breach (which is capable of remedy) of a material obligation under this Agreement (including but not limited to the events specified in **Condition 10.3(a)(iii) to (vi)**) within thirty (30) days of receiving a notice of breach from the Notifying Operator;
 - (ii) a winding up order has been made against the Defaulting Operator and the order remains or will remain in effect for a continuous period of ninety (90) days;
 - (iii) an order is made or an effective resolution is passed, for the reconstruction and amalgamation of the Defaulting Operator or otherwise under Sections 366 to 368 of the Companies Act 2016 or any other similar action or proceeding under any other law and the order or resolution remains or will remain in effect for a continuous period of sixty (60) days;
 - (iv) a receiver, receiver and manager, official manager, provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the Defaulting Operator;
 - (v) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the Defaulting Operator;
 - (vi) the Defaulting Operator fails to remedy breaches (which are capable of remedy) of any laws, regulations, rules or standards which has a material adverse effect on the Notifying Operator or this Agreement or the provision of Facilities and/or Services, within thirty (30) days of receiving a notice of breach from the Notifying Operator; or
 - (vii) a Force Majeure, substantially and adversely affecting the ability of an Operator to perform its obligations to the other Operator under this Agreement, continues for a consecutive period of ninety (90) days. However, Notifying Operator may not give notice under this **Condition 10.2** unless the Notifying Operator has:
 - (A) negotiated or endeavoured to negotiate in good faith with the other Operator to remedy the Force Majeure with the purpose of

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Condition 10

amending the terms of this Agreement to enable this Agreement to remain in full force and effect notwithstanding such inability to so perform; and

- (B) has failed to reach any Agreement within thirty (30) days from the commencement of negotiations.
- (b) Upon the occurrence of the events set out in **Condition 10.2** above or where a breach is incapable of remedy, and subject to the provision of **Condition 10.4** below, the Notifying Operator may terminate this Agreement by issuing a termination notice to the Defaulting Operator/other Operator (in the case of Force Majeure) and this Agreement shall terminate in accordance with the terms of the termination notice.
- 10.3 (a) The Notifying Operator may, without liability, suspend, to the extent necessary, access to its Facilities and/or Services where:
- (i) the Defaulting Operator fails to remedy a breach (which is capable of remedy) of a material obligation under this Agreement (including the failure to pay Invoices in accordance with this Agreement) within thirty (30) days of receiving a notice of breach from the Notifying Operator;
 - (ii) the Defaulting Operator fails to remedy breaches (which are capable of remedy) of any laws, regulations, rules or standards, which has a material adverse effect on the Notifying Operator or this Agreement or the provision of Facilities and/or Services, within thirty (30) days of receiving a notice of breach from the Notifying Operator;
 - (iii) the Defaulting Operator fails to remedy any fault or condition (which is capable of remedy), that causes the Defaulting Operator's network facilities to materially adversely affect the normal operation of the Notifying Operator's Network, or are a material threat to any person's safety;
 - (iv) the Defaulting Operator fails to remedy any condition (which is capable of remedy), that causes the Defaulting Operator's network facilities or supply of a network service posing an imminent threat to life or property of the Notifying Operator's, its employees or contractors;
 - (v) the Defaulting Operator fails to remedy any fault or condition (which is capable of remedy) in the Defaulting Operator's network facilities that cause material physical or technical harm to any network facilities of the Notifying Operator or any other person; or
 - (vi) subject to **Condition 13.1.1**, where Force Majeure applies.
- (b) Upon the occurrence of the events set out in **Condition 10.3 (a)** above or where a breach is incapable of remedy and subject to the provision of **Condition 10.4**

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below, the Notifying Operator may suspend access to its Facilities and/or Services by issuing a suspension notice and the suspension of access to the Notifying Operator's Facilities and/or Services shall take effect in accordance with the terms of the suspension notice.

- (c) During the period of suspension, the Notifying Operator shall be entitled to charge the Defaulting Operator for all fixed periodic Charges in respect of the Facilities and/or Services provided that where a suspension is due to Force Majeure, the fixed periodic Charges for Services affected by the Force Majeure only will not be charged. The Defaulting Operator shall be solely responsible for any loss, costs, damages or expenses which the Defaulting Operator may incur or suffer during the period of suspension.

- 10.4 (a) Where the Notifying Operator seeks to terminate this Agreement (or part thereof) or suspend, to the extent necessary, access to Facilities and/or Services on any grounds including those specified in:-

- (i) **Conditions 10.2 (a)(i) to (vii)** with respect to termination; and/or
- (ii) **Conditions 10.3 (a)(i) to (vi)** with respect to suspension,

the Notifying Operator shall first notify the Commission in writing of ("**Notice to the Commission**") of the action that the Notifying Operator proposes to take and the reasons why it considers such action is appropriate. The Commission may invite the Defaulting Party to make submissions to the Commission regarding the proposed termination or suspension. The Notifying Operator:

- (A) shall only give effect to the proposed termination or suspension with the Commission's written consent and subject to any time delay or conditions which the Commission may specify (if any). In this respect, the Commission shall respond to the Notifying Operator's notice within ten (10) Business Days or such other period that the Commission considers reasonable;
- (B) must not give effect to the proposed termination or suspension unless the Notifying Operator has received written consent from the Commission to such termination or suspension; and
- (C) subject to such conditions and/or requirements for the Access Seeker to comply as maybe determined by the Access Provider including shall take all steps practicable to minimise disruptions and inconvenience to the Customers of the Access Seeker, including the provision of security requirements, with a reasonable period to make alternative arrangements prior to the suspension or termination of this Agreement, or access to Facilities and/or Services provided under it.

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Condition 10

(b) If the Commission notifies the Notifying Operator that the Notifying Operator is permitted to: -

- (i) terminate this Agreement (or part thereof); or
- (ii) suspend access to the Facilities and/or Services,

the Notifying Operator may, issue:

(A) a termination notice immediately to the Defaulting Operator (with a copy of the said notice to be provided to the Commission on the same day) and this Agreement shall terminate in accordance with the terms of the notice; or

(B) a suspension notice, with reasons, to the Defaulting Operator

(1) immediately where the suspension is due to any of the events under **Condition 10.3(a)(iii), Condition 10.3(iv) and Condition 10.3(a)(v)**; or

(2) with five (5) Business Days' notice where the suspension is due to events under **Condition 10.3(a)(i), Condition 10.3(a)(ii),and/or Condition 10.3(a)(vi)**,

(with a copy of the said notice to be provided to the Commission on the same day) and the access to the Facilities and/or Services shall be suspended immediately or after the expiry of the five (5) Business Days period (as the case may be) in accordance with the terms of the notice.

10.5 The issuance of a suspension notice shall not in any way prejudice or prevent the Notifying Operator from exercising its right to issue a termination notice under **Condition 10.2**.

10.6 In the event the Notifying Operator suspends access to Facilities and/or Services by reason of the Defaulting Operator's failures set out in **Condition 10.3**, the Notifying Operator must reinstate access to Facilities and/or Services upon the Defaulting Operator remedying its failure or the direction of the Commission. Reconnection fee shall be imposed by the Notifying Operator to the Defaulting Operator due to suspension of the Facilities and/or Services.

10.7 Notwithstanding **Condition 10.4**, in the event that: -

- (a) an Operator's Licence(s) is terminated and the Operator is not immediately granted another Licence(s) of that type (where a License of that type or another Licence is required); or

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Condition 10

- (b) there are any changes in law or regulation which renders this Agreement or access to any Facilities and/or Services unlawful,

this Agreement or part thereof shall terminate in so far as this Agreement or part thereof is affected by the termination of an Operator's Licence(s) or change in law or regulation. However, other obligations under this Agreement which are not affected by such events shall remain in force. The Operators shall meet within five (5) Business Days of the affected Operator notifying the other Operator of the events specified in **paragraphs (a) or (b)** above, review this Agreement to ascertain whether access to the Facilities and/or Services are lawful and may be provided on different terms which are mutually agreeable by both Operators.

- 10.8 In the event that any government or state authority or owner or person having control over the Facilities and/or Services directs or terminates or requires the Access Provider not to use the infrastructure for whatsoever reason, such that the Access Provider is not able to provide the Facilities and/or Services to the Access Seeker, the Access Provider shall, notwithstanding the minimum contractual period, terminate the affected Facilities and/or Services by providing thirty (30) days prior written notice to the Access Seeker. The Operators agree that the remedies set out in this **Condition 10** shall be the only remedy for the Access Seeker. The Access Provider shall not be liable to the Access Seeker for any damages, costs and/or expenses including but not limited to the costs of dismantling and removing the Access Seeker's equipment, system or devices. However, the Access Provider will use its reasonable endeavours to offer the Access Seeker other suitable network facilities and/or services subject to availability.
- 10.9 Notwithstanding anything to the contrary, in the event an Operator breaches any of its obligations under this Agreement, the other Operator shall, without prejudice to any of its rights and remedies under this Agreement and under law, have the absolute discretion to immediately seek urgent interlocutory action which shall include but not be limited to:-
- (a) preventing such further breaches from occurring;
- (b) preventing the continuation of the said breach; and/or
- (c) requiring the Operator in breach to comply with their obligations under this Agreement,

without the necessity of first exercising any of its rights herein. For the avoidance of doubt, **Conditions 10.2, 10.3, 10.4 and 12** shall not preclude the other Operator from immediately seeking urgent interlocutory action under this Condition.

- 10.10 If, after the termination or expiry of this Agreement in whole or in part:
- (a) an Operator ("**requesting Operator**") gives the other Operator written notice requesting the other Operator to carry out necessary disconnection works and to

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return any equipment or facilities of the requesting Operator or a third person installed by or for the requesting Operator; and

- (b) the other Operator has failed to comply with the request, the requesting Operator may enter the premises of the other Operator on reasonable notice for the purposes of carrying out any necessary disconnection works and repossessing any such equipment and facilities. The other Operator on whose premises such equipment or facilities were installed is responsible for compensating the requesting Operator for any such equipment or facility which is not delivered up in good condition (fair wear and tear excepted) and for making good all the damage to the requesting Operator's premises, if the equipment or facilities of the other Operator are in the requesting Operator's premises or under the requesting Operator's care. The other Operator shall indemnify the requesting Operator in respect of any damage thereby caused to the premises, equipment and facilities of or under the care of the requesting Operator.

10.11 Upon termination of this Agreement or part thereof:

- (a) subject to **Condition 10.11 (b)** below, the Access Provider shall refund to the Access Seeker within sixty (60) days all amounts paid in advance in respect of Facilities and/or Services to the extent that the amount (or part of the amount calculated on a pro-rata basis) relate to the period after the effective date of termination; and
- (b) The Access Seeker shall immediately pay all amounts due to the Access Provider for the provision of Facilities and/or Services prior to and up to termination (save for disputed amounts which the Access Seeker is entitled to withhold under **Condition 12.6.4**).

For the avoidance of doubt, the Access Provider shall be entitled to claim for all Charges arising during an applicable minimum contractual period provided under this Agreement notwithstanding that the provision of Facilities and/or Services was terminated prior to the expiry of the applicable minimum period provided that:

- (i) such charges must be reduced to reflect any cost savings to the Access Provider from not having to supply the Facilities and/or Services to the extent that they have been terminated or suspended; and
- (ii) The Access Provider must use reasonable endeavours to mitigate its cost of termination or suspension and maximise cost savings under **Condition 10.11(b)(i)**.

Where the provision of Services is terminated due to Force Majeure, the minimum charge for Services affected by the Force Majeure shall not be applicable.

10.12 Without prejudice to the Access Provider's rights and remedies under this Agreement and/or law, upon termination of this Agreement or suspension of access to Facilities and/or Services, the Access Provider shall not be entitled to penalise the Access Seeker

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with a penalty with respect to the provision of Facilities and/or Services. Nothing in this **Condition 10.11** shall prejudice, limit or negate the rights and remedies of the Access Provider under this Agreement or law to seek redress or claim damages, cost and expenses for any breach of this Agreement, to enforce its right of indemnities, to claim interest and generally to enforce its rights and remedies.

- 10.13 Termination or expiry of this Agreement, in whole or in part, does not operate as a waiver of any breach by an Operator of any of its provisions and is without prejudice to any rights, liabilities or obligations of any Operator which have accrued up to the date of the termination or expiry, including a right of indemnity.
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CONDITION 11 – REVIEW

11.1 Subject to **Condition 11.3**, if: -

- (a) the Minister issues a direction or determination relating to the subject matter of this Agreement;
- (b) the Commission issues a direction or determination relating to the subject matter of this Agreement;
- (c) there are any amendment, changes or modifications to the Act, its subsidiary legislation and the instruments issued there under including but not limited to the MSA Determination, the Access List Determination and the Ministerial Direction on Access Pricing which relates to the subject matter of this Agreement;
- (d) enactment of new laws and regulations which relates to the subject matter of this Agreement;
- (e) the registration, determination, promulgation, issue, amendment or replacement of any industry code with which an Operator is required or obliged to comply;
- (f) if a condition of an Operator's Licence is amended or deleted or a new condition is imposed which relates to this Agreement; or
- (g) by agreement of each of the Operators,

the Operators agree to review this Agreement as soon as practicable in good faith. Where the changes referred to in **paragraphs (a) to (g)** above affect this Agreement, the Operators shall negotiate, as soon as practicable and in good faith, such amendments to this Agreement as are necessary or appropriate to ensure compliance with such changes.

11.2 If after the date hereof,

- (i) any change in, or the introduction of, any law, regulation or regulatory requirement; or
- (ii) any direction, request or requirement of any central bank, monetary, regulatory or other authority,

results in a currency depreciation of the Ringgit Malaysia or the appreciation of any other currency against the Ringgit Malaysia or any other currency control that will increase the cost to, or impose an additional cost on, either Operator in making or keeping its Network and Facilities available, or maintaining its Network and Facilities, then either Operator will be entitled to request for a review of the Charges which are affected by it and the Operators will in good faith negotiate any amendments to this Agreement.

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- 11.3 The obligation to negotiate set out in **Conditions 11.1 and 11.2** commences promptly after delivery of a notice from one Operator to the other Operator setting out in reasonable detail, the amendments sought.
- 11.4 (a) Subject to Commission approval and/or further direction, if a Regulated Facility and/or Service is removed from the Access List or becomes a non-regulated facility or service pursuant to a revocation or an amendment to the Access List Determination:
- (i) The Access Provider may, at its discretion and by giving notice to the Access Seeker:
- (A) terminate or withdraw that network facility or network service; or
- (B) vary or modify the terms and conditions pertaining to that Facilities and/or Services subject to mutual agreement provided always that the Operators shall, within fourteen (14) days from the date of the Access Provider's notice, first discuss the variation or modification which the Access Provider proposes to adopt ("**initial meeting**"). Thereafter, if the Operators fail to agree on the amended terms and conditions within forty five (45) days from the initial meeting or such other time as may be mutually agreed in writing by the Operators, then the Access Provider shall be entitled to terminate or withdraw that Facilities and/or Services under **Condition 11.4 (a)(i)(A)** above. In such a case, the notice period referred to in **Condition 11.4(c)**, shall commence from the date of the Access Provider's notice to vary the terms. Nothing in this **Condition 11.4(a)(i)(B)** shall prevent the Access Seeker from terminating the affected Facilities and/or Services at any time in accordance with **Condition 11.4(a)(ii)(A)**.
- (ii) The Access Seeker may by giving notice to the Access Provider either:
- (A) terminate that Facilities and/or Services by giving at least three (3) months written notice without penalty; or
- (B) propose to vary or modify the terms and conditions pertaining to that Facilities and/or Services subject to mutual agreement provided always that the Operators shall, within fourteen (14) days from the date of the Access Seeker's notice, first discuss the variation or modification which the Access Seeker proposes ("**first meeting**"). Thereafter, if the Operators fail to agree on the amended terms and conditions within forty five (45) days from the first meeting or such other time as may be mutually agreed in writing by the Operators, the Access Seeker may terminate or

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withdraw that Facilities and/or Services in accordance with **Condition 11.4(a)(ii)(A)**. Nothing in this **Condition 11.4(a)(ii)(B)** shall prevent the Access Provider from terminating or withdrawing the affected Facilities and/or Services at any time in accordance with **Condition 11.4(a)(i)(A)**.

- (b) If:
- (i) a non-regulated facility and/or service becomes a Regulated Facility and/or Service pursuant to an amendment to the Access List Determination; or
 - (ii) where there is a variation or amendment to the Access List Determination's service description of a Regulated Facility and/or Service,

either Operator may propose variation or modification to the terms and conditions pertaining to that Facilities and/or Services subject to mutual agreement provided always that the Operators shall, within fourteen (14) days, from the date of the written notice by the notifying Operator, first discuss the variation or modification proposed to be adopted (“**preliminary meeting**”). Thereafter, if the Operators fail to agree on the amended terms and conditions within one hundred and twenty (120) days from the preliminary meeting or such other time as may be mutually agreed in writing by the Operators, then either Operator may initiate the dispute resolution procedures in **Condition 12**. Nothing in this **Condition 11.4(b)** shall prevent the Access Seeker from terminating the affected Facilities and/or Services at any time, without penalty, by giving the Access Provider three (3) months written notice.

- (c) The notice given pursuant to **Condition 11.4(a)(i)(A)**, shall be:
- (i) the period of time between the time of giving notice and the time at which the Access Provider is proposing to no longer provide the network facility or network service to itself or other access seekers; or
 - (ii) twelve (12) months,
- whichever is the earlier.
- (d) The notice given pursuant to **Condition 11.4(a)(i)(A)** must state any alternative network facility or network service that may be available to be provided by the Access Provider to the Access Seeker and the terms and conditions of such alternative arrangement.
- (e) The amended terms and conditions agreed between the Operators shall take retrospective effect from the date the relevant Commission's determination

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takes effect (or where none is specified, the date of the Commission's determination) unless otherwise agreed.

11.5 For the avoidance of doubt:

- (a) the variation of this Agreement pursuant to **Condition 11.4** shall not be subject to the approval process required under **Condition 13.8(b)**; and
- (b) the provisions of this Agreement remain in full force and effect during any negotiations conducted under this **Condition 11** until commencement of an Agreement replacing or amending this Agreement.

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CONDITION 12 – DISPUTE RESOLUTION PROCESS

12.1. Introduction

12.1.1 Subject to **Condition 12.2.3**, the Access Provider and the Access Seeker shall adopt and comply with these Dispute Resolution Procedures in relation to any dispute which may arise between the Access Seeker and the Access Provider in relation to or in connection with the supply of any Facilities and/or Services and/or in relation to the terms and conditions of this Agreement (“**Access Dispute**”).

12.1.2 The following dispute resolution mechanisms are governed by this Condition:

- (a) inter-party working groups;
- (b) Interconnect Steering Group; and
- (c) specific resolution of disputes, being:
 - (i) technical disputes (which must follow the procedures set out in **Condition 12.5** if they cannot be resolved through the application of the general dispute resolution provisions in **Conditions 12.2, 12.3 and 12.4**);
 - (ii) Billing Disputes, which must follow the procedures set out in **Condition 12.6**; or
 - (iii) any other types of disputes, which, if cannot be resolved through the application of the general dispute resolution provisions in **Conditions 12.2, 12.3 and 12.4**, must be referred to the Commission for resolution.

12.1.3 An Access Dispute between the Operators regarding any matter dealt with under this Agreement shall first be attempted to be resolved by good faith negotiation between the Operators in accordance with this Agreement. If the Operators to the Dispute cannot or otherwise fail to reach an Agreement, the Operators shall always be entitled to seek resolution of the Access Dispute by the Commission in accordance with Section 151 of the Act, and the Commission will decide the Access Dispute if it is satisfied that:

- (a) the Operators will not reach agreement, or will not reach agreement in a reasonable time;
- (b) the notification of the Access Dispute is not trivial, frivolous or vexatious; and
- (c) the resolution of the Access Dispute would promote the objects in the Act.

12.1.4 All Access Disputes referred to the Commission pursuant to this Agreement shall be dealt with in accordance with the Act. Where the decision of the Commission is appealed in the Appeals Tribunal under the Act, the decision of the Appeals Tribunal

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shall be final and binding subject always to the right of judicial review contained in the Act.

12.2 General

- 12.2.1 Until expiry of the Dispute Resolution Procedures set out herein, an Operator may not commence court proceedings relating to that Access Dispute, other than an application for purposes set out in **Condition 13.2.2**. Nothing in this **Condition 12.2.1** shall be construed as ousting the jurisdiction of any court.
- 12.2.2 An Operator shall ensure that its representatives acting in relation to an Access Dispute are of sufficient seniority and have authority to settle an access dispute on behalf of the Operator. At the commencement of the Access Dispute resolution procedure, each Operator must notify the other Operator of the scope of the authority of each of their representatives. If in the course of the dispute resolution procedures it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to a representative, an Operator may require that those matters be referred to more senior officers of that Operator who have authority to settle those matters.
- 12.2.3 During the Access Dispute and any dispute resolution process invoked in accordance with this **Condition 12**, the Access Provider and the Access Seeker must continue to fulfill their obligations under this Agreement between themselves.
- 12.2.4 Subject to **Condition 12.2.5**, the Operators shall exchange information of a type described in this Agreement during the course of, and to facilitate, resolution of such Access Dispute.
- 12.2.5 Confidential information of an Operator which is disclosed, and any other oral or written submissions made by an Operator or an Operator's representatives during the course of any dispute resolution process will be subject to the confidentiality restrictions contained in the Confidentiality Agreement and this Agreement.
- 12.2.6 An Operator must not use information obtained under **Condition 12.2.4** or described in **Condition 12.2.5** for any purpose other than to resolve the dispute.
- 12.2.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of an Access Dispute (including a Technical Expert (as hereinafter defined) or the Commission, in accordance with this **Condition 12**) may decide not to determine the Access Dispute if the arbitrator considers that the dispute is trivial, frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the Access Dispute.
- 12.2.8 The costs of the arbitration are to be shared equally between the Operators, unless the arbitrator of the Access Dispute has decided not to determine the said Access Dispute in accordance with **Condition 12.2.7**. If an arbitrator decides not to determine the Access Dispute, the Operator that initiated the Access Dispute must pay the costs of the arbitration including the other Operator's costs thereto.

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12.3 Inter-Party Working group

- 12.3.1 In the first instance, the Operator raising an Access Dispute must inform the other Operator in writing and the Access Seeker and the Access Provider should attempt to resolve the Access Dispute between themselves in good faith.
- 12.3.2 The Access Provider and the Access Seeker shall establish a working group, or working groups, to fulfill the requirements set out in **Condition 12.3.1**. The working group shall be comprised of representatives of the Operators, and be headed by a person who holds a position that is at least equivalent to the head of the wholesale or interconnection group.
- 12.3.3 The Operators shall provide for:
- (a) subject areas to be dealt with by each working group;
 - (b) equal representation by the Access Seeker and the Access Provider;
 - (c) chairmanship and administrative functions of the working group which is to be shared equally; and
 - (d) formal notification procedures to the working group.
- 12.3.4 The Access Provider and the Access Seeker shall use reasonable endeavors to attempt to settle an Access Dispute in the working group level for a period of no longer than thirty (30) Business Days from the date of notification of the Access Dispute unless otherwise agreed by the parties, subject always to an Operator's right to obtain relief in court as set out in **Condition 13.2.2**.

12.4 Interconnection Steering Group

- 12.4.1 In the event that the Operators cannot resolve the dispute between themselves within the time specified in **Condition 12.3.4**, or after any agreed time extension has expired, either Operator may give ten (10) Business Days written notice ("**Notice Period**") to the other Operator stating its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice Period, then either Operator may notify the other Operator ("**Receiving Operator**") that it wishes to refer the issue to the ISG. In such an event, the Parties shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each Operator.
- 12.4.2 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Operator of a notice under **Condition 12.4.1**. If the ISG fails to meet or has not been formed within ten (10) Business Days of the receipt by the Receiving Operator of a notice of escalation of the Dispute, either Operator may refer the dispute to a Technical Expert (in accordance with **Condition 12.5**) or to the Commission for resolution in accordance with **Conditions 12.4.3(a)** or **(b)**, respectively.

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12.4.3 If the ISG does not resolve the dispute within twenty (20) Business Days after it first meets to review that dispute under **Condition 12.4.2**, either Operator may:

- (a) to the extent the issues in dispute are technical in nature, refer any technical dispute to a Technical Expert in accordance with **Condition 12.5**; or
- (b) refer the dispute to the Commission for final arbitration.

12.5 Use of a Technical Expert

12.5.1 A dispute will only be referred to a Technical Expert if the provisions in **Conditions 12.3 and 12.4** have been complied with.

12.5.2 Once a dispute is referred to a Technical Expert, it may not be referred back to a Working Group or ISG.

12.5.3 The person to whom a technical dispute may be referred under this section:

- (a) will be an expert appointed by Agreement of the Operators or, if the Operators cannot agree, by the Commission;
- (b) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communications industry;
- (c) need not be a Malaysian citizen or resident; and
- (d) will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest,

(“**Technical Expert.**”).

12.5.4 If the Operators fail to appoint a Technical Expert within ten (10) Business Days of the notice to refer a dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.

12.5.5 When relying on the services of a Technical Expert, the following procedures will apply to the dispute resolution procedure of the Technical Expert:

- (a) the Operators will present written submission to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
- (b) each Operator may respond to the other Operator’s submission in writing within fifteen (15) Business Days from the date of the other Operator’s submission.

12.5.6 A Technical Expert hearing will be within fifteen (15) Business Days of the last written submission unless:

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- (a) an Operator requests for and the other Operator agrees that the use of the Technical Expert be by documents only; or
- (b) failing agreement of the Operators, the Technical Expert decides within five (5) Business Days of the last written submission that the use of the Technical Expert be by documents only.

12.5.7 Should a Technical Expert hearing procedure be held, each Operator will have the opportunity of making an oral submission. This process will be conducted in private between the Operators and the said Technical Expert.

12.5.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Operators) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.

12.5.9 The Technical Expert will not have the power to appoint any other experts.

12.5.10 The Technical Expert will deliver his award within fifteen (15) Business Days of the conclusion of the hearing or of the last written submission where the arbitration is by documents only. A failure to comply with the time frame in this **Condition 12.5.10** does not invalidate the Technical Expert's award.

12.5.11 Every dispute referred to a Technical Expert will be considered separately so that time limits for each dispute are complied with.

12.5.12 The Technical Expert's decision will be final and binding on the Operators (in the absence of manifest error of fact or law).

12.6 Billing dispute resolution

12.6.1 An Invoicing Operator shall allow the Invoiced Operator to dispute an Invoice prepared by the Invoicing Operator if the Invoiced Operator notifies the Invoicing Operator in writing within thirty (30) Business Days after the date of receipt of such Invoice. If the Invoiced Operator fails to dispute an Invoice within the specified time period above, the Invoiced Operator is deemed to have accepted the Invoice.

12.6.2 Unless otherwise agreed in writing, a Billing Dispute may only arise where the Invoiced Operator has reasonable grounds to believe that an error has arisen from one of the following circumstances:

- (a) the Invoicing Operator's Billing System is, or has been, defective or inaccurate which are the subject of the dispute;
- (b) there is, or has been, a discrepancy between the Invoice in dispute and the records of the Invoiced Operator's Billing System;
- (c) there is, or has been, a fraud perpetrated by the Invoicing Operator; or

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- (d) the Invoicing Operator has made some other error in the calculation of the Charges which are the subject of the Billing Dispute.

12.6.3 All Billing Dispute Notices given under this **Condition 12.6** must specify;

- (a) the detailed reasons for which the Invoiced Operator disputes the Invoice;
- (b) the amount in dispute;
- (c) details required to identify the relevant Invoice and charges in dispute including:
 - (i) the account number;
 - (ii) the Invoice reference number;
 - (iii) the Invoice date;
 - (iv) the Invoice amount; and
 - (v) billing verification information.

12.6.4 Subject to **Condition 12.6.3**, an Operator is obliged to pay the amount stated in the Invoice by the Due Date even if it disputes the amount of the Invoice. If the amounts paid to date for the period pending settlement of the Dispute is higher than the amounts payable, then the Invoicing Operator will pay in full such difference and interest, calculated in accordance with **Condition 5.2.4**, within fourteen (14) days from the date of settlement of Dispute, as documented by the Operators or such other date as agreed between the Operators. The interest shall be payable by the relevant Operator from the payment date of the disputed amount to the date of actual payment of the differential amount.

12.6.4 Notwithstanding **Condition 12.6.4**, if the Operators are not able to settle a Billing Dispute within the time periods specified in **Condition 12.6.6**, an Operator may withhold payment of amounts disputed in good faith for all subsequent Invoices issued by the Invoicing Operator. The Operators agree that disputed amounts withheld in good faith at the Due Date shall not be subject to late payment interest provided that if the dispute is resolved between the Operators in writing against the Invoiced Operator, then the Invoiced Operator shall pay interest (calculated in accordance with **Condition 5.2.4**) on the outstanding amounts due to the Invoicing Operator. The interest shall be payable within fourteen (14) days from the settlement of the Dispute, as documented by the Operators or such other date as agreed between the Operators. Interest shall be calculated from the Due Date until date of actual payment of the outstanding amount.

12.6.5 The Operators agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this **Condition 12.6**.

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- 12.6.6 If the Operators are unable to resolve any Billing Dispute within ninety (90) calendar days (or such other period as the Operators may agree) from the date on which the Billing Dispute Notice is received, either Operator may seek the consent of the other Operator to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other Operator is, however, under no obligation to agree to such extension.
- 12.6.7 Once the negotiation period under **Condition 12.6.6** has expired, the Billing Dispute may be referred to the procedure described in **Condition 12.6.8** (“**Billing Dispute Escalation Procedure**”).
- 12.6.8 The Operator may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this **Condition 12.6.8** by notifying the other Operator’s Billing Representative. Each of the Operators shall then appoint a designated representative that has authority to settle the Billing Dispute, and that is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives however all reasonable requests for relevant information made by one Operator to the other Operator shall be honored.
- 12.6.9 Although it is the good faith intention of the Parties to use the billing dispute resolution procedures to the fullest extent to try to solve Billing Disputes, nothing in this Agreement shall prevent either Operator from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- 12.6.10 Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operation issues may be directed to the Billing Representatives nominated by each Operator. The Billing Representatives nominated by each Operator shall be their Billing Representative at the ISG meetings.
- 12.6.11 Either Operator may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 12.6.12 If the Operators are unable to resolve any Billing Dispute after exhausting the Billing Dispute Escalation Procedure, either Operator may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act.
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CONDITION 13 – GENERAL PROVISIONS

13.1 Force Majeure

13.1.1 If an Operator is unable to perform any obligation (other than an obligation to pay money) under this Agreement by reason of Force Majeure and that Operator:

- (a) gives the other Operator to which the obligation is owed prompt notice of the Force Majeure with reasonably full particulars thereof and an estimate of the extent and duration of its inability to perform; and
- (b) shall continue to take all actions within its power to comply as fully as possible with the said terms and conditions,

then that obligation is suspended insofar as it is affected by, and during the continuance of the Force Majeure.

13.1.2 If the Force Majeure continues beyond fourteen (14) days after the notice given under **Condition 13.1.1**, the Operators shall meet to discuss in good faith a mutually satisfactory resolution to the problem.

13.1.3 The requirement that a Force Majeure be removed with all possible diligence does not require the settlement of strikes, lockouts or other labour disputes or claims or demands on unreasonable terms. If a strike, lockout or other labour dispute or claim or demand principally concerns any matter the subject of this Agreement, the Operator affected must so notify and consult with the other Operator.

13.2 Governing Law

13.2.1 This Agreement and the transactions contemplated by it are governed by the laws of Malaysia.

13.2.2 Parties agree to observe and comply with all laws, by-laws, rules and regulations including any amendments which are now in force or which may hereafter be enacted.

13.2.3 In the event of:

- (a) an Operator seeking urgent interlocutory relief in respect of any matter; or
- (b) an Operator seeking relief in respect of the other Operator failing to comply with the dispute resolution process set out in **Condition 12**; or
- (c) an Operator seeking relief in respect of a manifest error or mistake of law of the arbitrator (be it the Technical Expert or the Commission), established by the Operators pursuant to any dispute resolution procedures agreed in writing,

each Operator irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Malaysia for such relief.

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13.3 Operators to Act in Good Faith

Each Operator agrees that it will act in good faith in relation to the other Operator with respect to all matters relating to or contemplated by this Agreement.

13.4 Costs and Expenses

The Operators agree to bear their own legal, registration and other costs incurred in relation to the preparation, negotiation and execution of this Agreement and all documents contemplated by it (except where this Agreement or those other documents expressly provides to the contrary). The stamp duty in respect of this Agreement shall be borne by the Operators equally.

13.5 Relationship of the Operators

The relationship of the Operators to this Agreement is one of independent contractors only. Nothing in this Agreement is to be construed as creating an agency, partnership, association, trust or joint venture between the Operators. Each Operator is responsible only for its obligations as set out in this Agreement.

13.6 Surviving Obligations

Termination or expiration in whole or in part of this Agreement does not affect those Conditions (including, without limitation, **Conditions 6, 8, 9, 10.6, 10.9 and 12**) which by their nature survive termination or expiry.

13.7 Relationship with Third Persons

13.7.1 An Operator and any of its employees, agents, representatives or contractors shall not be deemed to be an employee, agent, contractor or representative of the other Operator unless the other Operator is a related body corporate of the first mentioned Operator.

13.7.2 Subject to **Condition 13.7.1**, no Operator has any authority to bind or oblige or incur any liability on behalf of the other Operator and no such authority is to be implied.

13.7.3 **Conditions 13.7.1** and **13.7.2** have neither the effect nor imply:

- (a) that an Operator or any of its employees, agents, representatives or contractors is the employee agent contractor or representative of the other Operator; or
- (b) that an Operator has the authority to bind or oblige or incur a liability on behalf of the other Operator,

unless the first mentioned Operator is a related body corporate of the other Operator.

13.7.4 Either Operator may advise its Customers that certain services are provided by it, but each Operator must not represent that the other Operator jointly participates in the Operator's services.

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13.8 Variation

- (a) A variation of any part of this Agreement is valid if, and only if, made between and in writing subscribed by the Operators and that the variation in respect of Regulated Facilities and Services is registered with the Commission in accordance with the Act.
- (b) Subject to **Condition 13.8 (a)**, where the Operators agree to materially vary this Agreement or access to its Facilities and/or Services, the Operators shall inform the Commission in writing of the action the Operators proposes to take and the reasons why such action is appropriate. This Agreement or access to Facilities and/or Services shall not be varied until such reasonable time and on such reasonable conditions as the Commission may legally specify.
- (c) In this **Condition 13.8**, a reference to a variation includes a reference to an addition, deletion, amendment, modification, alteration or other variation.

13.9 Assignment

No rights, benefits or obligations under this Agreement may be assigned or novated by an Operator without the prior written consent of the other Operator, which consent must not be unreasonably withheld.

13.10 Remedies Cumulative

Subject to any clause or provision of this Agreement which provides for a remedy or form of compensation to the exclusion of any other remedy or form of compensation, the rights, powers and remedies provided in this Agreement are:

- (a) cumulative; and
- (b) not exclusive of the rights, powers or remedies provided by law independent of this Agreement.

13.11 Notices

13.11.1 Subject to **Condition 5.1.1(d)**, a notice, invoice, approval, consent, request or other communication in connection with this Agreement:

- (a) must be in writing;
- (b) must be left at the address of the addressee, or sent by ordinary post, registered post or licensed courier to the address of the addressee; and
- (c) if intended for or originating from the Access Seeker shall be addressed to or issued by the Access Seeker, as the case may be.

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The address and facsimile number of each Operator is:

The Access Provider:

Attention:

Address:

Email:

The Access Seeker:

Attention:

Address:

Email:

13.11.2 A notice, invoice, approval, consent, request or other communication takes effect from the time it is received unless a later time is specified in it.

13.11.3 A notice, invoice, approval, consent, request or other communication is, in the absence of contrary evidence, deemed to be received:

- (a) in the case of A.R registered post, on the third Business Day after posting; and
- (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicated that the facsimile was sent in its entirety to the facsimile number of the recipient;
- (c) in the case of an email, upon transmission of the email provided there is no notification of error or failure in transmission is received by the sender, if sent before and
- (d) in the case of a communication left at the address of the addressee or licensed courier, at the time the communication was so left.

13.11.4 Notwithstanding anything to the contrary in this **Condition 13.11**, notification by way of email shall not be applicable to or valid with respect to any legal notices, claims, demands, suits, actions and/or proceedings.

13.12 Waiver

- (a) A provision of or right under this Agreement may not be waived except in writing signed by the non-defaulting Operator or Operators to be bound.
- (b) Unless otherwise stated herein, no failure or delay on the part of any Operator in exercising any rights hereunder shall operate as a waiver thereof nor shall any single or partial exercise of such right preclude any other or further exercise of any other right hereunder provided however that nothing in this condition shall extend time or be construed to extend time for the performance of any right or obligation under this Agreement if a time period is imposed for the performance of such right or obligation.

General Terms and Conditions
Condition 13

- (c) Knowledge or acquiescence by any Operator of, or in, breach of any of the provisions of this Agreement shall not operate as, or be deemed to be, a waiver of such provision and, notwithstanding such knowledge or acquiescence, such Operator shall remain entitled to exercise the rights and remedies under this Agreement, and at law, and to require strict performance of all of the provisions of this Agreement.

13.13 Entire Agreement

This Agreement constitutes the entire Agreement of the Operators regarding the subject matter of this Agreement.

13.14 Severability

The whole or any part of this Agreement that is illegal or unenforceable:

- (a) will be:
 - (i) read down to the extent necessary so that it is legal and enforceable; or
 - (ii) severed (if it cannot be read down in accordance with paragraph (i)); and
- (b) will not affect the continued operation of the remaining provisions of this Agreement.

13.15 Time of the Essence

Time wherever referred to in this Agreement shall be of the essence.

13.16 Anti-Bribery and Integrity

Each Party agrees that, in connection with this Agreement, it shall:

- (a) strictly comply with laws and regulations relating to anti-corruption including but not limited to the Malaysian Anti-Corruption Commission Act 2009 (“MACCA”);
- (b) not engage in any action or omission which may violate laws and regulations relating to anti-corruption including but not limited to the MACCA throughout the term of this Agreement; and
- (c) take all measures to prevent corrupt practices, unfair means and illegal activities at all times throughout the term of this Agreement.

13.17 Personal Data

General Terms and Conditions
Condition 13

- 13.17.1 The Parties agree to comply and have adequate security measures in place to ensure compliance at all times with the provisions and obligations contained in all applicable laws and regulations in Malaysia, including but not limited to the Personal Data Protection Act 2010 (PDPA 2010), its subsidiary legislation and associated code of practice (Data Protection Legislation) as amended from time to time in order to collect, use, process, record, hold, store, share and/or disclose any or all personal data related to the performance and obligations under this Agreement.
- 13.17.2 The Parties shall implement adequate technical and organizational security to protect the personal data for any loss, misuse, unauthorised or accidental access, or disclosure alteration or destruction.
- 13.17.3 For the purpose of information and notification, TNB's Personal Data and Protection Policy can be access at <https://www.tnb.com.my/terms-policy/personal-data-protection-policy-pdpa> and The Access Seeker's Personal Data and Protection Policy can be access at <https://www.the Access Seeker.com.my/pdpa>.
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ANNEXURE 1
CONFIDENTIALITY AGREEMENT

**TERMS AND CONDITIONS
FOR TECHNICAL MATTERS**

Terms and Conditions for Technical Matters
Section I

SECTION I – OPERATIONAL PROCEDURES

- 1.1 The Operators shall comply with the operational procedures and methods, to be agreed in writing between the Operators within thirty one (31) days from the date of this Agreement or such other date to be mutually agreed between the Operators, in relation to:
- (a) the planning and provisioning of the relevant Facilities or Services;
 - (b) the management of the relevant Facilities or Services including:
 - (i) QOS indicators, reporting on performance in terms of those indicators and determining the appropriate action to be taken in the event that service quality falls below the agreed indicator levels;
 - (ii) Network operations in the event of Network failure, congestion and blockage; and
 - (iii) ensuring that the Operators' Networks are adequately protected from harm;
 - (c) test procedures and other technical and operational matters relating to the provision of Facilities or Services by the Access Provider to the Access Seeker;
 - (d) the handling of Customer operations; and
 - (e) such other matters as the Operators may agree.
- 1.2 Where relevant, the detailed procedures and/or contents pertaining to matters set out in **Sections II to X** shall be documented in the technical and implementation manual or the operations and maintenance manual, as the case may be.
- 1.3 In the event of any inconsistency between the agreed operational procedures and the terms of this Agreement, the terms of this Agreement shall prevail.
- 1.4 Where this Agreement and the documents referred to in this **Section I** do not cover any technical and implementation standards, the Operators may, upon mutual agreement, use ITU-T standards and/or any quality standards determined by the Commission.
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Terms and Conditions for Technical Matters
Section II

SECTION II - FORECASTING

1. General

1.1 **Section II** sets out forecasting terms and procedures that are applicable in relation to the provision of Facilities and/or Services.

2. Forecasting Obligations

2.1 Forecasting Requirements

2.1.1A Notwithstanding the procedures set out in this **Section II** pertaining to a Forecast Request, the Access Seeker shall provide the following Forecast for calendar year 2020 onwards for the following Facilities and/or Services:

- (a) Layer 2 HSBB Network Services with QoS;
- (b) Wholesale Local Leased Circuit Service; and
- (c) Duct and Manhole Access.

2.1.1B The Forecast required in **paragraphs (a) to (d) of Condition 2.1.1A** above, shall be in accordance with the following:

Facilities and/or Services	Maximum Period	Minimum Interval	Maximum Frequency
Layer 2 HSBB Network Service	1 year	3 months	3 months
Wholesale Local Leased Circuit Service	1 year	1 year	1 year
Duct and Manhole Access	1 year	1 year	1 year

2.1.2 (a) The information required by the Access Provider for the Forecast in **Condition 2.1.1A**, shall be as set out in **Condition 2.2**.

(b) For clarification, the Operators agree that all Forecast submitted prior to 1 July 2019 with respect to the Facilities and/or Services stipulated in **Condition 2.1.1A(a) to (d)** shall continue to apply in accordance with the terms of this Agreement.

2.1.3 The Access Seeker may request preliminary information from the Access Provider about the availability and capacity of its Facilities and/or Services to the extent the Access Seeker requires such information to provide Forecasts.

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Section II

2.2 Forecast Request

The Access Provider may request the Access Seeker to provide, with a sufficient level of detail to enable the Access Provider to carry out its Network planning and provisioning, in the format that to be mutually be agreed by the Operators, the following information (“**Forecast Information**”):

- (a) the Facilities and/or Services in respect of which Forecast is required;
- (b) the total period of time covered by each Forecast, which period:
 - (i) shall be determined having regard to the Access Provider’s own planning and provisioning cycles and the forecasting requirements which apply to the Access Seeker’ own business units in using the Facilities and/or Services;
 - (ii) shall be the shorter of the period set out in the Service Specific Obligations specified in the MSA Determination and the period of forecasting which the Access Provider provides to itself for network planning and provisioning purposes.
- (c) the intervals or units of time to be used in making the Forecast, which shall be the shorter of the period set out in the relevant service specific obligations and the intervals of time in which the Access Provider provides forecasting to itself;
- (d) the network area or operational area to which Forecasts shall relate, which area shall correspond to that which the Access Provider uses for its own Network planning and provisioning;
- (e) the frequency with which a Forecast must be updated or further Forecast made in accordance with the MSA Determination which shall be the shorter of the period set out in the relevant service specific obligations and the length of time after which the Access Provider provides itself with the updated or further Forecasts; and
- (f) such other information that the Access Provider reasonably requires in order to provide access to Facilities and/or Services requested by the Access Seeker.

2.3 Forecast Provision

The Access Provider may only require the Access Seeker to provide Forecasts in accordance with a Forecast Request:

- (a) no sooner than four (4) weeks after receipt of a Forecast Request; and
- (b) until such time as the Access Provider notifies the Access Seeker in writing that it withdraws the relevant Forecast Request.

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Section II

2.4 Use of Forecast Information

Forecast Information provided by the Access Seeker shall be treated by the Access Provider as the Confidential Information of the Access Seeker and shall only be used by the Access Provider whose role is within either:

- (a) The Access Provider's wholesale group; or
- (b) that part of the network engineering group of the Access Provider responsible for interconnection or access,

for the purpose of responding to and planning for the Forecast and related Orders. The Access Provider must maintain records that indicate which persons are provided with access to Forecast Information and, on request from the Commission, provide a copy of such records certified by the authorised representative of the Access Provider.

2.5 Distribution of Forecast Information

The Access Provider may only distribute Forecast Information of the Access Seeker outside the groups of people referred to in **Condition 2.4** if:

- (a) the Forecast Information of the Access Seeker is aggregated with Forecasts provided by other operators and the Access Provider's own requirements (so as to protect the confidentiality of the Forecast Information); and
- (b) the Forecast Information or its use does not otherwise identify the Access Seeker, its services or its customers in any manner.

2.6 Compliance with Forecast Request

2.6.1 The Access Provider must notify the Access Seeker within five (5) Business Days of receiving the Forecast if the Access Provider considers that:

- (a) the Forecast complies with the Forecast Request or the information required under **Conditions 2.1.1A and 2.1.1B** ("Notice of Compliance");
- (b) the Forecast does not comply with the Forecast Request or the information required under **Conditions 2.1.1 A and 2.1.1B**; or
- (c) The Access Provider requires further information as may be reasonably required to assess the Forecast.

2.6.2 Where the Forecast does not comply with the Forecast Request or the information required under **Conditions 2.1.1 A and 2.1.1B** or where the Access Provider requires further information, the Access Seeker shall within four (4) weeks from the receipt of the notice of non-compliance of the Forecast from the Access Provider, re-submit the Forecast for the Access Provider's consideration in accordance with **Condition 2.6.1**.

Terms and Conditions for Technical Matters
Section II

2.7 Preliminary Study

If the Forecast is compliant with the Forecast Request, the Access Provider will conduct a preliminary study for the purposes of determining whether or not the Forecast is acceptable to the Access Provider (“**Preliminary Study**”) unless the Access Provider determines that the same is not necessary. The Preliminary Study may comprise of, but is not limited to the following:

- (a) site visits and/or surveys;
- (b) testing of infrastructures, if necessary;
- (c) capacity checking; and/or
- (d) technical feasibility study.

2.8 Completion of Preliminary Study

The Access Provider shall complete the Preliminary Study in respect of a Forecast within the timeline setup in the table below:

Facilities and/or Services	Completion of Preliminary Study
Layer 2 HSBB Network Services with QoS	Within fifteen (15) Business Days (subject to an extension of time as mutually agreed between the Operators) of Notice of Compliance or the time within which the Access Provider performs and notifies the result of an equivalent Preliminary Study or Service Qualification undertaken for itself.
Other Facilities and Services	Within thirty (30) Business Days (subject to an extension of time as mutually agreed between the Operators) of Notice of Compliance.

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Section II

2.9 Acceptance or Rejection of the Forecast

2.9.1 Within five (5) Business Days (subject to an extension of time as mutually agreed between the Operators) of the completion of the Preliminary Study, the Access Provider shall inform the Access Seeker in writing whether it: -

- (a) accepts the Forecast; or
- (b) rejects the Forecast.

2.9.2 Where the Access Provider rejects the Forecast, such notice of rejection must specify:

- (a) the grounds on which the Access Provider rejects the Forecast in accordance with **Condition 2.10**, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Forecast;
- (b) where possible, propose modifications or alternatives to the Forecast submitted by the Access Seeker which the Access Provider is able to accept and fulfill; and
- (c) offer to meet within five (5) Business Days of the notice of rejection of the Forecast to discuss the reasons for rejection and alternative methods of compliance ("**Rejection Notice**"). The meeting shall take place between the Access Provider and the Access Seeker if the offer is accepted by the Access Seeker.

2.10 Reasons for rejection

2.10.1 The Access Provider may reject a Forecast where the Access Provider reasonably believes that the Forecast is inaccurate or there is insufficient capacity, having regards to:

- (a) total current usage of the Services or Facilities;
- (b) the current rate of growth of the Access Seeker' usage of the Services or Facilities;
- (c) the current rate of growth of total usage of the Services or Facilities; and
- (d) subject to **Condition 2.31 and 2.32 of Section III Terms and Conditions for Technical Matters**, the amount of capacity in the Services or Facilities that the Access Provider currently has available and can reasonably provision for the Access Seeker over the Forecast period, which must be at least equivalent to that which the Access Provider can reasonably provision for itself.

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Section II

2.10.2 In addition to **Condition 2.10.1**, the Access Provider may only reject a Forecast from the Access Seeker where:

- (a) The Access Provider discovers that it is not able to provide the Facilities and/or Services following the completion of the Preliminary Study (wherein the basis of rejection will be provided by the Access Provider);
- (b) the delivery of the Facilities and/or Services Forecasted by the Access Seeker is required within a period shorter than the indicative minimum timeframe specified in **Condition 2.13 of Section III**;
- (c) subject to **Condition 3.3.2 of the General Terms and Conditions**, it is not technically feasible to provide access to the Services or Facilities request by the Access Seeker;
- (d) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions of this Agreement; or
- (e) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities and/or Services to protect the integrity of a Network or the safety of individuals working on, or using services supplied by means of, a Network or Equipment.

2.11 Reconsideration by the Access Seeker

2.11.1 Where the Access Provider issues a Rejection Notice to the Access Seeker, the Access Seeker shall, within twenty one (21) Business Days from the receipt of the Rejection Notice or such other period as may be mutually agreed in writing either:

- (a) accept the Access Provider's proposed modifications or alternative to the Access Seeker' Forecast; or
- (b) to submit a new Forecast which the Access Seeker regards as meeting the Access Provider's concerns; or
- (c) negotiate and mutually agree with the Access Provider on further amendments to the Access Provider's proposed modifications or alternative to the Access Seeker' Forecast.

2.11.2 Upon the amended Forecast being mutually agreed by the Operators, the Access Seeker may issue a written notice to the Access Provider confirming its acceptance of the amended Forecast. If the Access Seeker decides to accept the amended Forecast, such written notice must be issued within three (3) Business Days from the expiry of the said twenty-one (21) Business Days or such other period as may be mutually agreed in writing.

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Section II

2.12 Reconsideration by the Access Provider

The Access Provider shall reconsider any re-submitted or amended Forecast provided pursuant to **Condition 2.11.1**. In such an event, **Conditions 2.9 to 2.10** shall re-apply.

2.13 Recovery for over-Forecasting

The Access Provider shall not seek to recover any costs or expenses incurred due to its acceptance of a Forecast from the Access Seeker, if the Forecast is not met by the Access Seeker, unless:

- (a) such costs and expenses were reasonably and necessarily incurred by the Access Provider.
- (b) The Access Provider reasonably seeks to mitigate its loss (including through its own usage) provided the Access Provider shall not be required to do so for any greater period than the relevant Forecast period;
- (c) The Access Provider only recovers from the Access Seeker less than seventy-five percent (75%) of such costs and expenses which could not be mitigated under **Condition 2.13(b)** above.

2.14 Confirmation of Forecast

If the Access Provider, acting reasonably will incur significant costs to ensure that access can be provided in accordance with a Forecast, the Access Provider may request the Access Seeker to confirm the relevant Forecast. Once confirmed, the Forecast is deemed to be an Order for a purpose of this Standard, and Section III of this Agreement will apply.

2.15 Meeting Forecasts

Subject to Conditions 2.9 and 2.10, the Access Provider must carry out network planning in order to enable Forecasts to be met. If the Access Seeker has confirmed a Forecast under Condition 2.14, it will be binding on the Access Seeker.

2.16 Failure to provide Forecasts

2.16.1 In the event of any failure, neglect or refusal by the Access Seeker to comply with its obligations sets out in this Forecast obligations, the Access Provider shall continue to provide access to the Access Seeker based on the last agreed Forecast.

2.16.2 The Access Provider shall not be responsible for any loss suffered or incurred by the Access Seeker due to the latter's failure to provide the Forecast.

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Section II

2.17 Non-binding

- 2.17.1 Subject to Condition 2.14 above, the Access Provider shall not require the Access Seeker to provide Forecasts that are legally binding on the Access Seeker, except to the extent that the Access Provider is permitted to recover costs and expenses as set out in Condition 2.13 above.
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Terms and Conditions for Technical Matters
Section III

SECTION III – ORDERING AND PROVISIONING

1. General

1.1 **Section III** sets out ordering and provisioning terms and procedures that are applicable in relation to the provision of Facilities and/or Services.

2. Ordering and Provisioning Obligations

2.1 Contact Point

2.1.1 Orders for access to Facilities and Services (excluding Layer 2 HSBB Network Service with QoS) are to be delivered to the personnel of the Access Provider and the Access Provider shall notify the Access Seeker in writing from time to time of any change to the designated persons. However, with respect to Orders for Layer 2 HSBB Network Service with QoS, Orders may be submitted through a web portal designated by the Access Provider.

2.1.2 A mechanism where Orders for access to Facilities and/or Services can be made (including a web portal or to be submitted manually), provided that if such a mechanism is the only method which the Access Provider provides for the receipt of Orders for that Facility and/or Service, the Access Provider cannot require the Access Seeker to unreasonably invest in specialized technology or systems (such as an automated interface between the Operational Support Systems of the Operators) unless mutually agreed by the Operators.

2.2 Order Content

2.2.1 The Access Seeker may place firm Orders for Facilities and/or Services from time to time.

2.2.2 Prior to access being provided, the Access Provider may require the Access Seeker to provide it with an Order which outlines the Access Seeker' access requirements. The Access Provider may request the Access Seeker to provide, at a level of detail (sufficient for planning provisioning), the following in an Order for access to Facilities and/or Services:

- (a) the Facilities or Services or both to which access is requested;
- (b) a requested time for delivery;
- (c) the detailed address of the location of the points of delivery and location maps, if necessary;
- (d) Equipment of the Access Seeker to be used in connection with the Order;
- (e) the configuration of the requested Facilities and/or Services;

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Section III

- (f) contact person and telephone number;
- (g) such other information that the Access Provider reasonably requires in order for it to plan for the provision of access to the Services or Facilities as requested by the Access Seeker, provided that such information shall not include any information which:
 - (i) The Access Provider does not require from itself for similar provisioning;
 - (ii) identifies, or which enables the identification of, a Customer or services of the Access Seeker unless otherwise mutually agreed by both Parties; or
 - (iii) is non-permitted information under **Condition 3.2.3, General Terms and Conditions** of this Agreement.

2.2.3 When the Order is placed, the Access Seeker must give the Access Provider a priority list, allowing for progressive delivery and setting out its preferred order of delivery.

2.3 Use of Ordering Information

Ordering information provided by the Access Seeker shall be treated by the Access Provider as the Confidential Information of the Access Seeker and shall only be used by those persons within the Access Provider whose role is within:

- (a) The Access Provider's wholesale group; and
- (b) that part of the Network engineering group of the Access Provider responsible for interconnection,

for the purpose of responding to and provisioning for the Order.

2.4 Treatment for Orders and Service Qualifications

The Access Provider shall: -

- (a) establish a single queue for Orders and Service Qualification for a given type of Facility and/or Service, whether those Orders and Service Qualifications are required for itself or any access seekers;
- (b) give the equivalent priority to the handling of all Orders and Service Qualifications in each queue; and
- (c) otherwise treat all Orders and Service Qualifications in each queue in compliance with its queuing policy established under Condition 2.27 of this Agreement.

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2.5 Acknowledgement of Receipt

The Access Provider shall acknowledge receipt of the Order, in writing (or any other material or electronic from agreed by the parties), with the timelines set out below:

<i>Facilities and/or Service</i>	<i>Acknowledgment Timelines</i>
Layer 2 HSBB Network Service with QoS	One (1) Business Days from the date of receipt of the Order
Other Facilities and Services	Two (2) Business Days from the date of receipt of the Order

2.6 Notice of Receipt

The Access Provider must include in its Notice of Receipt the following information:

- (a) the time and date of receipt of the Order;
- (b) a list of any additional information reasonably required by the Access Provider from the Access Seeker to provision the Order;
- (c) if the relevant Facilities and/or Services available to the Access Provider are below the capacity required to provide the relevant Facilities and/or Services to the Access Seeker, the Access Provider shall inform the Access Seeker of the available capacity and timeframe for the fulfillment of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfill the Order as submitted;
- (d) whether the Access Provider needs to perform post-Order Service Qualification because information is not readily available to the Access Provider, for example in its Operational Support Systems, together with the reasons for needing to undertake the Service Qualification and whether the Access Provider needs to obtain the requisite way leave and/or governmental authority approval to perform the post-Order Service Qualification; and
- (e) the position of the Order in the Access Provider's queue.

2.7 Further Information

The Access Seeker has a period of up to ten (10) Business Days after a request for additional information to provide the Access Provider with such additional reasonable information that is reasonably necessary to clarify an Order.

2.8 Post-Order Service Qualifications

The Access Provider shall make Service Qualifications available to the Access Seeker prior to placing Orders if such pre-Order Service Qualifications are undertaken for a

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given Facility and/or Service by the Access Provider for itself. The Access Provider shall only require post-Order Service Qualifications if:

- (a) no pre-Order Services Qualification has been completed in accordance with the process to be developed under **Condition 3 of the General Terms and Conditions**;
- (b) The Access Provider reasonably requires information from such post-Order Service Qualifications which is not readily available, for example in its Operational Support Systems; and
- (c) The Access Provider notifies the Access Seeker that the post-Order Service Qualifications are necessary (together with the reasons for needing to take such Service Qualifications) at the time of providing (and as specified in) the Access Provider's Notice of Receipt under **Condition 2.6** or, if further information has been requested under **Condition 2.7**, within two (2) Business Days upon the expiry of the period in **Condition 2.7**.

For clarification, the Access Seeker may also seek the consent of the Access Provider to perform a Service Qualification on its own, and such consent must not be unreasonably withheld.

2.9 Commencement and Completion of Service Qualifications

The Access Provider shall commence a Service Qualification on the date of issuing a Notice of Receipt (or where governmental approval is required to perform the Service Qualification, on the date such approval has been granted) and complete and notify the Access Seeker of the result of any Service Qualification within the shorter of:

- (a) fifteen (15) Business Days after the date of the Notice of Receipt (or where governmental approval is required, on the date such approval has been granted); and
- (b) the time within which the Access Provider performs and notifies the result of an equivalent Service Qualification undertaken for itself.

2.10 Withdrawal of Order following Service Qualifications

Subject to such reasonable charge as may be imposed by the Access Provider (based on necessary cost incurred by the Access Provider), the Access Provider shall permit the Access Seeker to withdraw its Order (irrespective of whether the Access Provider has accepted the Order or not) before the earlier of:

- (a) ten (10) Business Days after the Access Seeker receives the result of a Service Qualification under **Condition 2.9**; and
- (b) one (1) Business Day before the Access Provider commences civil works to provision the Order (where the civil works are required to provision the Facility

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and/or Service within the delivery timeframe specified in the Notice of Acceptance), and any civil works to be conducted must be subject to the issuance of a notice in writing by the Access Provider, which may be in the form of a Notice of Acceptance if civil works is to occur after the Access Provider has accepted the Order,

2.11 Acceptance Obligation

The Access Provider must use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Services and Facilities which comply with a Forecast accepted by the Access Provider pursuant to **Section II**.

2.12 Time for Acceptance or Rejection

2.12.1 The Access Provider must notify the Access Seeker that the Order is accepted or rejected by or within the shorter of:

- (a) the timeframe within which it accepts or rejects equivalent Orders for itself; or
- (b) the specified timeframe set out below for the purposes of this **Condition 2.12**:

Type of Facilities and/or Services	Timeframe
Layer 2 HSBB Network Service with QoS	One (1) Business Days after: (a) issuing the notice of receipt of the Order, where there is no post Order Service Qualification; or (b) providing the Access Seeker with the result of post-Order Service Qualification, where there is post-Order Service Qualification
Wholesale Local Leased Circuit Services	Ten (10) Business Days after: (a) issuing the notice of receipt of the Order, where there is no post Order Service Qualification; or (b) providing the Access Seeker with the result of post-Order Service Qualification, where there is post-Order Service Qualification
Duct and Manhole Access	Ten (10) Business Days after:

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	<p>(a) issuing the notice of receipt of the Order, where there is no post Order Service Qualification; or</p> <p>(b) providing the Access Seeker with the result of post-Order Service Qualification, where there is post-Order Service Qualification</p>
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2.12.2 If the Access Provider notifies the Access Seeker that an Order is rejected, the Access Provider must advise the Access Seeker whether the Access Provider would be able to accept the Order in a modified form.

2.13 Notice of Acceptance

The Access Provider’s Notice of Acceptance to the Access Seeker must contain the following information:

- (a) the delivery date or activation date (as applicable), which must be the date that is requested by the Access Seeker, or if that date cannot be met by the Access Provider, then no later than:
 - (i) the indicative delivery timeframe or activation timeframe set out below for the purpose of this **Condition 2.13**; or

Type of Facilities and/or Services	Timeframe
Layer 2 HSBB Network Service with QoS	<p>(a) Five (5) Business Days including the date of the BTU installation appointment, in respect of a premises on a street that is connected to the High Speed Broadband Network; or</p> <p>(b) up to Twenty (20) Business Days including the date of BTU installation appointment, in other cases</p>
Wholesale Local Leased Circuit Services	<p>(a) if no network facilities are required to supply the Wholesale Local Leased Circuit Services, twenty (20) Business Days; or</p> <p>(b) if new network facilities are required to supply the Wholesale Local Leased Circuit Services, sixty (60) Business Days.</p>

Terms and Conditions for Technical Matters
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Duct and Manhole Access	(a) Ten (10) Business Days commences from the Notice of Acceptance or confirmation of the Order (as applicable)
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(ii) the period of time taken by the Access Provider to deliver, or activate, such Facilities and/or Services for itself,

whichever is shorter;

- (b) the date when civil works (if any) are intended to commence;
- (c) the charges applicable to the fulfill the Order;
- (d) such information as is reasonably necessary for the Access Seeker to benefit from access to the Facilities and/or Services; and
- (e) the validity period, which shall be a period that is not shorter than three (3) months commencing from the date of the Notice of Acceptance (“Validity Period”).

2.14 Commencement of delivery timeframes

2.14.1 The applicable delivery timeframe for an Order, as determined under **Condition 2.13(a)**, shall commence from the following date, as applicable:

- (a) where the Access Seeker’ confirmation of an Order is required under **Condition 2.15**, the date the Access Seeker confirms the Order in accordance with **Condition 2.15**;
- (b) where the Access Seeker’ confirmation of an Order is not required under **Condition 2.15**, from the start of Validity Period; or
- (c) where way-leave and/or governmental authority approval is required in relation to an Order, the date on which last of the requisite way-leave and/or governmental authority approval has been obtained.

The Access Provider is not required to commence work on an Order unless and until all requisite way-leave and/or governmental authority approval has been obtained. The Access Provider will inform the Access Seeker of the requisite way-leave and/or governmental authority approvals which the Access Provider is required to obtain to commence the Order.

2.14.2 Where a delay in the delivery of an Order is caused by the Access Seeker or by any government authority or agency or third party (not within the control of the Operators), the delivery date specified in the confirmed Order or indicative delivery time set out

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above shall be extended for a further period as may be reasonably required by the Access Provider.

2.14.3 Where an Order has been confirmed by the Access Seeker in accordance with **Condition 2.15**, The Access Seeker may request for a change in the delivery dates of the Facilities and/or Services Ordered subject to the Access Provider first agreeing in writing to the same.

2.15 The Access Seeker Confirmation

2.15.1 The Access Seeker' confirmation of an Order is not required if the Access Provider accepts the Order without change. A change may include circumstances where delivery dates are delayed, estimated charges are exceeded, a post-Order Service Qualification is required or any other matter that requires further confirmation from the Access Seeker before the Access Provider can proceed with the Order.

2.15.2 Where the Access Seeker' confirmation is required for the Access Provider to proceed with fulfilling an Order as provided for under **Condition 2.15.1** above, the Access Provider shall permit the Access Seeker to provide its confirmation within the Validity Period and shall not provision the Order until the confirmation is received. Upon receipt of such confirmation, the Access Provider shall fulfill the Order in accordance with the Notice of Acceptance subject to **Condition 2.15.3**.

2.15.3 Notwithstanding anything to the contrary, in the event the necessary:

- (a) governmental authority or agency's approval; and/or
- (b) way-leave from third parties,

to fulfil the Order is not obtained, within six (6) months from the date of the Access Seeker' confirmation of the Order pursuant to **Condition 2.15**, either Operator may, without liability, cancel the Order at any time by giving written notice to the other Operator.

2.16 Estimated Charges

2.16.1 If the notice of acceptance provided by the Access Provider under **Condition 2.13** contains estimates of charges (e.g. based on time and materials) for a specific scope of works:

- (a) The Access Provider shall not exceed the estimate without providing the Access Seeker with written notice prior to exceeding the estimate that:
 - (i) the estimate will likely be exceeded;
 - (ii) an explanation of the reasons for exceeding the estimate; and

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- (iii) a further estimate of the charges for the work necessary to fulfil the Order;
- (b) The Access Provider shall permit the Access Seeker to withdraw the Order without penalty within ten (10) Business Days of the notice given by the Access Provider under **Condition 2.16.1(a)** if the revised estimate in that notice exceeds the original estimate by more than ten percent (10%); If the Access Seeker fails to withdraw the Order within the said time period, the Access Seeker is deemed to have accepted the revised estimated charges and shall be liable for the revised estimated charges.
- (c) where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of work provided by the Access Provider due to:
 - (i) information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; or
 - (ii) a charge in the scope of work by the Access Seeker,

The Access Seeker shall be obliged to pay the Access Provider for the actual cost incurred (but in no other circumstances); and
- (d) The Access Provider shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate or revised estimate, whereby such confirmation is to be provided by the Access Seeker within the timeframe set out in Condition 2.13(e) or Condition 2.16.1(b) of this Agreement.

2.16.2 The Access Provider shall not be obliged to commence work until the Access Seeker has confirmed in writing that the Access Seeker is agreeable to the estimate or revised estimate for a specific scope of work provided by the Access Provider.

2.17 Reasons for Rejection

The Access Provider may only reject an Order from the Access Seeker where:

- (a) subject to **Condition 3.3.2 of the General Terms and Conditions**, it is not technically feasible to provide access to the Services or Facilities requested by the Access Seeker;
- (b) subject to **Condition 3.3.3 of the General Terms and Conditions**, the Access Provider has insufficient capacity and/or space to provide the requested Services or Facilities;
- (c) subject to **Condition 2.19**, the Order is in excess of agreed Forecast levels;
- (d) the Order or variation request duplicates an Order awaiting fulfillment;
- (e) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions of this Agreement and

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such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through the application of a security requirement in accordance with this Agreement; or

- (f) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities and/or Services to protect the integrity of a Network or the safety of individuals working on, or using services supplied by means of, a Network or Equipment and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through the application of reasonable security or escorted access requirements).

2.18 Notice of Rejection

The Access Provider's notice of rejection of an Order to the Access Seeker must:

- (a) set out the ground(s) on which the Access Provider rejects the Order, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Order; and
- (b) offer to meet, and meet if the offer is accepted by the Access Seeker, within five (5) Business Days of the notice of rejection of the Order to discuss the reason(s) for rejection and alternative methods of compliance.

2.19 Order in Excess of Forecast

Notwithstanding Condition 2.17(b), the Access Provider must use its reasonable efforts to provide sufficient capacity to enable the Access Provider to accept and fulfil Orders from the Access Seeker for Services and/or Facilities or both which are in excess of the relevant Forecast. The Access Provider is only required to do so if, after meeting the Forecast requirements of other access seekers and itself, there is available capacity or the Access Provider could readily upgrade existing capacity. The Access Provider shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirements of all access seekers and itself, other Operators and its own business units. The Access Provider is not required to supply Services and/or Facilities in excess of Forecast, if despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of Facilities and/or Services provided to all access seekers and/or itself. For clarification when carrying out its obligations under this **Condition 2.19**, the Access Provider may have regard to its obligations under **Condition 3.3.3 of the General Terms and Conditions**.

2.20 Other Uses

The Access Provider shall permit capacity installed in connection with the provision of a network service to be used, to the extent technically feasible, in connection with another network service, as mutually agreed between both parties.

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2.21 Delivery Dates

Subject to **Condition 2.14**, the Access Provider shall deliver the Order for the Facilities and/or Services by the delivery date or activation date (as applicable) as specified in the Notice of Acceptance or the extended delivery date (if any) as determined in accordance with **Condition 2.24**.

2.22 Early Delivery Dates

If the Access Provider, in the normal course of business, is able to offer a delivery date earlier than the delivery date that would otherwise apply, it must advise the Access Seeker and, if requested by the Access Seeker, deliver access to the relevant Facilities and/or Services at the earlier delivery date.

2.23 Delayed Delivery Dates

When there is a delay in the delivery of an Order, and:

- (a) the delay is caused by the Access Provider:
 - (i) The Access Provider shall notify the Access Seeker of the delay to the delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;
 - (ii) The Access Provider shall permit the Access Seeker to cancel the Order without penalty if the delay is longer than the equivalent time period for delivery of the Facility and/or Service; and
 - (iii) the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date; or
- (b) where the delay is caused by the Access Seeker:
 - (i) The Access Seeker shall notify the Access Provider of the delay to the delivery date as soon as practicable after the Access Seeker becomes aware of it;
 - (ii) The Access Provider and the Access Seeker must work together to minimise the delay; and
 - (iii) the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date.

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2.23 Cancellation and Variation of Orders

2.23.1 Subject to **Condition 2.24**, the Access Seeker may cancel or vary an Order at any time provided that the Access Provider has not issued any purchase orders for any work in relation to the Order. Where a purchase order has been issued, the Access Provider shall provide, subject to any confidentiality requirements, a copy of the relevant purchase order.

2.23.2 If the Access Seeker wishes to change an Order already issued but not yet implemented, then the Access Seeker should issue a formal amendment to the original Order indicating:

- (a) original order reference number;
- (b) original route, quantity, locations and ready for testing date;
- (c) new requirements; and
- (d) Order identified as “Amendment”.

2.23.3 The Access Provider will then respond to whether the changes can be accommodated in the original time scale or propose a new ready for testing date.

2.24 Cancellation Charges

2.24.1 Except where provided in this Agreement that cancellation of an Order is to be at no penalty,

- (a) The Access Provider may impose a charge for the cancellation or variation of the Order; and
- (b) the charge which the Access Seeker is required to pay shall not exceed the lesser of the following amounts:
 - (i) the sum of costs necessarily incurred by the Access Provider which is directly attributable to the cancellation or variation; or
 - (ii) an amount equal to the sum of charges that would have been payable by the Access Seeker in the six (6) months immediately following the cancellation or variation had the Order not been cancelled or varied, and reduced to the extent that those costs have been mitigated, or would have been mitigated had the Access Provider used its best endeavours to do so. Notwithstanding the foregoing and to the extent that the Access Provider is not able, using its best endeavours, to mitigate its losses in relation to ordered Facilities and Services which have yet to be installed or activated, the Access Provider shall be entitled to charge and the Access Seeker shall pay the charges for the minimum period required for certain Facilities and Services in accordance with this Agreement.

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2.24.2 Where a cancellation charge is payable, the Access Seeker may opt to withdraw the cancellation and proceed with the Order with a prior fourteen days (14) written notice to the Access Provider.

2.25 Testing and Provisioning

The Access Provider shall:

- (a) co-operate with the Access Seeker in relation to the testing and provisioning of ordered Services and/or Facilities; and
- (b) treat the Access Seeker' testing and provisioning on an equivalent basis to that which the Access Provider treats testing and provisioning for itself.

2.26 Resource charge

The Access Provider:

- (a) may charge the Access Seeker a one-off fee, to be determined by reference to the costs incurred by the Access Provider, for allocation of manpower and other resources to enable the Access Provider to test and fulfill an Order for new Facilities and/or Services, provided that one-off fee is justified by the Access Provider to the Access Seeker as necessary for the Access Provider to provide the requested Facilities and/or Services; and
- (b) Must specify the methodology and unit costs for calculating any fees under Condition 2.26(a) above and its RAO.

2.27 Queuing Policy

The Access Provider shall establish and maintain a queuing policy for each Facility and/or Service which:

- (a) shall be non-discriminatory;
- (b) shall be applied to Orders and Service Qualifications of the Access Seeker and Orders and Service Qualifications for itself for the same or similar Facilities and/or Services, and shall treat the Orders and Service Qualifications of the Access Seeker on an equivalent basis to that which the Access Provider treats Orders and Service Qualifications for itself for the same or similar Facilities and/or Services; and
- (c) shall seek to maximise the efficiency of its ordering and provisioning process.

2.27 Acceptance on Queue

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The Access Provider shall promptly notify the Access Seeker, at the time of providing an acknowledgement of receipt of the Order under **Condition 2.5**, of their acceptance of, and position in, the Access Provider's queue.

2.28 Constrained Capacity

If the Access Provider reasonably believes that the capacity in any Facilities and/or Services required by:

- (a) The Access Seeker pursuant to the relevant Forecast and/or Order;
- (b) other access seekers, pursuant to their relevant Forecasts and/or Order; and
- (c) The Access Provider, for its own purposes of its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest,

would, in aggregate, exceed the capacity which the Access Provider will be in a position to be able to provide, the Access Provider must:

- (i) notify the Access Seeker and other persons to whom relevant capacity is supplied; and
- (ii) allocate the available capacity between itself, the Access Seeker and other access seekers in accordance with the Access Provider's Capacity Allocation Policy.

The Access Provider, where possible, will also indicate when extra capacity is likely to be made available to the Access Seeker.

2.29 Capacity Allocation Policy

If the Access Provider claims or is likely to claim that it has insufficient capacity to meet the Access Seeker's Forecasts or Orders, the Access Provider shall maintain a Capacity Allocation Policy, which:

- (a) shall on request be disclosed, free of charge, to the Access Seeker upon execution into the Access Agreement, and each time it is amended;
- (b) shall set out the principles in accordance with which the Access Provider shall determine how to allocate capacity between its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest and any other Operators, in circumstances where the amount of capacity available is less than the aggregate of capacity required by the Access Provider's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest, and the other Operator;
- (c) shall:

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- (i) be fair and reasonable;
 - (ii) be consistent, so far as practicable, with the Access Provider's general duty of non-discrimination in accordance with subsection 149(2) of the Act;
 - (iii) treat the requirements of the Access Seeker on an equivalent basis to the requirements of the Access Provider's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest; and
 - (iv) Allocate the available capacity in the relevant Facilities and/or Services in proportion to each Operator's Forecast and/or Order requirements; and
- (d) shall set out the Access Provider's plans to expand their capacity over time (if any), where such information must be provided to the Access Seeker on a non-discriminatory basis in terms of its content and frequency of updates.

2.30 Late Delivery

If the Access Provider fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with **Condition 2.24**, except where such failure has been caused solely by the Access Seeker's delay, caused by a delay or lack of authorization by governmental and/or regulatory bodies and/or caused by a third party, that the Access Provider shall, without limitation to any other rights the Access Seeker may have under this Agreement or law, provide a rebate to the Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities and/or Services for the period of the Access Provider's delay. The rebates may only be used by the Access Seeker for future Invoices for the same Service or Facility only. If the Access Provider alleges that a failure has been caused solely by the Access Seeker's delay or lack of authorisation by a third party, the Access Provider shall have the burden of demonstrating:

- (a) that allegation; and
 - (b) that the Access Provider has done all things reasonably practicable to minimise or avoid such failure.
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Section IV

SECTION IV – NETWORK CHANGE

1. General

1.1 **Section IV** sets out the network change terms and procedures that are applicable in relation to the provision of Facilities and/or Services.

2. Network Change Obligations

2.1 Scope

This **Condition 2** applies where an Operator proposes to implement a Network Change of a type referred to in **Condition 2.2** which necessitates a change in the hardware or software (including interface software) of the other Operator's Network in Order to ensure the continued proper operation and compatibility of the Operator's respective Networks, services and procedures.

2.2 Types of Changes

The following types of proposed Network Changes are within the scope of **Condition 2.1**:

- (a) any change by the Operator proposing to make the change ("**Notifying Operator**") to any technical specification of the interconnection interface between their respective Networks ("**Interface Change**");
- (b) any change by the Notifying Operator to any technical specification or characteristic of the Facilities and/or Services to which the other Operator ("**Recipient Operator**") has access which will or might affect:
 - (i) the Recipient Operator's Network;
 - (ii) the Recipient Operator's use of the Facilities or Services provided by the Notifying Operator ("**Facility and/or Service Change**");
- (c) any change by the Notifying Operator to any technical specification or characteristic of that Notifying Operator's Network which will or might affect the Recipient Operator's Network ("**Other Network Change**");
- (d) any change by the Notifying Operator to any of the operational support systems used inter-operator processes, including without limitation:
 - (i) the billing system;
 - (ii) the Ordering and provisioning systems; or
 - (iii) the Customer Transfer process, ("**OSS Change**"); and

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- (e) any enhancement by the Notifying Operator of the feature, functions or capabilities of the Facilities or Services to which the Recipient Operator has access, which enhancement the Notifying Operator proposes to make available either:
 - (i) to itself; or
 - (ii) to any other Operator (“**Functionality Change**”).(collectively, “**Relevant Changes**”).

2.3 Notification of change

If a Notifying Operator proposed to make a Relevant Change to its Network, services or procedures, the Notifying Operator shall provide the Recipient Operator with notice in writing (“**Change Notice**”) of:

- (a) the nature, effect, technical details and potential impact on the Recipient Operator’s Network and the expected completion date of the proposed Relevant Change, described at a sufficient level of detail to enable the other Operator to identify and begin planning such changes as may be necessary or desirable for the Recipient Operator to make to its Network, services or procedures in consequence of the Relevant Change; and
- (b) a date, which shall be no later than ten (10) Business Day from the date of the notice under this Condition, on which representatives of the Notifying Operator will be available to discuss with representatives of the Recipient Operator the proposed Relevant Change and the changes that may be necessary or desirable for the Recipient Operator to make to its network, services or procedures in consequence of the Relevant Change,

as soon as reasonably practicable and, in any event with not less than the relevant notice period set out in the table below:

Relevant Change:	Notice period:
Interface Change	3 Months
Other Network Change	3 Months
Facility and/or Service Change	3 Months
OSS Change	3 Months
Functionality Change	3 Months

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2.4 Post-notification procedures

The Notifying Operator shall:

- (a) meet with representatives of the Recipient Operator in the date set out in the Change Notice or as soon as practicable thereafter (but no later than the notice period set out in the table in **Condition 2.3**), for the purpose of discussing the Relevant Change and any changes that may be necessary or desirable for the Recipient Operator to make to its Network, services or procedures in consequence of the Relevant Changes;
- (b) provide any additional information reasonably requested by the Recipient Operator no later than ten (10) Business Days after the Recipient Operator's request for such additional information; and
- (c) take reasonable account of concerns raised and proposal made by the Recipient Operator to minimize any adverse impact of the Relevant Changes on the Recipient Operator and revise the Change Notice accordingly.

2.5 Testing

The Notifying Party shall, bearing its own costs in doing so:

- (a) co-operate with a Recipient Operator to develop procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Operators' respective Networks; and
- (b) jointly carry out testing with the Recipient Operator in a timely manner using its best endeavours to accommodate any timing requested by the Recipient Operator and, in any case, no less than twenty (20) Business Days before the Notifying Operator proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under **Condition 2.5.1(a)**.

2.6 Testing failure

Subject to the Recipient Operator having co-operated with the Notifying Operator in relation to the conduct of tests under **Condition 2.5**, if such tests:

- (a) are not accepted by ten (10) Business Days prior to the date when the Notifying Operator proposes to effect the Relevant Changes; or
- (b) do not provide reasonable assurance of the continued proper operation and compatibility of the Operators' respective Networks, services and procedures, the Notifying Party must postpone implementation of the Relevant Changes. The period of postponement will be for a period until a successful solution is

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implemented but such period shall not be shorter than the period necessary to allow the Operators to repeat the steps in **Conditions 2.3 to 2.5**.

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Section V

SECTION V – NETWORK FACILITIES ACCESS AND CO-LOCATION

1. General

1.1 **Section V** sets out the terms and procedure for Facilities Access and co-location.

2. Facilities Access - General Procedures

2.1 The Facilities Access will be for a fixed period and the period may vary depending on the type of facilities/premises provided.

2.2 The Operators may agree from time to time on such further terms of Facilities Access for different types of facilities/ premises. Such terms of Facilities Access for different types of facilities will be set having regard to such matters as *inter alia*:

- (a) the reasonable life span of the Facilities or Equipment on the Access Provider's standard planning horizons;
- (b) the reasonable life span of the Access Seeker' Facilities or Equipment which it installs within or attaches to or uses in conjunction with the Facilities to which access is provided, or the Access Seeker' standard planning horizons; and
- (c) the type of Facilities or Equipment available to the Access Seeker.

3. Network Facilities Access and Co-Location

3.1 Inspection and Site Survey

The Access Provider shall allow nominated employees or contractors of the Access Seeker to physically inspect a network premise and/or facility of the Access Provider during normal business hours provided that:

- (a) The Access Seeker has provided no less than five (5) Business Days' notice of its request to perform a physical inspection and details of its nominees; and
- (b) the nominations made by the Access Seeker are reasonable, having regard to the position of each person and the number of persons nominated.

3.2 Physical access

Subject to the Access Provider's process and procedures, the Access Provider shall allow the Access Seeker, its employees and contractors to physically access the Access Provider's Network facilities/premises for the purposes of installing, commissioning, modifying, maintaining, decommissioning and removing its Equipment and have physical control over the Access Seeker' Equipment located at such network facilities, twenty-four (24) hours a day, seven (7) days a week subject to the terms and conditions of any tenancy agreement provided always that from 9.00 am to 5.00 pm on any Business Day, the Access Seeker shall have physical access to the Access Provider's

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Network facilities for the purposes of installing, commissioning, modifying, maintaining, decommissioning and removing its Equipment.

3.3 Escorts

If the Access Provider determines that it is necessary to have an escort present when the Access Seeker's employees or contractors wish to enter onto the Access Provider's property, the Access Provider shall:

- (a) make such escort service available at all times during ordinary business hours;
- (b) subject to **Condition 3.3.1(d)**, provide immediate physical access to the Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week provided always that the Access Seeker strictly complies with the Access Provider's site access procedures (e.g. work permit approval);
- (c) subject to **Condition 3.3.1(d)**, provide physical access at the time requested by the Access Seeker for planned maintenance requests on the shorter of:
 - (i) two (2) Business Days' notice for manned sites and five (5) Business Days' notice for unmanned sites; and
 - (ii) the period of notice which the Access Provider requires from itself when providing itself with physical access for planned maintenance;
- (d) for both planned and emergency maintenance requests at unmanned sites only, have its escort arrive within the shorter of:
 - (i) thirty (30) minutes of time required by the Access Seeker pursuant to **Condition 3.3.1(b) or 3.3.1(c)** (as applicable) plus a reasonable window to allow for travel time (which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and
 - (ii) the period of time it requires for its escorts to arrive for planned and emergency maintenance at unmanned sites; and
- (e) bear the costs of such escort service.

Escort may only be required by the Access Provider as set out above only if the Access Provider requires an escort of its own contractors, subsidiaries and partners.

3.4 Absence of escort

- 3.4.1** For the purposes of **Condition 3.3**, if an escort does not arrive at the Access Provider's property within thirty (30) minutes of the scheduled commencement of the visit by the Access Seeker, the Access Seeker's staff may proceed to enter the Access Provider's property without an escort subject to the security requirements of the Access Provider

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and the terms and conditions of any tenancy Agreement. The Access Seeker shall provide the Access Provider with a written report (in a form and at a level of detail as may be specified by the Access Provider) as to the works and/or activities undertaken by the Access Seeker and/or his employees, contractors and agents within two (2) Business Days after the site visit.

3.4.2 Notwithstanding **Condition 3.3**, if the tenancy Agreement requires that the Access Seeker be escorted by the Access Provider in order to gain physical access to the Access Provider's network facility, the Access Provider shall escort the Access Seeker.

3.5 Site register

3.5.1 The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property, which must be made available for inspection by the Access Provider, upon request.

3.5.2 If the Access Seeker does not maintain or properly maintain a site register, the Access Provider may prohibit any representatives of the Access Seeker from entering the premises.

3.6 Preparatory work by the Access Seeker

3.6.1 If preparatory work is necessary for the purposes of allowing the Access Seeker to obtain access to the Access Provider's network facilities/premises, the Access Provider shall permit the Access Seeker's employees or contractors to perform such preparatory work if the Access Seeker satisfies the Access Provider (acting reasonably and in accordance with the guidelines referred to below) that such employees or contractors have the necessary qualifications. The policy and guidelines pertaining to the necessary qualifications of employees and contractors who will be permitted to perform preparatory work under this **Condition 3.6** may be obtained from the Access Provider. The policy and guidelines must be applied in a non-discriminatory manner to the personnel of the Access Provider and the Access Seeker who perform similar functions.

3.6.2 If the Operators agree that the Access Provider shall carry out the preparatory work on behalf of the Access Seeker, then the Access Provider shall undertake the preparatory work and the Access Seeker shall furnish all necessary and sufficient co-operation to the Access Provider to complete the preparatory work. The Access Seeker agrees to pay the Access Provider for undertaking the preparatory work.

3.7 Preparatory work by the Access Provider

3.7.1 If the Access Provider agrees to perform preparatory work and does so on the basis of an estimated charge (e.g. based on a time and materials basis) for a specific scope of work:

- (a) The Access Provider shall not exceed the estimate without providing the Access Seeker with prior written notice that:

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- (i) the estimate will likely be exceeded; and
 - (ii) a further estimate of the charges for the work necessary to complete the preparatory work;
 - (b) The Access Provider shall permit the Access Seeker to withdraw the request for preparatory work without penalty if the revised estimate exceeds the original estimate by more than ten percent (10%) of the original estimate within fourteen (14) days of the notice given by the Access Provider under **Condition 3.7.1(a)**.
- 3.7.2 Notwithstanding **Condition 3.7.1**, where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of works provided by the Access Provider due to information or facts which are inaccurate or erroneous, or which were not disclosed or provided by the Access Seeker, or due to a change in the scope of work by the Access Seeker, the Access Seeker shall be obliged to pay the Access Provider for the actual cost incurred.
- 3.7.3 The Access Provider shall not be obliged to commence work until the Access Seeker has confirmed in writing that the Access Seeker is agreeable to the estimate or revised estimate for a specific scope of works provided by the Access Provider.

3.8 Delays

If the Access Provider agrees to perform preparatory work and the Access Provider is or is likely to be unable to perform such work within the agreed timeframe, the Access Provider shall:

- (a) notify the Access Seeker of the delay to a delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;
- (b) permit the Access Seeker to cancel the preparatory work without penalty if the delay is longer than fourteen (14) days; and
- (c) compensate the Access Seeker for the reasonable costs it has incurred as a result of delay, subject to the Access Seeker using reasonable endeavours to mitigate those costs.

3.9 Utilities and ancillary services

If the Access Provider has permitted access or physical co-location at a particular location or network facilities the Access Provider must, where the relevant utilities and ancillary services are within the Access Provider's control, ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access or co-location to the same extent that the Access Provider provides to itself, including but not limited to:

- (a) access to roads;

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- (b) access to land;
- (c) power, including the provision of back-up power;
- (d) environmental services (including but not limited to heat, light, ventilation and air-conditioning, fire protection);
- (e) security, taking care to ensure that its agents, representatives or sub-contractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft; and
- (f) site maintenance.

3.10 Security caging

The Access Provider shall not require the use of cages or similar structures to physically segregate Equipment to be located at or on network facilities of the Access Provider.

3.11 Equipment Allowance

Subject to any restrictions under any tenancy Agreement, the Access Provider shall permit the Access Seeker to locate Equipment on or at the Access Provider's network facilities which is necessary for the purposes of obtaining the benefit of access to the Services and Facilities provided in accordance with this Agreement, including but not limited to multi-functional Equipment which may also be used for purposes other those specified in this **Condition 3.11**. Where restrictions in the tenancy Agreement prohibits the Access Seeker from locating its Equipment at the Access Provider's facilities/premises, the Access Provider:

- (a) shall use best endeavours to obtain the consent of the landlord for the Access Seeker to locate its Equipment at the Access Provider's facilities/premises; and
- (b) may at its own discretion offer an alternative premise and/or facility where the Access Seeker is permitted to locate its Equipment.

3.12 Marking

The Operators will mark or label their Equipment in such a manner that they can be easily identified as the Equipment of the Operator.

3.13 Maintenance

The Access Provider shall permit, and do all the things reasonably necessary to allow the Access Seeker to maintain its Equipment at or on the network facilities/premises to which access has been granted. This includes the provision of physical access.

3.14 Extensions

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- 3.14.1 Subject to all necessary permits, consents and approvals required by law being obtained, the Access Provider shall reasonably permit the Access Seeker, at the Access Seeker's cost, to extend network facilities/premises of the Access Provider as may reasonably be required to meet the Access Seeker's requirements in the circumstances and to the extent technically feasible.
- 3.14.2 Prior to any extension works being carried out, the Access Seeker shall submit a written proposal to the Access Provider detailing the works to be carried out and the impact of such works on the Access Provider's Network.
- 3.14.3 If the Access Provider agrees or disagrees with the proposal, the Access Provider will notify the Access Seeker of the same. If the Access Provider disagrees with the proposal, the Access Seeker may request for a meeting with the Access Provider to discuss amendments to the Access Seeker's proposal. The Access Seeker shall be responsible for all works carried out.

3.15 Cost

The utility and ancillary costs in respect of the network facilities/premises as contemplated in **Condition 3.9** shall be apportioned (in accordance with fair and equitable principles) against the utility and ancillary costs charged to other access seekers at the relevant location. Where there are no other access seekers at the relevant location, the apportionment shall be done in good faith between the Operators in accordance with fair and equitable principles.

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Section VI

SECTION VI– OPERATIONS AND MAINTENANCE

1. General

1.1 **Section VI** sets out the operations and maintenance terms and procedures that are applicable in relation to the provision of Facilities and/or Services.

2. Operations and Maintenance Obligations

2.1 Operations & Maintenance Standard & Procedure

2.1.1 The Operators shall take such reasonable steps within its respective Networks to facilitate end-to-end connection of communications across each other's Network in accordance with agreed operations and maintenance standards.

2.1.2 Where this Agreement and the documents referred to in **Section I** do not cover any operations and maintenance standards, the Operators may use ITU-T standards.

2.1.3 The Operators shall ensure that the operations and maintenance standards and procedures used in the respective Network do not adversely affect the operations of each other's Networks.

2.1.4 Each Operator shall be responsible for the operations and maintenance of its own Facilities and Services.

2.1.5 Each Operator shall on its own establish the recommended maintenance procedures for maintaining and servicing its own Facilities and Services.

2.1.6 The Operators will take all necessary precautions to avoid causing damage to the equipment and premises of the other Operator when such facilities are placed in the same co-located space.

2.2 Fault reporting systems & Fault Management

2.2.1 The Operators will co-operate to enable each other to meet the terms of their respective Licences and to fulfill their obligations under this Agreement and to provide communications services to their Customers.

2.2.2 The Operators will manage their Networks to minimise disruption to services and, in the event of interruption or failure of any service, will restore those services in accordance with the target times set out in **Condition 2.12**.

2.2.3 Each Operator shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of that Operator and to whom that Operator supplies services (inter alia), to report faults relating to any Network or support system.

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- 2.2.4 Each Operator must manage, notify and correct faults arising in its Network which affect the provision of any communications service by the other Operator:
- (a) as it would in the ordinary course for similar faults affecting the provision of communications services by it;
 - (b) in accordance with the fault notification procedures and the principles of priority of repair of faults documented in this **Section VI** and the documents referred to in **Section I**; and
 - (c) in accordance with any service quality standards mutually agreed and/or determined by the Commission.

2.2.5 Each Operator will use its best endeavour to determine faults on its own Network and establish the nature of the fault by carrying out thorough tests on its Network. If such tests prove that the fault is genuine and not residing on its own Network, then the Operator will report this fault to the other Operator's fault reporting centre.

2.3 Customer notification

The Operators will advise all of its Customers to report all faults to its own fault reporting service. If the fault concerns the service of the other Operator, the Operator may promptly inform the other Operator's Network Operation Centre ("NOC") of the reported fault.

2.4 Cross-referrals

If a Customer reports a fault to an Operator:

- (a) when the Customer is directly connected to another Operator; and
- (b) which clearly relates to a Network or support system of another Operator,

that Operator must promptly inform the other Operator of the reported fault, or refer that Customer to the other Operator's fault reporting service.

2.5 Network fault responsibility

- 2.5.1 The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services including for the purpose of restoring the supply of Facilities and/or Services (such as End-to-End Transmission Services or Layer 2 HSBB Network Services with QoS) which are used in another Operator's Network.
- 2.5.2 Each Operator will be responsible for its own fault management escalation procedures and shall offer full assistance for interconnection faults.
- 2.5.3 Where an Operator ("**First Operator**") notifies the other Operator that there is a fault in Facilities and/or Services provided by the other Operator and the other Operator

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discovers upon investigation that the fault is due to a fault in the First Operator's Network or the Customer premises equipment of the First Operator's Customer, the other Operator shall be entitled to charge the First Operator reasonable cost incurred for investigating and attending to such fault report/notification. The other Operator shall provide evidence that the faults resides in the First Operator's Network or the customer premises equipment of the other Operator's Customer.

2.7 Network fault responsibility:

The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services including for the purpose of restoring the supply of Facilities and/or Services (such as Transmission Services or HSBB Network Service) which are used in another Operator's Network.

2.8 Major inter-working faults

If a major fault occurs which affects a communications that crosses or is to cross both Operator's Networks, initial responsibility for identifying the fault rests with the Operator who first becomes aware of the fault.

2.9 Faults affecting other Networks or Equipment

If an Operator identifies a fault occurring in its Network or with its network facilities which may have an adverse effect on the other Operator's Network, network facilities, network services or Equipment, the first-mentioned Operator must promptly inform the other Operator of:

- (a) the existence of the fault;
- (b) the actions being taken by the first mentioned Operator to restore service and to further identify and rectify the fault; and
- (c) the outcome of those actions.

2.10 Bear own costs

Each Operator is responsible for establishing and maintaining a fault reporting service at its own cost irrespective of the location of the fault.

2.11 Fault priority

Each Operator shall give priority to faults in the following order:

- (a) the highest service loss impact in terms of the number of Customers affected;
- (b) those which have been reported on previous occasions and have re-occurred; and

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(c) all other faults.

2.11 Fault rectification

Each Operator shall rectify faults on a non-discriminatory basis.

2.12 Target times

Each Operator shall respond to and rectify faults within the lesser of:

- (a) timeframes set out in a relevant service specific obligation under Part A, Terms and Conditions for Regulated Facilities and/or Services of this Agreement or, if there is no such timeframe, the response timeframes, progress update frequencies and rectification timeframes set out in the table below;
- (b) timeframes which will result in compliance by all affected Operators with any applicable mandatory standards that apply to service availability and restoration; and
- (c) timeframes equivalent to that which the Access Provider provides to itself.

Priority Level	Fault Types (examples)	Response Time	Progress Update Frequency	Rectification Timeframe
Level 1	1. Major switch outage 2. Transmission bearer total outage 3. Route blocking > 30% 4. Major signaling problem > 50% per route basis 5. Major routing issues	Within 1 hour	Every 1 hour	4 hours
Level 2	1. Minor switch outage 2. Minor routing issue 3. Minor signaling problems 4. Route blocking 10% - 30%	Within 4 hours	Every 4 hours	24 hours
Level 3	1. Faults affecting single or small number of Customers 2. Route blocking <10%	Within 24 hours	Every 24 hours	72 hours
Level 4	1. Remote Congestion 2. External Technical Irregularities (ETI)	Within 48 hours	Every 48 hours	14 days

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Priority Level	Fault Types (examples)	Response Time	Progress Update Frequency	Rectification Timeframe
	3. Other performance related issues			

Explanatory Notes to Condition 2.12:

- (a) All faults reported shall be ascribed with a “**Priority Level**” as set out in the above table for response, progress update frequency and rectification purposes and the Operators involved shall cooperate with one another to achieve the given time targets based on the severity of the fault reported.
- (b) Some of the common “**Fault Types**” are listed as example in the above table.
- (c) “**Response Time**” refers to the time for the Operator whose Network or service is faulty to respond to and appropriately attend to the fault. Response Times are to be measured from either the time the fault is notified by The Access Seeker or from the time when the Access Provider first becomes aware of the Fault, whichever is the earlier.
- (d) “**Rectification Time**” refers to the time taken by the Operator to rectify a faulty service and is determined by the period between the reporting of a fault to the respective interconnect fault reporting centre (IFRC) of the Operator and the rectification of the faulty service.
- (e) “**Progress Update Frequency**” means the frequency at which the affected Operator may call the Operator responsible for restoring the fault to obtain a verbal progress update.
- (f) The Restoration Time shall be measured each month as “**Mean Time to Restore**” or “**MTTR**” and means the average Restoration Time it takes to restore a fault over a twelve (12) month rolling period.

The MTTR shall be discussed for tracking purposes at service review meetings.

2.13 Planned maintenance

2.13.1 If an Operator (“**Maintenance Operator**”) intends to undertake planned maintenance which may affect the other Operator’s Network, Facilities and/or Services, the Maintenance Operator must:

- (a) provide at least the greater of the time which it notifies its own Customers and ten (10) Business Days’ notice of the planned maintenance;

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- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications that crosses or would cross both Operators' Networks, and which are caused by the maintenance or re-routing; and
- (c) where the Operators agree that it is practicable, provide alternative routing or carriage at no additional cost to the other Operator.

2.13.2 Where the planned maintenance is not restored to full service within the expected duration, the additional outage time shall be regarded as unplanned maintenance occasioned by a planned maintenance and the procedure dealing with unplanned outage shall apply. The initial notice of the unplanned outage may be given verbally provided that it is followed by a written notice as soon as possible but no later than twenty four (24) hours after the verbal notice.

2.14 Planned maintenance windows

An Operator shall undertake planned maintenance within windows of time agreed with other Operator, and where the windows of time for such planned maintenance have the least effect on end-users.

2.15 Emergency maintenance

If the Maintenance Operator needs to undertake emergency maintenance which may affect the other Operator's network, the Maintenance Operator must:

- (a) provide at least twenty-four (24) hours' notice of the emergency maintenance. In such case, the Maintenance Operator shall provide verbal notification upon sending the written notice;
- (b) use its reasonable endeavours to minimize any disruption to the carriage of communications which cross or are to cross both Operator's Networks, and which are caused by the maintenance or re-routing; and
- (c) where practicable and agreed by the Operators, provide alternative routing or carriage at no additional cost to the other Operator.

2.16 Hours of fault and rectification

Both Operators shall maintain a twenty-four (24) hours a day, seven (7) days a week Network Operation Centre to which all faults relevant to the proper functioning of the Facilities and/or Services and complaints are reported.

2.17 Complaints Handling

The Operators must report all interconnection and access outages that relate to Networks, Facilities and/or Services to the other Operator relevant fault reporting and rectification service.

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3. Network Monitoring

- 3.1 Each Operator is responsible for monitoring of alarms belonging to its own Network.
- 3.2 The Operators shall ensure that either Operator's Network which may affect traffic is subject to a Network alarm management system and monitor in a way that is consistent with the Operator's internal operation and maintenance procedures.
- 3.3 The Operators may, where required, exchange records of circuit utilization or congestion report and call connection performance over the interface at regular intervals to ensure that service over the interface be maintained at satisfactory levels.

4. Service Review

- 4.1 The Operators shall hold meetings monthly or mutually agreed intervals to review the performance of interconnection between the Operator's Network and mutually exchanged operational information. In addition, the Operators shall discuss at the meetings, any other inter-working issue that arise. The information provided in such reports is confidential information and subject to the confidentiality obligations under this Agreement.

5. Maintenance of Equipment and/or Shared Sites

- 5.1 Each Operator shall be responsible for *inter alia*:
 - (a) maintaining its Equipment in good working condition;
 - (b) maintaining the Equipment and/or shared sites in a tidy and safe condition;
 - (c) ensuring that combustible material is not left in or around shared sites following maintenance works or other operations; and
 - (d) take such other action as a reasonable prudent operator of such Equipment would take.

6. Business Contingency Plan

- 6.1 The Operators agree to discuss terms and conditions pertaining to business contingency plan for purposes of catering for major unplanned outages affecting either or both Operators' Networks.

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Terms and Conditions for Technical Matters
Section VII

SECTION VII – OTHER TECHNICAL MATTERS

1. General

- 1.1 **Section VII** sets out the other technical matters and procedures that are applicable in relation to the provision of Facilities and Services.

2. Technical Obligations

2.1 Compliance

The Operators shall adhere to the relevant guidelines issued by the Commission from time to time to the extent that they have not been expressly revoked or are not inconsistent with any technical obligations set out in the MSA Determination.

2.2 Prevention of technical harm and interference

- 2.2.1 Each Operator is responsible for the safe operation of its Network and must take all reasonable and necessary steps to ensure that its Network, its Network operations and implementation of this Agreement:

- (a) do not endanger the safety or health of the officers, employees, contractors, agents or Customers of the other Operator; and
- (b) do not damage, interfere with or cause any deterioration in the operation or impedes or interrupts the continuous use of the other Operator's Network.

which measures shall be no less robust than the measures which the Operator takes in respect of new facilities or Equipment incorporated into its own Network.

- 2.2.2 Each Operator and must not do anything, or knowingly permit any third person to do anything, in relation to Network, network facilities, network services or Equipment which:

- (a) cause interference to the communications services provided by the other Operator; or
- (b) materially obstructs, interrupts or impedes the continuous use or operation of, the Network, network facilities, network services or Equipment of another Operator.

2.3 Prohibition of tampering and modification

An Operator must not modify, or take any action which would have the effect of modifying the operation of the Network of the other Operator or take any action with respect to the other Operator's Network without the other Operator's permission.

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2.4 Notice of interference and rectification

If an Operator (“**Notifying Operator**”) notifies another Operator that the other Operator’s network, network facilities, network services or Equipment is causing interference to the Notifying Operator’s network, network facilities, network services or Equipment:

- (a) the other Operator shall rectify the situation as soon as possible, and in any case, within twenty four (24) hours of receiving notice from the Notifying Operator, so that no interference is caused; or
- (b) if the other Operator is not able to locate the source of the interference within twenty four (24) hours under **Condition 2.4(a)**, the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet as soon as possible, and in any case, within twenty four (24) hours of such notice and jointly examine each other’s network, network facilities, network services or Equipment to locate the source of the interference.

2.5 Safety and Health and Security Procedures

2.5.1 Compliance with Occupational Safety and Health (OSH) Requirements

- (a) The Access Seeker shall comply and shall secure compliance by his personnel and agents at all times during the term of the tenancy with the followings:
 - (i) Factories and Machinery Act, 1967 (Revised 1974) (if applicable);
 - (ii) Occupational Safety and Health Act, 1994;
 - (iii) all other relevant occupational safety and health requirements imposed by law including any subsequent amendments to or re-enactment of the said law;
 - (iv) any directives or order by the Access Provider or relevant authorities and/or superintending officer representative (SOR) relating to occupational safety and health requirements; and
 - (v) any guidelines, codes, regulations issued or made by the Construction Industry Development Board (CIDB);
 - (vi) all guides, codes and recommendations issued or made by the government, professional or trade organization or other official or responsible organization relating to occupational safety and health.

The above are hereinafter collectively referred to as the “**OSH Requirements**”.

- (b) The Access Seeker shall take all necessary precautions to protect the environment, property and its own employees and any employees of the Access

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Section VII

Provider and any third parties who are at any time directly or indirectly affected by the operations of the Access Seeker. Such precautions shall include but not limited to the provision of information on the equipment and substances to be used, hazards and risks involved in the performance of the works.

(c) Occupational Safety and Health (OSH) Measures

- (i) The Access Seeker shall familiarize himself with the area of the site where the Works are to be performed and any operating units bordering the same and the hazards which might be encountered in carrying out the works for which he has contracted. The Access Seeker shall fully co-operate and comply with any directives from the Access Provider or any regulatory authority, should any of them consider there is hazard involved and request the Access Seeker thereafter to alter its mode of operations.
- (ii) The Access Seeker shall be under an obligation to take all reasonable measures in relation to the type of works undertaken and shall conduct himself, manage his work force and carry out his operation in such a way as to comply at all times with obligations and duties under the OSH Requirements.
- (iii) The Access Seeker shall ensure the usage of personal protective clothing and equipment whenever it is required and shall provide the Personal Protective Equipment (PPE) and Personal Protective Clothing at The Access Seeker's own expense as required by its personnel to comply with the OSH Requirements. The PPE includes items such as safety helmet, safety boots, safety goggles and other safety gadgets as prescribed in the OSHA. The Access Seeker shall also comply to any safety requirement from the Access Provider from time to time if any.
- (iv) The Access Seeker shall ensure that the tools and equipment, and other items used in the execution of the works are in a safe, sound and good condition and capable of performing the function for which they are intended.

(d) Site Accidents

- (i) The Access Seeker shall immediately report to the Access Provider any accidents, injuries or near misses arising from the execution of the Works, soonest possible and in any event no later than twenty four (24) hours from the time of occurrence.
- (ii) The Access Seeker shall furnish to the Access Provider full details of such accidents, injuries or near misses or other relevant information as may be required by the Access Provider within three (3) days after the occurrence.

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Section VII

- (iii) The Access Provider shall be entitled to carry out any investigations of such accidents, injuries or near misses. The Access Seeker shall render full assistance to the Access Provider for purposes of such investigations.
 - (e) Non-Compliance of Occupational Safety and Health (OSH) Requirements
 - (i) Without prejudice to the Access Seeker's obligations as set out herein, the Access Provider shall have the right at any time and from time to time to carry out occupational safety and health inspection and audit during performance of the works hereunder.
 - (ii) If during the performance of works under this Agreement, the Access Provider informs the Access Seeker that it is in the opinion that the Access Seeker is conducting the works in such a way as to endanger the Access Seeker and any persons engaged or employed by the Access Seeker, plant equipment or materials or environment, the Access Seeker shall promptly remedy that breach of occupational safety, health and environment provisions.
 - (iii) The Access Provider may direct the Access Seeker to suspend the works until such time as the Access Seeker satisfies the Access Provider that the works will be resumed in conformity with applicable occupational safety, health and environment provisions. During periods of suspension referred to above, the Access Provider shall not be liable to any cost or losses incurred by the Access Seeker.
- 2.5.2 The Access Seeker shall comply and cause its employees, agents and contractors to comply with all guidelines, rules and regulations issued by the Access Provider from time to time on site access and security procedures with respect to access to and use of the Shared Space. Further the Access Seeker shall take all such necessary measures to prevent unauthorised access to the Shared Space.

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**TERMS AND CONDITIONS
FOR REGULATED
FACILITIES AND/OR SERVICES**

Terms and Conditions for Regulated Facilities and/or Services

1. General

- 1.1 The General Terms and Conditions and the Terms and Conditions for Technical Matters shall also apply to these Regulated Facilities and/or Services subject to any modifications specified herein.
- 1.2 These Terms and Conditions for Regulated Facilities and/or Services must be registered with the Commission in accordance with section 150 of the Act and shall only take effect upon registration.
- 1.3 These Terms and Conditions for Regulated Facilities and/or Services comprise of:-
- (a) Part A – Service Description; and
 - (b) Part B – Charging Principles and Charges.

2. List of Regulated Facilities and/or Services

- 2.1 The list of Regulated Facilities and/or Services under this document are as follows:

Facilities / Services	Sections in Part A and B
Layer 2 HSBB Network Service with QoS	Section I
Wholesale Local Leased Circuit Services	Section II
Duct and Manhole Access	Section III

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PART A
SERVICE DESCRIPTION

SECTION I – LAYER 2 HSBB NETWORK SERVICE WITH QoS

1. General

1.1 This **Section I of Part A** sets out the terms and conditions which are applicable to Layer 2 HSBB Network Services with QoS.

1.2 Both Parties agree that the term for the Layer 2 HSBB Network Service with QoS will be for a minimum of one (1) year. After the expiry of this minimum period, the term will be renewed on a monthly basis unless otherwise terminated in accordance with this Agreement.

2. General Terms and Conditions

2.1 The Layer 2 HSBB Network Service with QoS is an access and transmission Facility and/or Service for the provision of Layer 2 connectivity for the carriage of certain communications, being data in digital form and conforming to Internet Protocols, between customer equipment at an end users' premises and a POI at the mutually agreed location, where in respect of the service:

- (a) the customer equipment is directly connected to the Access Provider High-Speed Broadband Network;
- (b) The Access Seeker selects the bit rate;
- (c) The Access Seeker selects the QoS Class; and
- (d) The Access Seeker assigns the Customer with an IP address.

The Network Diagram will be as set out under Diagram 1.

2.2 The Layer 2 HSBB Network Service with QoS includes shared splitting services, interfaces to operational support systems and network information

2.3 Nothing in this service description is intended to limit:

- (a) the number of concurrent Layer 2 HSBB Network Services with QoS acquired by the Access Seeker from the Access Provider associated with a single Customer;
- (b) concurrent acquisition of Layer 2 HSBB Network Service with QoS and other HSBB Network Services by the Access Seeker from the Access Provider associated with a single Customer; or

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- (c) the number of Layer 2 HSBB Network Service that may be acquired by the Access Seeker, either in a single location or at multiple locations (or permit the Access Provider to require the Access Seeker to acquire any minimum or maximum number of HSBB Network Services, either in a single location or at multiple locations), as condition of the Access Provider supplying the Layer 2 HSBB Network Service with QoS.
- 2.4 The Layer 2 HSBB Network Service with QoS shall be supplied to the Access Seeker as follows:
- (a) at the speeds which are capable of providing the bit rates as selected by the Access Seeker; and
 - (b) in accordance with the QoS Class as selected by the Access Seeker.
- 2.5 The Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by the Forecasts regarding Layer 2 HSBB Network Service is one (1) year;
 - (b) the minimum intervals or units of time to be used in Forecast regarding Layer 2 HSBB Network Service is three (3) months; and
 - (c) the maximum frequency to update or to make further Forecasts regarding Layer 2 HSBB Network Service is once every three (3) months.
- 2.6 The Access Provider shall acknowledge receipt of each Order for Layer 2 HSBB Network Service within one (1) Business Day.
- 2.7 The Access Provider shall commence a Service Qualification on the date of issuing a Notice of Receipt and complete and notify the Access Seeker of the result of any post-Order Service Qualification within the shorter of:
- (a) five (5) Business Days after the commencement of the post-Order Service Qualification; and
 - (b) the time within which the Access Provider performs and notifies the result of an equivalent post-Order Service Qualification undertaken for itself.
- The Access Provider shall only require post-Order Service Qualification to be requested in respect of the premises on a street that is not connected to Layer 2 HSBB Network Service.
- 2.8 The Access Provider must notify the Access Seeker that an Order for Layer 2 HSBB Network Service is accepted or rejected within one (1) Business Day after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order; or

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Part A – Section II

- (b) providing the Access Seeker with the result of post-Order Service Qualification, where the Access Provider has undertaken post-Order Service Qualification for that Order.

2.9 The indicative activation timeframe for Layer 2 HSBB Network Service is:

- (a) in respect of a premises on a street that is connected to Layer 2 HSBB Network Service, five (5) Business Days including the date of the Broadband Termination Unit (“BTU”) installation appointment; or
- (b) otherwise, up to twenty (20) Business Days including the date of the BTU installation appointment.

The Access Provider will perform activations within the shorter of the timeframe specified in this **Subsection 2.9**, the time within which the Access Provider performs activations for itself and the time which would permit The Access Seeker or downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service), Determination No.2 of 2016 including such modification or variation as may be determined by the Commission from time to time. For clarification, the indicative activation timeframe in this **Subsection 2.9** commences from the Notice of Acceptance or confirmation of the Order.

2.10 The Billing Period for Layer 2 HSBB Network Service will be monthly as set out in **Part B** of Terms and Conditions for Regulated Facilities and/or Services.

2.11 The Access Seeker shall pay to the Access Provider for Layer 2 HSBB Network Service stated in this **Section I** of **Part A** provided by the Access Provider, Charges in accordance with the applicable provisions set out in **Section I** of **Part B** of this Agreement.

2.12 The Access Seeker shall be responsible for all matters related to the customer service, first level troubleshooting including the connection of BTU to the Access Seeker’s Residential Gateway (“RG”) to the Customer’s devices, fault reports, technical issues and settlement save and except for the cases where the fault is ascertained to be caused by the Access Provider or any of its equipment to support the provision of The Access Seeker’s Services by the Access Seeker. For the avoidance of doubt, the Access Provider shall not be obligated to ensure the compatibility of its equipment with the Access Seeker’s retail devices, RG or any other related equipment owned and/or installed by the Access Seeker. The Access Provider may provide reasonable technical support, upon request the Access Seeker.

2.13 Each Party hereby agree to undertake reasonable steps to ensure that all equipment and/or devices installed and/or owned by a Party are not damaged, due to action or omission of the other Party.

2.14 The Access Seeker is responsible for implementing sufficient procedures and checkpoints and taking reasonable precautions to ensure that whatever method selected by the Access Seeker for use of Layer 2 HSBB Network Services is free of viruses,

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Part A – Section II

hacking, spamming, worms, trojan horses and other items of a destructive nature. The detail process shall be as set out in the Technical and Implementation manual.

- 2.15 The Access Seeker shall be responsible for any content transmitted from the Access Seeker's Customer, whether authorised or unauthorised using the Layer 2 HSBB Network Services with QoS. The Access Seeker shall ensure that the use of the Layer 2 HSBB Network Services with QoS shall comply at all times with all applicable laws, regulations and instructions for use of the Layer 2 HSBB Network Services with QoS, if any.
- 2.16 The Parties responsibilities relating to the operation and maintenance of the Layer 2 HSBB Network Services with QoS shall be as set out in the Operation and Maintenance manual.

3. Service fulfillment timeline

- 3.1 The Access Provider shall work together with the Access Seeker to comply with the obligations on service fulfillment timelines as stated under **Condition 6.6.13** of the **MSA Determination**.
- 3.2 The Access Seeker may request for Layer 2 HSBB Network Services with QoS by submitting a Service Order Form ("SOF") via a Portal or other method to be agreed by both Parties.

4. Service assurance timeline

The Access Provider shall work together with the Access Seeker to comply with the obligations on service assurance timelines as stated under **Condition 6.6.14** of the **MSA Determination**.

5. Equivalence of Inputs

The Access Provider must:

- (a) provide Layer 2 HSBB Network Service on an Equivalence of Inputs basis to the Access Seeker, including the product, speed tiers, speed, price, timeframes, service level performance and terms and conditions that are equivalent to what it provides to itself and/or the other access seeker;
- (b) provide access to Operational Support Systems for Layer 2 HSBB Network Service to the Access Seeker that are equivalent to what it provides to itself and/or the other access seeker; and
- (c) ensure that the Access Seeker is able to use Layer 2 HSBB Network Service, the OSS, the systems and processes that are used by the Access Provider in the same way and with the same degree of reliability, performance, accuracy and up-to-date information as it provides to itself and/or the other access seeker.

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Part A – Section II

6. Modularity

The Access Provider must provide Layer 2 HSBB Network Service on a modular and unbundled basis so that the Access Seeker does not have to acquire network components, Facilities and/or Services that are not required for Layer 2 HSBB Network Service to be provided.

7. Mandatory Standard on QoS

The terms and conditions for Layer 2 HSBB Network Services in this Agreement shall:

- (a) contain only terms and conditions which are consistent with the rights and obligations set out in any applicable mandatory standard on QoS; and
- (b) not contain any terms and conditions which are inconsistent with the rights and obligations set out in any applicable mandatory standard on QoS.

8. Churn Obligations

8.1 The Releasing Service Provider must not object to the Access Service Provider implementing any Customer's Churn request, where such request is received by the Access Provider from a Gaining Service Provider.

8.2 Except where the Releasing Service Provider and the Access Service Provider are the same person, the Gaining Service Provider must notify the Releasing Service Provider of each proposed Churn prior to forwarding a Transfer Request to the Access Service Provider.

8.3 Within two (2) Business Days of receipt by the Releasing Service Provider of the notice from the Gaining Service Provider under Condition 8.2 above, the Releasing Service Provider must advise the Gaining Service Provider if it believes, on reasonable grounds, that the Transfer Request is invalid because:

- (a) the Transfer Request resulted from a processing error; or
- (b) the Transfer Request was incomplete (for reasons including that the Customer or their agent did not execute the Transfer Form).

For clarification, if no notice is provided under this subsection, the Gaining Service Provider may forward the Transfer Request to the Access Service Provider (where the Access Service Provider is a different person to the Releasing Service Provider).

8.4 If a notification is made under Condition 8.3 above, the Releasing Service provider must provide the Gaining Service Provider with evidence upon which the notification is based. In such circumstances, the Releasing Service Provider and the Gaining Service Provider must take immediate action to rectify the invalid Churn in accordance with the Customer's wishes. If the Customer wishes to proceed with the transfer to the Gaining Service Provider, and the Gaining Service Provider provides the Releasing Service

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Provider with a Transfer Form, the Transfer Request may be provided to the Access Service Provider immediately.

- 8.5 Within two (2) Business Days after the receipt of a Transfer Request, the Access Service Provider must implement the Churn and advise each of the Gaining Service Provider and the Releasing Service Provider that the transfer has been completed.
- 8.6 An Access Service Provider must facilitate and implement Churns between Operators in accordance with the obligations specified in this Condition 8, even if the Access Service Provider is not the Releasing Service provider or the Gaining Service Provider.
- 8.7 Unless otherwise specifically provided in this Agreement, the Access Service Provider and the Releasing Service provider must not use information disclosed for the purposes of Churn (including information contained in a Transfer Request or a Transfer Form) for other purposes. In particular, the Access Service Provider and the Releasing Service Provider must handle information disclosed for the purposes of a Churn as a Confidential Information of the Gaining Service Provider and must not use such information in connection with marketing to, or offering services to, a Customer.
- 8.8 If a Service is subject to a Churn, a Releasing Service Provider or an Access Service Provider (acting as an Access Provider for the purposes of this Agreement) must not refuse an Access Request on the ground that the Releasing Service Provider is currently using the Service Specified in the Access Request.
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Terms and Conditions for Regulated Facilities and/or Services
Part A – Section III

PART A

SERVICE DESCRIPTION

SECTION II – WHOLESALE LOCAL LEASED CIRCUIT SERVICES

1. General

1.1 This **Section II** of **Part A** sets out the terms and conditions which are applicable to Wholesale Local Leased Circuit Service.

2. General Terms and Conditions

2.1 A Wholesale Local Leased Circuit Service is a Facility and/or Service for the carriage of communications by way of a private circuit between a POI at the Access Provider's premises and an End User location or the Access Seeker Point of Presence, available only at one end of a private circuit.

2.2 The Wholesale Local Leased Circuit Service comprises transmission and switching, whether packet or circuit, at such transmission rates as may be agreed between the Access Provider and the Access Seeker on a permanent or virtual basis.

2.3 The functionalities of the Wholesale Local Leased Circuit Service include:

- (a) transmission and switching (whether packet or circuit); and
- (b) a digital protocol (including Internet Protocol).

2.4 An example of technology used in the Wholesale Local Leased Circuit Service would be Integrated Service Digital Network (ISDN), IP based networks and Ethernet interfaces.

2.5 For the purposes of this **Section II**, an end user includes:

- (a) a wholesale or retail customer; and
- (b) an operator (who is a licensed application service provider or licensed network service provider under the Act, where such licence is required) and the final recipient of the service.

2.6 For the purpose of **Subsection 2.3, Section II, Terms and Conditions for Technical Matters** of this Agreement, the Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Wholesale Local Leased Circuit Service is one (1) year, or as mutually agreed by the Operators;

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Part A – Section II

- (b) the minimum intervals or units of time to be used in Forecasts regarding Wholesale Local Leased Circuit Service is one (1) year or as mutually agreed by the Operators; and
 - (c) the maximum frequency to update or to make further Forecasts regarding Wholesale Local Leased Circuit Service is once a year or as mutually agreed by the Operators.
- 2.7 For the purposes of **Subsection 2.5, Section III, Terms and Conditions for Technical Matters** of this Agreement, the Access Provider shall acknowledge receipt of each Order for the Wholesale Local Leased Circuit Service within two (2) Business Days.
- 2.8 Subject to any shorter timeframe required under **Subsection 2.12, Section III, Terms and Conditions for Technical Matters** of this Agreement, the Access Provider must notify the Access Seeker that an Order for the Wholesale Local Leased Circuit Service is accepted or rejected within ten (10) Business Days after:
 - (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under **Subsection 2.8, Section III, Terms and Conditions for Technical Matters** of this Agreement; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under **Subsection 2.9, Section III, Terms and Conditions for Technical Matters** of this Agreement, where the Access Provider has undertaken post-Order Service Qualification for that Order under **Subsection 2.8, Section III, Terms and Conditions for Technical Matters** of this Agreement.
- 2.9 For the purpose of **Subsection 2.13.1(a), Section III, Terms and Conditions for Technical Matters** of this Agreement, the indicative delivery timeframe for Wholesale Local Leased Circuit Service is:
 - (a) if no new Facilities are required to supply the Wholesale Local Leased Circuit Service, twenty (20) Business Days; or
 - (b) if new Facilities are required to supply the Wholesale Local Leased Circuit Service, sixty (60) Business Days.

For clarification, the indicative delivery timeframe in this **Subsection 2.9** commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with **Subsection 2.14, Section III, Terms and Conditions for Technical Matters** of this Agreement.
- 2.10 For the purpose of **Condition 5.1.1(e), General Terms and Conditions** of this Agreement, between the Operators, the Billing Period for Wholesale Local Leased Circuit Service will be one (1) year in advance for the first year and quarterly in advance for subsequent years.

Terms and Conditions for Regulated Facilities and/or Services
Part A – Section II

3. Provisioning of Wholesale Local Leased Circuit Service

- 3.1 Subject to the applicable Charges in **Section II** of **Part B** and the agreed procedures, the Access Provider shall provide a Wholesale Local Leased Circuit Service to The Access Seeker.
 - 3.2 The minimum period in which the Access Seeker may lease Wholesale Local Leased Circuit Service is one (1) year.
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Terms and Conditions for Regulated Facilities and/or Services
Part A – Section III

PART A
SERVICE DESCRIPTION

SECTION III – DUCT AND MANHOLE ACCESS

1. General

1.1 This **Section III of Part A** sets out the terms and conditions which are applicable to Duct and Manhole Access.

2. General Terms and Conditions

2.1 The Duct and Manhole Access is a Facility and/or Service which comprises the provision of physical access to:

- (a) Lead-In Ducts and associated manholes;
- (b) Mainline Ducts and associated manholes in areas in which the Access Provider has exclusive rights to develop or maintain duct and manhole infrastructure, whether or not in combination with other Facilities and Services; and
- (c) sub-ducts where there is no room for the Access Seeker to install its own sub-ducts.

2.2 Provision of physical access includes the provision of

- (a) space at specified Facilities to enable the Access Seeker to install and maintain its own lines and sub-ducts; and
- (b) access for the personnel of the Access Seeker.

2.3 For the purpose of **Subsection 2.3, Section II, Terms and Conditions for Technical Matters** of this Agreement, the Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Duct and Manhole Access is one (1) year, or as mutually agreed by the Operators;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Duct and Manhole Access is one (1) year or as mutually agreed by the Operators; and
- (c) the maximum frequency to update or to make further Forecasts regarding Duct and Manhole Access is once a year or as mutually agreed by the Operators.

2.4 For the purposes of **Subsection 2.5, Section III, Terms and Conditions for Technical Matters** of this Agreement, the Access Provider shall acknowledge receipt of each Order for the Duct and Manhole Access within two (2) Business Days.

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Part A – Section III

- 2.5 Subject to any shorter timeframe required under **Subsection 2.12, Section III, Terms and Conditions for Technical Matters** of this Agreement, the Access Provider must notify the Access Seeker that an Order for the Duct and Manhole Access is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under **Subsection 2.8, Section III, Terms and Conditions for Technical Matters** of this Agreement; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under **Subsection 2.9, Section III, Terms and Conditions for Technical Matters** of this Agreement, where the Access Provider has undertaken post-Order Service Qualification for that Order under **Subsection 2.8, Section III, Terms and Conditions for Technical Matters** of this Agreement.
- 2.6 For the purpose of **Subsection 2.13.1(a), Section III, Terms and Conditions for Technical Matters** of this Agreement, the indicative delivery timeframe for Duct and Manhole Access is ten (10) Business Days. For clarification, the indicative delivery timeframe in this **Subsection 2.6** commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with **Subsection 2.14, Section III, Terms and Conditions for Technical Matters** of this Agreement.
- 2.7 For the purpose of **Condition 5.1.1(e), General Terms and Conditions** of this Agreement, between the Operators, the Billing Period for Duct and Manhole Access will be one (1) year in advance for the first year and quarterly in advance for subsequent years.
- 2.8 The Access Provider agrees to provide Duct and Manhole Access to The Access Seeker in accordance with the terms of this Agreement including the relevant **Terms and Conditions for Technical Matters** and the terms and conditions of this **Section III**.
- 2.9 The Access Seeker shall pay to the Access Provider for Duct and Manhole Access stated in this **Section III** of **Part A** provided by the Access Provider, Charges in accordance with the applicable provisions set out in **Section III** of **Part B** of this Agreement.
- 2.10 The other relevant information on the Duct and Manhole Access may be obtained from the Access Provider upon written request.
- 3. Pre-Requisites for applying Duct and Manhole Access**
- 3.1 The Access Provider shall not be obliged to provide to The Access Seeker the Duct and Manhole Access unless:
- (a) The Access Provider:
 - (i) is the owner of the Duct and Manhole; or

Terms and Conditions for Regulated Facilities and/or Services
Part A – Section III

- (ii) has exclusive rights of use of the Duct and Manhole pursuant to a lease or tenancy agreement with the owner of the Duct and Manhole and the Access Provider has been granted the requisite approval by the owner of the said Duct and Manhole to permit the Access Seeker to use the Duct and Manhole;
 - (b) The Access Seeker has the appropriate license under the Act and its subsidiary legislation to operate the service and other approvals from relevant authorities, where required;
 - (c) there is sufficient space; and
 - (d) the Technical Proposal from the Access Seeker has been approved by the Access Provider.
- 3.2 The Access Provider is also not obliged to offer Duct and Manhole Access where:
 - (a) The Access Seeker wishes or intends to install cables in the sub-ducts which are not fiber optic cables; and/or
 - (b) the relevant Manhole, Mainline Duct, Lead-In Duct and the respective sub-ducts are damaged or not in usable condition.

4. Duration of Duct and Manhole Access

- 4.1 Duct and Manhole Access agreed between the Operators, shall be for a fixed period of three (3) years unless a lesser period is stipulated by the Access Provider (where the Access Provider's right to use the Duct and Manhole is less than three (3) years) and may be further renewed subject to the mutual agreement of the Operators. The Access Seeker shall within six (6) months prior to the expiry of the term of Duct and Manhole notify the Access Provider in writing as to whether or not it wishes to renew the term of the Duct and Manhole Access.
- 4.2 The term of the Duct and Manhole Access shall commence on the date ("Start Date"):
 - (a) The Access Provider makes available for physical possession the Duct and Manhole space in accordance with the agreed specifications in the Technical Proposal and the Access Provider has notified the Access Seeker in writing of the same; or
 - (b) The Access Seeker takes physical possession of the Duct and Manhole, whichever is the earlier.

5. Use of Duct and Manhole

- 5.1 The Access Seeker shall only use the Duct and Manhole for the sole purpose of providing communications services and shall not do or permit to be done any act or

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Part A – Section III

thing which is illegal or may become a nuisance or give reasonable cause for complaint from the Access Provider, or owner or any of the other access seekers.

- 5.1A If the Access Seeker has not complied with Condition 5.1, the Access Seeker shall take the necessary rectification or remedial action to address any complaints made by the Access Provider or other access seekers.
- 5.2 The Access Seeker shall not sub-let the Duct and Manhole without the prior written approval of the Access Provider.
- 5.3 The Access Provider shall not be responsible for any damage to the Access Seeker' fiber optic cable in the Duct and Manhole caused by fire, water leakage and/or by any other Force Majeure.
- 5.4 The Access Seeker shall establish and maintain a register of all persons who visit the Sub-duct and Manhole Space on the Access Seeker' behalf, which must be made available for inspection upon request by the Access Provider.
- 5.5 The Access Seeker' right to use the Sub-duct and Manhole Space and the right of access does not entitle the Access Seeker to any proprietary rights or interest whether under statute, common law, equity or any theory of law in any building, land, fixture, or other structure.
- 5.6 All costs incurred by the Access Seeker' personnel and appointed contractor in performing the fibre cable pulling and installation in the sub-duct and manhole space is to be borne by the Access Seeker. Any access to the ducts and manholes shall require prior written approval from the Access Provider.
- 5.7 The fibre cable pulling and installation to be performed by the appointed contractor on behalf of the Access Seeker shall be done in accordance to the agreed technical specification document generated based on the site survey unless otherwise agreed in writing by both Operators.
- 5.8 The Access Seeker shall be fully responsible to obtain all necessary consents, permits, plans, drawings, approvals and licenses from third parties and governmental authorities or agencies for the installation works.
- 5.9 The Access Seeker shall further observe and perform and cause all its employees, independent contractors, agents or invitees to observe and perform all manuals, rules and regulations by the Access Provider as set out in the Manuals which may be amended by the Access Provider from time to time and notified to the Access Seeker in writing.
- 5.10 The Access Seeker shall ensure that all cables, equipment, system or devices on the Sub-duct and Manhole Space shall:
- (a) be "Type-Approved" (to define) and comply with all relevant laws and regulations including obtaining the necessary licenses, permits and approvals;

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Part A – Section III

- (b) not cause any interference to the Access Provider's and/or any other access seekers' equipment or services provided in or around the Sub-duct and Manhole Space; and/or
- (c) adhere to and have been tested in accordance with the international industry standard (such as the ITU-T Recommendation with Test Specifications G.652)

5.11 In the event that:

- (a) The Access Seeker fails to fulfil its obligations under this Condition 5.7; or
- (b) the cables, equipment, system or devices of the Access Seeker is or poses a threat or danger to the public health and safety or the Access Provider and/or other access seeker's facilities, equipment, device or system,

The Access Provider may direct the Access Seeker to take such remedial action as may be necessary to remedy such breaches including temporary shutting down of the equipment, system or devices.

5.12 The Access Seeker shall only be permitted to install its fibre optic cable in the Sub-duct and Manhole Space for the provision of its services to their end users and shall not be permitted to install any other operator's cables, modify, alter or handle any cables or existing equipment belonging to the Access Provider or any other access seeker, on the Sub-duct and Manhole Space without the prior written approval of the Access Provider.

5.13 If a fault, defect or problem with the Access Seeker's cables—at the Sub-duct and Manhole Space causes or may cause damage to the Sub-duct and Manhole Space and/or to the Access Provider's and other access seeker's equipment and/or facilities, the Access Seeker must:

- (a) notify the Access Provider in writing as soon as practicable; and
- (b) repair the fault, defect or problem or take other appropriate corrective action immediately to the Access Provider's satisfaction.

5.14 If the Access Seeker detects a fault, defect or problem in the Sub-duct and Manhole Space, it must notify the Access Provider as soon as possible.

5.15 Upon completion of the installation or recovery work, the Access Seeker shall submit the relevant documentations containing information (before and after) of the work, location and the surrounding area of the installation work showing the modification of the existing underground infrastructure and placement of cable within the Sub-duct and Manhole Space, to the Access Provider.

6. Joint Survey

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Part A – Section III

For the purposes of **Subsection 2.8, Section III, Terms and Conditions for Technical Matters**, and subject to the timeframe specified under **Subsection 2.9, Section III, Terms and Conditions for Technical Matters** of this Agreement, a joint survey may be conducted by the Access Provider and the Access Seeker, along with surveyors, where necessary, to determine the availability of requested ducts and manholes at a particular area, provided that the scope of the survey be jointly decided, and any costs are necessarily incurred, itemized and agreed between the parties.

7. Operational manuals

7.1 The Access Provider shall establish operations and maintenance manuals which are made available to the Access Seeker (upon request), containing reasonable processes and procedures relating to Duct and Manhole Access including but not limited to:

- (a) safety, security and occupational health and safety;
- (b) laying, maintenance, restoration and removal of cables;
- (c) entry to manholes; and
- (d) sealing or closing of manholes.

7.2 The Access Provider's processes and procedures for Duct and Manhole Access shall:

- (a) not be intentionally designed to deny or have the effect of denying or delaying the Access Seeker's access to ducts and manholes;
- (b) not completely or substantially prohibit the Access Seeker from physically accessing ducts and manholes unless the Access Provider has been directed in writing to do so by the Government (in which case, the Access Provider shall notify the Commission); and
- (c) be no more restrictive or onerous than the processes and procedures that the Access Provider imposes on its own personnel who physically access ducts and manholes.

7.3 The Access Provider shall allow the Access Seeker, its nominated employees and/or contractors to physically access the Access Provider's network facilities and the Access Seeker's Equipment, and to have physical control over the Access Seeker's Equipment located at the Sub-duct and Manhole Space for the Access Seeker to perform operations or maintenance activities. The Access Provider shall provide:

- (a) immediate physical access for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week; and
- (b) physical access at the time requested for planned maintenance

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Part A – Section III

- 7.4 The Access Seeker shall on the expiration or termination of the Duct and Manhole Access, at its own cost and expense, remove all its cables, equipment, system and devices which may have been installed by the Access Seeker and to peaceably and quietly make good the Sub-duct and Manhole Space to the Access Provider with all the Access Provider's fixtures and additions thereto in good and tenable repair and condition (fair wear and tear excepted) in accordance with the covenants herein contained.
- 7.5 The Access Seeker shall be given a grace period of ten (10) Business Days effective from the expiry or termination of the Duct and Manhole Access to vacate the Sub-duct and Manhole Space, during which no monthly rental will be charged by the Access Provider. Should the cables, equipment, system or devices not be removed within the grace period, the Access Provider shall have the right to:
- (a) charge for the use of the Sub-duct and Manhole Space at the rate of two (2) times the current rental or the cost of reinstatement as debt due and payable;
 - (b) remove the cable, equipment, system and/or devices of the Access Seeker and the Access Seeker shall reimburse the Access Provider to the cost of removing the same; and
 - (c) without any liability to the Access Seeker, dispose of the cable, equipment, system and/or devices in such manner as the Access Provider deems fit with a one (1) month's written notice. If The Access Seeker fails to settle any debt due, the Access Provider shall have a lien on the cables, equipment, system or devices and is entitled to retain such cables, equipment, system or devices or to sell the cables, equipment system or devices at any price in such manner as it deems fit for payment of any such debt and the cost of sale shall be borne by the Access Seeker. The Access Provider shall be entitled to set off the proceeds from the sale of the cables, equipment, system or devices against any and all debts due by the Access Seeker to the Access Provider. Any balance in the proceeds from the sale shall be returned to the Access Seeker.

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**Terms and Conditions for Regulated Facilities and/or Services
Part B – Section II**

**PART B
CHARGES AND CHARGING PRINCIPLES**

SECTION I – LAYER 2 HSBB NETWORK SERVICE WITH QOS

1. General

1.1 This **Section I** of **Part B** sets out the charges and charging principles which would be applicable to the Layer 2 HSBB Network Services.

2. Charges and Charging Principles

2.1 The Layer 2 HSBB Network Service supplied by the Access Provider shall be subjected to the Charges listed in Table A and Table B below.

2.2 For the purposes of clarification, all the other HSBB Network Service not listed in Table below is negotiated charges.

Layer 2 HSBB Network Service with Quality of Service

Table 1: One-time Charges

Installation	1 January 2018 until 31 December 2018	1 January 2019 until 31 December 2019	1 January 2020 until a new MSAP Determination takes effect
Broadband termination unit port (non-recurring charge)	440	461	485
Service gateway (non-recurring charge)	426	447	469

Table 2: Recurring Charges

	1 January 2018 until 31 December 2018	1 January 2019 until 31 December 2019	1 January 2020 until a new MSAP Determination takes effect
Broadband termination unit port (RM per port per month)	45	45	45
Layer 2 service gateway including for Multimedia Multicast, Unicast and Data (RM per month):			
100 Mbps	322	283	254
200 Mbps	644	567	507

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500 Mbps	1,611	1,416	1,268
750 Mbps	2,417	2,125	1,902
1 Gbps	3,300	2,901	2,597
3 Gbps	9,899	8,703	7,791
5 Gbps	16,499	14,504	12,985
10 Gbps	32,998	29,009	25,970
20 Gbps	65,996	58,017	51,940
50 Gbps	164,991	145,043	129,850
100 Gbps	329,981	290,086	259,701
200 Gbps	659,963	580,173	519,402
500 Gbps	1,649,907	1,450,432	1,298,504

Table 3: Other One Time Charge

The following are the applicable charges payable by the Access Seeker to the Access Provider, if so incurred.

SG Reconfiguration, Upgrade, Downgrade, Decommission (at the Access Seeker request)	RM500.00 for each SG
SG Reconnection	RM500.00 for each SG
BTU Upgrade/Downgrade (per BTU)	RM10.00
Addition / Removal of Service (per BTU)	RM20.00
BTU Unrecoverable, Damaged or Destroyed (if due to Customer/AS fault)	RM200.00 for each BTU plus Site Visit Charge (To be waived after minimum period)
Repair of each BTU (if due to Customer/AS fault)	RM200.00 for each BTU plus Site Visit Charge (To be waived after minimum period)
Site Visit Charge (if due to Customer/AS fault)	RM89.00
Appointment Deferment (less than two (2) Business Days' notice)	RM100.00 for each deferment

PART B
ACCESS CHARGES AND CHARGING PRINCIPLES

SECTION II – WHOLESALE LOCAL LEASED CIRCUIT

1. General

1.1 This **Section II** of **Part B** sets out the charges and charging principles which would be applicable to Wholesale Local Leased Circuit Service.

2. Charges and Charging Principles

2.1 The Wholesale Local Leased Circuit Service provided by the Access Provider shall, only to the extent necessary, be subject to the Charges listed in **Appendix I to Section II**. Where a Wholesale Local Leased Circuit Service is commissioned in a particular year (e.g. 2018) and continues through to the following calendar year (e.g. 2019), the Charges set out in **Appendix I to Section II** for that particular contract period, shall be apportioned and calculated based on the stipulated Charges applicable to the relevant calendar year or part thereof.

2.2 The Access Seeker will not be entitled to terminate any of the lease agreements in respect of any Wholesale Local Leased Circuit Service in the first year. If The Access Seeker terminates, The Access Seeker shall pay the applicable charges for the minimum period of one (1) year irrespective of use. After the first year, the Access Seeker may terminate the lease agreement by providing the Access Provider three (3) months prior written notice. Any advance payment for the un-utilised portion of the lease agreement will be refunded on a pro-rated basis. Upon expiry, the lease agreement will be automatically renewed for the same duration unless either Operator gives a written notice to the other Operator, three (3) months prior to the expiry of the lease agreement, stating its intention not to renew the lease agreement.

2.3 The Access Provider's Payment Terms

2.3.1 The payment terms for Wholesale Local Leased Circuit Service is as follows:

- (a) for the first year, one (1) year in advance; and
- (b) for subsequent years, quarterly in advance.

2.3.2 The contract period for the lease agreement shall commence from the date of commissioning of the respective Wholesale Local Leased Circuit Service circuit.

**Terms and Conditions for Regulated Facilities and/or Services
Appendix 1 to Section II**

APPENDIX 1 TO SECTION II

CHARGES FOR WHOLESALE LOCAL LEASED CIRCUIT SERVICE

Table A: Charges for Wholesale Local Leased Circuit

For Peninsular and East Malaysia	Ringgit Malaysia per circuit		
	1 January 2018 until 31 December 2018	1 January 2019 until 31 December 2019	1 January 2020 until a new MSAP Determination takes effect
Installation	2,555	2,683	2,817

For Peninsular and East Malaysia	Ringgit Malaysia per year per circuit		
	1 January 2018 until 31 December 2018	1 January 2019 until 31 December 2019	1 January 2020 until a new MSAP Determination takes effect
Below 1 Mbps	576	588	600
From 1 Mbps to 1 Gbps	7,608	7,344	7,116
From 1 Gbps to 10 Gbps	192,504	185,184	178,428
From 1 Gbps (using Dense Wavelength Division Multiplexing equipment)	11,388	11,004	10,656

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**PART B
CHARGES AND CHARGING PRINCIPLES**

SECTION III – DUCT AND MANHOLE ACCESS

1. General

1.1 This **Section III** of **Part B** sets out the charges and the charging principles which would be applicable to Duct and Manhole Access.

2. Charges and Charging Principles

2.1 Rental and Other Charges

The Duct and Manhole Access supplied by the Access Provider shall be subject to the Charges listed in **Table A** below. For the purpose of clarification, all the other Duct and Manhole Access not listed in **Table A** below are negotiated charges.

2.2 Mode of Payment

2.2.1 The Access Seeker shall pay to the Access Provider the recurring charges rental stated in **Condition 2.1** above (“**Rental**”) for Duct and Manhole Access as follows:

- (a) For the first year, the first year’s Rental charges shall be paid in advance on the Commencement Date; and
- (b) For subsequent years, a quarterly advance shall be paid to the Access Provider

2.2.2 The Access Seeker shall pay to the Access Provider the one-time charges stated in **Condition 2.1** above within thirty (30) days from the date of receipt of the invoice.

2.2.3 The Access Seeker agrees to pay the Access Provider the Rental recurring charges for the whole three (3) year period irrespective of use of the Ducts and Manhole Access as the Access Seeker has committed to the minimum period of three (3) years, or such lesser period specified by the Access Provider. This minimum three (3) year commitment period shall apply to every renewal of the Duct and Manhole Access unless otherwise agreed between the Operators.

**Terms and Conditions for Regulated Facilities and/or Services
Part B-Section III**

Table A: Duct and Manhole Access Charges

One Time Charges

Type of Charges	Location Category	Charge
Site Survey	Peninsular	RM 1,000
	Island	RM 1,500
	Sabah Zone A	RM 2,000
	Sabah Zone B	RM 2,500
	Sabah Zone C	RM 3,000
	Sabah Zone D	RM 3,500
	Sarawak Zone A	RM 2,000
	Sarawak Zone B	RM 2,500
	Sarawak Zone C	RM 3,000
	Sarawak Zone D	RM 3,500
Site Preparation Work	Applicable to all location	To be undertaken by the Access Provider (if required)
Site Supervision Work	Applicable to all location	As mutually agreed, (if required)

Recurring Charges

Type of Charge	Charge per sub-duct (per km per year)		
	1 January 2018 until 31 December 2018	1 January 2019 until 31 December 2019	1 January 2020 until a new MSAP Determination takes effect
Duct and Manhole Access	3,792	3,984	4,188