

REFERENCE ACCESS OFFER

Version 2.0 of 2023

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1 –INTRODUCTION

1. BACKGROUND

- 1.1 Pursuant to Commission Determination on the Mandatory Standard Access List, (Determination No. 6 of 2021), Mandatory Standard on Access (Determination No.1 of 2022), Commission Determination on the Mandatory Standard on Access Pricing (Determination No.1 of 2023) issued by the Malaysian Communications and Multimedia Commission in accordance with sections 55 and 104(2) of the Communications and Multimedia Act 1998 (Act 588), **Seax Malaysia Sdn Bhd (Co. No. 201701017175 / 1231340-U) (“SEAX”)** is pleased to prepare, publish and maintain an Reference Access Offer ("RAO") for all Access Seekers' reference and request for access. The RAO deals with access to Facilities and/or Services offered by the Access Provider. The RAO aims to be sufficiently flexible to deal with the requirements by the Access Seekers, subject to the availability of the Facilities and/or Services offered by the Access Provider.

2 SCOPE AND STRUCTURE OF SEAX'S RAO

- 2.1 **The scope of this RAO:** Unless otherwise specified in this RAO, limited only to the provision of Facilities and/or Services within SEAX's licenses only. It shall only apply in respect of the wholesale relationship between SEAX and the Access Seekers included in the Access List Determination.
- 2.2 **The Structure of this RAO:** This RAO governs the terms and conditions to access the Facilities and/or Services.
- 2.3 **Scope outside RAO:** If the Access Seeker requests network facilities or network services outside SEAX's RAO, the terms and conditions for the provision of such network facilities or network services shall remain outside the scope of SEAX's RAO. Nevertheless, the Operators are free to consider SEAX's RAO when negotiating the terms and conditions for the supply of other network facilities or network services that are not listed in the Access List Determination.
- 2.4 **Application of this RAO:** Any person who is a licensee as defined in the Act and who acts in one or more of the following capacities is entitled to enter into this RAO:
- (i) network facilities providers, in their capacity as Access Providers or Access Seekers;
 - (ii) network service providers, in their capacity as Access Providers or Access Seekers;
 - (iii) applications service providers, in their capacity as Access Seekers; and
 - (iv) content applications service providers, in their capacity as Access Seekers.

2.5 **Facilities and/or Services offered under this RAO:** The following Facilities and/or Services offered under SEAX's RAO are as follows:

- (a) Network Co-Location
- (b) Trunk Transmission Services
- (b) End to End Transmission Services

2.6 **Access Agreement:** Each Operator must, at its own expense, on the request of the other, do everything reasonably necessary to give effect to this RAO by undertaking the following:

- (i) to execute the Access Agreement ("Agreement");
- (ii) the timely performance of all obligations under this RAO;
- (iii) to register the Access Agreement within the stipulated period and in accordance to the requirement under the Act; and
- (iv) to negotiate in good faith on changes to an Access Agreement that may be necessary to secure registration of the Access Agreement under the Act.

2.7 **Changes to the RAO:**

2.7.1 This RAO may change from time to time. SEAX shall, no less than twenty (20) Business Days prior of making any amendment to this RAO, show the amendments to the existing RAO (whereby provide a copy of the amendments, or an amended copy of SEAX's RAO) to:

- (a) the Access Seeker who is being provided with access to Facilities and/or Services under the existing RAO; and
- (b) the Access Seeker who has requested access to facilities and/or services under the existing RAO within the period of ninety (90) days prior to the making of such amendments, unless the Access Seeker has already indicated that it does not wish to proceed with the Access Request.

2.7.2 Upon expiry of the twenty (20) Business Days as specified in subclause 2.7.1 above, if no disagreement is put forward by Access Seeker, the Access Seeker will be deemed to have agreed to the amendments. Thereafter, SEAX's RAO shall be made available to an Access Seeker on Access Provider's publicly accessible website and Operators shall inform the Commission in writing of the amendments Parties wish to make. The SEAX's RAO shall not be varied until such reasonable time and condition specified by the Commission.

2.7.3 Within ten (10) Business Days after the amended RAO is published on Access Provider's publicly accessible website, SEAX shall forward a copy thereof to the Commission.

2.8 **Notice of Withdrawal, Replacement and Variation of SEAX's RAO:**

2.8.1 If subject to **Section 56 of the Act**, the Commission revokes, varies or replaces the Access List Determination relating to the Facilities or Services, SEAX may, by giving written notice to all Access Seekers to whom it is supplying Facilities or Services under SEAX's RAO, withdraw or replace SEAX's RAO..

2.8.2 SEAX shall comply with **Sections 7.4.2 and 7.4.3 of the MSA Determination** where it provides written notification to all Access Seekers as per the conditions provided below.

- (i) Notice period - the notice period must be no shorter than:
 - (a) The period of time between the time of giving the notice and the time at which the SEAX is proposing to no longer provide the Facilities or Services to itself; or
 - (b) twelve (12) months.

- (ii) The Notice provided pursuant to Section 2.8 above shall state:
 - (a) when the variation or replacement will come into effect;
 - (b) how the variation or replacement is likely to affect the Access Seeker; and
 - (c) any alternative Facilities or Services that may be available to be provided by SEAX to the Access Seeker and the terms and conditions on which such alternative arrangements are made available.

2.8.3 SEAX may give the Access Seekers to whom it is supplying Facilities and Services under SEAX's RAO a notice of a variation or replacement of SEAX's RAO to effect such variations that are necessary or appropriate in the event of:

- (a) the occurrence of a Legislative Event that materially affects the rights or obligations of SEAX under SEAX's RAO; or
- (b) the occurrence of a Regulatory Event that relates to SEAX; or
- (c) a review by the Commission of the MSA Determination pursuant to **Subsection 7.5 of the MSA Determination**.

- 2.9 **Availability:** This SEAX's RAO shall be made available to an Access Seeker:
- (a) on written request, at SEAX's principal place of business;
and
 - (b) on a publicly assessable website at <http://seax.my/reference-access-offer/>

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STRUCTURE OF THIS RAO

This diagram is only a broad summary and illustration of the scope and structure of this RAO. This diagram shall not limit or prejudice the interpretation or scope of the respective documents forming this RAO.

STRUCTURE OF THIS RAO					
Background, Scope and Structure	Definition	General Terms and Conditions	Terms and Conditions for Technical Matters	Terms and Conditions for Regulated Facilities and Services	
				Part A	Part B
This document sets out the: (a) generic scope of this RAO; and (b) list of documents forming part of this RAO.	Sets out the definitions and rules of interpretation applicable to this RAO .	Sets out the terms and conditions applicable to Facilities and Services.	Sets out the technical and operational matters applicable to Facilities and Services.	Sets out the service description of Regulated Facilities and Services.	Sets out the charges and charging principles applicable to Regulated Facilities and Services.

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2 DEFINITIONS & RULES OF INTERPRETATION

1.1 The following words have these meanings in this SEAX's RAO unless the contrary intention appears: -

“Act” or “CMA” means the Communications and Multimedia Act 1998.

“Access Agreement” or “AA” means an agreement entered into between Operators whereby the Access Provider provides access to an Access Seeker in accordance with the terms contained in such agreement.

“Access List Determination” means the Commission Determination on Access List Determination No. 6 of 2021 which contains the list of Facilities and Services determined by the Commission under Chapter 3 of Part VI of the Act.

“Access Provider” means an Operator who is:-

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

“Access Request” means a request for access made by an Access Seeker in the form set out in this RAO.

“Access Seeker” means is a network facilities provider, a network services provider, an application service provider or a content application service provider who is a licensee as defined in the Act and who makes a written request for access to Facilities and/or Services.

“Access Service” means a service for the carriage of agreed Communication along SEAX's Facilities and Services between the POIs/POPs.

“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 Section 11.6.1 of this RAO.

“Billing Dispute Notification Period” means the period specified in Section subsection 7.2 of Annexure A.

“Billing Representative” means a representative of the Operator appointed in accordance with the billing procedures set out in Annexure A.

“Billing System” means a system to issue Invoices relating to Charges payable by Access Seeker under this RAO.

“Billing Period” means the period over which the supply of access to Facilities and/or Services is measured for the purposes of billing which shall be no more than

one (1) month and in accordance with the relevant calendar month, unless otherwise agreed between the Operators.

“Billing Cycle” means the regular periodic basis on which SEAX shall issue Invoices for the supply of access to Services during each Billing Period, as specified in PART A - SERVICE DESCRIPTION.

“**Bank Guarantee**” means a guarantee, executed in favour of SEAX by a licensed bank in Malaysia on behalf of the Access Seeker.

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

- (a) a Saturday and Sunday;
- (b) in the states where Friday is observed as the weekly holiday, a Friday and Saturday; or
- (c) a day which is lawfully observed as a national public holiday throughout Malaysia.

“**Change Notice**” means the notice specified under Section V of this RAO.

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

“**Commencement Date**” means the date on which the Operators enter into the Access Agreement or such other date as agreed between the Operators.

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

“**Communication**” means any communication, whether between persons and persons, things and things, or persons and things in the form of sound, data, text, visual images, signals, or any other form or any combination of those forms and, where the context permits, includes and attempt to establish a communication.

“**Communications Service**” means the network facilities, network services, application services and/or content application services provided by the Operator, as the case may be, pursuant to its Licence(s).

“**Confidentiality Information**” means all information, know-how, ideas, concepts, technology, manufacturing processes, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of the Disclosing Party but does not include:

- (a) information which is or becomes part of the public domain (other than through any breach of an Access Agreement);
- (b) information rightfully received by the Receiving Party from a third person without a duty of confidentiality being owed to the third person, except where the Receiving Party has knowledge that the third person has obtained that information either

directly or indirectly as a result of a breach of any duty of confidence owed to the Disclosing Party;

(c) information which has been independently developed by the Receiving Party;
or

(d) information required by law or the business rules of any stock exchange to be disclosed, provided that:

- (i) the Receiving Party, gives twenty-four (24) hours' notice to the Disclosing Party of the particulars of the required disclosure; and
- (ii) the Receiving Party provides the Disclosing Party with all assistance reasonably required by the Disclosing Operator (at the Disclosing Party's cost) to enable the Disclosing Party to take any steps available to it to prevent that disclosure or to ensure that it occurs subject to a reasonable obligation of confidence;

“Creditworthiness Information” means the information required by SEAX to assess the creditworthiness of the Access Seeker which are more particularly described in Section 3.2 of SEAX’s RAO and such other information as may be required from time to time.

“Customer” means in relation to an Operator, a person having a contractual relationship with the Operator for the provision of Communications Services.

“Churn” means the processes which are required to be carried out by Operators in relation to the provision of Facilities and/or Services and transfers 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);

“Determination” means any lawful determination made by the Commission and/or the Minister, pursuant to Chapter 2 of Part V of the Act.

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

“Dispute Resolution Procedures” means the procedures set out in Annexure A of this RAO.

“Disclosing Party” means the party disclosing the Confidential Information.

“Due Date” means, in respect of an Invoice, thirty (30) days from the receipt of an Invoice.

“Effective Date” means the date on which the relevant portions of this RAO requiring registration is duly registered with the Commission under Section 150 of the Act in its entirety.

“End to End Transmission Services” has the meaning as described in Part A - Service Description, Section 3 of this RAO..

“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 an Access Provider providing to itself and to all Access Seekers 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 in this RAO to “itself” includes its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest.

“End User Customer” means a person or entity having a contractual relationship with the Access Seeker for the provision of, or to whom the Access Seeker provides, communications by means of the Access Seeker’s Facilities and/or Services.

“Facilities” means network facilities and/or other facilities which facilitate the provision of network services or applications services including content applications services which are listed in the Access List Determination and as specified in this RAO.

“Facilities Access” in relation to Facilities, 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 Terms and Conditions For Technical Matters.

“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.

“Instrument” means any lawful instrument which is issued by the Commission pursuant to the Act.

“Insurance Information” means the insurance information required by SEAX pursuant to Section 8.2 of this RAO.

“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 requested Facilities and/or Services during a Billing Period.

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

“**Interconnecting Network**” means interconnection of network of an Access Provider and the network of an Access Seeker.

“**Legislative Event**” means:

- (a) the enactment, amendment, replacement or repeal of the Act;
- (b) the enactment, amendment, replacement or repeal of the rules promulgated pursuant to sections 104 and 105 of the Act in respect of mandatory standards;
- (c) the registration, determination, promulgation, issue, amendment or replacement of any industry code with which SEAX is required or obliged to comply; and/or
- (d) the making of a determination, direction or finding by the Commission, the Minister or a court of law that all or any part of SEAX’s RAO contravenes any provision of any law, except to the extent that the making of such determination, direction or finding constitutes a Regulatory Event.

“**Licence**” means an individual licence granted by the Minister pursuant to the Act for Communication Services.

“**Manuals**” means the Technical and Implementation Manual, the Operations and Maintenance Manual and other manuals which the Operators establish pursuant to the Access Agreement.

“**Minimum Value**” for the purposes of calculating the Security Sum means the total estimated value of access to the requested Facilities and Services provided (based on the most recent amounts invoiced for those requested Facilities and Services) or new facilities and/or services to be provided by SEAX to the Access Seeker for a ninety (90) day period.

“**Minister**” means the Minister of Communications and Multimedia or, if different, the Minister administering the Act.

“**MSQOS**” means the Commission Determination on the Mandatory Standard for Quality of Service No. 2 of 2016 and No 3 of 2009 issued by Commission (as may be applicable).

“**MSAP**” means Commission Determination on the Mandatory Standard on Access Pricing No.1 of 2023.

“**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. In relation to an Operator, mean so much of the network as is owned and operated by the Operator.

“Network Capacity” means equipment and facilities required to be installed in SEAX’s Network for use in the provision of one or more Access Services but does not include Interconnect Link.

“Network Conditioning” means the conditioning, equipping and installation of facilities at SEAX’s Network to enable the provision of one or more Access Services.

“Network Co-Location Service” means Facilities and/or Services comprising (i) physical co-location or (ii) virtual co-location as specified in Part A – Service Description, Section 1 of this RAO.

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

(a) network facilities and/or other facilities that are not listed in the Access List; and/or

(b) network services and/or other services that are not listed in the Access List,

specified in this RAO which facilitates the provision of network services or applications services including content applications services.

“Operators” means SEAX and the Access Seeker collectively.

“Other Operator” means either:

(a) SEAX; or

(b) the Access Seeker.

as the context requires.

“Order” means an order placed by the Access Seeker.

“Operational Support System” or “OSS” means operations support systems used to manage networks, and which typically provide for support functions such as network inventory, service provisioning, network configuration and fault management provided by Access Provider to Access Seeker.

“OSS Change” means has the meaning given to it under Section V of this RAO.

“Point of Interconnect” or “POI” means any technically feasible point which demarcates the Interconnecting Network and is a point at which a Communication is transferred between the Interconnecting Networks.

“Point of Presence” or “POP” means a point at which an Access Seeker has established itself for the purposes of obtaining access to Facilities or Services..

“QOS” means quality of service.

“QOS standards” means the QOS standards in respect of certain services set out in this RAO.

“**RAO**” means this Referenced Access Offer as issued by SEAX from time to time and published on its website.

“**Regulatory Event**” means:

- (a) the declaration, modification, variation or revocation of the MSA Determination;
- (b) the giving of a lawful direction to SEAX by the Commission relating to SEAX’s RAO; and/or
- (c) the giving of a lawful direction to SEAX by the Minister relating to SEAX’s RAO.

“**Review**” means a review of the MSA Determination and/or a review of the Mandatory Standard on Access Pricing.

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

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

specified in this RAO which facilitates the provision of network services or applications services including content applications services.

“**Receiving Party**” means the party receiving Confidential Information.

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

“**Security Sum**” means the security in the form of a Bank Guarantee, deposited with SEAX, for the supply of network facilities or network services in accordance with this RAO.

“**Services**” means the applicable network services and/or other services as listed in the Access List and as specified in this RAO which facilitate the provision of network services .

“**Service Ordering Procedures**” means the procedures governing the forecasting, planning and ordering of relevant Facilities and Services as set out in the relevant Manuals.

“**Standard Access Obligations**” or “**SAO**” has the meaning prescribed in Section 149 of the Act.

“**Service Qualification**” (i) in relation to Network Co-Location Service, End-to-End Transmission Service means, a desk and/or field study that may be conducted and may include (where relevant) the testing of a line to ascertain whether it could be used in response to an Access Request and/or Order or proposed Order’ and (ii) in relation to all other Facilities and Services, includes the interrogation of an Access Provider’s OSS to confirm availability of network facilities to fulfil an Order or

proposed Order;

“**Transmission Service**” means each of the trunk transmission service; and End to End Transmission Services.

“**Trunk Transmission Service**” means the services described in Section II, Part A of Service Description and Specific Obligations.

“**Technical Specifications**” means any technical parameters, specifications and procedures applicable to Interconnection of the Operators’ Network and provision of Access Services documented in this RAO or any manuals referred to in the Access Agreement.

1.2 In SEAX’s RAO 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 novation 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) a reference to a 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; and
- (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 party is a reference to a person who is not a party to SEAX’s RAO;
- (i) in relation to an Access Service for the carriage of a communication it refers to the carriage of a communication between the POIs/POPs along SEAX’s Network but does not include any Communication for which the Access Service is provided with the assistance a third party’s Facilities or Services;
- (j) no rule of construction and/or interpretation applies to the disadvantage and/or detriment of the Operator having control and/or responsibility for the preparation of SEAX’s RAO;
- (k) headings are included for convenience and do not affect the interpretation of SEAX’s RAO.

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3 GENERAL TERMS AND CONDITIONS

Section 1 PRINCIPLES OF ACCESS FACILITIES AND SERVICES

1.1 Provision and Usage of Facilities and Services subject to SEAX's License and RAO

1.1.1 The Facilities and 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 Facilities and 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 SAO

1.2.1 In accordance with the Act and subject to exemptions determined by the Minister, all network facilities providers and network services providers shall provide access on reasonable terms and conditions to the Facilities and Services listed in the Access List to any other:

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

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

1.3 Principles of Non-Discrimination

1.3.1 The Operators agree and acknowledge that the governing principle of this RAO 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 an 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 on the Access Provider's Facilities and Services; and
- (b) on an equitable and non-discriminatory basis.

1.3.3 However, nothing in this RAO shall limit the Access Seeker's 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 an Access Provider provides to itself or its related companies.

1.4 Reasonableness

1.4.1 An Access Provider may refuse a request if:

- (a) supply of the relevant listed Facilities and/or Services would not be reasonable (see subsection 1.4 of this RAO); 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 (see subsection 1.5 of this RAO).

1.5 Unreasonable request

1.5.1 Although not prescribed by the Act, a request for access to a listed Facilities or Services may not be reasonable if one or more of the criteria in subsection 2.4.11 of this RAO are satisfied. For clarification, this RAO does not intend or attempt to narrow the grounds of refusal upon which a Party may rely under the Act.

1.6 Unreasonable terms

1.6.1 The Act provides for several mechanisms to determine terms and conditions if the parties are unable to reach agreement on the terms and conditions of supply, including dispute resolution by the Commission.

1.7 Non-discrimination

1.7.1 As required by subsection 149(2) of the Act, an Access Provider must provide access to those Facilities and/or Services specified in the Access List Determination, and such access must 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) provided on an equitable and a non-discriminatory basis.

1.8 For the purposes of this RAO, the term non- discriminatory” requires comparison of:

- (a) the basis on which a thing is provided by the Access Provider to an Access Seeker;
- (b) the basis on which that thing is provided by the Access Provider to itself and to other Access Seekers.

1.9 Customer Relationship Principles

1.9.1 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;
- (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. Such an agreement may include, but is not limited to the following:-

- (i) the Access Provider billing on behalf of the Access Seeker; or
- (ii) the Access Provider, in its own right, bills the Customer of the Access Seeker and makes a separate payment to the Access Seeker.

1.9.2 The Operators agree and acknowledge that, unless otherwise specifically agreed and identified in this RAO, 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 as regards:

(a) to the extent technically feasible, the transparency, from the Customers' perspective, of services carried across the Access Provider's Network; and

(b) the standard and quality of Services which the Access Provider supplies to Customers of the Access Seeker, whenever those services are associated with or incidental to the supply of Communications Services by the Access Seeker.

1.10 APPLICATION OF NON-DISCRIMINATION PRINCIPLE:

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

- (a) processing of applications for access;
- (b) acceptance or refusal of Access Requests;
- (c) provision of information required to place orders;
- (d) provisioning and Churn of network services Facilities or network facilities Services;
- (e) allocation of constrained capacity;
- (f) fault reporting and fault rectification;
- (g) network conditioning;
- (h) allocation of space at exchanges; and
- (i) the purpose or use for which access is provided.

Non-Standard performance: Nothing in this RAO limits an Access Seeker's ability to request access to Facilities and/or Services that is either superior or inferior (e.g. as to technical standard and quality) to that which an Access Provider provides to itself.

1.11 NO EXCLUSIVITY AND NO RESTRICTION ON RESALE:

1.11.1 An Access Provider must not, in relation to the supply of a Facility or Service, include a term or condition in an Access Agreement preventing an Access Seeker from acquiring the same or any other Facility or Service from another Operator.

1.11.2 An Access Provider must not, in relation to the supply of a Facility or Service, include a term or condition in an Access Agreement preventing an Access Seeker from re-supplying that Facility or Service to any person.

1.12 NECESSARY THIRD PARTY INVOLVEMENT CAUSING OR CONTRIBUTING TO NON-COMPLIANCE IN TIMEFRAME

1.12.1 If:

- (a) an Access Provider fails to comply with a timeframe under this RAO; and
- (b) the Access Provider considers that such failure was caused or contributed to by the necessary third party involvement or other matters reasonably outside the Access Provider's control (for example, where approval from local or other authority is required), The Access Provider must notify the Commission of such non-compliance and such third party involvement, and provide the contact details of such third party, to permit the Commission to investigate the non-compliance.

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SECTION 2 PARAMETERS OF SEAX'S RAO

- 2.1 The scope of this RAO is, unless otherwise specified in this SEAX RAO, limited only to the provision of Facilities and/or Services specified in **Subsection 1.1 of the General Terms and Condition.**
- 2.2 The Operators agree that this RAO is not intended to govern the provision of any facilities and/or services not specified in this RAO.
- 2.3 The obligation of an Operator to agree, in accordance with this RAO, to the extension of this RAO to cover the provision of a Communications Service to the other Operator is first subject to the Operator being so obliged by virtue of its Licence or by applicable regulations, Determinations and/or Directions, and the other Operator being in full compliance of all the material terms herein.
- 2.4 Except where this RAO provides to the contrary, the rights and obligations conferred by this RAO apply reciprocally as between the Operators. For the purposes of clarification, where this RAO expressly states that a service is only to be provided by one named Operator to the other named Operator the obligations in respect of that service are not regarded as reciprocal.
- 2.5 For the avoidance of doubt, this RAO 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.
- 2.6 The Operators hereby agree and acknowledge that this RAO in its entirety shall only be effective and enforceable upon registration of the relevant portion of this RAO (which requires registration) with the Commission.
- 2.7 Each Operator shall notify the other Operator as soon as possible of all correspondences from the Commission pertaining to the registration of this RAO.

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SECTION 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 listed in the Access Provider's RAO by serving an Access Request on 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's request for the supply of network facilities or network services.

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 network facility or network service that is being sought by the Access Seeker;
- (e) contain the information (if any) as set out in Section 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 network facility and/or network service 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's 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) 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;
- (j) contain Creditworthiness Information as set out in Section 3.2;
- (k) contain Insurance Information as set out in Section 8.2;
- (l) be accompanied by the Security Sum as set out in Section 3.3A;
- (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 Section 3.1.3(e), an Access Provider must provide the following information to an Access Seeker within ten (10) Business Days of receipt of a written request 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, including details concerning all POIs and other locations (including sites deemed to be critical national information infrastructure and other secure sites) at which physical co-location, virtual co-location or in-span interconnection is available to Access Seekers;
- (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;
- (h) any security requirements, insurance requirements and creditworthiness information required by the Access Provider under Sections 3.2, 3.3 and 3.3A; and
- (i) the Access Provider's reason for failing to supply any of the information referred to in paragraphs (a) to (h) of this Section 3.1.4.

The provision of information under this Section 3.1.4 is subject to the Confidentiality Agreement.

- 3.1.5 If an Access Seeker wishes to obtain access to additional Facilities or Services that are not specified in the Access List then the requirements under this subsection 3.1.3 (c) may apply to any request for access to such additional Facilities or Services to the extent agreed by the parties.

3.2 Creditworthiness Information

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

- (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 be reasonably requested by the Access Provider provided that such information are information which are publicly available.

3.3 Security Sum

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

3.4 Insurance Information

3.4.1 Subject to Subsection 8.2, 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.

3.5 Processing of Access Request

3.5.1 Access Provider's acknowledgement of receipt of Access Request

Subject to Subsection 2.10 of Section VII of the Terms and Conditions for Technical Matters, 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) request additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request. When requesting such information, Access Provider shall comply to the condition **5.4.16 of the MSA Determination**; 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
- (c) where the Access Seeker wishes to negotiate amendments to the RAO or Agreement on different terms, such terms to be mutually agreed in writing between the Operators.

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 Subsection 3.5.1 upon receipt of such additional information.

3.5.2 One-Off Non-Refundable Resource Charge

- (a) Subject to Subsection 3.5.2(b), the Access Provider may charge the Access Seeker a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request.
- (b) The fee for the respective Facilities and Services are set out in Annexure 1 of the General Terms and Conditions. Processing fees for Facilities and Services not currently specified in Annexure 1 will be mutually agreed between the Operators from time to time.
- (c) In the event that additional or non-routine work is required in order to process the Access Request, the Access Provider may charge a separate reasonable fee for undertaking such

additional or non-routine work. Such additional or non-routine work may include but is not limited to physical infrastructure checks, reprocessing due to error in information provided by the Access Seeker, site survey and site visits. The methodology and unit cost for such additional or non-routine work will be provided by the Access Provider where requested by the Access Seeker and shall be subject to mutual agreement prior to the Access Provider carrying out the additional or non-routine work. The Access Provider shall not be obliged to commence work until the scope of works and the said resource charges have been agreed to in writing by the Access Seeker.

- (d) The processing fee (excluding the additional and non-routine processing fees) will be set-off against the Charges for the network facilities and network services upon the confirmation by the Access Seeker of the Access Request. If the Access Seeker does not confirm the Access Request, the non-refundable resource charge will not be refunded to the Access Seeker.

3.5.3 Request for information

Where the Access Provider requests for additional information pursuant to Subsection 3.5.1(a), the Access Provider shall not require an Access Seeker to provide any of the following information to the Access Provider (whether as a condition of the provision of further information or as a condition of assessing the Access Seeker's application, or at any other time):

- (a) the Access Seeker's 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's 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 in respect of particular points of interface;
- (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 requirement in Subsection 3.2;
- (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 requested access; 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.

3.5.4 Acceptance response

If the Access Provider responds that access will be provided in accordance with a RAO, the Access Provider must, within ten (10) Business Days of such response, provide two copies of the RAO duly executed by the Access Provider to the Access Seeker and one (1) copy of confidentiality agreement that has also been properly executed by the Access Provider.

3.5.5 Negotiation response

If the Access Provider is willing to proceed with negotiation of the Access Request under Subsection 3.1.3 (c), the Access Provider must set out in its response to the Access Seeker:

- (a) a place, date and time, not later than fifteen (15) Business Days from the date of the Access Seeker's Provider's response, when the Access Provider's representative that is authorised to negotiate on an Access Agreement, will be available for the initial meeting with the Access Seeker's representative that is authorised to negotiate on an Access Agreement; and
- (b) one (1) copy of the executed confidentiality agreement returned by the Access Seeker that has also been properly executed by the Access Provider.

3.6 Grounds for refusal

3.6.1 Reasons for refusal

Except where expressly permitted otherwise under the Act or section 3 of this RAO, an Access Provider shall not refuse an Access Request, except on the grounds that:

- (a) the Access Provider does not currently supply, or provide access to, the relevant Facilities and/or Services to itself or to any third parties (in which case it shall identify any alternative facilities

and/or 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 original supply of access to Facilities and/or Services to the Access Seeker;

- (b) the Access Seeker has not provided all of the information required to be provided in accordance with subsection 3.4.1 of this RAO;
- (c) it is not technically feasible to provide access to the Facilities and/or Services requested by the Access Seeker;
- (d) subject to this RAO, the Access Provider has insufficient capacity or space to provide the requested Facilities and/or Services;
- (e) the Access Provider has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested Facilities and/or Services and such concern cannot be addressed through a security requirement in accordance with this RAO;
- (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities and/or Services; or
- (g) there are reasonable grounds for the Access Provider to refuse access in the national interest.

3.6.2 Technical infeasibility

For the purposes of Subsection 3.6.1 (c) of this RAO, an Access Provider shall not refuse an Access Request on the grounds of technical infeasibility unless the Access Provider establishes that there are substantial technical or operational concerns preventing the fulfilment of the Access Request. Each of the following matters 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 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, on its own, 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 and/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 subsection) improvements that would allow the Access Provider to meet the Access Request (in whole, or in part, and including for an interim period until any primary difficulties can be resolved).

3.6.3 Capacity constraints

An Access Provider may only refuse an Access Request on the ground that an Access Provider has insufficient capacity or space underset out in Subsection 3.5.1(e) of this RAO 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; or
- (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 Party within seven (7) months from the date of the Access Request, the Access Provider must promptly inform the Access Seeker and, if required by the Access Seeker, reconsider the Access Request in accordance with the process set out in this Section 3 of this RAO; and
- (c) in the case of both Subsection 3.5.4.3 (a) and (b), the Access Provider is unable to expand capacity to meet the requirements in the Access Seeker's Access Request.

3.6.4 Assessment of the Access Seeker's ability to pay for supply of relevant network facilities or network services Reasonable grounds in which the Access Provider may refuse in accordance with Subsection 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 RAO.

3.6.5 Assessment of the Access Seeker's 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 Subsection 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.

3.6.6 Assessment of Creditworthiness

In determining the creditworthiness of the Access Seeker, the Access Provider:

- (a) may have regard to the list of information in Subsection 3.2; but
- (b) shall not take into account amounts outstanding for network facilities or network services previously provided by the Access Provider to the Access Seeker where, in accordance with the terms and conditions governing the provision of such network facility or network service, the Access Seeker is not required to pay such amounts to the Access Provider to the extent that there is a bona fide dispute in relation to the amounts outstanding by the Access Seeker to the Access Provider and the Access Seeker is relying on such terms and conditions as a basis for its non-payment.

3.7 Notification of Rejection to the Access Seeker

3.7.1 Subject to Section 2.10 of Section VII of the Terms and Conditions for Technical Matters, 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 Subsection 3.4.1, as the case may be;
- (b) provide reasons for rejection under Subsection 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) Subsection 3.5.1(b), the Access Provider must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;

- (ii) Subsection 3.5.1(e), the Access Provider must identify when additional capacity is likely to be available; and
- (iii) Subsection 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.

3.7.2 Where the Operators are unable to resolve their differences following the meeting held pursuant to Subsection 3.7.1(d), either Operator may request resolution of the dispute in accordance with Section 11.

3.8 Acceptance of Access Request

3.8.1 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 Subsection 3.5.1(b), provide the Access Seeker with two (2) copies of the RAO executed by the Access Provider or, if there is already an existing agreement, two (2) copies of a supplemental agreement to the RAO.

3.8.2 Where the Access Provider is willing to negotiate different terms to the RAO, the Operators shall ensure that their designated representatives 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 Subsection 3.5.1(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
- (d) identify what technical investigations, if any, need to be made and by whom such investigations should be made.

3.8.3 Where the Access Provider is willing to negotiate different terms to the RAO, the Operators shall co-operate, in good faith and in a commercially reasonable manner, in negotiating and implementing the amendments to the RAO. This includes avoiding unnecessary disputes and resolving disputes promptly and fairly. The Operators shall use their best endeavours to conclude the supplemental agreement (if there is an existing agreement) within three (3) months of receipt of the draft supplemental agreement in Subsection 3.7.1(a) or within four (4) months from the date of the first meeting in accordance with Subsection 3.7.2 (as the case may be), 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 Section 11 shall take effect; or
- (b) either Operator may initiate the dispute resolution procedures in Section 11.

3.8.4 For the purposes of this Section, good faith requires that an 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 an 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 an Access Seeker to warrant that supplemental agreement 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;
- (g) intentionally mislead or coerce an 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.

3.8.5 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 network facility or network service until a Access 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.

3.9 Fast Track Application Process

3.9.1 Notwithstanding and as an alternative process to that set out in Subsections 3.1 to 3.7, 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 Subsection 3.9.2;

- (b) the fast-track application form:
 - i. shall be limited to gathering information from the Access Seeker as set out in Subsection 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 Subsection 5.3 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 Subsection 3.6.1(c), 3.6.1(f) and 3.6.1(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 Subsection 3.7.6(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 subjected to fast-track application may be limited to End-to End Transmission Service and Interconnect Link Service.

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SECTION 4 - PROVISION OF INFORMATION

- 4.1 The obligations of each Operator to provide information to the other Operator are as set out in this RAO or as otherwise agreed between the Operators and are subject to the requirements of confidentiality imposed by this RAO.
- 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 Each Operator will charge and bill its own Customers for a Call Communication. The Operators will agree on the Communication Information which is to be exchanged for the purposes of charging and billing, and such Communication Information will be deemed to be included in the documents referred to in Section I of the Terms and Conditions for Technical Matters for the purposes of call and billing verification. For the purpose of inter-operator billing reconciliation the Operators will provide CLI to each other subject to:
- 4.4 CLI and data relating to CLI will be kept confidential by the Operators. The Operators may use the CLI disclosed to it only for the following purposes:-
- (a) prevention and investigation of fraud;
 - (b) display to Customers;
 - (c) emergency services;
 - (d) malicious call tracing; and
 - (e) inter-Operator and/or Customer billing,
- provided always that such use does not violate the law. The Operators will cooperate in the barring of CLI where required under law, Determination, Direction or as otherwise agreed.
- 4.5 To the extent permitted by Malaysian law and any relevant guidelines or customer service standards in force, pursuant to the Operator's respective Licence conditions, the Operators will exchange information and otherwise cooperate in relation to the prevention and investigation of fraudulent use or misuse of the Operators' respective Communications Services and the theft of the Operator's provided terminal equipment.
- 4.6 Information provided under this RAO 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.
- 4.7 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.

- 4.8 The Operators acknowledge that when information (including, for the purposes of this Condition any updated information) required to be provided under this Section 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.
- 4.9 (a) Subject to the Act and any subordinate legislation, nothing in this RAO may be construed as requiring an Operator at any time to disclose to the other Operator information which is at the date when this RAO 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 RAO 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.
- 4.10 All communication information, call and such other relevant information in relation to Call Communication must be kept by both Operators for a period of two (2) years unless otherwise agreed in writing for the purposes of verification and audit.
- 4.11 The Operators further agree that the information provided for the purpose of this RAO shall be subject to the Confidentiality Agreement.

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SECTION 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 except for:
- (i) Charges incurred for agreed numbers used for testing purposes prior to the commissioning of the respective POI.
 - (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 (30) 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 in monthly tranches.
 - (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).
 - (e) The Billing Period for the purpose of invoicing shall be 30 days unless otherwise agreed with the Access Seeker or Part A of the Service Descriptions And Specific Obligations
- 5.1.2 (a) The Invoicing Operator is responsible for obtaining information upon which the invoice is based, and if the Invoicing Operator does not normally collect that information and it is not reasonably practicable for the Invoicing Operator to do so but the Invoiced Operator is able to collect the information, the Invoiced Operator may, upon written request, provide a summary of information which is reasonably necessary to allow the Invoicing Operator to provide accurate and timely Invoice to the Invoiced Operator subject to such terms and conditions as may be determined by the Invoiced Operator, and if the Invoiced Operator

provides such information, the Invoicing Operator undertakes that it will only use that information to verify its own interconnect usage report.

- (b) If the Invoiced Operator provides such information, the Invoicing Operator shall pay the Invoiced Operator a reasonable fee to be determined by the Invoiced Operator. In the event the Invoicing Operator requires a more detailed interconnect report or information, the Invoicing Operator may request the same from the Invoiced Operator and such details will be provided at a reasonable additional charge to be determined by the Invoiced Operator PROVIDED ALWAYS that it is reasonably practicable for the Invoiced Operator to do so.
- (c) For the purposes of preparing the summary of information, the 'A' and 'B' numbers and the handover POI shall be included.

5.1.3 (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.

5.1.4 (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 (30) 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 (30) 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 of the actual interconnect usage.

5.1.5 Where appropriate, any taxes (including goods and service tax or sales and service tax, as applicable), duties or other imposts (as at the date of this RAO or imposed after the date of this RAO) shall be added to all or any Charges under this RAO and be paid by the Operator responsible for making such payment.

5.1.6 Sales and Service Tax

5.1.6.1 Where Sales and Service Tax ("SST") is applicable to any Works provided by the Access Provider under this RAO, the applicable rate of SST for the provision of the said Facilities and/or Services. The Charges for the provision of Facilities and/or Services shall be increased by an amount calculated as follows:

$$A \times R$$

Where:

A is the amount of Charges payable for the provision of Facilities and/or Services

R is the applicable rate of SST

5.1.6.2 If the Access Provider is liable for the SST as contemplated by Clause 1.5.6.1, then the Access Provider shall:

(A) provide to the Access Seeker information that may be reasonably required to establish the Access Seeker's liability for SST; and

(B) provide such information and documents as may reasonably be required by the Access Seeker to enable the Access Seeker to claim an input tax credit under the laws applicable to SST.

5.1.6.3 where a taxable supply has been made and consideration charged but the applicable SST has not been charged, the Access Provider shall issue a tax invoice to the Access Seeker for the increase in Charges required under Subsection 5.1.6.1 in accordance with the laws applicable to SST.

5.1.6.4 Where the provision of Facilities and/or Services under this RAO is made before the implementation date of SST, then no SST shall be payable by the Access Seeker.

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 RAO 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 RAO.
- 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.
- 5.2.3 (a) Subject to Subsection 5.2.3(b), all invoices shall be stated in Ringgit Malaysia and payment must be made in Ringgit Malaysia; and
- (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.

- 5.2.5 Where interest in respect of any due and unpaid amount is due to the Invoicing Operator under Subsection 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 Section 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:
- (a) with respect to Charges 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 Security Sum

- 5.3.1 Access Seeker shall have deposited or procured the deposit of the Security Sum as security for the performance of all [Name of AS]’s obligations under this RAO. The amount of the initial Security Sum shall be the Minimum Value determined by SEAX as at the date hereof. For the purpose of clarification, the Security Sum does not relieve Access Seeker from its obligations to pay amounts to SEAX as they become due and payable, nor does it constitute a waiver of the SEAX’s right to suspend, disconnect, or terminate the relevant Facilities or Services due to non-payment of any sums due or payable to SEAX.
- 5.3.2 In determining the Minimum Value, the amount shall be in accordance with SEAX’s security policy and shall commensurate with:
- (a) a commercially reasonable estimate of the charges that will be incurred by Access Seeker over:

- (i) for Facilities and/or Services with a minimum period of access, the minimum period of access to those Facilities and/or Services; and
 - (ii) for Facilities and/or Services without a minimum period of access, a single Billing Period for those Facilities and/or Services.
 - (b) the creditworthiness of Access Seeker (including prior record of payment by the Access Seeker; and
 - (c) security previously reasonably required by SEAX.
- 5.3.3 (a) SEAX shall be entitled, from time to time, to revise the Security Sum in any of the following event:
- i. where the Security Sum is less than the Minimum Value;
 - ii. if SEAX determine by acting reasonably that there is a material increase in the credit risk to SEAX due to changes in either or both of the circumstances under Subsections 5.3.2(a) and (b) and, that the variation will materially reduce or remove the increased credit risk provided that such revision is only carried out once in any twelve (12) month period. For clarification, increase in credit risk includes, but is not limited to, failure to pay on the Due Date in respect of one (1) Invoice rendered in the preceding three (3) months;
 - iii. upon provisioning of new or additional Facilities and/or Services to the Access Seeker to ensure the Security Sum is equivalent to the Minimum Value after taking into consideration the estimated value of the new or additional Facilities and/or Services provided over three (3) Billing Period.
- (b) Where the amount of the Security Sum is, at any time, less than the Minimum Value determined by SEAX due to a demand and/or call being made by SEAX on the Security Sum, Access Seeker shall within thirty (30) days from the written request of SEAX, deposit a new security equivalent to the Minimum Value.
- 5.3.4 (a) The Security Sum deposited by Access Seeker with SEAX, shall only be used for the purposes set out in Subsection 5.3.1. SEAX may at its discretion call upon or deduct the Security Sum at any time after the due date or upon a breach of any of Access Seeker's obligation. Such utilization or deduction of the Security Sum shall not be construed as a set-off or counterclaim.
- (b) Upon termination of the RAO:

- (i) the Security Sum deposited with SEAX or parts thereof shall be returned and/or refunded to Access Seeker sixty (60) days from the date of termination provided all other amounts payable by the Access Seeker to SEAX have been paid; and
- (ii) SEAX shall immediately in writing unconditionally waive its rights under the Bank Guarantee provided as Security Sum in respect of future performance of this RAO by the Access Seeker, if any, since this RAO has been terminated save and except that the Bank Guarantee shall remain in full force in respect of any antecedent breaches under this RAO or in respect of any amounts payable by Access Seeker to SEAX as at the date of termination, without prejudice to the rights and remedies of SEAX under this RAO (including but not limited to the right to claim for any or all amounts due and payable under the RAO and/or to call upon the Security Sum) and/or under law.

5.4 Billing Disputes

- 5.4.1 Where there is a Billing Dispute, the Operators shall comply with the dispute resolution procedures in Section 11 of this RAO.
- 5.4.2 With respect to Charges, the Operators agree that where there is a discrepancy the amounts payable, in an Invoice for a particular month, a variance of up to one percent (1%) of the total Charges shall be acceptable and shall not be subject to a billing dispute provided that such discrepancy is not a result of an error in charging principles or applicable rates.
- 5.4.3 For the avoidance of doubt, the Invoiced Operator shall not use the dispute resolution procedure in Section 11 to avoid or delay payment due to the Invoicing Operator where there is no genuine dispute.

5.5 Withholding of disputed amount

- 5.5.1 An Access Provider shall allow an Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker if:
 - (a) the Access Seeker notifies SEAX within twenty-one (21) days from the date of receipt of the Invoice of such dispute (unless otherwise agreed in an Access Agreement); and
 - (b) the Access Seeker's notification specifies the information referred to in subsection 5.4 of this RAO.

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SECTION 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 RAO) 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 RAO) 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 RAO.
- 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 RAO 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 RAO 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 RAO. 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 RAO.

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SECTION 7 - CONFIDENTIALITY OBLIGATION

- 7.1 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 RAO including but not limited to the business and operations of an Operator and the terms of this RAO 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.
- 7.2 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.
- 7.3 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.
- 7.4 Neither Operator shall publicise or announce the execution of this RAO or otherwise disclose the terms thereof without the prior written consent of the other save 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 Subsection 8.4 shall apply.
- 7.5 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 RAO provided that its employees and advisers is subject to and maintains the confidentiality obligations under this RAO; 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.
- 7.6 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.
- 7.7 Upon the expiry or termination of this RAO, 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 Subsection 8.7 and that it is not in possession or control of any of the disclosing Operator's Confidential Information.
- 7.8 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 Section 8.
- 7.9 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 RAO. 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 RAO and any other ancillary matters related to the performance of this RAO including but not limited to the disclosure of their personal data to any other third parties on a need to know basis.
- 7.10 The obligations of the receiving Operator in this Section 8 shall survive the termination or expiry of this RAO.

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SECTION 8 - LIABILITY AND INDEMNITY

8.1 General Principle

8.1.1 Save to the extent that another provision of this RAO 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 Section 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 RAO and in relation to any act, omission or event relating to or arising out of this RAO.

8.2 Insurance

8.2.1 Without limiting or reducing each Operator's liability and responsibility as contained elsewhere in this RAO, each Operator shall procure and maintain the following insurances applicable to its operations with respect to and for the duration of this RAO 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 RAO and/or their dependants.

(b) Comprehensive General Liability Insurance or Public Liability Insurance of an amount which is not more than Ringgit Malaysia Twenty Million (RM 20,000,000) for any one claim or series of claims arising out of an accident or occurrence in connection with this RAO 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.

8.3 Damage to Property

8.3.1 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.

8.4 Death and Personal Injury

8.4.1 Subject to Section 8.6.4, 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 Operator arising out of any act or omission of the defaulting Operator, its servants or agent.

8.5 Third Person Indemnity

8.5.1 Subject to Section 8.6.4, 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.

8.6 Liability

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

8.6.2 Subject to Subsections 6.4 and 8.5, 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.

8.6.3 Notwithstanding Subsections 8.3.1 and 8.5.1, 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.

8.6.4 In no event will either Operator's liability under this RAO any accident or occurrence in connection with this RAO save that the limitation of liability set out in this Subsection 8.6.4 shall not apply to damage to

property and/or fraud by that Operator and/or amounts due and payable under an Invoice.

8.7 Exclusion of Warranties

- 8.7.1 Except as expressly set out in this RAO, 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 negated and excluded. The warranties set forth in this RAO are the only warranties made by each Operator and will not be enlarged or diminished without that Operator's approval.
- 8.7.2 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 RAO or any termination of this RAO, 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 RAO.

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SECTION 9 – TERMINATION AND SUSPENSION

9.1 Term of SEAX’s RAO

9.1.1 SEAX’s RAO shall only take effect on the Effective Date and shall remain in force until the termination of this RAO.

9.1.2 An Operator shall, unless otherwise required by the Access Seeker, enter into Access Agreements with a term of no less than three (3) years from the date of execution of the Access Agreement.

9.1.3 Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, and subject to the Access Provider not being able to provide access as a result of Force Majeure, the Access Provider shall only require the Access Seeker to acquire access to individual Facilities and/or Services under the Access Agreement for a minimum period as follows:

Facilities and/or Services	Minimum term
Transmission Services	Twelve (12) months
Network facilities access	Three (3) years

9.2 Termination Circumstances

9.2.1 (a) An Operator (“Notifying Operator”) may terminate this RAO 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 Subsection 9.3(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 Section 176 of the Companies Act 1965 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 RAO 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 RAO, continues for a consecutive period of ninety (90) days However, Notifying Operator may not give notice under this Subsection 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 amending the terms of this Agreement to enable this RAO 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 Subsection 9.2.1 above or where a breach is incapable of remedy, and subject to the provision of Subsection 9.4 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. The Notifying Operator shall forward to the Commission a copy of the notice of termination at the same time as providing the notice of termination to the Access Seeker.

9.3 (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 RAO 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;
 - (vi) where the Defaulting Operator has failed to provide a new Security Sum as required in accordance with this RAO; or
 - (vii) subject to Subsection 12.1.1, where Force Majeure applies.
- (b) Upon the occurrence of the events set out in Subsection 9.3(a) above or where a breach is incapable of remedy and subject to the provision of Subsection 9.4 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.
- 9.4 (a)** Where the Notifying Operator seeks to terminate the 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 9.2 (a)(i) to (vii) with respect to termination; and/or
 - (ii) Conditions 9.3 (a)(i) to (vii) 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 will endeavour to respond to the Notifying Operator’s notice within ten (10) Business Days or such other period that the Commission considers is reasonable;
 - (B) must not give effect to the proposed termination or suspension unless the Access Provider has received written consent from the Commission to such termination or suspension; and
 - (C) The Operators shall take all step practicable to minimise disruption and inconvenience to the access Seeker’s Customers, including providing the Parties with reasonable period to make alternative arrangements prior to the termination and/or suspension of the Facilities and/or the Services provided therein.
- (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 Subsection 9.3(a) (iii) (where it involves material threat to a person’s safety), Subsection 9.3(a) (iv) and Subsection 9.3(a)

(v); or (2) with five (5) Business Days' notice where the suspension is due to events under Subsection 9.3(a) (i), Subsection 9.3(a) (iii) (where it does not involve material threat to a person's safety), Subsection 9.3(a) (vi) and/or Subsection 9.3(a) (vii), (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 Day period (as the case may be) in accordance with the terms of the notice.

9.5 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 Subsection 9.2.

9.6 In the event the Notifying Operator suspends access to Facilities and/or Services by reason of the Defaulting Operator's failures set out in Subsection 9.3, the Notifying Operator must reinstate access to Facilities and/or Services upon the Defaulting Operator remedying its failure or the direction of the Commission.

9.7 Notwithstanding Subsection 9.4, 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
- (b) there are any change in law or regulation which renders this Agreement or access to any Facilities and/or Services unlawful,

the Agreement or part thereof shall terminate in so far as the 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 the 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.

9.8 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, Subsections 9.2, 9.3, 9.4 and 12 shall not preclude the other Operator from immediately seeking urgent interlocutory action under this Section.

9.9 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 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.

9.10 Upon termination of this Agreement or part thereof:

- (a) subject to Subsection 9.10 (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 Subsection 11.6.5).

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 Notifying Operator from not having to supply the Facilities and/or

Services to the extent that they have been terminated or suspended; and

- (ii) the Notifying Operator must use reasonable endeavours to mitigate its cost of termination or suspension and maximise cost savings under Condition 10.10(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 during the period of Force Majeure.

- 9.11** 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 with a penalty with respect to the provision of Facilities and/or Services. Nothing in this Subsection 9.11 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 breach of this Agreement by the Access Provider, to enforce its right of indemnities, to claim interest and generally to enforce its rights and remedies.
- 9.12** 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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SECTION 10 – REVIEW

10.1 Subject to Subsection 10.3, if:-

- (a) the Minister issues a direction or determination relating to the subject matter of this RAO;
- (b) the Commission issues a direction or determination relating to the subject matter of this RAO;
- (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 RAO;
- (d) enactment of new laws and regulations which relates to the subject matter of this RAO;
- (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 RAO; or
- (g) by agreement of each of the Operators, the Operators agree to review the agreement as soon as practicable in good faith. Where the changes referred to in paragraphs (a) to (g) above affect this RAO, the Operators shall negotiate, as soon as practicable and in good faith, such amendments to this RAO as are necessary or appropriate to ensure compliance with such changes.

10.2 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 or the appreciation of any other currency against the Ringgit 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 RAO.

- 10.3 The obligation to negotiate set out in Subsection 10.1 and 10.2 commences promptly after delivery of a notice from one Operator to the other Operator setting out in reasonable detail, the amendments sought.
- 10.4 (a) 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:
- (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 network facility or network service subject to mutual agreement provided always that the Operators shall, within fourteen (14) days from the date of 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 network facility or network service under paragraph (a)(i)(A) above. In such a case, the notice period referred to in Subsection 10.4(c), shall commence from the date of the Access Provider's notice to vary the terms. Nothing in this paragraph (i)(B) shall prevent the Access Seeker from terminating the affected network facility or network service at any time in accordance with Subsection 10.4(a) (ii) (A).
 - (ii) the Access Seeker may by giving notice to the Access Provider either:-
 - (A) terminate that network facility or network service 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 network facility or network service subject to mutual agreement provided always that the Operators shall, within fourteen (14) days from the date of 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 withdraw that network facility or network services in accordance with Subsection 10.4(a) (ii)(A). Nothing in this Subsection 10.4(a) (ii)(B) shall prevent the Access Provider from terminating or withdrawing the affected network facility or network service at any time in accordance with Subsection 10.4(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; or
 - (ii) where there is a variation or amendment to the Access List service description of a Regulated Facility and/or Service,

either Operator may propose variation or modification to the terms and conditions pertaining to that network facility or network service 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 ninety (90) 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 Section 11. Nothing in this Subsection 10.4(b) shall prevent the Access Seeker from terminating the affected network facility or network service at any time, without penalty, by giving the Access Provider three (3) months written notice.

- (c) The notice given pursuant to Subsection 10.4(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 Subsection 10.4(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 of the relevant Commission’s Determination takes effect (or where none is specified, the date of the Commission’s Determination was made) unless otherwise agreed.

10.5 For the avoidance of doubt:

- (a) the variation of the Agreement pursuant to Subsection 10.4(a) shall not be subject to the approval process required under Subsection 12.1.1(b); and
- (b) the provisions of this Agreement remain in full force and effect during any negotiations conducted under this Section 10 until commencement of an agreement replacing or amending this RAO.

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SECTION 11 – DISPUTE RESOLUTION PROCESS

11.1. Introduction

11.1.1 Subject to Subsection 11.2.3, an Access Provider and an Access Seeker shall adopt and comply with this dispute resolution procedure in relation to any dispute which may arise between an Access Seeker and 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 RAO (“Access Dispute”).

11.1.2 The following dispute resolution mechanisms are governed by this Section:

- (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 Subsection 11.5 if they cannot be resolved through the application of the general dispute resolution provisions in Subsection 11.2, 11.3 and 11.4);
 - (ii) Billing Disputes, which must follow the procedures set out in Subsection 11.6; or
 - (iii) any other types of disputes which, if cannot be resolved through the application of the general dispute resolution provisions in Subsection 11.2, 11.3 and 11.4, must be referred to the Commission for resolution.

11.1.3 A dispute between the Operators regarding any matter dealt with under this RAO shall first be attempted to be resolved by good faith negotiation between the Operators in accordance with this RAO.

11.1.4 All disputes referred to the Commission pursuant to this RAO 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 shall be final and binding subject always to the right of judicial review contained in the Act.

11.2 General

11.2.1 Until expiry of the dispute resolution procedures set out herein, an Operator may not commence court proceedings relating to that dispute, other than an application for purposes set out in

Subsection 11.2.2. Nothing in this Subsection 11.2.1 shall be construed as ousting the jurisdiction of any court.

- 11.2.2 An Operator shall ensure that its representatives acting in relation to a dispute are of sufficient seniority and have authority to settle an access dispute on behalf of the Operator. At the commencement of the 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.
- 11.2.3 During a dispute and any dispute resolution process invoked in accordance with this Subsection 11, an Access Provider and Access Seeker must continue to fulfill their obligations under this RAO between themselves.
- 11.2.4 Subject to Subsection 11.2.5, the Operators shall exchange information of a type described in this RAO during the course of, and to facilitate, resolution of such a dispute.
- 11.2.5 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 RAO.
- 11.2.6 An Operator must not use information obtained under Subsection 11.2.4 or described in Subsection 11.2.5 for any purpose other than to resolve the dispute.
- 11.2.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a dispute (including a Technical Expert (as hereinafter defined) or the Commission, in accordance with this Section 11) may decide not to determine the 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 dispute.
- 11.2.8 The costs of the arbitration are to be shared equally between the Operators, unless the arbitrator of the dispute has decided not to determine the dispute in accordance with Subsection 11.2.7. If an arbitrator decides not to determine the dispute, the Operator that initiated the dispute must pay the costs of the arbitration including the other Operator's costs thereto.

11.3 Inter-Party Working group

- 11.3.1 In the first instance, the Operator raising a dispute must inform the other Operator in writing and the Access Seeker and Access Provider should attempt to resolve the Access Dispute between themselves in good faith.
- 11.3.2 An Access Provider and Access Seeker shall establish a working group, or working groups, to fulfill the requirements set out in Subsection 11.3.1. 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 Access Provider's wholesale or interconnection group.
- 11.3.3 The Access Provider 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.
- 11.3.4 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 unless otherwise agreed by the parties, subject always to an Operator's right to obtain relief in court as set out in Subsection 11.2.2.

11.4 Interconnection Steering Group

- 11.4.1 In the event that the Operators cannot resolve the dispute between themselves within the time specified in Subsection 11.3.4, 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 Interconnect Steering Group (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.
- 11.4.2 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 Subsection 11.4.1. 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 Subsection 11.5) or to the Commission for resolution in accordance with Subsection 11.4.3(a) or (b), respectively.

- 11.4.3 If the ISG does not resolve the dispute within twenty (20) Business Days after it first meets to review that dispute under Subsection 11.4.2, 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 Subsection 11.5; or
 - (b) refer the dispute to the Commission for final arbitration.

11.5 Use of a Technical Expert

- 11.5.1 A dispute will only be referred to a Technical Expert if the provisions in Subsection 11.3 and 11.4 have been complied with.
- 11.5.2 Once a dispute is referred to a Technical Expert, it may not be referred back to a Working Group or ISG.
- 11.5.3 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 communication 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 or interest,
- ("Technical Expert.").
- 11.5.4 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.
- 11.5.5 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.
- 11.5.6 A Technical Expert hearing will be within fifteen (15) Business Days of the last written submission unless:

- (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.

- 11.5.7 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.

- 11.5.8 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.

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

- 11.5.10 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 Subsection 11.5.10 does not invalidate the Technical Expert's award.

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

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

- 11.6 Billing dispute resolution
 - 11.6.1 An Invoicing Operator shall allow the Invoiced Operator to dispute an Invoice prepared by the Invoicing Operator if:
 - (a) in the case of any other Facilities and Services (other than those specified in paragraph (a) above), the Invoiced Operator notifies the Invoicing Operator in writing within forty-five (45) 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.

 - 11.6.2 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 in respect of the recording of the calls which are the subject of the dispute;
- (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Operator's Billing System;
- (c) there is, or has been, a fraud perpetrated by the Invoicing Operator; or
- (d) the Invoicing Operator has made some other error in respect of the recording of the Call Communications and calculation of the Charges which are the subject of the Billing Dispute.

11.6.3 All Billing Dispute Notices given under this Subsection 11.6 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;
 - (v) billing verification information; and
- (d) evidence in the form of the Invoiced Operator's outgoing report, indicating the relevant traffic data which is in dispute.

11.6.4 Subject to Subsection 11.6.5, 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 Subsection 5.2.4, within fourteen (14) days from the date of settlement of Dispute, as documented by 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.

- 11.6.5 Notwithstanding Subsection 11.6.4, if the Operators are not able to settle a Billing Dispute within the time periods specified in Subsection 11.6.7, an Operator may withhold payment of amounts disputed in good faith for all subsequent Invoices issued by the Invoicing Operator. 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 Subsection 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. Interest shall be calculated from the Due Date until date of actual payment of the outstanding amount.
- 11.6.6 The Operators agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this Subsection 11.6.
- 11.6.7 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.
- 11.6.8 To the extent that a Billing Dispute notified under this Subsection 11.6 involves a Billing Dispute with an international correspondent of the Invoicing Operator, the dispute resolution procedures shall be suspended for a reasonable period of time pending resolution of the dispute with that international correspondent. As a general rule, the period of suspension will not exceed one hundred twenty (120) days. However, the Operators recognize that some Billing Disputes with international correspondents may take longer to resolve, in which case the Access Provider must promptly inform the Access Seeker of the likely period required for resolution.
- 11.6.9 Once the negotiation period under Subsection 11.6.7 and any extension granted under Subsection 11.6.8 has expired, the Billing Dispute may be referred by the Access Seeker to the procedure described in Subsection 11.6.10 (“Billing Dispute Escalation Procedure”).

- 11.6.10 The Access Seeker may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this Subsection 11.6.10 by notifying the Access Provider'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 RAO. 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.
- 11.6.11 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 RAO 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.
- 11.6.12 An Operator may request a joint investigation of Invoice discrepancies after that Operator has conducted comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the Operators must agree the terms of the joint investigation, including:
- (a) the scope of the joint investigation;
 - (b) how the joint investigation will be conducted; and
 - (c) the date by which the joint investigation must be concluded.
- The joint investigation may include the generation of test Call Communications to the other Operator's Network.
- 11.6.13 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.
- 11.6.14 Either Operator may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 11.6.15 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 CMA. For the purposes of clarification, the Billing Dispute procedure shall follow the procedure in this Subsection 11.6 and does not involve the inter-party working group, Interconnect Steering Group and Technical Expert under Subsection 11.3, 11.4 and 11.5.

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SECTION 12 – GENERAL PROVISIONS

12.1 Force Majeure

12.1.1 If an Operator is unable to perform any obligation (other than an obligation to pay money) under this RAO 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.

12.1.2 If the Force Majeure continues beyond fourteen (14) days after the notice given under Subsection 12.1.1, the Operators shall meet to discuss in good faith a mutually satisfactory resolution to the problem.

12.1.3 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 RAO, the Operator affected must so notify and consult with the other Operator.

12.2 Governing Law

12.2.1 This RAO is governed by the laws of Malaysia.

12.2.2 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 Section 11; 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.

12.3 Operators to Act in Good Faith

12.3.1 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 RAO.

12.4 Surviving Obligations

12.6.1 Termination or expiration in whole or in part of this RAO does not affect those Conditions (including, without limitation, Section 6, 7, 8, 9.6, 9.9 and 11) which by their nature survive termination or expiry.

12.5 Variation

- 12.5.1
- (a) A variation of any part of this RAO 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 Subsection 12.5.1(a), where the Operators agree to materially vary this RAO or access to its Facilities and/or Services, the Operators shall inform the Commission in writing of the action the Access Provider proposes to take and the reasons why such action is appropriate. This RAO 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 Subsection 12.5, a reference to a variation includes a reference to an addition, deletion, amendment, modification, alteration or other variation.

12.6 Waiver

- 12.6.1
- (a) A provision of or right under this RAO may not be waived except in writing signed by the non-defaulting Operator or Operators to be bound.
 - (b) 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 RAO if a time period is imposed for the performance of such right or obligation.

- (c) Knowledge or acquiescence by any Operator of, or in, breach of any of the provisions of this RAO 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 RAO, and at law, and to require strict performance of all of the provisions of this RAO.

12.7 Severability

12.7.1 The whole or any part of this RAO 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 RAO.

12.8 Time of the Essence

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

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**ANNEXURE 1
NON-REFUNDABLE PROCESSING FEE**

Type of Facilities or Services	Type of Access Request	Processing Fee
Domestic Connectivity to International Services	a) Establishment of new route/bearer b) Circuit Migration Exercises c) Provisioning of Additional Circuits	RM 600 per circuit RM 600 per circuit RM250 per circuit
Network Co-location Service	Request for Site establishment	RM300 per site
End-to-End Transmission Service	a) Establishment of new route/bearer b) Circuit Migration Exercises c) Provisioning of Additional Circuits	RM 600 per circuit RM 600 per circuit RM 250 per circuit

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4 TERMS AND CONDITIONS FOR TECHNICAL MATTERS

SECTION I – OPERATIONAL PROCEDURES

- 1.1 The Operators shall comply with the operational procedures and methods, to be agreed in writing between the Operators, in relation to:
- (i) the planning and provisioning of the relevant Facilities or Services;
 - (ii) the management of the relevant Facilities or Services including:
 - (A) 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;
 - (B) Network operations in the event of Network failure, congestion and blockage; and
 - (C) ensuring that the Operators' Networks are adequately protected from harm;
 - (iii) test procedures and other technical and operational matters relating to the provision of Facilities or Services by the Access Provider to the Access Seeker;
 - (iv) the handling of Customer operations; and
 - (v) such other matters as the Operators may agree.
- 1.2 Where relevant, the detailed procedures and/or contents pertaining to matters set out in Section II to VIII shall be documented.
- 1.3 In the event of any inconsistency between the agreed operational procedures and the terms of this RAO, the terms of this RAO shall prevail.

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SECTION II - FORECASTING

1. General:

- 1.1 Section II herein sets out forecasting terms and procedures that are applicable in relation to the provision of Facilities and/or Services.
- 1.2 Notwithstanding the procedures set out in this Section II pertaining to a Forecast Request, the Access Seeker is required the Access Seeker is required Forecasts in good faith with regard to a certain period of supply of access to Facilities or Services (as the case may be) in accordance with Section II of Terms And Conditions For Technical Matters.
- 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.
- 1.4 An Access Provider and an Access Seeker may agree to an alternative forecasting and ordering procedure other than that set out in Section II of this RAO as part of an Access Agreement. If agreement is reached about such matters, the Access Provider and Access Seeker will be bound by the terms of that alternative procedure and not Section II Terms And Conditions For Technical Matters.
- 1.5 Access Provider shall not require an Access Seeker to provide Forecasts that are legally binding on the Access Seeker, subject to except to the extent that the Access Provider is permitted to recover costs and expenses as set out in subsection 2.12 below.
- 1.6 The Access Provider must not request an Access Seeker to provide a Forecast that contains:
 - (a) any information that is or would allow the Access Provider to infer any non-permitted information listed under this RAO; or
 - (b) any information that identifies or would enable the identification of Customers or particulars services of the Access Seeker.

2. Forecasting Obligations

- 2.1 Forecasting Requirement
 - 2.1.1 The Access Seeker shall meet the requirement of forecasting process to the extent that it enable the Access Provider to plan for the expected need of the Facilities and/or the Services in order to carry the forecasted traffic and confirm to the agreed grade of service standard to be mutually agreed by the Operators.

2.1.2 The Access Seeker shall provide traffic forecast for each and every route. The Access Seeker and the Access Provider shall discuss in good faith the planning and design of the relevant part of the respective networks and the dimensioning of Network Capacity to carry traffic within the Access Provider's Network.

2.2 Confirmation of Forecast

If an Access Provider, acting reasonably will incur significant costs to ensure that access can be provided in accordance with a Forecast (for example, because it will need to proactively augment its Network to provide access within the requested timeframes), the Access Provider may request the Access Seeker to confirm the relevant Forecast. Once confirmed, the Forecast is deemed to be an Order for the purposes of this RAO.

2.3 Forecast request

The Access Provider may request an Access Seeker to provide, with a sufficient level of detail to enable the Access Provider to carry out network planning and provisioning, the following information ("Forecast Information"):

- (a) the Facilities and/or Services in respect of which Forecasts are 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's own business units in using the relevant Facilities and/or Services; and
 - ii. shall be the shorter of the period set out in the relevant Service Specific Obligations 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 this RAO, 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 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 (which shall not include any information that the Access Provider does not provide to itself in connection with forecasting for its own facilities and/or services).

2.4 Forecast provision

An Access Provider may only require an Access Seeker to provide Forecasts in accordance with a Forecast Request no sooner than four (4) weeks after receipt of a Forecast Request.

2.5 Use of Forecast Information

Forecast information provided by the Access Seeker shall be treated by an 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 or interconnection 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. The Access Provider must maintain records that indicate which persons are provided with access to Forecast information.

2.6 Distribution of Forecast Information

An Access Provider may only distribute Forecast Information of an Access Seeker outside the groups of people referred to in subsection 2.5 of this RAO 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.

2.7 Time for response

The Access Provider must notify the Access Seeker within five (5) Business Days of receiving a Forecast whether or not the Access

Provider considers the Forecast to be in compliance with the Forecast Request and:

- (a) if, the Access Provider considers that the Forecast does not comply with the Forecast Request, to specify in that notice the additional information which the Access Seeker is to provide to comply with the Forecast Request and the Access Provider will not require such information to be provided sooner than four (4) weeks after such a notice; or
- (b) if, the Access Provider considers that the Forecast does comply with the Forecast Request, to specify in that notice that the Forecast is provisionally accepted subject to verification of the details of the Forecast and the matters set out in paragraphs 2.8(a) to 2.8(d) below.

2.8 Reasons for rejection

Access Provider may only reject a Forecast following provisional acceptance where the Access Provider reasonably believes that the Forecast is inaccurate or, there is insufficient capacity having regard to:

- (a) total current usage of the Facilities and/or Services by the Access Provider and all Access Seekers;
- (b) the current rate of growth of the Access Seeker's usage of the Facilities and/or Services;
- (c) the current rate of growth of total usage of the Facilities and/or Services by the Access Provider and All Access Seekers; and
- (d) subject to subsections 2.31 and 2.32 of Condition II Terms And Conditions For Technical Matters, the amount of capacity in the Facilities and/or Services 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.

2.9 Time for acceptance or rejection

The Access Provider must give notice of any acceptance or rejection ("Rejection Notice") of a Forecast to the Access Seeker:

- (a) within fifteen (15) Business Days of receipt of the relevant Forecast; and
- (b) such Rejection Notice (if any) must specify:

- i. the grounds on which the Access Provider rejects the Forecast in accordance with subsection 2.8 above, 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; and
- ii. an offer to meet within five (5) Business Days of the Rejection Notice of the Forecast to discuss the reasons for rejection and alternative methods of compliance. The meeting shall take place between the Access Provider and Access Seeker if the offer is accepted by the Access Seeker.

2.10 Reconsideration by Access Seeker

The Access Provider must allow an Access Seeker to reconsider its Forecast following a Rejection Notice and allow the Access Seeker, within twenty-one (21) Business Days of receipt of a Rejection Notice, either:

- (a) to confirm its rejected Forecast, and explain why the Access Seeker considers that the Access Provider is obliged to accept the Forecast under this RAO; or
- (b) to submit a new Forecast which the Access Seeker regards as meeting the Access Provider's concerns.

2.11 Reconsideration by Access Provider

The Access Provider shall reconsider any re-submitted or amended Forecast provided pursuant to subsection 2.10 and subsections 2.7 to 2.11 shall re-apply.

2.12 Recovery for over-forecasting

An Access Provider shall not seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an 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; and
- (c) the Access Provider only recovers from the Access Seeker, seventy-five percent (75%) of such costs and expenses which could not be mitigated under paragraph 2.12(b) above.

2.13 Meeting Forecasts

Subject to subsections 2.7 to 2.9 above, an Access Provider must carry out network planning in order to enable the Forecasts Requested to be met. If an Access Seeker has confirmed a Forecast under subsection 2.2 above, it will be binding on the Access Seeker.

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Section III Ordering And Provisioning Obligations

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 or mechanism

The Access Provider shall designate and notify an Access Seeker of one or more of the following:

- (a) a person to whom Orders for access to Facilities and/or Services are to be delivered;
- (b) a contact point to which Orders for access to Facilities and/or Services are to be delivered (such as an e-mail address); and
- (c) a mechanism where Orders for access to Facilities and/or Services can be made (such as a web portal or B2B gateway), 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 specialised technology or systems (such as an automated interface between the Operational Support Systems of the Operators).

2.2 Order content

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

- (a) the Facilities and/or Services to which access is requested;
- (b) a requested date and time for delivery;
- (c) the location of the points of delivery;
- (d) Equipment of the Access Seeker to be used in connection with the Order, to the extent it may adversely affect the Access Provider's Network; and
- (e) such other information that the Access Provider reasonably requires in order for it to provision access to the Facilities and/or Services 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; or
- iii. is non-permitted information.

2.3 Use of ordering information

Ordering information provided by the Access Seeker shall be treated by an Access Provider as 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 or interconnection group; and
- (b) that part of the network engineering group of the Access Provider responsible for interconnection or access,

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

2.4 Treatment of Orders and Service Qualifications

An Access Provider shall:

- (a) establish a single queue for all Orders and Service Qualifications 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.

2.5 Acknowledgment of receipt

An Access Provider shall acknowledge receipt of an Order for Facilities and/or Services, in writing (or any other material or electronic form as agreed by the parties), within the period specified in the Service Specific Obligations for the purposes of this subsection 2.5 above.

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 clarify provision the Order; and

- (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 fulfilment of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfil 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
- (e) the position of the Order in the Access Provider's queue.

2.7 Further information

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

2.8 Service Qualifications

The Access Provider shall make Service Qualifications available to Access Seekers prior to placing Orders if such pre-Order Service Qualifications are undertaken for a given Facility and/or Service by the Access Provider for itself. The Access Provider shall only require post-Order Service Qualifications to be requested if:

- (a) no pre-Order Services Qualifications has been completed;
- (b) the Access Provider reasonably requires information from post-Order Service Qualifications which are 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 subsection 2.6, , or, if further information has been requested under subsection 2.7, within two (2) Business Days upon the expiry of the period specified in subsection 2.7.

For clarification, an 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 or completion of Service Qualifications

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 Service Qualification within the shorter of:

- (a) fifteen (15) Business Days after the date of the Notice of Receipt; 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

An Access Provider shall permit an Access Seeker to withdraw its Order without penalty (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 subsection 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 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

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

2.12 Time for acceptance or rejection

The Access Provider must notify the Access Seeker that an Order is accepted or rejected within:

- (a) the specified timeframe in the Service Specific Obligations for the purposes of this subsection 2.12; and
 - (b) the timeframe within which it accepts or rejects equivalent Orders or itself,
- whichever is shorter.

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

2.13.1 An Access Provider's Notice of Acceptance to the Access Seeker must contain the following information:

- 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 fulfil 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 paragraph 2.13(a) above, shall commence from:

- (a) where the Access Seeker’s confirmation of an Order is required under subsection 2.15, the date the Access Seeker confirms the Order in accordance with that subsection; and
- (b) in any other case, from the start of the Validity Period.

2.15 Access Seeker’s confirmation:

- (a) The Access Seeker’s confirmation of an Order is not required if 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.
- (b) Where the Access Seeker’s confirmation is required for the Access Provider to proceed with fulfilling an Order as provided under paragraph 2.15(a) 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 fulfil the Order in accordance with the Notice of Acceptance.

2.16 Estimated charges

2.16.1 If the Notice of Acceptance provided by the Access Provider contains estimates of charges (e.g based on time and materials):

- (a) the Access Provider shall not exceed the estimate without providing the Access Seeker with a 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
 - 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 paragraph 2.16(a) above if the revised estimate in that notice exceeds the original estimate by more than ten percent (10%);

2.16.2 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 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 (but in no other circumstances); and.

2.16.3 the Access Provider shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate, whereby such confirmation to be provided by the Access Seeker within the timeframe set out in paragraphs 2.13(e) or 2.16(b), as applicable.

2.17 Reasons for rejection

2.17.1 An Access Provider may only reject an Order from an Access Seeker where:

- (a) subject to subsection 2.17 (as if references to 'Access Request' in that subsection were references to 'Order'), it is not technically feasible to provide access to the Facilities and/or Services requested by the Access Seeker;
- (b) subject to compliance with subsections 2.31 and 2.32, the Access Provider has insufficient capacity to provide the requested Facilities and/or Services;
- (c) subject to subsection 2.19, the Order is in excess of agreed Forecast levels;
- (d) the Order or variation request duplicates an Order awaiting fulfilment;

- (e) the Access Seeker has not obtained the necessary related agreements from the Access Provider (e.g. regarding access to a new Point of Interface);
- (f) there are reasonable grounds to believe that the Access Seeker would fail to a material extent, to comply with the terms and conditions of the Access Agreement and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through a security requirement in accordance with this RAO); or
- (g) 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:

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

- (a) set out the grounds 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 reasons for rejection and alternative methods of compliance.

2.19 Order in excess of Forecast

The Access Provider must use its reasonable efforts to provide sufficient capacity to enable the Access Provider to accept and fulfil Orders from an Access Seeker for Facilities and/or Services 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. An Access Provider is not required to supply Facilities and/or Services in excess of the 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.

2.20 Required extra capacity

An Access Provider may require an Access Seeker to procure such additional capacity on the Access Seeker's side of the Network to the extent that the Access Provider, in good faith and reasonably, estimates that the Operators may require additional capacity to meet demand and a failure by the Access Seeker to procure that additional capacity may cause an adverse impact on the operation of the Access Provider's Network. Where the Access Seeker fails to so procure additional capacity and the demand exceeds the capacity on the Access Seeker's Network, the Access Provider must notify the Access Seeker in writing, and the Access Seeker and the Access Provider must meet [no later than five (5) Business Days after receipt of the notice from the Access Provider] to attempt to identify alternative sources of capacity. If the matter cannot be resolved within ten (10) Business Days of the date of that meeting, the Access Provider may bar or block calls or traffic to the Access Seeker's Network to the extent necessary to minimise congestion within the Access Provider's Network.

2.21 Other uses

An 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, at the Access Seeker's option.

2.22 Delivery dates

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 subsection 2.24.

2.23 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 or both at the earlier delivery date.

2.24 Delayed delivery dates

2.24.1 Where there is a delay in the delivery of an Order:

(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 the 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 Provider shall notify the Access Seeker of the delay to the delivery date as soon as practicable after the Access Provider becomes aware of it;
 - ii. the Access Provider and 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.

2.25 Cancellation and variation of Orders

An Access Provider shall allow an Access Seeker to cancel or vary an Order at any time subject to subsection 2.26.

2.26 Cancellation or variation penalty

2.26.1 Except where this RAO provides 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.

2.27 Testing and provisioning

An Access Provider shall:

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

2.28 Resource charge

2.28.1 An 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 provide a 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 paragraph 2.28(a) above, and in its RAO.

2.29 Queuing policy

An Access Provider shall establish and demonstrate and maintain a queuing policy system for each Facility and/or Service, which:

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

2.30 Acceptance on queue: An Access Provider shall promptly notify an Access Seeker at the time of providing an acknowledgment of receipt of the Order under subsection 2.5 (and as specified in the Notice of Receipt under subsection 2.6), of their acceptance of, and position in, the Access Provider's queue.

2.31 Constrained capacity

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

- (a) the Access Seeker pursuant to the relevant Forecasts and/or Orders;
- (b) other Access Seekers, pursuant to their relevant Forecasts and/or Orders; and
- (c) the Access Provider, for the 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:

- (d) notify all Access Seekers to whom relevant capacity is supplied; and
- (e) allocate the available capacity between itself, the Access Seeker and other Access Seekers in accordance with the Access Provider's Capacity Allocation Policy.

2.32 Capacity Allocation Policy

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

- (a) shall be disclosed, free of charge, to each Access Seeker upon entry into an Access Agreement, the Commission upon the Effective Date, to both Access Seekers with whom the Access Provider has an Access Agreement and the Commission each time it is amended, and any other Operator on request;
- (b) shall set out the principles in accordance with which the Access Provider shall determine how to allocate capacity between itself (including its related bodies corporate) and any other Operator or Operators, in circumstances where the amount of capacity available is less than the aggregate of capacity required by the Access Provider, its related bodies corporate and the other Operator or Operators; and
- (c) shall:
 - 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 and third parties on an equivalent basis to 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.

(d) shall set out the Access Provider's plans to expand their capacity over time (if any), where such information must be provided to Access Seekers on a non-discriminatory basis in terms of its content and frequency of updates.

2.33 Late delivery

2.33.1 If an Access Provider fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with paragraph 2.24(a)iii, except where such failure has been caused solely by the Access Seeker's delay or lack of authorisation by a third party, the Access Provider shall, without limitation to any other rights the Access Seeker may have under subsection 2.7 or law, provide a rebate to the affected Access Seeker.

2.33.2 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, and the methodology and unit rates for calculating such rebates shall be set out in the Access Provider's RAO.

2.33.3 If the Access Providers 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 allegations; and
- (b) that the Access Provider has done all things reasonably practicable to minimize or avoid such failure.

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Section IV POINT OF INTERFACE AND DECOMMISSIONING

1. General

- 1.1 Section IV sets out point of interface and decommissioning terms and procedures that are applicable in relation to the provision of Facilities and/or Services.
- 1.2 Each Operator shall interconnect and keep its Network interconnected with the Network of another Operator in accordance with the terms of an Access Agreement with that Operator.

2. Point of Interface and Location Consideration

- 2.1 The technical consideration for determining the locations for Point of Interface by the Access Provider shall include, without limitation, the following:
 - (a) whether switching and transmission facilities have the capacity to interconnect with other networks;
 - (b) timely and efficient deployment of sufficient capacity of links to support the required Grade of Service to Customers; and
 - (c) preservation of network security.

The Access Provider may in its absolute discretion determine not to establish a Point of Interface at a location where the aforesaid technical considerations does not warrant the same.

- 2.2 Access Provider shall publish on its publicly accessible website and keep updated a list of the general locations and technically feasible points:
 - i. at which physical co-location is available;
 - ii. in respect of which virtual co-location is available; and
 - iii. in respect of which in-span interconnection is available, on and from the date of publication for the following twelve (12) months.

The list of POIs offered by the Operators is set out in Appendix 1 to this Section V.

- 2.3 Security and critical national information infrastructure:
 - (a) Access Provider may decline to publish information in connection with particular Points of Interface and other locations where Facilities are located, for national or operational security reasons, in such circumstances, the Access Provider will:
 - (i) promptly provide such information to other Operators on request, subject only to the Operators entering into a confidentiality agreement in accordance with this Agreement; and

- (ii) offer to provide, and if the offer is accepted, provide, updated location details to such Operators as Points of Interface and Facilities are withdrawn, introduced and changed.

3. Criteria for Establishing a New Point of Interface

3.1 Prior to accepting the establishment of a new POI, the Operators shall comply with the following:

- (a) the Access Seeker shall in good faith submit forecast of its three (3) year requirement including traffic and circuit forecast, and Interconnect Link Service requirement at the proposed new POI;
- (b) the Interconnect Link Service shall be redimensioned to provide for a minimum of two (2) years provisioning period for the purposes of planning;
- (c) indicate the number of routes and nodes that will be served by the Interconnect Link Service that is provided at the proposed POI;
- (d) specify whether the method of provisioning is in-span or virtual co-location; and
- (e) determine the availability of the switch capacity at the nodes.

3.2 For an in-span interconnection, the connection shall be provided by means of optic fibre circuits.

3.3 The following shall also be agreed for in-span Interconnection:

- (a) the number of E1s of the installed POI capacity for each Operator shall be on an equal basis.
- (b) the in-span fibre connection shall be at a point mutually agreed. Where practical, the Operators shall use their best efforts to establish their connections at mid-point along the link.
- (c) SDH is the preferred technology and the type of equipment at both ends shall be compatible with the Access Provider's Equipment.
- (d) Access Seeker's microwave equipment (where same is used) must also be compatible with the Access Provider's Equipment.
- (e) The connection between one Operator and another will be point to point with protection in accordance to the agreed service level availability.

- (f) The provision of additional transmission facilities at the POI shall be agreed subject to the following conditions are met:
 - (i) Total utilization of the existing transmission facilities is at 75% and/or
 - (ii) Demand of the circuits exceeds the forecasted circuits.

4. Point of Interface Procedures

4.1 Interconnection

Each Operator shall interconnect and keep its Network interconnected with the Network of another Operator in accordance with the terms of an Access Agreement with that Operator.

4.2 Lack of space

If there are space constraints at a particular location, the Access Provider shall take reasonable steps to optimise its usage of the space, including through the upgrading of Facilities subject to the cost being borne by the Access Seeker. If the Access Provider has used its best efforts to accommodate all Access Seekers and it is not physically possible for any further Access Seekers to be accommodated, the Access Provider shall be excused from providing physical interconnection at such location.

4.3 Access Seeker requested POI

4.3.1 An Access Provider shall reasonably consider a request by an Access Seeker to interconnect at a point other than that specified in Appendix 1. The Access Provider shall promptly notify the Access Seeker whether it accepts or refuses a request by an Access Seeker under this subsection 4.3, and provide the Access Seeker with reasons if it refuses the Access Seeker's request.

4.3.2 The Access Seeker may request, in writing, for a meeting with the Access Provider to discuss the rejection of its request and the Operator shall meet within twenty (20) Business Days from the date of the written request.

4.4 Network responsibility

Each Operator is responsible for the provisioning and maintenance of Facilities (including those Facilities which form part of the interconnection links and the transmission equipment) on its side of the POI.

4.5 Third party Point of Interface

An Access Provider shall permit an Access Seeker to nominate a Point of Interface of a third party for the purposes of interconnection and access between the Access Provider and the Access Seeker, provided that the Access Seeker remains responsible for the costs of such interconnection and access, and for the third party's act and omissions at the Point of Interface.

4.6 POI factors

When determining a request under subsection 4.3 of this RAO, each Access Provider must have regard to each of the following:

- (a) the Access Provider shall offer (but shall not require) POI and colocation for every Closed Number Area throughout Malaysia in which the Access Provider has network facilities;
- (b) in addition to offering POI and co-location in accordance with paragraph 4.6(a) above, the Access Provider shall offer interconnection and co-location at each other technically feasible point;
- (c) the Access Provider shall offer physical co-location in at least one location for every Closed Number Area throughout Malaysia in which the Access Provider has network facilities, but may additionally offer other more than one forms of interconnection co-location in relation to a particular location (e.g. virtual co-location);
- (d) the Access Provider shall not reserve space other than current needs for itself, future needs [calculated by use of a reasonably projected rate of growth over two (2) years] and the needs of other Access Seekers who are currently occupying or have ordered additional space from that Access Provider; and
- (e) any possible re-arrangement of the configuration of its Equipment to eliminate space inefficiencies.

5. Decommissioning Obligations

5.1 Decommissioning notice

5.1.1 Except where an Access Provider is required to vacate a site where a Point of Interface is located, or any other Facility and/or Service which relies on the Access Provider's use of that site, as a result of a third party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, an Access Provider must provide no less than:

- (a) one (1) year's notice in writing to all relevant Access Seekers prior to the decommissioning of a POI/POP; or
- (b) six (6) months' notice in writing to all relevant Access Seekers prior to the decommissioning of any other Facilities and/or Services,

Where an Access Provider is required to vacate the site as a result of a third party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, the Access Provider must provide all relevant Access Seekers with as much notice as possible in relation to the matters in paragraphs 5.1.1(a) and 5.1.1(b) above.

5.2 Co-operation

An Access Provider must co-operate and negotiate with all relevant Access Seekers in relation to the timetable for decommissioning of the relevant Point of Interface, Facilities and/or Services.

5.3 Alternative arrangements

5.3.1 An Access Provider which notifies an Access Seeker of its intention:

- (a) to decommission a Point of Interface, shall provide to the Access Seeker functionally equivalent interconnection at another Point of Interface on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker, relative to the terms and conditions and recurring charge applying applicable in respect of the Point of Interface that is proposed to be decommissioned, for a period that is not less than three (3) years from the date of decommissioning; or
- (b) to decommission any other Facilities and/or Services, shall provide to the Access Seeker access to alternative Facilities and/or Services on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker, relative to the terms and conditions and recurring charge applicable in respect of the Facilities and/or Services that are proposed to be decommissioned, for a period that is not less than three (3) years from the date of decommissioning.

5.4 Decommissioned Point of Interface compensation

An Access Provider shall pay the Access Seeker reasonable costs, necessarily incurred in:

- (a) decommissioning any links to the Point of Interface that is proposed to be decommissioned that are, or will be, rendered redundant by the proposed decommissioning;
- (b) installing or otherwise procuring links between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to paragraph 5.3(a) of this RAO; and
- (c) the carriage of traffic between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to paragraph 5.3(a) of this RAO for a period that is not less than three (3) years from the date of decommissioning.

5.5 Decommissioned Facilities/ or Service compensation

Except where decommissioning is caused by Force Majeure, an Access Provider shall pay the Access Seeker's reasonable costs, necessarily incurred in:

- (a) moving the Access Seeker's Equipment from the decommissioned Facilities to alternative Facilities offered in accordance with subsection paragraph 5.3(b) of this RAO; or
- (b) re-arranging Equipment to connect to alternative Services offered in accordance with subsection paragraph 5.3(b) of this RAO.

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Appendix 1
List of Point of Interface

STATE	ADDRESS1	
CX2, CYBERJAYA	SELANGOR	CYBERJAYA
	WILAYAH PERSEKUTUAN	
AIMS, KL	KUALA LUMPUR	K.LUMPUR
GOMBAK	SELANGOR	GOMBAK
BENTONG	PAHANG	BENTONG
TEMERLOH	PAHANG	TEMERLOH
MARAN	PAHANG	MARAN
GAMBANG	PAHANG	GAMBANG
INDERA SEMPURNA	PAHANG	KUANTAN
NENASI	PAHANG	NENASI
ROMPIN	PAHANG	ROMPIN
ENDAU	JOHOR	ENDAU
MERSING	JOHOR	MERSING
ANSAR	JOHOR	JOHOR BHARU
PADANG BESAR	PERLIS	PADANG BESAR
MID CAUSEWAY	JOHOR	JOHOR BHARU (IN SPA

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Section V NETWORK CHANGE

1. General

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

2. Network Change Obligation

2.1 Scope

This Section 2 applies where an Operator proposes to implement a Network Change of a type referred to in subsection 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 Operators' respective Networks, services and procedures.

2.2 Types of changes

2.2.1 The following kinds of proposed Network Changes may be within the scope of subsection 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 to, which will or might affect:
 - i. the Recipient Operator's Network; or
 - ii. the Recipient Operator's use of the Facilities and/or Services provided by the Notifying Operator, ("Facility and/or Service Change");
- (c) any change by the Notifying Party 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 in inter-carrier processes, including without limitation:
 - i. the billing system;
 - ii. the ordering and provisioning systems; or

- iii. the Customer Churn process, (“OSS Change”); and
- (e) any enhancement by the Notifying Operator of the features, functions or capabilities of the Facilities and/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

2.3.1 If a Notifying Operator proposes 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 Recipient Operator to identify and begin planning such changes as may be necessary or desirable for the Recipient Party 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 Days from the date of the Change Notice, on which representatives of the Notifying Party 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	Three (3) months
Other Network Change	Three (3) months
Facility and/or Service Change	Three (3) months
OSS Change	Three (3) months
Functionality Change	Three (3) months

2.4 Post-notification procedures

2.4.1 The Notifying Operator shall:

- (a) meet with representatives of the Recipient Operator on 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

subsection 5.3), for the purpose of discussing the Relevant Changes 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 proposals made by the Recipient Operator to minimise any adverse impact of the Relevant Changes on the Recipient Operator and revise the Change Notice accordingly.

2.5 Testing

2.5.1 A 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 Party and, in any case, no less than twenty (20) Business Days before the Notifying Party proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under paragraph 2.5(a) above.

2.6 Testing failure

2.6.1 Subject to the Recipient Operator having co-operated with the Notifying Operator in relation to the conduct of tests under subsection 4.10.5 of this RAO, 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 Operator must postpone implementation of the Relevant Changes. The period of postponement will be the period necessary to allow the Operators to repeat the steps in subsections 2.3 to 2.5 above.

2.7 Churn Obligation and Process (where applicable)

2.7.1 **Authorisation of Releasing Service Provider:** 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 Service Provider from a Gaining Service Provider.

- 2.7.2 **Notifications:** 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.
- 2.7.3 **Notification of invalid Churns:** Within two (2) Business Days of the receipt by the Releasing Service Provider of the notice from the Gaining Service Provider under this subsection 2.7.2 herein, 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).

- 2.7.4 **Response to invalid Churn notification:** If a notification is made under subsection 2.7.3 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 Provider with a Transfer Form, the Transfer Request must be provided to the Access Service Provider immediately.
- 2.7.5 **Implementation of Churn:** 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.
- 2.7.6 **Facilitation of Churn:** An Access Service Provider must facilitate and implement Churns between Operators in accordance with the obligations specified in subsection 2.7.5 above, even if the Access Service Provider is not the Releasing Service Provider or the Gaining Service Provider.
- 2.7.7 **Confidentiality:** Unless otherwise specifically provided in this RAO, the Access Service Provider and the Releasing Service Provider must not use information disclosed for the purposes of a 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 Confidential Information of the Gaining Service Provider, and must not use such

information in connection with marketing to, or offering services to, a Customer.

- 2.7.8 **Availability:** 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 RAO) must not refuse an Access Request (under subsection 3.6 of this RAO) on the ground that the Releasing Service Provider is currently using the Service specified in the Access Request.

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SECTION VI NETWORK FACILITIES ACCESS AND CO-LOCATION

1. General

1.1 Section VI 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's 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's standard planning horizons; and

(c) the type of Facilities or Equipment available to the Access Seeker.

2.3 The Access Provider shall have reasonable physical access, without any charges imposed to the Access Provider, to the Access Seeker's network premise and/or facilities with respect to any Facilities and Services requested by the Access Seeker for the purpose of installation, commissioning, maintenance, modification, decommissioning and removal of equipment installed within, attached to, or situated in the Access Seeker's premises.

2.4 Where the Access Seeker relocates, rebuilds or replaces any premises and/or facility to which the Access Provider has access to during the fixed period of access, the Access Seeker will provide access to a replacement premises and/or facility on substantially similar terms.

3. Network Facilities Access and Co-Location

3.1 Inspection and Site Survey

3.1.1 The Access Provider shall allow nominated employees or contractors of a potential 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

3.2.1 The Access Provider shall allow an 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's 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 9.00am to 5.00 pm on any Business Day, the Access Seeker shall have physical access to the Access Provider's network facilities for the purposes of installing, commissioning, modifying, maintaining, decommissioning and removing its Equipment.

3.3 Escorts

3.3.1 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 an 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
- (iii) 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 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 or co-locate at or on an Access Provider's network facilities, 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 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:
 - (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). If the Access Seeker fails to withdraw the request within the said time period, the Access Seeker is deemed to have accepted the revised estimate charges and shall be liable for the revised estimated charges.
- 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

3.8.1 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 relevant 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 notified under Condition 3.8.1(a) 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 that 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;
- (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 an 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 an 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 an 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

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 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.

3.16 Conditional supply

An Access Provider shall not require an Access Seeker to acquire:

- (a) other Facilities and/or services from the Access Provider as a condition of providing access to Facilities and/or Services under this Agreement (for example, an Access Provider shall not make access to Facilities conditional on the acquisition of Services, such as End-to-End Transmission Service, or other services, such as maintenance services); and (b) any Facilities and/or Services in any minimum or maximum quantity. For clarification purposes, reference to quantity in this Condition does not apply to bandwidth.

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SECTION VII– OPERATIONS AND MAINTENANCE

1. General

1.1 Section VII 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 Call 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 Each Operator is responsible for managing the traffic from its own Gateway to the other Operator's Gateway. This includes applying Network management actions for traffic control under situations like abnormal traffic upsurge, Network instability and other abnormal traffic behaviours.

2.1.7 Both Operators shall be responsible to carry out interconnect testing for all trunk group on each E1 by selecting circuits randomly on an annual basis and on a case by case basis for interconnect link test such as call detail recording (CDR) verification, End-of-Selection (EOS) signal verification, test line termination and call forwarding detail verification. In the event that there are any abnormalities arising from the tests, an Operator must notify the other Operator within five (5) Business Days from the time of discovery.

2.1.8 Each Operator is responsible for the operations and maintenance of their portion of the In-span Interconnect Link Service, alongside with any Network elements under its control and ownership.

2.1.9 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.

2.1.10 The Operators will comply with the relevant national safety and health regulations when carrying out works inside the Access Provider or third party premises.

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 fulfil their obligations under the 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.

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 VIII 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 interconnect fault reporting centre of the reported fault.

2.4 Cross-referrals

2.4.1 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.

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 full-span Interconnect Link Service, Domestic Connectivity to International Services, Bitstream Services, DSL Resale and End-to-End Transmission Service provided by the other Operator and the other Operator 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.

2.6 Transmission service faults

The Operator that supplies transmission services is responsible for maintaining and repairing that transmission service, notwithstanding that the transmission service may be used in the other Operator's Network.

2.7 Major inter-working faults

If a major fault occurs which affects a communication 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.

2.8 Faults affecting other Networks or Equipment

2.8.1 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 which persists for more than thirty (30) minutes that could degrade the PSTN, Telephony Service over IP and other telephone services between nodes by fifty percent (50%) or more;
- (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.

2.9 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.

2.10 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
- (c) all other faults.

2.11 Fault rectification

Each Operator shall rectify faults on a first come first serve basis where the priority level is the same in accordance with the target times set out in Condition 2.12.

2.12 Target times

Each Operator shall respond to, rectify and restore faults in its Network (excluding faults in their respective submarine cables) which is of a type listed in the following table in accordance with the target times set out below.

Priority Level	Fault Types (examples)	Response Timeframe	Progress Update Frequency	Rectification Timeframe
Level 1	<ol style="list-style-type: none"> 1. Major switch outage 2. Transmission bearer total outage 3. Route blocking > 30% 4. Major signalling problem 5. Major routing issues 6. Fraudulent calls 	Within one (1) hour	Within one (1) hour	Four (4) hours
Level 2	1. Minor switch outage	Within four (4) hours	Within four (4) hours	Twenty-four (24) hours
	2. Minor routing issue			
	3. Minor signaling problems			
	4. Route blocking 10%-30%			
	5. Cross line and silent calls			
	6. Mobile number portability issues			
Level 3	1. Faults affecting single or small	Within twenty-four (24) hours	Within twenty-four (24) hours	Seventy-two (72) hours
	2. Route blocking <10%			
Level 4	1. Remote congestion	Within forty-eight (48) hours	Within forty-eight (48) hours	Ten (10) Business Days
	2. External Technical Irregularities (“ETI”)			
	3. Other performance related issues			

With respect to faults in its submarine cables, the Operator agrees that the Restoration Time shall be up to four (4) weeks from the fault notification.

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 restoration 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) “Restoration Time” refers to the time taken by the Operator to restore 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 restoration 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 an Access Seeker’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;
- (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 Access Seeker.

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

2.15.1 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 fault reporting 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 outages that relate to Facilities and/or Services to their respective fault reporting centre.

2.18 Routine Testing

The Operators shall conduct interconnection service tests at agreed half yearly intervals to ensure the maintenance of interconnection services at agreed services levels in accordance with standards as agreed by both parties or such other standards as may be determined by the Commission.

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Section VIII OTHER TECHNICAL MATTER

3.1 Compliance

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 and are not inconsistent with any technical obligations set out in this RAO.

3.2 Prevention of technical harm

An Operator must take reasonable measures to ensure that the interconnection and access does not cause physical or technical harm to 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.

3.3 Technical Standards

An Operator must comply with any applicable technical Standard adopted by the Commission under Chapter 3 of Part VII of the Act.

3.4 No Interference

An Operator must not do anything, or knowingly permit any third person to do anything, in relation to a Network, network facilities, network services or Equipment which:

- (a) causes interference; or
- (b) materially obstructs, interrupts or impedes the continuous use or operation of, the Network, network facilities, network services or Equipment of another Operator.

3.5 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, so that no interference is caused 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 paragraph 4.13.5(a) above, 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.

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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
- (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
Network Co-location Service	Section II
Trunk Transmission Service	Section II
End-to-End Transmission Service	Section III

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PART A - SERVICE DESCRIPTION

SECTION I NETWORK CO-LOCATION SERVICE

1. General

1.1 This Part A of Section I sets out the terms and conditions which are applicable to Network Co-location Service under the Access List.

2. Types of Network Co-Location Services

2.1 The types of Network Co-Location Services provided by the Access Provider are:

- (a) Physical Co-Location, which refers to the provision of space at the Access Provider's premises to enable the Access Seeker to install and maintain its own equipment necessary for the provision of the Access Seeker's services through the Facilities and/or Services of the Access Provider. Physical Co-Location includes physical space, power, environmental services (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker;
- (b) Virtual Co-Location, which refers to the provision of facilities or services at the Access Provider's premises to enable the acquisition by the Access Seeker of Facilities and Services, where equipment is owned and maintained by the Access Provider

2.2 Network premises at which co-location is to be provided switching sites, submarine cable landing centres, earth station, exchange buildings other customer modules including roadside cabinets, any location where the main distribution frame is housed and such other facilities network location associated with the Facilities and/or Services in this RAO.

3. Pre-requisites for Applying for Network Co-Location Services

3.1 General Pre-requisites for Network Co-Location

3.1.1 The Access Provider shall not be obliged to provide to the Access Seeker Network Co-Location at the designated sites ("Designated Sites") unless:

- (a) the Access Provider:
 - (i) Is the legal owner of the Designated Sites; or
 - (ii) has exclusive rights of use of the Designated Sites pursuant to a lease or tenancy agreement and the Access Provider has been granted the requisite approval by the owner or landlord of Designated Sites to permit the Access Seeker to use space for physical co-location in accordance with the terms herein contained.

- (b) the Access Seeker has the appropriate license under the Act and its subsidiary legislation to operate the service for the purpose for which the equipment is to be installed and other approvals from relevant authority, where required;
- (c) there is sufficient space at the Designated Site, provided there is excess space available after taking into consideration of SEAX's own use requirement and future expansion plan as provided under Terms and Conditions for Technical Matters; and

3.1.2 The list of the Designated Sites may, upon written request by the Access Seeker, be obtained from the Access Provider within within one (1) week upon written request.

3.2 Forecast

For the purposes of subsection 2.3 of Terms and Conditions for Technical Matters, an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Network Co-Location Service is one (1) year;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Network Co-Location Service is one (1) year; and
- (c) the maximum frequency to update or to make further Forecasts regarding Network Co-Location Service is once a year.

3.3 Acknowledgement of receipt

Access Provider shall acknowledge receipt of each Order for a Network Co-Location Service within two (2) Business Days.

3.4 Time for acceptance or rejection

3.4.1 Subject to any shorter timeframe required under subsection 2.12 of Terms and Conditions for Technical Matters, an Access Provider must notify an Access Seeker that an Order for a Network Co-Location Service is accepted or rejected within ten (10) Business Days after:

- (a) issuing the Notice of Receipt with respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 2.8 of Terms and Conditions for Technical Matters; or
- (b) providing the Access Seeker with the result of post-Order Service Qualification information under subsection 2.9 of Terms and Conditions for Technical Matters, where the Access Provider has undertaken post-Order Service Qualification for

that Order under subsection 2.8 of Terms and Conditions for Technical Matters.

3.5 Indicative delivery timeframe

For the purposes of paragraph 2.13(a)i of Terms and Conditions for Technical Matters, the indicative delivery timeframe for Network Co-Location Service is twenty (20) Business Days. For clarification, the indicative delivery timeframe in this subsection 2.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 2.14 of Terms and Conditions for Technical Matters.

3.6 Billing Cycle

For the purposes of subsection 5.11.3 of General Terms and Condition, between the Operators, the Billing Cycle for Network Co-Location Services will be one (1) year in advance for the first year and quarterly in advance for subsequent years.

3.7 Inspection

An Access Provider shall allow nominated employees and/or contractors of a potential Access Seeker to physically inspect network facilities of the Access Provider during normal business hours provided that 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.

3.8 Physical access

Where required to fulfil an Order for a Network Co-Location Service or for the Access Seeker to perform operations or maintenance activities, an Access Provider shall allow an 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 such network facilities, at equivalent times and in accordance with equivalent processes and procedures as are applicable to itself. An Access Provider must not prevent or restrict access to any network facility or site for reasons concerning national or operational security reasons and may only apply reasonable security procedures and processes that comply with the obligations specified in this RAO.

3.9 Nominated Personnel

The employees and/or contractors nominated by Access Seeker under subsection 3.7 or 3.8 will be reasonable having regard to the :

(a) The position of each person and the number or persons nominated; and

- (b) The position of each of the Access Provider's own personnel and the number of the Access Provider's own personnel to which the Access Provider provides physical access to such network facilities.

4. Duration

4.1.1 Network Co-Location at a Designated Site, 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 Designated Site 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 the Network Co-Location at the Designated Site notify the Access Provider in writing as to whether or not it wishes to renew the term of the Network Co-Location at the Designated Site. If the Access Seeker notifies the Access Provider that it wishes to renew the term of the Network Co-Location at a Designated Site but the Access Provider's lease or tenancy to use the land on which the Designated Site expires upon or will expire in the renewed term, the Access Provider shall, within one (1) month from the date of receipt of the Access Seeker written notice, inform the Access Seeker as to its intention to renew its lease or tenancy of the said land.

4.1.2 The term of the Network Co-Location shall commence on the date ("Commencement Date"):

- (a) the Access Provider makes available for physical possession the co-located space ("Co-Located Space") at the Designated Site in accordance with the agreed specifications and the Access Provider has notified the Access Seeker in writing of the same; or
- (b) the Access Seeker takes physical possession of the Co-located Space at the Designated Site, whichever is the earlier.

5. Use of Co-Located Space

5.1.1 The Access Seeker shall only use the Co-Located Space for the sole purpose of providing Communication Services and shall not do or permit to be done any act or thing which is illegal or may become a nuisance or give reasonable cause for complaint by the Access Provider or owner or any of the other access seekers in the Access Provider's Designated Site or owner any other buildings adjoining the Designated Site.

5.1.2 If the Access Seeker has not complied with Condition 5.1.1, the Access Seeker shall take the necessary rectification or remedial action to address any complaints made by the Access Provider or other access seekers in the Designated Site or owner or owner of the building adjoining the Designated Site.

5.1.3 The Access Seeker's right to use the Co-Located 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, other structure or in or to the Designated Site.

5.1.4 Where the land on which the Designated Site is located is owned or controlled by a third party ("Site Owner") and the Access Provider's use of the Designated Site is pursuant to a tenancy or lease, the Access Provider shall be under no obligation to seek any renewal of the term of the tenancy or lease. The Access Seeker agrees that it shall not seek a tenancy or lease to the land on which the Designated Sites is located from the Site Owner unless the Access Provider signifies in writing that it is no longer interested in the use of the Designated Sites.

6 Storage

- 6.1 The Access Seeker shall not permit to be kept on the Co-Located Space or any part thereof:
- (a) any materials the storage of which may contravene any ordinance, statute, regulation or by-law;
 - (b) any materials the storage of which an increased rate of insurance is usually required; or
 - (c) any explosive, combustible or radioactive substances.

7 Increase in Premium

The Access Seeker shall not do or permit to be done anything which would render the insurance policy or policies with respect to the Access Provider's Designated Site on which the Co-Located Space is located void or voidable or whereby the premium of the said policy or policies may be increased. In the event of an increase in premium or other expenses on renewal of such policy or policies due to a breach or non-observance of this condition by the Access Seeker, the Access Seeker undertakes to repay all sums paid by the Access Provider including the expenses incurred thereto.

8 Repairs

8.1 In the event of any damage caused to the Co-Located Space by the Access Seeker, the Access Seeker shall, at its own cost and expense, restore and to forthwith make good any damage to the original state and condition (fair wear and tear excepted) as specified in the notice in writing given by the Access Provider to the Access Seeker. Where applicable, the Access Provider may specify all necessary repairs or, where damage cannot be made good with repairs to the original state and condition, such replacements to be effected to the building, plant, facilities and equipment.

8.2 If the Access Seeker fails to effect the replacements and/or repairs within the time period stipulated in the notice (which period must be a

reasonable time), the Access Provider may, whether or not together with its workmen, enter the Co-Located Space and make all necessary replacements and/or repairs to the building, plant, facilities and equipment. The costs for all such necessary replacements and/or repairs shall be a debt due from the Access Seeker and shall be recoverable by the Access Provider save where the replacements and/or repairs were due to the natural failure of the structure or due to the Access Provider.

9 Tenantable Condition

The Access Seeker shall keep the Co-Located Space and the interior thereof including the flooring and interior plaster or other surface material or rendering on walls or ceilings and the Access Provider's fixtures thereon including doors, window, glass shutters, locks, fastenings, electric wires, installations and fittings for electricity supply and other fixtures and additions and other goods therein including the items specifically attached thereto, if any, in good and tenantable repair and condition (reasonable wear and tear excepted).

10 Consents, Licences and Approvals

- 10.1 The Access Seeker shall be fully responsible to obtain all necessary consents, permits, approvals and licenses from third parties and governmental authorities or agencies to carry out/provide its Communications Services at the Co-Located Space including operating and using all equipment, systems, cables, links and devices.
- 10.2 The Access Seeker shall further observe and comply with all laws, by-laws, rules and regulations affecting the Access Seeker which are now in force or which may hereafter be enacted.
- 10.3 The Access Seeker shall further observe and perform and cause all its employees, independent contractors, agents or invitees to observe and perform all rules and regulations made by the Access Provider (and which rules and regulations equally apply to all access seekers and the Access Provider) from time to time and notified to the Access Seeker in writing Provided Always that the Access Provider shall not be liable to the Access Seeker in any way for violation of the rules and regulations by any person including the Access Seeker or its employees, independent contractors, agents or invitees save where the Access Provider has been negligent.

11. Sub-letting and Assignment

- 11.1 The Access Seeker shall not sub-let, assign or part with the possession of the Co-Located Space without the prior written approval of the Access Provider (the approval of which shall not be unreasonably withheld). Where the Access Provider allows the Access Seeker to sub-let the Co-Located Space, the Access Seeker shall be fully responsible for the acts and omission of its sub-lessee and shall

ensure that its sub-lessee complies with all the Access Seeker's obligations with respect to the Co-Located Space under this Agreement.

- 11.2 Where the Access Seeker is permitted by the Access Provider to sub-let part of the Co-Located Space to other access seekers for the purposes of co-locating with the Access Seeker at the Co-Located Space, the Access Seeker shall strictly comply with the same procedures in respect of permitting access as those stipulated and/or required by the Access Provider in providing access. The Access Seeker must notify the Access Provider of all persons with whom the Access Seeker has reached a co-location agreement within two (2) Business Days of reaching such agreement. The Access Seeker shall provide sufficient evidence to the Access Provider to demonstrate that such agreement with the other access seeker have been duly registered with the Commission, failing which the other access seekers shall not be permitted to co-locate at the Co-Located Space. The Access Seeker shall be fully responsible to ensure that all other access seekers co-locating with the Access Seeker at the Co-Located Space shall strictly comply with all the relevant terms and conditions contained in this Agreement including but not limited to provisions pertaining to the preservation of and the security of the Access Provider's Network Facilities and premises.

12. Payment of Quit Rents, Rates and Taxes

The Access Provider will pay all quit rents, rates (save for utilities), taxes, assessments which are or may hereafter be charged upon the Co-Located Space. Any increase in quit rent, assessment, taxes or rates on the Co-Located Space from the Commencement Date of the Network Co-Location shall be borne by the Access Provider and all access seekers in proportion to their usage of space.

13. Utilities

- 13.1 The Access Seeker shall be responsible to apply for its own individual meter and power supply to the Co-Located Space and shall be further responsible for and bear the cost of all electricity utilised by the Access Seeker at the Co-Located Space.
- 13.2 In the event that the Access Seeker's application to the relevant authority for an individual meter is not successful, the Access Seeker may:
- (a) subject to the Access Provider's prior written approval, utilise the electricity supplied to the Access Provider at that premises provided that:
 - (i) the Access Provider is of the opinion that the electricity power load is sufficient to be shared with the Access

- Seeker and other access seekers within its Designated Site; and
- (ii) the Access Seeker reimburse the Access Provider for all electricity charges utilised (and any other additional charges for back-up power) by the Access Seeker at the Co-Located Space, the charges of which shall be determined by the Access Provider; or
- (b) where the Access Provider is not able to provide the electricity supply to the Access Seeker, the Access Seeker shall be entitled to bring and install its own generator at the Co-Located Space at the Designated Site.

14. To Permit the Access Provider to Enter and View Condition

14.1 Where the Co-Located Space is an enclosed or secured area, the Access Seeker shall permit the Access Provider and his agents, servants and contractors, to enter the Co-Located Space at all reasonable times and upon giving five (5) Business Days written notice for the purpose of viewing the state and condition thereof or for any other reasonable purpose. The Operators agree however, that in an emergency which poses a clear and imminent danger to public safety and/or the Access Provider or other access seekers equipment, the Access Provider may enter the Co-Located Space by first giving verbal notification and which shall be followed by a written notification within twenty four (24) hours and take reasonable actions as the circumstances dictate to address the emergence situation. The Access Seeker shall have the option to provide an escort to the Access Provider, at its own cost, but the Access Provider shall not be prevented from entering if the escort fails to be present.

15. Installation of Equipment

- 15.1 The Access Seeker shall ensure that all equipment, system or devices on the Co-Located Space shall:
- (a) be type-approved and comply with all relevant laws and regulations;
 - (b) not cause any frequency interference to the Access Provider's and/or any of the other access seekers' equipment or services provided in or around the Co-Located Space;
 - (c) be electromagnetically compatible in accordance with the prescribed standards and shall not cause electromagnetic interference to the Access Provider's and/or any of the other access seekers' equipment or services provided in or around the Co-Located Space.; and/or

- (d) not be connected to any equipment belonging to the Access Provider without the written consent from the Access Provider.

For the purposes of Condition 15.1 (b) and (c), the Operators agree that where the Access Seeker's equipment causes frequency interference or electromagnetic interference to the Access Provider and/or other access seekers' equipment or services provided in or around the Co-Located Space, the Access Provider shall immediately provide verbal notification followed by immediate written notice within 24 hours to the Access Seeker. The Access Seeker shall immediately thereafter (no longer than 24 hours upon receiving the verbal notification) take all necessary steps to stop such interference.

- 15.2 In the event that:
 - (a) the Access Seeker fails to fulfil its obligations under this Condition 16.1; or
 - (b) the 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.
- 15.3 The Access Seeker shall only be permitted to install its Equipment on the Co-Located Space for the provision of its Communications Services and shall not be permitted to install any other operator's equipment, system and/or devices on the Co-Located Space without the prior written approval of the Access Provider.
- 15.4 The Access Seeker shall not damage, tamper, modify, alter or handle any equipment, system or devices belonging to the Access Provider or any other access seeker in the Designated Site and/or the Co-Located Space without the prior written approval of the Access Provider and/or the other access seeker.
- 15.5 The Access Seeker is responsible for insuring its equipment and shall purchase the necessary insurances when carrying out any works including installation works on the Access Provider's Designated Site. The insurance shall be in the amount which is sufficient to insure the full value of the works carried out by the Access Seeker.

16. Installation of Electrical Points and Plumbing Connection

The Access Seeker shall not install any electrical sockets, plugs or electrical power points or electrical motor or engine or appliances or make any additional plumbing connections on or to the Co-Located Space without obtaining the prior written consent of the Access Provider to the work plan.

17. Safety and Health and Security Procedures

- 17.1 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) Occupational Safety and Health Act, 1994; and
 - (ii) all other relevant occupational safety and health requirements imposed by law including any subsequent amendments to or re-enactment of the said law;
 - (iii) any directives or order by Access Provider or relevant authorities relating to occupational safety and health requirements; and
 - (iv) 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 Access 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.

18. Exclusive Possession

- 18.1 The Access Seeker recognises that it does not have exclusive possession of the Co-Located Space since the Access Provider occupies the Co-Located Space and may sub-let or intends to sub-let the Co-Located Space to other parties. However, the Access Provider agrees that it shall not tamper, modify, alter or handle any or interfere with equipment, system or devices belonging to the Access Seeker at the Co-Located Space for the duration of the Physical Co-Location unless an emergency situation arises and immediate notice has been given to the Access Seeker.

19. Maintenance of Equipment

- 19.1 The Access Seeker shall be responsible for the operation and maintenance of its Equipment, system and/or devices at the Co-Located Space.
- 19.2 The Access Provider shall not be responsible for any damage to the Access Seeker's Equipment, system and/or devices at the Co-Located Space caused by fire, water leakage, air-conditioning / mechanical ventilation failure, power fluctuation / interruption, and/or by any other causes or reasons unless due to the Access Provider's negligence.
- 19.3 In the operation and maintenance of the Equipment, systems and/or devices at the Co-Located Space, the Access Seeker must:
- (a) take such other action as a reasonably prudent Access Seeker would in operating and maintaining their Equipment, systems and/or devices;
 - (b) keep the Co-Location Space in a tidy and safe condition at all times; and
 - (c) ensure that flammable or toxic material is not left in or around the Co-Location Space following maintenance and/or other operations.
- 19.4 If a fault, defect or problem with the Access Seeker's Equipment, systems and/or devices at the Co-Located Space causes or may cause damage to the Co-Location 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.
- 19.5 If the Access Seeker detects a fault, defect or problem in the Co-Location Space, it must notify the Access Provider as soon as possible.

20. Vacating the Co-Located Space

20.1 The Access Seeker shall on the expiration or termination of the Physical Co-Location at each Co-Located Space, at its own cost and expense, remove all its equipment, system and devices which may have been installed by the Access Seeker and to peaceably and quietly yield up the Co-Located Space to the Access Provider with all the Access Provider's fixtures and additions thereto in good and tenantable repair and condition (fair wear and tear excepted) in accordance with the covenants herein contained.

20.2 The Access Seeker shall be given:

- (a) a grace period of ten (10) Business Days effective from the expiry or termination of the Physical Co-Location at the Co-Located Space; or
- (b) where the infrastructure on the Designated Site is to be dismantled or the Access Provider is to vacate the Designated Site in such reasonable grace period as may be specified by the Access Provider taking into consideration the time lines provided by the relevant authorities or the owner of the land / landlord to the Access Provider to dismantle the infrastructure or to vacate the Designated Site provided always that the Access Seeker must vacate the Co-Located Space earlier than the stipulated time line provided to the Access Provider to enable the Access Provider to comply with the requisite time lines, to vacate the Co-Located Space, during which no monthly rental will be charged by the Access Provider. Should the equipment, system or devices not be removed within the grace period, the Access Provider shall have the right to:
 - (i) charge for the use of the Co-Located Space at the rate of two (2) times the current rental or the cost of reinstatement as debt due and payable;
 - (ii) without any liability to the Access Seeker, dispose of the equipment, system 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 equipment, system or devices and is entitled to retain such equipment, system or devices or to sell the 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 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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PART A SERVICE DESCRIPTION

SECTION II – TRUNK TRANSMISSION

1. General

1.1 Section II of Part A sets out the terms and conditions which are applicable to Trunk Transmission Service.

2. Scope of Trunk Transmission Service

2.1 The Trunk Transmission Service is a Facility and/or Service for the carriage of communications between two technically feasible network transmission points not being Access Seeker's premises, on the Access Provider's network, via such network interface at such transmission rates as may be agreed between Access Provider and Access Seeker.

2.2 Network Interface may use any technology as may be agreed between Access Provider and Access Seeker.

2.3 Functionalities of the Trunk Transmission Service includes:

- (a) Transmission and any type of routing or switching whether packet or circuit, multi-layer or otherwise ;
- (b) The signalling required to support a technology or to provide a service;
- (c) Termination at either end of the port, router, network termination unit, switch, submarine cable landing centre or earth station;
- (d) Digital protocol including Internet protocol.

2.4 A technically feasible network transmission point specified in 2.1 includes submarine cable and satellite link between Sabah and Sarawak and Peninsular Malaysia, submarine cable landing centre or earth station.

2.5 The Trunk Transmission Service may for the carriage of Communication which comprises of content application services.

2.6 An Access Seeker for the Trunk Transmission Service which includes but not limited to not a network facility provider or network service provider which is only authorized to provide limited network facilities or network services such as in the last mile, but wishes to acquire the Trunk Transmission Service in order to connect its limited network facilities or network services.

2.7 For the purpose of Section 2.3 of the Terms and Conditions for Technical Matters of this RAO, Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Trunk Transmission Service one (1) year or as mutually agreed by the Operators;

- (b) the minimum intervals or units of time to be used in Forecasts regarding Trunk Transmission 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 Trunk Transmission Service is once a year or as mutually agreed by the Operators.
- 2.8 For the purpose of Section 2.5 of the Terms and Conditions for Technical Matters of this RAO, An Access Provider shall acknowledge receipt of each Order of Trunk Transmission Service within (2) Business Days.
- 2.9 Subject to any shorter timeframe that is required under Section 2.12 of Terms and Conditions for Technical Matters, an Access Provider must notify an Access Seeker that an Order for Trunk Transmission Service is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt with respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 2.8 of Terms and Conditions for Technical Matters; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification information under subsection 2.9 of Terms and Conditions for Technical Matters, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 2.8 of Terms and Conditions for Technical Matters.
- 2.10 For the purposes of paragraph 2.13(a)i of Terms and Conditions for Technical Matters, the indicative delivery timeframe for Trunk Transmission Service is :
- a) if no new network facilities are required to supply the Trunk Transmission Services, twenty (20) Business Days; and
 - b) if new network facilities are required to supply the Trunk Transmission Services, sixty (60) Business Days.
- 2.11 The indicative delivery timeframe stated in 2.9 above commences from the Notice of Acceptance or confirmation of the Order in accordance with section 2.14 of Terms and Conditions for Technical Matters.
- 2.12 For the purposes of Section 5.1.1 (e) General Terms and Conditions of this RAO, between the Operators, the Billing Period for the purpose of invoicing shall be 1 year in advance for the first year and quarterly in advance for the subsequent years.
3. Provisioning of the Trunk Transmission Service
- 3.1 Access Provider will provide the Trunk Transmission Service requested by the Access Seeker in accordance with this Agreement.

- 3.2 Where the Access Seeker leases the Trunk Transmission Service from the Access Provider, the Access Provider's Equipment can be co-located in Access Seeker's premises in accordance to Section I of Part A of this RAO.
- 3.3 Access Provider shall ensure the Trunk Transmission Service conforms to the Technical Specifications, subject to the Access Seeker's use of the Trunk Transmission Service in accordance with the Technical Specifications.
- 3.4 The Access Seeker shall pay to the Access Provider for the Trunk Transmission Services stated in this Section II of Part A provided by the Access Provider, the Charges in accordance with the applicable provisions set out in Section II of Part B.
- 3.5 4.5 The minimum period in which the Access Seeker may lease Trunk Transmission Service is one (1) year.

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PART A SERVICE DESCRIPTION

SECTION III - END-TO-END TRANSMISSION SERVICE

1. GENERAL

1.1 The End-to-End Transmission Service is a Facility and/or Service for the carriage of communications between:

- i. Two End User locations;
- ii. Two Access Seeker premises; or
- iii. One End User location and one Access Seeker's premises.

via such network interfaces at such transmission rates as may be agreed between SEAX and the Access Seeker on a permanent or virtual basis.

1.2 Network interfaces may use any technology as may be agreed between SEAX and the Access Seeker including, for example, Ethernet interfaces.

2 The functionalities of the End-to-End Transmission Service include:

- (i) Transmission and any type of routing or switching, whether packet, circuit, multi-layer or otherwise;
- (ii) The signalling required to support the technology or to provide a service;
- (iii) Termination at either end by a port, router, network termination unit, switch, submarine cable landing centre or earth station; and
- (iv) A digital protocol including Internet Protocols.

3. General Terms and Condition

3.1 (a) Access Provider will provide End-to-End Transmission Service requested by the Access Seeker in accordance with this RAO.

(b) an End Users' location or Access Seeker's premises in Section 1.1 above, may include submarine cable or satellite link between Sabah, Sarawak and Peninsular Malaysia, submarine cable landing centre or earth station.

(c) The End-to-End Transmission Service may be for the carriage of communications which comprise a content application service.

(d) Technologies used to supply the End-to-End Transmission Service such as Metro-E or any other applicable technology which is currently available or which may be developed in the future, may be requested by the Access Seeker and the Access Provider must supply the End-to-End Transmission Service using these technologies on request.

(e) An Access Seeker for the End-to-End Transmission Service which includes but not limited to not a network facility provider or network service provider which is only authorized to provide limited network facilities or

network services such as in the last mile but wishes to acquire the End-to-End Transmission Service in order to connect its limited network facilities or network services.

- (f) for avoidance of doubt, the End-to-End Transmission Service comprises but is not limited to the Facilities and/or Services specified in the Trunk Transmission Service.
- (g) The End-to-End Transmission Service includes any End-to-End Transmission Service supplied to the Access Seeker with:
 - (i) any network availability between 99.90% and 99.992% whether per month or otherwise;
 - (ii) any latency of between <1 ms and <40 ms;
 - (iii) Zero or more routes of redundancy; and
- (iv) Any other technical parameters specified or utilised by the Access Provider from time to time, including of parameters of a type to in subparagraph (i) to (iii) above.

3.2 Forecasts

For the purposes of subsection 2.3 of Terms and Conditions for Technical Matters, an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding End-to-End Transmission Service is one (1) year;
- (b) the minimum intervals or units of time to be used in Forecasts regarding End-to-End Transmission Service is one (1) year; and
- (c) the maximum frequency to update or to make further Forecasts regarding End-to-End Transmission Service is once a year.

3.3 Acknowledgement of receipt

For the purposes of subsection 2.5 of Terms and Conditions for Technical Matters, an Access Provider shall acknowledge receipt of each Order for End-to-End Transmission Service within two (2) Business Days.

3.4 Time for acceptance or rejection

Subject to any shorter timeframe required under subsection 2.12 of Terms and Conditions for Technical Matters, an Access Provider must notify an Access Seeker that an Order for End-to-End Transmission Service is accepted or rejected within ten (10) Business Days after:

- a) issuing the Notice of Receipt with respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 2.8 of Terms and Conditions for Technical Matters; or
- b) providing the Access Seeker with the result of post-Order Service Qualification information under subsection 2.9 of Terms and Conditions for Technical Matters, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 2.8 of Terms and Conditions for Technical Matters.

3.5 Indicative delivery timeframe

For the purposes of paragraph 2.13(a)i of Terms and Conditions for Technical Matters, the indicative delivery timeframe for End-to-End Transmission Service is :

- a) if no new network facilities are required to supply the End-to-End Transmission Services, twenty (20) Business Days; and
- b) if new network facilities are required to supply the End-to-End Transmission Services, sixty (60) Business Days.

3.6 Billing Cycle

For the purposes of subsection 2.3 of Terms and Conditions for Technical Matters, between the Operators, the Billing Cycle for End-to-End Transmission Service will be quarterly.

3.7 Reporting

3.7.1 Access Provider shall notify the Commission in writing, in respect of End-to-End Transmission Service offered or supplied by the Access Provider, details of :

- a) each technically feasible network point at which an End-to-End Transmission is offered and supplied (and, in the case of supply, the Access Seekers to whom the End-to-End Transmission Services are supplied at those points);
- b) each network interface through which an End-to-End Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the End-to-End Transmission Services are supplied using those interfaces);
- c) each bit rate at which an End-to-End Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the End-to-End Transmission Services are supplied at those bit rates); and

- d) whether the End-to-End Transmission Service is supplied in conjunction with any other Facility or Service.

4. Provisioning of End-to-End Transmission Service

- 4.1 Access Provider will provide End-to-End Transmission Service requested by the Access Seeker in accordance with this RAO.
- 4.2 Where the Access Seeker leases End-to-End Transmission Service from the Access Provider, the Access Provider's Equipment can be installed in the Access Seeker's premises without any charge imposed to the Access Provider. Any levy or charges imposed by the owner and/or occupier of the Access Seeker or End User premises and/or building as a result of the installation of Access Provider's Equipment shall be borne by the Access Seeker.
- 4.3 Access Provider shall ensure End-to-End Transmission Service conforms to the Technical Specifications, subject to the Access Seeker's use of this End-to-End Transmission Service in accordance with the Technical Specifications.
- 4.4 The Access Seeker shall pay to the Access Provider for the End-to-End Transmission Services stated in this Section II of Part A provided by the Access Provider, the Charges in accordance with the applicable provisions set out in Section III of Part B.
- 4.5 The minimum period in which the Access Seeker may lease End-to-End Transmission Service is one (1) year.

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PART B - CHARGES AND CHARGING PRINCIPLES

SECTION I-NETWORK CO-LOCATION SERVICE

1. General

- 1.1 Section I of Part B sets out the charges and the charging principles which would be applicable to Physical Co-location unless otherwise expressly stated.
- 1.2 The prices below for Network Co-Location Service shall be applied for physical co-location for space, environmental services (heat, light, ventilation and air-conditioning), security, maintenance at switching sites and exchange buildings.
- 1.3 In the event that there is an increase in the utility tariff / rates after the Effective Date of the Access Agreement, the Access Provider reserves the right to revise the utility charges by giving written notice to the Access Seeker reflecting the actual increase in the utility tariff/rates (without additional charges). For the avoidance of doubt, the revised utility charges shall also be applicable to any contract for the Designated Site that exist or is still subsisting at the time of the revision of the utility charges. The revised utility charges shall take effect on the date of the revision of the utility charges

2. Mode of Payment

- 2.1 The Access Seeker shall pay to the Access Provider the recurring charges stated above for Physical Co-Location at the Access Provider's Designated Site monthly in advance within the first seven (7) days of the applicable month.
- 2.2 The Access Seeker shall pay to the Access Provider for the one-time charges stated in Condition 1 above within thirty (30) days from the date of receipt of the invoice.
- 2.3 The Access Seeker agrees to pay the Access Provider the recurring charges for the whole three (3) year period irrespective of use of the Co-Located Space as the Access Seeker has committed to the minimum period of three (3) years (or such lesser period specified by the Access Provider, where the Access Provider lease or tenancy is less than three (3) years). The minimum three (3) year commitment period shall apply to every renewal of the Co-Located Space unless otherwise agreed between the Operators.
- 2.4 The demand or acceptance of any payment by the Access Provider after default or breach by the Access Seeker does not prejudice the exercise by the Access Provider of the powers conferred upon the Access Provider under this Agreement and/or under law nor does it constitute an election by the Access Provider to exercise or not to exercise any of the rights, powers or privileges under this Agreement and/or under law.
- 2.5 All utility charges shall be paid monthly in advance.

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APPENDIX 1
CHARGES FOR NETWORK CO-LOCATION SERVICE

1.1 Physical Co-Location Service supplied by the Access Provider shall, only to the extent necessary, will be subject to the Physical Co-Location Service Charges listed in Table A below. For the purposes of clarification, all other Physical Co-Location Service charges not listed in Table A below are negotiated charges.

TABLE A: ONE-TIME CHARGES

Type of Charge	Location Category	Charge (RM)
Site Survey.	Bentong	1,000
	Temerloh	1,000
	Maran	1,000
	Gambang	1,000
	Indera sempurna	800
	Nenasi	800
	Rompin	800
	Mersing	800
Site preparation – on site.	Bentong	3,000
	Temerloh	3,000
	Maran	3,000
	Gambang	3,000
	Indera sempurna	3,000
	Nenasi	2,500
	Rompin	2,500
	Mersing	2,500
Relocation and Termination - on site	Bentong	3,000
	Temerloh	3,000
	Maran	3,000
	Gambang	3,000
	Indera sempurna	3,000
	Nenasi	2,500
	Rompin	2,500
	Mersing	2,500

TABLE B: RECURRING CHARGES

	<i>Ringgit Malaysia per square metre per year</i>		
	2023	2024	2025
Physical Co-Location	201.92	216.73	233.00

Space services)	(including			
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PART B - CHARGES AND CHARGING PRINCIPLES

SECTION II – TRUNK TRANSMISSION

1. General

- 1.1 Section II of Part B sets out the charges and charging principles which would be applicable to Trunk Transmission Service.

2. Charges and Charging Principles

- 2.1 The Charges comprises of the Trunk Transmission Service supplied by the Access Provider in accordance to Appendix 1 of Section II
- 2.2 The Access Seeker will not be entitled to terminate any of the lease agreements in respect of the Trunk Transmission Service referred to in Condition 2.2 in the first year. If the Access Seeker terminates the lease agreement in the first year, the Access Seeker shall pay to Access Provider the applicable charges for the minimum period of one (1) year irrespective of use.
- 2.3 In the event that the Access Seeker renews the agreement, the Access Seeker may terminate the lease agreement by providing Access Provider 3 months prior written notice. Any advanced payment for the unutilised portion of the lease agreement will be refunded on a pro-rated basis.

3. Payment Terms

- 3.1 The payment terms for End-to-End Transmission Service is as follows:
- (a) for the first year, one (1) year in advance; and
 - (b) for subsequent years, quarterly in advance.
- 3.2 The contract period for the lease agreement shall commence from the date of commissioning of the respective Trunk Transmission Service circuit.

APPENDIX 1 TO SECTION II
CHARGES FOR TRUNK TRANSMISSION SERVICE

Table: Charges

Table A:

Within Peninsular Malaysia and within Sabah and Sarawak	Ringgit Malaysia per month		
	2023	2024	2025
10 Mbps	52	34	15
100 Mbps	524	338	152
200 Mbps	1,049	677	305
500 Mbps	2,622	1,692	762
750 Mbps	3,932	2,538	1,143
1 Gbps	5,357	3,440	1,524
3 Gbps	16,071	10,322	4,572
5 Gbps	26,785	17,203	7,620
6 Gbps	32,142	20,643	9,145
7 Gbps	37,499	24,084	10,669
8 Gbps	42,856	27,524	12,193
9 Gbps	48,213	30,965	13,717
10 Gbps	53,570	34,405	15,241

Table B

One Time Charges

Within Peninsular Malaysia and within Sabah and Sarawak	2023	2024	2025
Installation (non-recurring charge)	2,738	2,820	2,905

PART B - CHARGES AND CHARGING PRINCIPLES

SECTION III - END-TO-END TRANSMISSION SERVICE

1. General

- 1.1 Section II of Part B sets out the charges and charging principles which would be applicable to End-to-End Transmission Service.

2. Charges and Charging Principles

- 2.1 The Charges comprises of:
- (a) non-recurring charges; and
 - (b) recurring charges.
- 2.2 The Access Seeker may lease any or all of the End-to-End Transmission Service referred to in Appendix 1 to this Section III from Access Provider for the duration of one (1) year with the option to renew for the same duration. The Access Seeker will not be entitled to terminate any of the lease agreements in respect of any End-to-End Transmission Service referred to in Condition 2.2 in the first year. If the Access Seeker terminates the lease agreement in the first year, the Access Seeker shall pay to Access Provider the applicable charges for the minimum period of one (1) year irrespective of use.
- 2.3 In the event that the Access Seeker renews the agreement, the Access Seeker may terminate the lease agreement by providing Access Provider 3 months prior written notice. Any advanced payment for the unutilised portion of the lease agreement will be refunded on a pro-rated basis.

3. Payment Terms

- 3.1 The payment terms for End-to-End Transmission Service is as follows:
- (a) for the first year, one (1) year in advance; and
 - (b) for subsequent years, quarterly in advance.
- 3.2 The contract period for the lease agreement shall commence from the date of commissioning of the respective End-to-End Transmission Service circuit.

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**APPENDIX 1 TO SECTION III
CHARGES FOR END-TO-END TRANSMISSION SERVICE**

Table: Charges

Table A:

Within Peninsular Malaysia and within Sabah and Sarawak	Ringgit Malaysia per month		
	2023	2024	2025
1 Mbps	82	55	0
10 Mbps	1,037	817	598
100 Mbps	1,508	1,122	735
200 Mbps	2,033	1,460	888
500 Mbps	3,608	2,476	1,345
750 Mbps	4,917	3,321	1,726
1 Gbps	6,561	4,663	2,765
3 Gbps	17,669	4,663	2,765
5 Gbps	28,383	18,622	8,861
6 Gbps	33,977	22,181	10,385
7 Gbps	39,571	25,740	11,909
8 Gbps	45,165	29,299	13,433
9 Gbps	50,759	32,858	14,957
10 Gbps	56,353	36,417	16,482

Table B

One Time Charges

Installation (non-recurring charge)	6,571	6,768	6,971
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ANNEXURE A: DISPUTE RESOLUTION PROCEDURES

1. Definitions

- 1.1 In the Dispute Resolutions Procedures set out in this Annexure A:
- (a) “Billing Dispute” means the dispute of an Invoice issued by one party to the other party, which is made in good faith;
 - (b) “Billing Dispute Notice” means the written notification made by one party to the other party in relation to a Billing Dispute in accordance with subsection 7.4 of this Annexure;
 - (c) “Billing Dispute Notification Period” means the period after the date of receipt of an Invoice during which a Billing Dispute may be raised in relation to that Invoice, as specified in subsection 7.2 of this Annexure;
 - (d) “Billing Representative” means a representative of the part appointed in accordance with the billing procedures set out in subsection 7.15 of this Annexure;
 - (e) “Billing System” means a system to issue Invoices relating to charges payable by each party under an Access Agreement;
 - (f) “Dispute” has the meaning given to it in subsection 2.1 of this Annexure;
 - (g) “Notice” means the notice issued of intention to escalate the issue to the Interconnect Steering Group, as specified in subsection 5.1 of this Annexure; and
 - (h) “Technical Expert” has the meaning given to it in subsection 6.3 of this Annexure.

2. Introduction

- 2.1 Subject to subsection 2.2(c) of this Annexure, an Access Provider and an Access Seeker shall adopt and comply with these Dispute Resolution Procedures in relation to any dispute which may arise between an Access Seeker and an Access Provider in relation to or in connection with the supply of Facilities and/or Services to which this RAO applies (“Dispute”).
- 2.2 The following dispute resolution mechanisms are discussed in this section:
- (a) inter-party working groups;
 - (b) interconnect steering group; and
 - (c) subject to specific resolution of disputes, being:
 - i. technical disputes (which must follow the procedure set out in section 6 of this Annexure if they cannot be resolved through the

application of the general dispute resolution provisions in sections 3 and 4 of this Annexure);

- ii. Billing Disputes (as defined in subsection 1.1 of this Annexure), which must follow the procedures set out in section 7 of this Annexure; or
- iii. any other types of disputes, which, if cannot be resolved through the application of the general dispute resolution provisions in sections 3, 4 and 5 of this Annexure, must be referred to the Commission for resolution.

2.3 A Dispute shall first be attempted to be resolved by negotiation between the Parties. If the Parties to the Disputes cannot or otherwise fail to reach an agreement, the Parties shall always be entitled to seek resolution of the Dispute by the Commission in accordance with section 151 of the Act, and the Commission will decide the dispute if it is satisfied that:

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

An Access Provider shall not prevent the Access Seeker from notifying a Dispute to the Commission in accordance with the Act.

2.4 For clarification, unless stated otherwise, all references to sections, subsections and paragraphs in this Annexure are references to sections, subsections and paragraphs of this Annexure.

3. General

3.1 An Operator may not commence court proceedings relating to that a Dispute which is the subject of these Dispute Resolution Procedures until it has complied with each applicable process in these Dispute Resolution Procedures, other than an application for urgent interlocutory relief. Nothing in this subsection shall be construed as ousting the jurisdiction of any court.

3.2 Both Parties to a Dispute shall ensure that their representative acting in relation to a Dispute are of sufficient seniority and have authority to settle a Dispute on their behalf. At the commencement of the Dispute Resolution Procedures, each party must notify the other party 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, a party may require that those matters be referred to more senior officers of that Operator who have authority to settle those matters.

- 3.3 During a Dispute and any dispute resolution process invoked in accordance with this Annexure, an Access Provider and Access Seeker must continue to fulfil their obligations under the Access Agreement between them.
- 3.4 Subject to subsection 3.5 of this Annexure, the Parties to a Dispute shall exchange information of a type described in this RAO during the course of, and to facilitate, resolution of the Dispute.
- 3.5 Confidential Information of a party which is disclosed, and any other oral or written submissions made by a party or a party's representatives during the course of any dispute resolution process will be subject to the confidentiality restrictions in relevant confidentiality provisions contained in the Confidentiality Agreement prepared in accordance with subsection 2.3.8 of this RAO.
- 3.6 A party must not use information obtained under subsection 3.4 of this Annexure or described in subsection 3.5 above for any purpose other than to resolve the Dispute.
- 3.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a Dispute (including a Technical Expert or the Commission, in accordance with this Annexure) may decide not to determine the 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 Dispute.
- 3.8 The costs of the arbitration are to be shared equally between the parties, unless the arbitrator of the Dispute has decided not to determine the Dispute in accordance with subsection 3.7 above. If an arbitrator decides not to determine the Dispute, the party that initiated the Dispute must pay the other party's costs.

4. Inter-party working group

- 4.1 In the first instance the Access Seeker and the Access Provider should attempt to resolve the Dispute between themselves.
- 4.2 The Access Provider and the Access Seeker shall establish a working group, or working groups, to fulfil the requirements of subsection 4.1 above. The working group shall comprise 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 Access Provider's wholesale or interconnection group.
- 4.3 The Access Provider 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 to be shared equally; and

(d) formal notification procedures to the working group.

4.4 The Access Provider and the Access Seeker shall use reasonable endeavours to attempt to settle the Dispute in the working group for a period of no longer than thirty (30) Business Days unless otherwise agreed by the Parties, subject always to a party's right to seek urgent interlocutory relief.

5. Interconnect steering group

5.1 In the event that the Parties cannot resolve the Dispute between themselves within the time specified in subsection 4.4 of this Annexure, or after any agreed time extension has expired, either party may give ten (10) Business Days' written notice ("Notice ") to the other party 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, then either party may notify the other party ("Receiving Party") that it wishes to refer the issue to the Interconnect Steering Group ("ISG").

5.2 In the event that a dispute is referred to an ISG under subsection 5.1, the Parties shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each party.

5.3 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Party of a Notice under subsection 5.1 of this Annexure. If the ISG fails to meet or has not been formed within ten (10) Business Days of the receipt by the Receiving Party of the Notice, either Party may refer the Dispute:

(a) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with section 6 of this Annexure); or

(b) to the Commission for arbitration.

5.4 If the ISG has not resolved the Dispute within twenty (20) Business Days after it first meets to review that Dispute under subsection 5.3 above, either party may refer the Dispute:

(a) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with section 6 of this Annexure); or

(b) to the Commission for final arbitration.

6. Use of a Technical Expert

6.1 A Dispute will only be referred to a Technical Expert if the provisions of section 5 of this Annexure have been complied with.

- 6.2 Once a Dispute is referred to a Technical Expert, it may not be referred back to a working group or ISG.
- 6.3 The person to whom a technical dispute may be referred under this section 6:
- (a) will be an expert appointed by agreement of the Parties or, if the Parties 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").
- 6.4 If the Parties fail to appoint a Technical Expert within ten (10) Business Days of the need to refer a Dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.
- 6.5 When relying on the services of a Technical Expert, the following dispute resolution procedure will apply to the Technical Expert:
- (a) the Parties will present written submissions to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
 - (b) each party may respond to the other party's submission in writing within fifteen (15) Business Days from the date of the other party's submission.
- 6.6 At the request of either party and subject to the parties agreeing, or the Technical Expert deciding within five (5) Business Days of the last written submission, that the arbitration by the Technical Expert should be by documents only, a Technical Expert hearing will be held within fifteen (15) Business Days of the last written submission.
- 6.7 Should a Technical Expert hearing be held, each party will have the opportunity of making an oral submission. This process will be conducted in private.
- 6.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Parties) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.
- 6.9 The Technical Expert will not have the power to appoint any other experts.

- 6.10 The Technical Expert will deliver his or her award within fifteen (15) Business Days of the hearing or of the last written submission where the arbitration is by documents only.
- 6.11 Every Dispute referred to a Technical Expert will be considered separately so that time limits for each dispute are complied with.
- 6.12 The Technical Expert's decision will be binding on the Parties (in the absence of manifest error of fact or law).

7. Billing Dispute resolution

- 7.1 As outlined in the billing provisions of this RAO at subsection 4.11, a party ("Invoicing Party") shall provide to the other party ("Invoiced Party") an Invoice in writing, or in such electronic form as may be agreed from time to time, for amounts due in respect of the supply of Facilities and/or Services during such Billing Cycle.
- 7.2 An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:
 - (a) in the case of domestic calls and interconnection, the Invoiced Party notifies the Invoicing Party within thirty (30) Business Days after the date of receipt of such Invoice;
 - (b) in the case of outgoing and incoming international calls and interconnection, the Invoiced Party notifies the Invoicing Party within six (6) months after the date of receipt of such Invoice; and
 - (c) in case of any other Facilities and/or Services, the Invoiced Party notifies the Invoicing Party within thirty (30) Business Days after the date of receipt of such invoice,

provided that, in any case specified above, the Invoiced Party's Billing Dispute Notice specifies the information in accordance with subsection 7.4 of this Annexure.

- 7.3 A Billing Dispute may only arise where the Invoiced Party has reasonable grounds to believe that an error has arisen from one of the following circumstances:
 - (a) the Invoicing Party's Billing System is, or has been, defective or inaccurate in respect of the recording of the calls which are the subject of the Dispute;
 - (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Party's Billing System;
 - (c) there is, or has been, a fraud perpetrated by the Invoicing Party; or

- (d) the Invoicing Party has made some other error in respect of the recording of the calls or calculation of the charges which are the subject of the Billing Dispute.

7.4 A Billing Dispute Notice given under this section 7 must specify:

- (a) the reasons for which the Invoiced Party disputes the Invoice is disputed;
- (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; and
- (d) evidence in the form of a report, indicating the relevant traffic data which is in dispute.

7.5 The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with subsection 5.5 of this RAO. If the Billing Dispute is resolved against the Invoiced Party, that Invoiced Party shall be required to pay interest at the rate specified in subsection 5.2.4 of this RAO on the amount payable.

7.6 Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the Invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. Once the Billing Dispute is resolved, if the Invoicing Party is obliged to refund an amount to the Invoiced Party, interest will be payable on the refunded amount at the rate specified in subsection 5.2.4 of this RAO. In such circumstances, interest will be payable from the date the Invoiced Party paid the disputed amount to the date of the refund by the Invoicing Party.

7.7 The parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this section 7.

7.8 If the parties are unable to resolve any Billing Dispute within one (1) month (or such other period as the parties may agree) from the date on which the Billing Dispute Notice is received, either party may seek the consent of the other party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other party is, however, under no obligation to agree to such extension.

7.9 To the extent that a Billing Dispute notified under this section involves a Billing Dispute with an international correspondent of the Invoicing Party, the Dispute Resolution Procedures shall be suspended for a reasonable period of time

pending resolution of the Billing Dispute with that international correspondent. As a general rule, the period of suspension will not exceed four (4) months. However, the parties shall recognise that some Billing Disputes with international correspondents may take longer to resolve, in which case the Invoicing Party must promptly inform the Invoiced Party of the likely period required for resolution.

- 7.10 Once the negotiation period under subsection 7.8 of this Annexure (including any extension agreed) and any suspension period under subsection 7.9 of this Annexure have expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection 7.11 of this Annexure (“Billing Dispute Escalation Procedure”).
- 7.11 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection 7.11 by notifying the Invoicing Party’s Billing Representative. Both parties shall then appoint a designated representative that who has authority to settle the Billing Dispute, and who is at a higher level of management than the persons with direct responsibility for administration of this RAO. 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 party to the other party shall be honoured.
- 7.12 Once any Billing Dispute has been resolved to the parties’ satisfaction, any sum to be paid or repaid shall be paid by the relevant party within ten (10) Business Days days from the date of resolution of the Billing Dispute.
- 7.13 Although it shall be the good faith intention of the parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try to solve Billing Disputes, nothing in this Annexure shall prevent either party 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.
- 7.14 A party may request a joint investigation of Invoice discrepancies after that party has conducted a comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the parties must agree on the terms of the joint investigation, including:
- (a) the scope of the joint investigation;
 - (b) how the joint investigation will be conducted; and
 - (c) the date by which the joint investigation must be concluded.

The joint investigation may include the generation of test calls to the other party’s Network.

- 7.15 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 party.
- 7.16 Either party may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 7.17 If the Billing Dispute Escalation Procedure has been exhausted, either party may refer to the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act.

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ANNEX B – CONFIDENTIALITY AGREEMENT

NON-DISCLOSURE AGREEMENT (“Agreement”)

- (A) Pursuant to the Access List Determination and Section 5.3.8 of the MSA Determination issued by the Commission, the Operators agreed to execute this Agreement to hold such proprietary and confidential information in the strictest confidence upon the terms and conditions hereinafter appearing.
- (B) The Operators wish to enter into this Agreement in accordance with the terms and conditions herein contained.

Access Provider and the Access Seeker agree as follows:

- 1. In this Agreement, unless the context otherwise requires, the following words shall have the following meanings:
 - 1.1 “Access Agreement” means an agreement (including all supplementals and/or amendments thereto) commercially negotiated and entered into between the Operators whereby the Access Provider agrees to provide the network facilities and/or network services to the Access Seeker in accordance with the terms therein contained and which shall be registered with the Commission in accordance with the Act.
 - 1.2 “Access List Determination” means Commission Determination on Access List, (Determination No. 2 of 2015) which came into operation on 1st September 2015 and includes any amendment thereto as determined by the Commission from time to time.
 - 1.3 “Access Provider” means an Operator who is:
 - (a) a network facilities provider who owns or provides network facilities;
 - (b) a network service provider who provides network services; and
 - (c) a licensee as defined in the Act.
 - 1.4 “Access Seeker” means an Operator who:
 - (a) is a network facilities provider, network service provider, application service provider or content application service provider and who is a licensee as defined in the Act; and
 - (b) makes a written request for access to facilities or service or is being provided with facilities and/or service by Access Provider under this Agreement.
 - 1.5 “Act” means the Communications and Multimedia Act 1998 (as amended).
 - 1.6 “Agreement” means this agreement, any modification, amendment or addition thereto as may be agreed in writing by the Operators from time to time.

- 1.7 “Commission” means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998 (as amended).
- 1.8 “Confidential Information” includes all information relating to an Operator or its related corporation (as defined under the Companies Act 2016) including but not limited to information, knowledge or data of an intellectual, technical, scientific, financial, cost, pricing, commercial or marketing nature which is not in the public domain (other than through any breach of this Agreement) and in which the Operator has a business, proprietary or ownership interest or has a legal duty to protect, whether or not received from a third party in whatever form including but not limited to technical data/know-how, drawings, photographs, specifications, standards, manuals, reports, formulae, algorithms, processes, information lists, trade secrets, strategies, customers (including any personal information and/or other non-public personal information about such end-users and any list, description or other grouping of end-users that is derived using any such personal information or non-public information), internal procedures, employees, business opportunity which the Operator considers to be confidential and whether it is identified by the Operator as confidential nature or otherwise and which may be furnished by the Operator.
- 1.9 “Disclosing Operator” means the Operator from whom the Confidential Information originates and is disclosed to the Recipient.
- 1.10 “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.
- 1.11 “Operator” means Seax Malaysia Sdn Bhd or Access Seeker and “Operators” shall mean both of them.
- 1.12 “Recipient” means the Operator to whom the Confidential Information is given or disclosed.
- 1.13 “Reference Access Offer” or “RAO” means the reference access offer issued by the Access Provider pursuant to the MSA Determination and as modified from time to time.
2. Subject to Clause 4, each Operator shall keep confidential all Confidential Information of the other Operator which:
- 2.1 is disclosed, communicated or delivered to it by an Operator pursuant to the Reference Access Offer and/or the Access Agreement; or
- 2.2 comes to its knowledge or into its possession in connection with the Reference Access Offer and/or the Access Agreement,
- and shall not:

- (a) use or copy such Confidential Information except for the purpose of the RAO and/or the Access Agreement and/or is required by law; or
 - (b) disclose or communicate, cause to be disclosed or communicated or otherwise make available such Confidential Information to any third party person other than its directors, officers, employees and/or professional adviser to whom disclosure is necessary for the purposes of the RAO and/or the Access Agreement.
- 3. Notwithstanding the foregoing, the Receiving Party shall have no liability to the Disclosing Party with regard to any Confidential Information of the Disclosing Party which the Receiving Party can prove that the Confidential Information:
 - (i) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Receiving Party;
 - (ii) was rightfully in the Receiving Party's possession, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;
 - (iii) is disclosed with the prior written approval of the Disclosing Party;
 - (iv) was independently developed or discovered by or on behalf of the Receiving Party without any aid, application or use of the Confidential Information of the Disclosing Party, as demonstrated by files created at the time of such independent development or discovery;
 - (v) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party without breach of this Agreement by the Receiving Party and otherwise not in violation of the Disclosing Party's rights;
 - (vi) is disclosed generally to third parties by the Disclosing Party without restrictions similar to those contained in this Agreement;
- 4. Each Operator shall establish and observe procedures adequate to protect the Confidential Information of the other Operator. Without limiting the generality of the foregoing, each Operator shall ensure that each of its directors, officers, employees and/or professional adviser to whom that Confidential Information is disclosed for the purposes of the Reference Access Offer and/or the Access Agreement is subject to and maintains the confidentiality obligations set out herein.
- 5. Except as otherwise provided in this Agreement, the Recipient may disclose the Confidential Information of the other Operator only:-
 - 5.1 if required by law or the business rules of any stock exchange to be disclosed; and/or
 - 5.2 in accordance with a lawful and binding directive issued by the Commission in accordance with the Act

PROVIDED THAT in each case the Recipient:

-
- (a) shall provide prompt notice of such requirement to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure; or
 - (b) has given notice to the other Operator that it has disclosed the Confidential Information to the Commission, as soon as possible after such disclosure but in any event no later than twenty four (24) hours; and
 - (c) provides the other Operator with a copy of the Confidential Information that the Recipient so disclosed.
6. The Recipient shall (at the other Operator's costs) co-operate in any action taken by the other Operator to :
- 6.1 protect the confidentiality of the other Operator's Confidential Information; or
 - 6.2 enforce the rights in relation to its Confidential Information.
7. Confidential Information provided by one Operator to the other Operator is provided for the benefit of that other Operator only. Each Operator acknowledges that no warranty is given by the Disclosing Operator that the Confidential Information is or will be correct. However, the Operators will use their best endeavours to ensure such information is correct.
8. All rights, title and interests in and to the Confidential Information is and shall remain with the Disclosing Party and the Recipient obtains no right or license in or to any Confidential Information of the other pursuant to this Agreement.
9. Any unauthorized disclosure and/or use of Confidential Information by the Recipient will cause irreparable harm to the Disclosing Operator for which damages may not be an adequate remedy. The Disclosing Operator shall be entitled to seek equitable relief, including seeking specific performance or injunctive relief in the event of any breach of the provisions of this Agreement by the Recipient without the necessity of providing actual damages. Such remedies shall not be deemed exclusive to this Agreement and shall be additional to all other remedies available at law or equity.
10. Each Party hereby represents, warrants and undertakes, as follows: -
- 10.1 that it is duly authorised and empowered to execute and perform its respective obligations under this Agreement; and
 - 10.2 the execution and performance of this Agreement will not breach, and is not prohibited by the provisions of any law, regulations, agreement,

indenture, undertaking, legal provision or other instruments binding upon them.

11. All Confidential Information provided by the Operators are provided on “as is” basis. Both Operators make no warranties, express, implied, or otherwise, regarding the accuracy, completeness, or performance of the Confidential Information.
12. The Recipient agrees to keep the existence and nature of this Agreement confidential and not use the Confidential Information or the name of the Disclosing Operator in any publicity, advertisement or other disclosure with regard to this Agreement without prior written consent of the Disclosing Operator.
13. No announcement of any kind shall be made in respect of this Agreement except as specifically agreed between the Operators and the announcement shall in any event be issued only after prior consultation with the other.
14. This Agreement is personal to the Operators and shall not be assigned or novated or otherwise transferred in whole or in part by either Operator without the prior written consent of the other Operator.
15. Any modification, variation or amendment of this Agreement is not of any force unless made in writing, agreed and duly executed by the Operators.
16. This Agreement is governed by and interpreted in accordance with the law of Malaysia and each of the Operators hereto submits to the exclusive jurisdiction of the courts of Malaysia.
17. If any provision, condition, term, stipulation, covenant or undertaking of this Agreement is or becomes illegal, void, invalid, prohibited or unenforceable in any respect the same shall be ineffective to the extent of such illegality, voidness, invalidity, prohibition or unenforceability without invalidating in any manner whatsoever the remaining provisions hereof.
18. Failure by any Operator hereto to enforce, at any time, any provision of this Agreement shall not be construed as a waiver of its right to enforce such provision or any other provision of this Agreement, or as a waiver of any continuing, succeeding or subsequent breach of any provision or other provision of this Agreement or as a waiver of any right under this Agreement.
19. This Agreement shall be binding on the successors-in-title and permitted assigns of the Operators.
20. This Agreement constitutes the entire agreement and understanding between the Operators in respect of the Confidential Information and supersedes all previous agreements, understanding and undertakings in such respect and all obligations implied by law to the extent that they conflict with the express provisions of this Agreement.

20. The term of this Agreement shall be for a period of one (1) year from the date of its signing. Notwithstanding the term, the foregoing commitments of Receiving Party shall survive any termination of discussions between the Parties and shall continue for a period of two (2) years upon expiry or early termination of this Agreement.
21. Either Party may terminate this Agreement by giving at any time not less than thirty (30) days' written notice to the other Party. Subject to clause 4 hereof, the Parties' rights and obligations concerning the Confidential Information disclosed during the terms of this Agreement shall survive any such termination.
22. All notices or other official communications including but not limited to any request, demand, consent or approval to be given under this Agreement by either Party to the other shall be in writing and shall be addressed as follows:

If to Access Seeker

Address:

Attention:

Telephone No :

Facsimile No :

If to Seax Malaysia Sdn Bhd

Address: Level 19-11, Q Sentral, 2A, Jalan Stesen Sentral 2, KL Sentral, 50470 Kuala Lumpur.

Attention : Chief Technical Officer

Telephone No : 60322760766

- 22.1 Such notices shall be hand delivered or sent by registered mail with full postage prepaid or telex or facsimile and shall be deemed delivered:
 - (i) In the case of telex or facsimile, at the time of transmission recorded on the message if such time is within normal business hours on a working day at the place of receipt, otherwise at the commencement of normal business hours on the next working day.
 - (ii) In the case of a letter, whether delivered by registered mail in the course of post or by hand or by courier, at the date and time of its actual delivery by the deliverer if within normal business hours on a working day otherwise at the commencement of normal business on the next such working day.
 - (iii) In the case of a telecopier/photographic facsimile transmission, at the time recorded together with the telephone dialing code of the receiving machine on the message if such time is within normal business hours on a working day, otherwise at the commencement of normal business hours on the next working day.

22.2 The notice by one Party to the other Party shall be deemed to have been given/and or communicated or sent by registered mail, within seven (7) days from and including the date of posting or, if by courier on the next business day or if by facsimile transmission when transmitted to the addressee provided the sender receives a transmission control report from the despatching machine.

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IN WITNESS WHEREOF the Operators have caused this Agreement to be signed by their duly authorized representatives:

SIGNED for and on behalf of }
SEAX MALAYSIA SDN BHD }
Company No. 201701017175 (1231340 – U)}

In the presence of

.....
Name:
Designation:

SIGNED for and on behalf of }
ACCESS SEEKER }
Company No. }

In the presence of

.....
Name:
Designation:

ANNEXURE C –ACCESS REQUEST FORM



ACCESS REQUEST FORM

NO.	DOCUMENT/INFORMATION	YES/NO
1.	<p>The Name And Contact Details Of The Access Seeker;</p> <p>Company Name: _____ Registration No: _____</p> <p>Registered Address: _____</p> <p>Principal Place of Business (if different from the above)</p> <p>_____</p> <p>Telephone No: _____ Facsimile No: _____</p> <hr/> <p>Certified True Copy Of The Following Document:</p> <p>a) Act 2016 - Section 17: Company registration</p> <p>b) Act 2016 - Section 58: Register of Directors, Managers and Secretaries</p> <p>c) Act 2016 - Section 78: Return of Allotment of Shares</p> <p>d) Act 2016 – Section 46(3): Registered Address.</p> <p>e) Type of Licences in possession according to Communications and Multimedia Act 1998</p> <p>i) _____</p> <p>ii) _____</p> <p>iii) _____</p> <p>iv) _____</p> <hr/> <p>Insurance:</p> <p>Types of insurance: (List of insurance policies)</p> <p>Sum Insured: _____</p> <p>Parties Insured: _____</p> <p>Expiry date: _____</p>	
	<p>Nominated Authorised Personnel Details:</p> <p>Name: _____ Designation: _____</p> <p>Telephone No: _____ Facsimile No: _____</p> <p>E-mail Address: _____</p> <p><small>(The Nominated Authorised Personnel above shall have the authority to make binding representations, concessions and accept any proposals or terms on behalf of the Access Seeker subject to the final approval of its Management)</small></p>	

2.	<p>Technical Information:</p> <p>Relevant technical information relating to the interface standards of the Equipment of the Access Seeker:</p> <p>Relevant information relating to the Access Seeker's Network and the functionality of its services, to the extent that the Access Seeker is aware that such information may affect SEAX's Network:</p> <hr/> <p>Types of Services Required</p> <p>(i) Nature of Service: (ii) Forecast Information</p> <p>Preliminary forecast capacity of service gateway and the forecast information as specified in SEAX's RAO</p> <p>Year 1: _____ Mbps/Gbps Year 2: _____ Mbps/Gbps Year 3: _____ Mbps/Gbps</p> <p>Point A (_____) to Point B (_____)</p> <p>Quality of Service Required: _____</p> <hr/> <p>Types of Facilities required:</p> <p>(i) Nature of Facilities: _____ (ii) Location: _____ (iii) Detailed Description of Facilities sought: _____</p>	
3.	<p>Negotiate or Accept:</p> <p>Access Seeker wishes to:</p> <p><input type="checkbox"/> accept SEAX's RAO;</p> <p><input type="checkbox"/> wish to negotiate an Access Agreement on alternative terms.</p> <p><small>(List down in sufficient detail the information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of the negotiations)</small></p>	
4.	<p>Confidentiality Agreement</p> <p>Two (2) copies of a duly executed Agreement by the Access Seeker in accordance with SEAX's RAO</p>	
5.	<p>Creditworthiness information:</p> <p>a) Solvency Statement issued pursuant to the Companies Act 2016 (Section 113); and b) Certified True Copy of the Access Seeker's most recently published Audited Financial Report. c) Business profiles. d) A certificate issued by its financial officer providing its currently known Quick Ratio. e) 3 months Bank Statement.</p>	

6.	Security Sum: Type of Security : Cash/Performance Bond/Bank Guarantee	
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Name of Authorised Officer:
Designation:
Date:

Affix Company Stamp here