



REFERENCE ACCESS OFFER

(30th July 2020 Version 2.0)

for

MYISP DOT COM SDN. BHD. (706993-V)

**NO. 1-2-1, SUNTECH @ PENANG CYBERCITY,
LINTANG MAYANG PASIR 3, 11900 BAYAN BARU,
PULAU PINANG**

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1 INTRODUCTION & SCOPE

1.1 Preliminary

This Reference Access Offer (“RAO”) is published by MYISP Dot Com Sdn Bhd (Company No. 706993-V), (herein referred to as “MYISP”) a company incorporated under the laws of Malaysia and having its registered office at No. 1-2-1, Suntech @ Penang Cybercity, Lintang Mayang Pasir 3, 11900 Bayan Baru, Pulau Pinang, for all Access Seekers’ reference and request for access pursuant to the:

- i) Commission Determination on Access List (Determination No.2 of 2015) which came into operation on 1st September 2015;
- ii) Commission Determination on the Mandatory Standard on Access (Determination No.3 of 2016) which came into operation on 1st January 2017; and
- iii) Commission Determination on the Mandatory Standard on Access Pricing Determination No.1 of 2017), which came into operation on 1st January 2018.

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).

1.2 Scope and Structure of the MYISP’s RAO

1.2.1 Unless otherwise specified in this RAO, this RAO governs the terms and conditions to access the Facilities and/or Services offered by MYISP within MYISP’s licenses only.

1.2.2 The RAO is to provide reference to the eligible licensees under the Communications and Multimedia Act to seek access to MYISP’s Network Facilities and/or Services, subject to the availability of the Facilities and/or Services offered by MYISP. It aims to be sufficiently flexible to deal with change as it occurs.

1.2.3 **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;
- (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.

1.2.4 **Changes to the RAO:**

1.2.4.1 This RAO may change from time to time. MYISP shall, no less than twenty (20) Business Days prior to making any amendment to this RAO provide a copy of the amendments, or an amended copy of MYISP'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.

1.2.4.2 Upon expiry of the twenty (20) Business Days as specified in subclause 1.2.4.1 above, MYISP's RAO shall

- (a) be made available to an Access Seeker on Access Provider's publicly accessible website without delay. Operators shall inform the Commission in writing of the amendments Parties wish to make; and
- (b) MYISP will provide the updated RAO to the Commission within ten (10) Business Days after it being made available on Access Provider's website under subclause 1.2.4.2 (a) above.

1.2.5 Facilities and/or Services offered under this RAO:

- (a) End to End Transmission Services

1.2.6 The Structure of this RAO: This RAO governs the terms and conditions to access the Facilities and/or Services. More specifically:

- (a) The Definition and Interpretation are applicable to all documents consisting of this RAO unless otherwise stated;
- (b) The General Terms and Conditions govern the supply of the Facilities and/or Services, unless otherwise stated;
- (c) The General Terms and Conditions for Technical Obligations govern the technical matters pertaining to the Facilities and/or Services, unless otherwise stated; and
- (d) Terms and Conditions for the Facilities and/or Services govern the supply of the Facilities and/or Services, unless otherwise stated.

1.2.7 Scope outside RAO: If the Access Seeker requests network facilities or network services outside MYISP's RAO, the terms and conditions for the provision of such network facilities or network services shall remain outside the scope of MYISP's RAO. Nevertheless, the Operators are free to consider MYISP'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.

1.2.8 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.

1.2.9 Notice of Withdrawal, Replacement and Variation of MYISP's RAO: If subject to Section 56 of the Act, the Commission revokes, varies or replaces the Access List Determination relating to the Facilities or Services, MYISP may, by giving written notice to all Access Seekers to whom it is supplying Facilities or Services under MYISP's RAO, withdraw or replace MYISP's RAO with effect from a date no earlier than the effective date of the Commission's revocation.

- (i) MYISP shall comply with Sections 7.4.2 and 7.4.3 of the MSA Determination where it is given written notification pursuant to Section 1.2.9; and
- (ii) MYISP may give the Access Seekers to whom it is supplying Facilities and Services under MYISP's RAO a notice of a variation or replacement of MYISP'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 MYISP under MYISP's RAO; or
 - (b) the occurrence of a Regulatory Event that relates to MYISP; or
 - (c) a review by the Commission of the MSA Determination pursuant to Subsection 7.5 of the MSA Determination.

1.3 Notices: All requests, notices, forms or communications arising out of this RAO, shall be sent to MYISP at the address below:

MYISP DOT COM Sdn Bhd
Attention: Legal & Regulatory Department
Address: No. 1-2-1, Suntech @ Penang Cybercity,
Lintang Mayang Pasir 3,
11900 Bayan Baru, Pulau Pinang.
Email: lrd@myisp.com.my

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Articles of Agreement	Definitions	General Principles	Operator Access Obligations	Service Descriptions and Specific Obligations	Charges and Charging Principles	Annexure
This document sets out the: 1) generic scope of this RAO; and 2) list of documents forming part of this RAO.	Sets out the definitions and rules of interpretation applicable to this RAO	Sets out the General principles applicable to this RAO: 1) Principles of Access to Facilities and Services; 2) Application of Non-Discrimination Principle 3) Customer Principles 4) No exclusivity and no restriction on resale 5) Necessary third-party involvement causing or contributing to noncompliance in timeframe	Sets out the obligations imposed on all network facilities and/or network service providers who are required to provide Facilities and/or Services listed in the Access List Determination under section 149 of the Act.	Sets out the specific obligations for the Facilities and/or Services	Sets out the fees and price list applicable for the Facilities and/or Services	Sets out the procedures for dispute resolutions and Terms and Conditions of the NDA

1.4 Structure of this RAO

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

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2 DEFINITIONS AND RULES OF INTERPRETATION

For the purpose of this RAO, the following words have these meanings in this RAO, unless the context otherwise requires:

“Act” or **“CMA”** means the Communications and Multimedia Act 1998 and include all amendments thereto from time to time.

“Access Agreement” 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 and this RAO and/or commercially negotiated between the Operators pursuant to the terms contained and registered with MCMC in accordance with Section 150 of the Act.

“Access List Determination” means the Commission Determination on Access List Determination No.2 of 2015 which came into operation on 1st September 2015 that sets out 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.

For the purpose of clarification, in this MYISP’s RAO the Access Provider herein means MYISP.

“Access Request” means a request for access made by an Access Seeker under subsection 4.4.5 of this RAO and containing the information contained in subsection 4.4.6 of this RAO.

“Access Seeker” means is:

- (a) 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
- (b) who makes a written request for access to Facilities and/or Services.

“Access Service Provider” means the Operator to whose Network, a line is directly connected, and over which Services are supplied, and may also be a Gaining Service Provider or a Releasing Service Provider.

“Billing Cycle” means the regular periodic basis on which the Access Provider shall issue Invoices for the supply of access to Facilities and/or Services during each Billing Period, as specified in subsection 4.11.3 of this RAO.

“Billing Dispute” means the meaning given to it in subsection 1.1 of the Dispute Resolution Procedure in Annexure A of 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 as contemplated in subsection 4.11.1 of this RAO, which shall be no more than one (1) month and in accordance with the relevant calendar month, unless otherwise agreed between the Operators.

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

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

“Bank Guarantee” means a guarantee, executed in favour of MYISP by a licensed bank in Malaysia approved by the MYISP on behalf of the Access Seeker and in a format acceptable to MYISP.

“Capacity Allocation Policy” has the meaning given to it in subsection 4.7.32 of this RAO;

“Charges” means the sums payable by the Access Seeker to MYISP 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.

“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 an 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).

“Change Notice” has the meaning given to it in subsection 4.10.3 of this RAO;

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

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

“Confidential Information” means a Confidentiality agreement entered into between MYISP and the Access Seeker in accordance with Subsection 4.3 herein

“Confidential Agreement” or “Non-Disclosure Agreement” means a confidential agreement executed between the Operators, a copy which is annexed in Annex B herein.

“Customer” means in relation to an Operator, a person having a contractual relationship with the Operator for the provision of communications by means of that Operator’s Facilities and/or Services.

“Disclosure Obligations” means those obligations set out in subsection 4.3 of this RAO.

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

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

“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.

“Effective Date” means the date on which the relevant portions of the Access Agreement requiring registration are duly registered in its entirety with the Commission under section 150 of the Act.

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

“End to End Transmission Services” has the meaning as described in paragraph 4(22) of the Access List Determination.

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

“Facility and/or Service Change” has the meaning given to it in paragraph 4.10.2(b) of this RAO.

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

“Force Majeure” means an event or circumstance beyond the reasonable control of an Operator which affects the Operator’s ability to perform its obligations under this RAO or under an Access Agreement.

“Forecast” means a forecast made by the Access Seeker referred to in subsection 4.6 of this RAO.

“Forecast Information” has the meaning given to it in subsection 4.6.6 of this RAO.

“Forecast Request” means a request by the Access Provider for Forecast Information from the Access Seeker, as described in subsection 4.6.6 of this RAO.

“Functionality Change” has the meaning given to it paragraph 4.10.2(e) 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 interest in them or licenses to use any of them.

“Interface Change” has the meaning given to it in paragraph 4.10.2(a) of this RAO.

“Internet Protocol” has the meaning given to it in paragraph 3 of the Access List Determination.

“Invoice” means the invoice for amounts due in respect of the supply of Facilities and/or Services during a Billing Period as contemplated in subsection 4.11.1 and 4.11.3 of this RAO.

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

“Insurance Information” means the insurance information as may be required by Access Provider;

“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 MYISP 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 MYISP’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.

“Minimum Value” 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 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.

“MCMC” means the Malaysian Communications and Multimedia Commission Act 1998, [Act 589].

“MDF” means Main Distribution Frame.

“Negotiation Obligations” means those obligations set out in subsection 4.4 of this RAO.

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

“Network Conditioning” means the conditioning, equipping and installation of Equipment in the Access Provider’s Network to enable the provision of O&T Services.

“Notice of Acceptance” means the Access Provider’s notice of acceptance of an Order provided to the Access Seeker pursuant to subsection 4.7.12 and 4.7.13 of this RAO.

“Notice of Receipt” means the acknowledgement of receipt of the Order from an Access Seeker, as described in subsection 4.7.5 and 4.7.6 of this RAO.

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

“Operator” has the meaning given to it in paragraph 3 of the Access List Determination.

“Other Operator” means either MYISP; or the Access Seeker, as the context requires.

“Order” means the Order which an Access Seeker must give to an Access Provider to obtain access to Facilities and/or Services, as described in subsection 4.7.2 of this RAO.

“OSS Change” has the meaning given to it in paragraph 4.10.2(d) of this RAO.

“Other Network Change” has the meaning given to it in paragraph 4.10.2(c) of this RAO.

“Point of Interconnection” or **“POI”** has the meaning given to it in paragraph 3 of the Access List Determination.

“Point of Interface” means a point at or between network facilities which demarcates the Network of an Access Provider and the Network of an Access Seeker and is the point at which a communication is transferred between those network facilities and includes POI and POP.

“Point of Presence” or **“POP”** has the meaning given to it in paragraph 3 of the Access List Determination.

“Provisional Invoice” means an Invoice issued under subsection 4.11.17 of this RAO.

“QOS” means quality of service.

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

“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.

“Rejection Notice” means the notice of rejection made by an Access Provider in response to an Access Seeker’s Forecast as described in subsection 4.6.13 of this RAO.

“Releasing Service Provider” means an Operator from whom its Customer requests a transfer.

“Relevant Change” has the meaning given to it in subsection 4.10.2 of this RAO, and includes any Interface Change, Service Change, Network Change, OSS Change and Functionality Change.

“Regulatory Event” means:

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

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

“RM” means Ringgit Malaysia which shall be the monetary currency used in MYISP's RAO unless otherwise provided.

“Security Sum” means the security in the form of a Bank Guarantee, provided by Access Seeker accordance with subsection 4.3.5 of this RAO.

“Service Qualifications” means:

- (a) in relation to End-to-End Transmission Facilities and Services, a desk and/or field study that may be conducted under subsection 4.4 and 4.7 of this RAO, 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 an Order or proposed Order; and
- (b) 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;

“Services” means network services and/or other services which facilitate the provision of network services or application services, including content applications services, as listed in the Access List Determination.

“Service Specific Obligations” means the obligations which relate to specific types of Facilities and/or Services set out in section 5 of this RAO and which add to or vary the Content Obligations in respect of those Facilities and/or Services.

“Standard” means the Mandatory Standard on Access as determined by the Commission in this Determination.

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

“Transfer Form” means a form which is executed by a Customer for the purpose of authorising a Churn.

“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.

“Transfer Request” means a request from a Gaining Service Provider to an Access Service Provider to implement a Churn, including a Transfer Form.

“Validity Period” has the meaning given to the term in paragraph 4.7.13(e) of this RAO.

2.1 In this RAO, unless the context otherwise requires:

- a. the singular includes the plural and vice versa;
- b. a reference to, this RAO or other forms of legal instruments issued under the Act or the Access Agreement, includes any variation or replacement of any of them;
- c. a reference to an annexure or schedule is a reference to an annexure or schedule to this RAO and a reference to this RAO includes an annexure or schedule;
- d. a reference to a section is a reference to a section of this RAO and a reference to a paragraph is a reference to a paragraph of this RAO;
- e. a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under them and consolidations, amendments, re-enactments or replacements of any of them;
- f. the word “person” includes a firm, body corporate, unincorporated association or an authority;
- g. a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns;
- h. all monetary amounts are expressed in Ringgit Malaysia;
- i. if the day on which the payment of money or the performance of an obligation falls due is not a Business Day, the due date or performance date shall be deemed to be the next Business Day;
- j. a reference to body corporate of an Operator has the same meaning as in the Companies Act 2016;
- k. a reference to a third person or a third party is a reference to a person who is not the Access Provider or the Access Seeker; and
- l. a term or expression starting with a capital letter:
 - i. which is defined in in paragraph 2 of this RAO, has the meaning given to it in section paragraph 2;
 - ii. Which is defined in the body of this RAO, has the meaning given to it in the body of this RAO unless the context indicates otherwise; and
 - iii. Which is defined in the Act, the relevant subsidiary legislations made under it or the Access List Determination but is not expressly defined in paragraph 2 of this RAO, has the same meaning as in the Act, the relevant subsidiary legislations made under it or the Access List Determination, as the case may be.

2.2 A definition provided in the Act shall prevail over a definition provided in this RAO to the extent of any inconsistency.

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3 GENERAL PRINCIPLES OF ACCESS

3.1 PRINCIPLES OF ACCESS TO FACILITIES AND SERVICES

- 3.1.1 **Reasonableness:** An Access Provider may refuse a request if:
- (a) supply of the relevant listed Facilities or Services would not be reasonable (see subsection 3.1.2 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 3.1.3 of this RAO).
- 3.1.2 **Unreasonable request:** 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 4.4.11 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.
- 3.1.3 **Unreasonable terms:** 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.
- 3.1.4 **Non-discrimination:** 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.
- 3.1.5 **Meaning of non-discriminatory:** 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; with
 - (b) the basis on which that thing is provided by the Access Provider to itself and to other Access Seekers.

3.2 APPLICATION OF NON-DISCRIMINATION PRINCIPLE

- 3.2.1 **Examples:** The non-discrimination principle contained in subsection 149(2) of the Act applies to, amongst other the following:
- (a) processing of applications for access;
 - (b) acceptance or refusal of Access Requests;
 - (c) provision of information required to provide Forecasts or place Orders;
 - (d) provisioning of Facilities and/or Services;
 - (e) allocation of constrained capacity;

- (f) fault reporting and fault rectification;
- (g) Network Conditioning;
- (h) allocation of space at exchanges;
- (i) the purpose or use for which access is provided; and
- (j) access to Operational Support Systems in respect of service fulfilment and service assurance.

3.2.2 **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.

3.3 CUSTOMER PRINCIPLES

3.3.1 **Recognition of principle:** All Operators must recognise and act consistently with the Customer relationship principles referred to in subsection 3.3.2 of this RAO.

3.3.2 **Customer Relationship principles:**

- (a) A Customer will be regarded as a Customer of an Operator when the Customer utilises Facilities and/or Services provided to that Customer by the Operator.
- (b) The same person may be a Customer of more than one Operator:
 - i. in respect of the same or different Facilities provided by different Operators;
 - ii. in respect of the same or different Services provided by different Operators; or
 - iii. in respect of Facilities provided by one Operator and Services provided by another Operator.
- (c) 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.
- (d) Each Operator will be responsible for billing its own Customers, unless express agreement to the contrary is made by the Access Provider and the Access Seeker. An agreement to the contrary may include, without limitation:
 - i. the Access Provider billing on behalf of the Access Seeker; or
 - ii. the Access Provider in its own right billing the Customer of the Access Seeker and making a separate payment to the Access Seeker.

3.4 NO EXCLUSIVITY AND NO RESTRICTION ON RESALE

- 3.4.1 An Access Provider must not, in relation to the supply of a Facility and/or Service, include a term or condition in an Access Agreement preventing an Access Seeker from acquiring the same or any other Facility and/or Service from another Operator.
- 3.4.2 An Access Provider must not, in relation to the supply of a Facility and/or Service, include a term or condition in an Access Agreement preventing an Access Seeker from re-supplying that Facility and/or Service to any person.

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

- 3.5.1 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.

4 OPERATOR ACCESS OBLIGATIONS

4.1 SCOPE

- 4.1.1 This section 4 imposes obligations on all network facilities providers and/or network service providers who are required to provide Facilities and/or Service listed in the Access List Determination under section 149 of the Act.

4.2 APPLICABLE OBLIGATIONS

- 4.2.1 All persons described in subsection 4.1.1 of this RAO must comply with each relevant subsection of this RAO, which address the following:
- (a) Disclosure Obligations;
 - (b) Negotiation Obligations;
 - (c) Content Obligations; and
 - (d) Service Specific Obligations.

4.3 DISCLOSURE OBLIGATIONS

- 4.3.1 **General duty:** All Operators shall, subject to the provisions of this RAO and the terms and conditions of any confidentiality agreement entered into pursuant to subsection 4.3.4 of this RAO, provide, in response to a request in good faith from any other Operator, any information which is reasonably necessary for the negotiation, conclusion and implementation of the provision

of access as contemplated in this RAO and in the Act. No Operator may enter into any contract which would prevent it from making information available to other Operators unless:

- (a) the Operator notifies the Commission of its entry into the agreement; and
- (b) the said agreement permits the Operator to only make the information available if directed by the Commission.

4.3.2 **Freedom to negotiate:** Without limiting its obligations under the Act, an Access Provider shall not:

- (a) refuse to negotiate an agreement with an Access Seeker, whether the access sought is based on a RAO or otherwise; or
- (b) refuse to provide information required under this subsection 4.3 of this RAO on the basis that the Access Seeker wishes to negotiate an Access Agreement, whether the access sought is based on a RAO or otherwise.

4.3.3 **Information disclosure:** An Access Provider must provide the following information to an Access Seeker within ten (10) Business Days of receipt of a written request from that Access Seeker for the provision of access (whether or not on the basis of a RAO):

- (a) any supplementary details, of a Facility and/or Service 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;
- (b) any supplementary access charges for access to Facilities and Services not included in the RAO (for example, discounts for inferior service levels or surcharges for enhanced service levels);
- (c) all supplementary technical information relating to the Facilities and/or 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;
- (d) supplementary details of the Access Provider's operational processes and procedures not included in the RAO (e.g. regarding escorted access at sites deemed to be critical national information infrastructure or other secure sites);

- (e) 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 (e.g. capacity constraints);
- (f) details of the Access Provider's alternative quality of service targets not included in the RAO and actual achievements in respect of the Facilities and/or Services which may be the subject of the Access Request;
- (g) any security requirements, insurance requirements and creditworthiness information (including a credit assessment form, if available) required by the Access Provider under subsections 4.3.5, 4.3.6 and 4.3.7 of this RAO; and
- (h) the Access Provider's reasons for failing to supply any of the information referred to in paragraphs 4.3.3(a) to 4.3.3(g) of subsection 4.3.3 of this RAO.

Prior to the provision of information under subsection 4.3.3 of this RAO, the Access Provider may request the Access Seeker to enter into a confidentiality agreement in accordance with subsection 4.3.4 of this RAO.

4.3.4 Confidentiality Agreement: An Access Provider's confidentiality agreement:

- (a) shall be reciprocal;
- (b) shall be no broader than the confidentiality provisions on the Access Provider's RAO;
- (c) shall be no broader than necessary to protect the legitimate commercial interests of the Disclosing Party;
- (d) shall include provisions prohibiting the Receiving Party from disclosing information to third parties or using information other than as necessary for the purposes of assessing a request for access; and
- (e) shall not prevent the disclosure of Confidential Information or other information to the Commission by the Receiving Party.

4.3.5 Security requirements:

- (a) An Access Provider shall not impose any security requirements on an Access Seeker unless the Access Provider determines, acting reasonably, that the Access Seeker presents a credit risk and that imposing the security requirement will materially reduce or remove that risk.
- (b) An Access Provider shall ensure that the amount and type of any security requirements to be imposed on an Access Seeker is only imposed in the Access Provider's security policy and is commensurate with:

i. a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over:

(1) for Facilities and/or Services with a minimum period of access, the minimum period of access to those Facilities and/or Services; and

(2) for Facilities and/or Services without a minimum period of access, a single Billing Period for those Facilities and/or Services, in an Access Agreement;

ii. the creditworthiness of the Access Seeker (including prior record of payment by the Access Seeker); and

iii. security previously reasonably required by the Access Provider.

(c) The Access Provider must not impose a security requirement on an Access Seeker which:

i. exceeds a commercially reasonable estimate of the charges that will be incurred by the Access Seeker for access to Facilities and/or Services to be provided by the Access Provider to the Access Seeker; or

ii. is designed to, or has the effect of, denying or delaying the Access Seeker's access to Facilities and/or Services.

4.3.6 **Insurance requirements:** An Access Provider shall ensure that any insurance that it requires an Access Seeker to have in place extends no further than the reasonable insurable interest that the circumstances require and shall not be permitted to require:

(a) insurance beyond that necessary for worker's compensation, social security, employer's liability insurance and insurance within statutory limits as required by the laws of Malaysia in respect of its employees employed in connection with the work covered by the Access Agreement that may be entered into; and

(b) comprehensive general liability insurance in excess of Ringgit Malaysia Twenty Million (RM 20,000,000.00) for any one claim or series of claims arising out of an accident or occurrence in connection with the Access Agreement that may be entered into.

4.3.7 **Creditworthiness information:** An Access Provider may only request creditworthiness information from an Access Seeker:

(a) if the Access Provider reasonably believes that the Access Seeker may not be able to meet any liabilities that may arise under an Access Agreement with the Access Seeker;

- (b) if the creditworthiness information sought is limited to information which is publicly available (on the this basis, the Access Provider may request the Access Seeker to warrant that such information is accurate); and
- (c) to the extent commensurate with an commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to Facilities and/or Services in an Access Agreement.

4.3.8 **Reporting Obligations:** On 1 April and 1 October of each year, in respect of the Facilities and/or Services set out in subsection 4.3.9 of this RAO, each Access Provider shall notify the Commission in writing of:

- (a) each Facility and/or Service which is included in the Access Provider's RAO as published on its publicly accessible website;
- (b) each Facility and/or Service which is not included in the Access Provider's RAO as published on its publicly accessible website;
- (c) each Access Agreement which the Access Provider has entered into, including:
 - i. the name and contact details of the relevant Access Seeker;
 - ii. the Facilities and/or Services made available under the Access Agreement;
 - iii. any other products or services made available under the Access Agreement;
 - iv. the terms of the Access Agreement;
 - v. whether the Access Agreement is based on the terms of the Access Provider's RAO, is negotiated on amended terms of the RAO, or is negotiated on alternative terms; and
 - vi. any further details of the Access Agreement that may be requested by the Commission from time to time.
- (d) each Facility and/or Service which has been supplied under an Access Agreement during the period since the previous reporting period under subsection 4.3.8 of this RAO and the name and details of the party to which they were supplied;
- (e) each Access Agreement which has expired or has been terminated since the previous reporting period under subsection 4.3.8 of this RAO;
- (f) details of any security required by the Access Provider from Access Seekers under subsection 4.3.5 or subsection 4.16.8 of this RAO, as revised or varied under subsection 4.16.7 of this RAO;

- (g) details of all ongoing negotiations with Access Seekers, including the date on which the negotiation commenced and updates where an extension of time for negotiation has been granted;
- (h) details of all ongoing disputes with Access Seekers to which the Dispute Resolution Procedures apply;
- (i) details of any ongoing space constraints at any POI locations including due to technical reasons;
- (j) details of any constrained capacity and how it has been allocated in accordance with the Access Provider's Capacity Allocation Policy;
- (k) summary details of all refused requests for interconnection or access by Access Seekers since the previous reporting period under subsection 4.3.8 of this RAO;
- (l) the information required to be provided under subsections 2.20 of PART A of Section 5 and subsection 2.7 of PART B of Section 5 of this RAO; and
- (m) any other information requested by the Commission.

4.3.9 **Facilities and/or Services subject to reporting:** The reporting obligations set out in subsection 4.3.8 of this RAO apply to the following Facilities and/or Services:

- (a) End to End Transmission.

4.4 NEGOTIATION OBLIGATIONS

4.4.1 **Timing:** If an Operator wishes to negotiate an Access Agreement with another Operator:

- (a) both parties shall notify the Commission when the negotiations for the Access Agreement begin under this subsection;
- (b) both parties shall use their best endeavours to conclude the Access Agreement within:
 - i. where there is no Access Agreement in place between the Operators, four (4) months; or
 - ii. where there is already a commercial agreement or an Access Agreement in place between the Operators, three (3) months, after a written request by the Access Seeker to commence negotiations under paragraph 4.4.6(c) of this RAO and the Access Provider's response confirming it is willing to proceed to negotiate under paragraph 4.4.7(b) of this RAO;

- (c) if the negotiations are not completed within the applicable timeframe under paragraph 4.4.1 (b) of this RAO:
 - i. the parties 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 parties and the Dispute Resolution Procedures shall take effect; or
 - ii. either Party may initiate the Dispute Resolution Procedures; and
 - (d) if the Commission grants an extension of time under paragraph 4.4.1(c) of this RAO, it may do so subject to such conditions as it specifies (such as an ongoing requirement to provide updates on negotiations at specified intervals and the right to reduce or extend any extension).
- 4.4.2 **Good faith:** An Operator shall co-operate, in good faith and in a commercially reasonable manner, in negotiating and implementing the terms of its Access Agreements. This includes:
- (a) acting promptly, honestly, and not perversely, capriciously or irrationally;
 - (b) avoiding the imposition of unreasonable restrictions or limitations on the provision of access to Facilities and/or Services (such as refusing to provide particular forms of access that the Access Provider provides to itself); and
 - (c) avoiding unnecessary disputes and resolving disputes promptly and fairly.
- 4.4.3 **Confidentiality:** An Operator must protect from disclosure any Confidential Information provided by another Operator in the course of negotiating an Access Agreement and during the term of an Access Agreement in accordance with a confidentiality agreement prepared under subsection 4.3.4 of this RAO.
- 4.4.4 **Intellectual Property:** An Operator shall only use such Intellectual Property and information provided by another Operator for the purposes of providing or acquiring access to the requested Facilities and/or Services. An Operator must not use such Intellectual Property or information for the development or marketing of other communication services or Equipment by that Operator, its own divisions, subsidiaries, partners or other entities in which has a direct or indirect equity, contractual or other interest, or third parties.
- 4.4.5 **Access Request:** An Access Provider may require an Access Seeker to provide an Access Request to the Access Provider if:
- (a) there is no Access Agreement in force between the Access Provider and the Access Seeker governing access to the Facilities and/or Services to which the Access Seeker seeks access; or

- (b) there is such agreement, but:
 - i. the current terms of that Access Agreement will expire or terminate within the next four (4) months; or
 - ii. the required Facilities and/or Services are outside the scope of that agreement.

The Access Provider shall develop a process for desk/field studies and Service Qualifications that an Access Seeker may take up prior to entering into an Access Agreement.

4.4.6 **Required information:** An Access Request must contain the following information:

- (a) the name and contact details of the Access Seeker;
- (b) the Facilities and/or Services in respect of which access is sought;
- (c) whether the Access Seeker wishes to accept the Access Provider's RAO, to negotiate amendments to the RAO, or to negotiate an Access Agreement on alternative terms;
- (d) the information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of the negotiations. The type of information which may be requested by the Access Seeker is described in, but not limited to, subsection 4.3.3 of this RAO;
- (e) two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the form prescribed by the Access Provider in accordance with subsection 4.3.4 of this RAO;
- (f) preliminary information regarding the scale and scope of Facilities and/or Services that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request;
- (g) relevant technical information relating to the interface standards of the Equipment of the Access Seeker;
- (h) 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) creditworthiness information in accordance with the Access Provider's requirements, as set out in subsection 4.3.7 of this RAO;
- (j) assessed security (or, if applicable, confirmation of security provided) in accordance with the Access Provider's security requirements, as set out in subsection 4.3.5 of this RAO;
- (k) insurance information in accordance with the Access Provider's insurance requirements, as set out in subsection 4.3.6 of this RAO; and

- (l) such other information as the Access Provider may reasonably request for the sole purpose of providing access to requested Facilities and Services.

4.4.7 **Obligations upon receipt:** The Access Provider shall, within ten (10) Business Days of receipt of an Access Request, respond to the Access Seeker in writing acknowledging receipt of the Access Request and stating that:

- (a) if the Access Seeker is willing to accept a RAO from the Access Provider, the Access Provider will is willing to provide access in accordance with the RAO;
- (b) if paragraph 4.4.7(a) of this RAO does not apply, the Access Provider is willing to proceed to negotiate amendments to the RAO or an Access Agreement on alternative terms;
- (c) the Access Provider refuses the Access Request in accordance with subsection 4.4.10 of this RAO; or
- (d) the Access Provider requires specified additional information to make a decision on the Access Request in accordance with paragraphs 4.4.7(a) to 4.4.7(c) of this RAO, and once such information is received from the Access Seeker, the Access Provider shall reconsider the Access Request in accordance with this subsection and the ten (10) Business Days for the Access Provider to consider the Access Request will recommence from the receipt of the information from the Access Seeker.

The Access Provider must provide a copy of its response to the Commission at the same time that the Access Provider provides the response to the Access Seeker.

4.4.8 **Acceptance response:** If the Access Provider responds that access will be provided in accordance with a RAO [as described in paragraph 4.4.7(a) of this RAO], the Access Provider must, within ten (10) Business Days of such response, provide two copies of the RAO an ARD executed by the Access Provider to the Access Seeker and one (1) copy of confidentiality agreement returned by the Access Seeker [in accordance with paragraph 4.4.6(e) of this RAO] that has also been properly executed by the Access Provider.

4.4.9 **Negotiation response:** If the Access Provider is willing to proceed with negotiation of the Access Request [as described in paragraph 4.4.7(b) of this RAO], 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 [in accordance with paragraph 4.4.6(e) of this RAO] that has also been properly executed by the Access Provider.

4.4.10 Refusal response: If the Access Provider decides to refuse the Access Request [as described in paragraph 4.4.7(c) of this RAO], the Access Provider must set out in its response to the Access Seeker:

- (a) the grounds in subsection 4.4.11 of this RAO on which the Access Provider is relying;
- (b) the basis of the Access Provider's decision with sufficient particulars to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of refusal; and
- (c) a place, date and time, not later than seven (7) Business Days from the date of the Access Provider's response, at which representatives of the Access Provider authorised to review the Access Provider's assessment of the Access Request will be available to meet with representatives of the Access Seeker for the purpose of discussing the refusal of the Access Request. At this meeting, the Access Seeker may request the Access Provider to substantiate its reasons for refusal (and the Access Provider shall do so), and if access has been refused on the basis of the grounds in:
 - i. paragraph 4.4.11(b) of this RAO, the Access Provider must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;
 - ii. paragraph 4.4.11(d) of this RAO, the Access Provider must identify when additional capacity or space is likely to be available; and
 - iii. paragraph 4.4.11(e) of this RAO, 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 Facilities and/or Services, its reasons for the security requirement and why it considers such concern cannot be addressed through a security requirement under subsection 4.3.5 of this RAO.

4.4.11 Grounds for refusal: Except where expressly permitted otherwise under the Act or section 5 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 4.4.6 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.

4.4.12 **Dispute resolution:** If, following the meeting between the parties required to be held pursuant to paragraph 4.4.10(c) of this RAO, for the purposes of discussing an Access Provider's refusal of an Access Request, the parties have been unable to resolve any their differences about the validity of the Access Request and the Access Seeker continues to disagree with the Access Provider's refusal of the Access Request, either Party may request resolution of the dispute in accordance with the Dispute Resolution Procedures.

4.4.13 **Initial Meeting:** Unless otherwise agreed between the Operators, each Operator shall ensure that its representatives meet on the date notified pursuant to paragraph 4.4.9(a) of this RAO and that such representatives:

- (a) agree a timetable for the negotiations, including milestones and dates for subsequent meetings within the applicable timeframe for negotiations under paragraph 4.4.1(b) of this RAO;
- (b) agree on negotiating 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.

4.4.14 Facilities and/or Services not specified in the Access List Determination:

If an Access Seeker wishes to obtain for access to additional facilities and/or services that are not specified in the Access List Determination, then the requirements under subsection 4.4 of this RAO may apply to any request for access to such additional facilities and/or services to the extent agreed by the parties.

4.4.15 Additional matters: An Access Provider shall not do, or threaten to do, anything that has the effect or likely effect of, any of the following:

- (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;
- (b) refuse to negotiate access to the Facilities and/or Services because the Access Seeker has not agreed to acquire access to other Facilities and/or Services or because the Access Seeker has not agreed to acquire a particular configuration, option or feature of a requested Facility and/or Service;
- (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 an Access Agreement complies with all applicable laws;
- (e) refuse to include in any Access Agreement a provision permitting variation of the Access 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;
- (j) fail to provide information that is necessary to conclude an Access Agreement including, without limitation:
 - i. information about the Access Provider's Network that the Access Seeker reasonably requires to identify the Network elements to which it requires access; and
 - ii. information about the basis of the determination of rates, charges or fees.

4.4.16 **Non-permitted Information:** Notwithstanding anything else in this RAO, an Access Provider shall not impose an obligation on 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 Facilities and/or 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;
- (d) details of the Access Seeker's current or proposed retail charges;
- (e) details of the Access Seeker's marketing strategy or proposed client base;

- (f) financial information relating to the Access Seeker's business, except to the extent that such information may be required pursuant to the creditworthiness requirements in subsection 4.3.7 of this RAO;
- (g) details of any other supply arrangements or Access Agreements to which the Access Seeker is or may be a party, except to the extent that such details are directly relevant to technical characteristics of the requested Facility and/or Service; or
- (h) any other commercially sensitive information of the Access Seeker which is not strictly required by the Access Provider to supply a requested Facility and/or Service.

4.4.17 **Technical infeasibility:** For the purposes of paragraph 4.4.11(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).

4.4.18 **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 paragraph 4.4.11(d) 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 subsection 4.4 of this RAO; and
- (c) in the case of both paragraphs 4.4.18(a) and 4.4.18(b) of this RAO, the Access Provider is unable to expand capacity to meet the requirements in the Access Seeker's Access Request.

4.4.19 **Reporting on refusals:** If an Access Provider refuses an Access Request, it must notify the Commission within five (5) Business Days of that refusal together with an explanation of its reason for refusal under subsection 4.4.11 of this RAO.

4.4.20 **Fast-track application and agreement:** Notwithstanding and as an alternative process to that set out in subsections 4.4.1 to 4.4.18 of this RAO, 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 4.4.21 of this RAO;
- (b) the fast-track application form:
 - i. shall be limited to gathering information from the Access Seeker as set out in paragraphs 4.4.6(a) and 4.4.6(b) of this RAO; and
 - ii. in respect of any requirement to provide security, shall set out a process for determining the required security sums under subsection 4.3.5 of this RAO 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 paragraphs 4.4.11(a), 4.4.11(e) or 4.4.11(f) of this RAO;
- (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 must:
 - i. 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 paragraph 4.4.20(c) of this RAO (including the basis on which those grounds apply); and

- ii. provide the Commission with a copy of the response at the same time that it provides the response to the Access Seeker under paragraph 4.4.20(e) of this RAO.

4.4.21 **Principles for setting up fast-track process:** 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.

4.5 **CONTENT OBLIGATIONS: GENERAL**

4.5.1 **Content Obligations:** The Content Obligations referred to in this RAO are as follows:

- (a) General Obligations as described in subsection 4.5 of this RAO;
- (b) Forecasting Obligations as described in subsection 4.6 of this RAO;
- (c) Ordering and Provisioning Obligations as described in subsection 4.7 of this RAO;
- (d) Point of Interface Procedures as described in subsection 4.8 of this RAO;
- (e) Decommissioning Obligations as described in subsection 4.9 of this RAO;
- (f) Network Changes Obligations as described in subsection 4.10 of this RAO;
- (g) Billing and Settlement Obligations as described in subsection 4.11 of this RAO;
- (h) Operations and Maintenance Obligations as described in subsection 4.12 of this RAO;
- (i) Technical Obligations as described in subsection 4.13 of this RAO;
- (j) Term, Suspension and Termination Obligations as described in subsection 4.14 of this RAO;
- (k) Churn Obligations as described in subsection 4.15 of this RAO; and

(l) Legal Boilerplate Obligations as described in subsection 4.16 of this RAO.

4.5.2 **Application:** Unless otherwise specifically provided in this RAO, the Content Obligations shall apply to all Facilities and/or Services subject to the Service Specific Obligations which are set out in section 5 of this RAO.

4.5.3 **General:** All Access Providers must:

(a) include in each RAO, obligations which are consistent with these Content Obligations; and

(b) not include in any RAO, obligations which are inconsistent with these Content Obligations.

4.5.4 **Compliance with Content Obligations:** Each Operator shall comply with:

(a) subsection 4.5 of this RAO; and

(b) the following subsections 4.6 to 4.16 of this RAO (inclusive); and

(c) the Service Specific Obligations in section 5 of this RAO, as may be applicable.

4.6 FORECASTING OBLIGATIONS

4.6.1 **General:** Subject to subsections 4.6.3 and 4.6.4 of this RAO, an Access Provider may require, as a condition of accepting Orders for access to Facilities and/or Services from an Access Seeker (but not as a prerequisite for entering into an Access Agreement), that the Access Seeker provide Forecasts in good faith over with regard to a certain period of supply of access to Facilities or Services (as the case may be) in accordance with subsection 4.6 of this RAO.

4.6.2 **Prerequisite information:** 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.

4.6.3 **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, and subsection 4.7 of this RAO will apply.

4.6.4 **Alternative procedure:** An Access Provider and an Access Seeker may agree to an alternative forecasting and ordering procedure other than that set out in subsection 4.6 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 subsection 4.6 of this RAO.

4.6.5 **Non-binding:** Subject to subsection 4.6.3 of this RAO, an 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 4.6.16 of this RAO.

4.6.6 **Forecast request:** An 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).

- 4.6.7 **Non-permitted information:** 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 subsection 4.4.16 of this RAO; or
 - (b) any information that identifies or would enable the identification of Customers or particulars services of the Access Seeker.
- 4.6.8 **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.
- 4.6.9 **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 those personnel of 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 and related Orders. The Access Provider must maintain records that indicate which persons are provided with access to Forecast Information and, on request from the Commission, provide a copy of such records certified by the Access Provider's Chief Executive Officer or Chief Operating Officer.
- 4.6.10 **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 4.6.9 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.
- 4.6.11 **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 not 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 4.6.12(a) to 4.6.12(d) of this RAO.

4.6.12 **Reasons for rejection:** An 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 4.7.31 and 4.7.32 of this RAO, 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.

4.6.13 **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 4.6.12 of this RAO, 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.

- 4.6.14 **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.
- 4.6.15 **Reconsideration by Access Provider:** The Access Provider shall reconsider any re-submitted or amended Forecast provided pursuant to subsection 4.6.14 of this RAO and subsections 4.6.11 to 4.6.13 of this RAO shall re-apply.
- 4.6.16 **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 4.6.16(b) above.
- 4.6.17 **Meeting Forecasts:** Subject to subsections 4.6.11 to 4.6.13 of this RAO, 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 4.6.3 of this RAO, it will be binding on the Access Seeker.

4.7 ORDERING AND PROVISIONING OBLIGATIONS

- 4.7.1 **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).

4.7.2 **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 under subsection 4.4.16 of this RAO.

4.7.3 **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.

4.7.4 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 established under subsection 4.7.29 of this RAO.

4.7.5 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 4.7.5 of this RAO.

4.7.6 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.

4.7.7 Further information: The Access Provider shall allow the Access Seeker a period of up to ten (10) Business Days after a request for additional

information under paragraph 4.7.6(b) of this RAO to provide the Access Provider with such information.

4.7.8 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 in accordance with the process to be developed under subsection 4.4.5 of this RAO;
- (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 4.7.6, of this RAO, or, if further information has been requested under subsection 4.7.7 of this RAO, within two (2) Business Days upon the expiry of the period specified in subsection 4.7.7 of this RAO.

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.

4.7.9 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.

4.7.10 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 4.7.9 of this RAO; 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.

4.7.11 **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 subsection 4.6 of this RAO.

4.7.12 **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 4.7.12; 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.

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

- (a) the delivery date or activation date (as applicable), which must be the date that is requested by the Access Seeker, or, if that date cannot be met by the Access Provider, then no later than:
 - i. the indicative delivery timeframe or activation timeframe specified in the Service Specific Obligations for the purpose of this subsection 4.7.13; or
 - 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**").

4.7.14 **Commencement of delivery timeframes:** The applicable delivery timeframe for an Order, as determined under paragraph 4.7.13(a) of this RAO, shall commence from:

- (a) where the Access Seeker's confirmation of an Order is required under subsection 4.7.15 of this RAO, 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.

4.7.15 **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 4.7.15(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.

4.7.16 **Estimated charges:** 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 4.7.16(a) above if the revised estimate in that notice exceeds the original estimate by more than ten percent (10%);

- (c) where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of work provided by the Access Provider due to:
 - i. information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; or
 - ii. a 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.
- (d) 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 4.7.13(e) or 4.7.16(b) of this RAO, as applicable.

4.7.17 Reasons for rejection: An Access Provider may only reject an Order from an Access Seeker where:

- (a) subject to subsection 4.4.17 of this RAO (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 4.7.31 and 4.7.32 of this RAO, the Access Provider has insufficient capacity to provide the requested Facilities and/or Services;
- (c) subject to subsection 4.7.19 of this RAO, 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).

4.7.18 **Notice of rejection:** 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.

4.7.19 **Order in excess of Forecast:** Notwithstanding paragraph 4.7.17(b) of this RAO, an 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.

4.7.20 **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 traffic

to the Access Seeker's Network to the extent necessary to minimise congestion within the Access Provider's Network.

4.7.21 **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.

4.7.22 **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 4.7.24 of this RAO.

4.7.23 **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.

4.7.24 **Delayed delivery dates:** 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.

4.7.25 **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 4.7.26 of this RAO.

4.7.26 **Cancellation or variation penalty:** 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.

4.7.27 **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.

4.7.28 **Resource charge:** 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 4.7.28(a) above, and in its RAO.

4.7.29 **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.

4.7.30 **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 4.7.5 of this RAO (and as specified in the Notice of Receipt under subsection 4.7.6 of this RAO), of their acceptance of, and position in, the Access Provider's queue.

4.7.31 **Constrained capacity:** 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.

4.7.32 **Capacity Allocation Policy:** 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.

4.7.33 Late delivery: If an Access Provider fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with paragraph 4.7.24(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 4.7 of this RAO or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities and/or Services for the period of the Access Provider's delay, and the methodology and unit rates for calculating such rebates shall be set out in the Access Provider's RAO. 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.

4.8 POINT OF INTERFACE PROCEDURES

4.8.1 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.

- 4.8.2 Point of Interface locations:
- (a) Subject to subsection 2.31 of PART A of Section 5 of this RAO, each 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.
 - (b) The Access Providers shall ensure that network co-location at each POI is offered to the Access Seeker in accordance with subsection PART A of Section 5 of this RAO.
- 4.8.3 **Access Seeker requested Point of Interface:** An Access Provider shall reasonably consider a request by an Access Seeker to interconnect at a point other than that specified under subsection 4.8.2 of this RAO. The Access Provider shall promptly notify the Access Seeker whether it accepts or refuses a request by an Access Seeker under this subsection, and provide the Access Seeker with reasons if it refuses the Access Seeker's request.
- 4.8.4 **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 Point of Interface.
- 4.8.5 **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.
- 4.8.6 **Point of Interface factors:** When determining which locations are to be listed under paragraph 4.8.2(a) of this RAO, or when determining a request under subsection 4.8.3 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 4.8.6(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.

4.9 DECOMMISSIONING OBLIGATIONS

4.9.1 **Decommissioning notice:** 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 any the decommissioning of a Point of Interface; or
- (b) six (6) month's' notice in writing to all relevant Access Seekers prior to the decommissioning of any Facilities and/or Services which rely on the Access Provider's use of that site.

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 4.9.1(a) and 4.9.1(b) above.

4.9.2 **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.

4.9.3 **Alternative arrangements:** 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.

4.9.4 **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 4.9.3(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 4.9.3(a) of this RAO for a period that is not less than three (3) years from the date of decommissioning.

4.9.5 **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 4.9.3(b) of this RAO; or
- (b) re-arranging Equipment to connect to alternative Services offered in accordance with subsection paragraph 4.9.3(b) of this RAO.

4.10 NETWORK CHANGE OBLIGATIONS

4.10.1 **Scope:** This subsection 4.10 applies where an Operator proposes to implement a Network Change of a type referred to in subsection 4.10.2 of this RAO 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.

4.10.2 **Types of changes:** The following kinds of proposed Network Changes may be within the scope of subsection 4.10.1:

- (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**”).

4.10.3 **Notification of change:** 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

4.10.4 Post-notification procedures: 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 4.10.3 of this RAO), 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.

4.10.5 Testing: 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 4.10.5(a) above.

- 4.10.6 **Testing failure:** 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 4.10.3 to 4.10.5 of this RAO.

4.11 BILLING AND SETTLEMENT OBLIGATIONS

- 4.11.1 **Invoices:** An Access Provider shall use its best endeavours to issue to the Access Seeker an Invoice in writing or in electronic form (as requested by the Access Seeker) within one (1) month of the end of each Billing Period in accordance with subsection 4.14.3 of this RAO for amounts due in respect of the supply of Facilities and/or Services during the relevant Billing Period.
- 4.11.2 **Currency:** Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, an Access Provider shall state all Invoices in Ringgit Malaysia and payment shall be made by the Access Seeker in Ringgit Malaysia.
- 4.11.3 **Billing Period:** An Access Provider shall issue Invoices in monthly accordance with the Billing Period specified in the Service Specific Obligations, except where a different Billing Period is agreed with the Access Seeker in an Access Agreement.
- 4.11.4 **Billing verification information:** An Access Provider shall provide, with each Invoice, such information as may be reasonably necessary for the Access Seeker to verify rates and charges contained in an Invoice.
- 4.11.5 **Other billing information:** An Operator must provide to any Operator with which it interconnects, information within its possession that is reasonably necessary to allow the other Operator to provide accurate and timely billing services to itself, other Operators and Customers.
- 4.11.6 **Summarised Invoice and billing information:** An Access Provider shall provide the Access Seeker, on written request, with an aggregated summary of billings for access to the Facilities and/or Services provided to the Access Seeker, in monthly tranches.

- 4.11.7 **Billing error:** If an Operator discovers an error in an Invoice, it must promptly notify the other Operator. The Operator which made the error must make necessary adjustments to correct that error within one (1) month of notification.
- 4.11.8 **Time for payment:** Subject to subsection 4.11.11 of this RAO, an Access Provider shall allow an Access Seeker no less than one (1) month from the date of receipt of an Invoice for the Access Seeker to make the payment. This subsection 4.11.8 should not be construed as preventing an Access Provider from granting a discount to an Access Seeker as an incentive to make early payments.
- 4.11.9 **Method of payment:** An Access Provider shall allow an Access Seeker to pay an Invoice by bank cheque or electronic funds transfer directly to an account nominated by the Access Provider.
- 4.11.10 **No set-off:** Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, an Access Provider may not set-off Invoices, except where the Access Seeker is in liquidation or at least three (3) Invoices have been issued and such Invoices have not been paid (excluding disputed amounts).
- 4.11.11 **Withholding of disputed amounts:** 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 the Access Provider within fifteen (15) Business 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 4.11.13.
- 4.11.12 **Billing Disputes:** An Access Provider shall allow an Access Seeker to dispute any amount in an Invoice if:
- (a) in case of the End-to-End Transmission Facilities and Services or any other Facilities and/or Services, the Access Seeker notifies the Access Provider within thirty (30) Business Days after the date of receipt of such Invoice,
- provided that, in any specified case, the Access Seeker's notification specifies the information referred to in subsection 4.11.13 of this RAO.
- 4.11.13 **Notification of Billing Dispute:** An Access Provider may require an Access Seeker to provide the following information when disputing any amount in an Invoice:
- (a) the reasons for which 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.

4.11.14 Billing Dispute resolution: An Access Provider and an Access Seeker must comply with the Dispute Resolution Procedures applicable to Billing Disputes.

4.11.15 Interest: Except for any amount in an Invoice being disputed by an Access Seeker in good faith in accordance with subsection 4.11.12 of this RAO, an Access Provider may charge interest on any amount outstanding from an Access Seeker from time to time, in respect of that overdue sum for the period beginning on its due date and ending on the date of the receipt of the overdue sum by the Access Provider. The interest that may be charged by the Access Provider shall be at the rate of two percent (2%) per annum above Malayan Banking Berhad's base rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than two (2) months will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad's base rate calculated from the due date until the date of receipt by the Access Provider of full payment. For clarification, an Access Provider shall not charge interest on an amount which is disputed by an Access Seeker in good faith.

4.11.16 Backfilling: Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, the Access Provider may include omitted or miscalculated charges from an earlier Invoice in a later Invoice, or issue an Invoice for charges which have previously not been invoiced provided that the Access Provider is able to substantiate the charges to the Access Seeker and such inclusion, amendment or issuance is made within three (3) months from the end of the Billing Cycle in which the calls were made or in which other service Facilities and/or Services were provided.

4.11.17 Provisional billing: Where an Access Provider is unable to issue an Invoice within one (1) month after the end of the Billing Cycle in accordance with subsection 4.11.1 of this RAO, it may issue an Invoice to an Access Seeker for a provisional amount, based on the last Invoice ("**Provisional Invoice**"). In such circumstances, the Access Provider may invoice the Access Seeker for a provisional amount for a period of not more than three (3) successive Billing Cycles, provided the total provisional amount of the provisional Invoice is no more than the average of the three (3) most recent Invoices. Where there have not been three (3) past Invoices for access to the relevant Facilities and/or Services, the Access Provider may issue a Provisional Invoice up to the full value of the amount based on the most recent Invoice.

4.11.18 **Adjustment Period:** Where a Provisional Invoice is issued by the Access Provider, within the next two (2) months or such other time period as may be agreed in the Access Agreement (“**Adjustment Period**”), the Access Provider must issue an Invoice for the actual amount due for access to the relevant Facilities and/or Services. If that Invoice for the actual amount is not issued within the Adjustment Period, the Access Seeker shall treat the provisional amount as the actual amount. If the actual amount for a particular Billing Period is higher than the provisional amount for the Billing Period, then the Access Seeker will pay in full such difference (free of interest) within one (1) month from the receipt of the actual Invoice to the Access Provider. If the actual amount for a particular Billing Period is lower than the provisional amount for the Billing Period, then the Access Provider will reimburse in full such difference (free of interest) within one (1) month from the receipt of the actual Invoice to the Access Seeker.

4.12 OPERATION AND MAINTENANCE OBLIGATIONS

4.12.1 **Operations and maintenance responsibility:** Each Operator shall be responsible for the operations and maintenance of its own facilities and services.

4.12.2 **Fault reporting service:** 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 Facilities and/or Services (inter alia) to report faults relating to any Network, Facility and/or Service.

4.12.3 **Customer notification:** Each Operator will advise all of its directly connected Customers to report all fault reporting service described in subsection 4.12.2 of this RAO.

4.12.4 **Non-discriminatory fault reporting and identification:** An Operator shall:

- (a) perform fault reporting and identification on a non-discriminatory basis; and
- (b) treat the fault reported by another Operator on an equivalent basis as it treats the faults reported by itself.

4.12.5 **Cross-referrals:** If a Customer reports a fault to an Operator:

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

the Operator which receives the report shall promptly inform the other Operator of the reported fault, or refer that Customer to the other Operator's fault reporting service.

4.12.6 **Network fault responsibility:** The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services including for the

purpose of restoring the supply of Facilities and/or Services which are used in another Operator's Network.

- 4.12.7 **Major inter-working faults:** If a major fault occurs which affects a communication that crosses or is to cross both Operators' Networks, initial responsibility for identifying the fault rests with the Operator who first becomes aware of the fault.
- 4.12.8 **Faults affecting other Networks or Equipment:** If an Operator identifies a fault occurring in its Network or with its network facilities which may have an adverse effect on the other another Operator's Network, network facilities, network services or Equipment, the first-mentioned Operator must promptly inform the other Operator of:
- (a) the existence of the fault;
 - (b) the actions being taken by the first mentioned Operator to rectify the identified faults and restore the service; and
 - (c) the outcome of those actions.
- 4.12.9 **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.
- 4.12.10 **Fault priority:** Each Operator shall give priority to faults which have in the following order:
- (a) the highest service loss impact in terms of the number of Customers affected; or
 - (b) those which have been reported on previous occasions and have reoccurred; and
 - (c) all other faults.
- 4.12.11 **Fault rectification:** Each Operator shall rectify faults on a non-discriminatory basis.
- 4.12.12 **Target times:** Each Operator shall respond to and rectify faults within the lesser of:
- (a) timeframes set out in a relevant Service Specific Obligation or, if there is no such timeframe, the response timeframes, progress update frequencies and rectification timeframes set out in the table below:
 - (b) timeframes which will result in compliance by all affected Operators with any applicable mandatory standards that apply to service availability and restoration; and
 - (c) timeframes equivalent to that which the Access Provider provides to itself.

Priority Level	Fault Types (examples)	Response Timeframe	Progress Update Frequency	Rectification Timeframe
Level 1	1. Major switch outage 2. Transmission bearer total outage 3. Route blocking > 30% 4. Major signalling problem 5. Major routing issues	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%			
Level 3	1. Faults affecting single or small number of customers	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			

Explanatory Notes to subsection 4.12.12:

- (a) All faults reported shall be ascribed with a ‘Priority Level’ as set out in the table above for response and rectification purposes and the Operators involved shall cooperate with one another to achieve the given target timeframes targets corresponding to the severity of the fault reported as set out in that table.
- (b) The “Fault Types’ listed in the table above are only examples of possible types of faults. Operators are required to categorise all faults by reference to the specified ‘Priority Levels’, ‘Response Timeframe’s and ‘Rectification Timeframes’.
- (c) ‘Response Timeframe’ refers to the timeframe for the Operator whose Network, Facility and/or Service is faulty to respond to and appropriately attend to the fault. ‘Response Timeframe’s are to be measured from either the time the fault is notified by the other Operator or from the time when the Operator first becomes aware of the fault, whichever is the earlier.
- (d) ‘Progress Update Frequency’ refers to the frequency to update the other Operator until the fault is rectified.
- (e) ‘Rectification Timeframe’ refers to the time taken by the Operator to rectify a faulty Network, Facility and/or Service and is determined by the period between the reporting of a fault to the relevant fault reporting service of the Operator and the rectification of the fault on a permanent or temporary

basis (provided that if rectified on a temporary basis, the Operator must continue attempting to achieve a permanent rectification without delay).

4.12.13Planned maintenance: If an Operator intends to undertake planned maintenance (“**Maintenance Operator**”) 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.

4.12.14Planned maintenance windows: A Maintenance Operator shall undertake planned maintenance within windows of time agreed with other Operators, and where the windows of time for such planned maintenance have the least effect on end- users.

4.12.15Emergency maintenance: If a Maintenance Operator needs to undertake emergency maintenance which may affect the other Operator’s Network, the Maintenance Operator must, if it is able to:

- (a) provide at least twenty-four (24) hours’ 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 rerouting; and
- (c) where the Operators agree that it is practicable, provide alternative routing or carriage at no additional cost to the other Operator.

4.12.16Hours of fault reporting and rectification: An Access Provider shall maintain a twenty-four (24) hours a day, seven (7) days a week fault reporting and rectification service.

4.12.17Complaints handling: The Operators must report all interconnection and access outages that relate to Networks, Services and/or Facilities to the Access Provider’s relevant fault reporting and rectification service.

4.12.18Routine testing: The Operators shall conduct interconnection service tests at agreed annual 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.

4.13 TECHNICAL OBLIGATIONS

- 4.13.1 **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.
- 4.13.2 **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.
- 4.13.3 **Technical Standards:** An Operator must comply with any applicable technical Standard adopted by the Commission under Chapter 3 of Part VII of the Act.
- 4.13.4 **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.
- 4.13.5 **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.

4.14 TERM, SUSPENSION AND TERMINATION OBLIGATIONS

- 4.14.1 **Term:** 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.

4.14.2 **Term of supply:** 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
End-to-End Transmission Services	Twelve (12) months

4.14.3 **Termination circumstances:** Subject to subsection 4.14.6 of this RAO, an Access Provider may only terminate an Access Agreement if any of the circumstances referred to in paragraphs 4.14.3(a), 4.14.3(b) or 4.14.3(c) of this RAO apply and the Access Provider has notified the Access Seeker that it will terminate where:

- (a) the Access Seeker has materially breached the Access Agreement, and the Access Provider has notified the Access Seeker that it will terminate in no less than one (1) month if the Access Seeker has not remedied its breach by the end of that period and the Access Seeker has failed to remedy its breach in accordance with such a notification;
- (b) the Access Seeker has become subject to a winding up order (whether compulsory or voluntarily) or ceases to trade in the normal course of business or becomes insolvent or a receiving order is made against it or has entered into any agreement or composition with or assignment for the benefit of its creditors or the Access Seeker's assets are subject of any form of distress or execution or any analogous insolvency event related to the Access Seeker has occurred in any jurisdiction; or
- (c) a Force Majeure has continued for a period of more than three (3) months.

The Access Provider 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. For clarification, a notice to be given under this subsection 6.14.3 is in addition to the notice required under subsection 6.14.6 of this RAO.

4.14.4 **Change in law:** Where continued operation of the an Access Agreement or access to any Network, Facilities and/or Services provided under it is or will be unlawful (as a result of a legislative change), the Access Seeker and the Access Provider must meet within five (5) Business Days of becoming aware of the Relevant Change in law to review whether access to the relevant Network, Facilities and/or Services may be provided by the Access Provider on different terms and conditions (which are acceptable to the Access Seeker). If the parties cannot agree to the provision of access on different terms and conditions, the Access Provider may terminate the provision of access to the relevant Network, Facilities and/or Services.

4.14.5 **Suspension:** Subject to subsection 4.14.6 of this RAO, an Access Provider may only suspend access to any Facilities and/or Services in the following circumstances:

- (a) the Access Seeker's facilities materially and adversely affect the normal operation of the Access Provider's Network, or are a material threat to any person's safety;
- (b) the Access Seeker's facilities or the supply of Services pose an imminent threat to life or property of the Access Provider, its employees or contractors;
- (c) the Access Seeker's facilities cause material, physical or technical harm to any facilities of the Access Provider or any other person;
- (d) where the Access Seeker has failed to pay Invoices in accordance with subsection 4.11 of this RAO (and subject to any right the Access Seeker has under subsection 4.11 of this RAO to dispute any amount in an Invoice);
- (e) where the Access Seeker has failed to provide the new security amount as required under subsections 4.3.5, 4.16.7 and 4.16.8;
- (f) where Force Majeure applies; or
- (g) the Access Seeker breaches any laws, regulations, rules or standards which has a material and adverse effect on the Access Provider or the provision by the Access Provider of Facilities and/or Services under this Access Agreement.

For the purposes of this subsection 4.14.5, an Access Provider must provide the Access Seeker with five (5) Business Days' notice, including reasons, prior to suspending access to any Facilities and/or Services. The Access Provider shall forward to the Commission a copy of the notice of suspension at the same time as providing the notice of suspension to the Access Seeker. For clarification, a notice to be given under this subsection 4.14.5 is in addition to the notice required under subsection 4.14.6 of this RAO.

4.14.6 **Notice:** Prior to terminating, suspending, or seeking to materially vary an Access Agreement or access to any Facilities and/or Services provided under it, an Access Provider must notify the Commission in writing of the action the Access Provider proposes to take and the reasons why it considers such action is appropriate. The Commission may invite any affected Access Seeker to make submissions to the Commission regarding the proposed termination, suspension or material variation. The Access Provider:

- (a) shall only give effect to the proposed termination, suspension or material variation with the Commission's written consent and subject to any time delay or conditions which the Commission may specify (if any). The Commission will endeavour to respond to the Access Provider'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, suspension or material variation unless the Access Provider has received written consent from the Commission to such termination, suspension or material variation; and
- (c) shall take all steps practicable to minimise disruptions and inconvenience to the Customers of the Access Seeker, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the suspension or termination of the Access Agreement, or access to Facilities and/or Services provided under it.

4.14.7 **Undertakings:** If the parties to an Access Agreement adopt the terms and conditions specified in an access undertaking that has been registered with the Commission within five (5) Business Days of such adoption. In such circumstances, the terms and conditions of the Access Agreement will continue in force for the remainder of the term of that Access Agreement, even if the access undertaking is withdrawn or expires prior to the expiry of that term.

4.14.8 **Post-termination fees:** An Access Provider shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any Facilities and/or Services provided under it except:

- (a) charges invoiced in arrears and not yet paid; or
- (b) charges arising during an applicable minimum contractual period (as described in subsection 4.14.2 provided that:
 - i. such charges must be reduced to reflect any cost savings to the Access Provider from not having to supply the Facilities and/or Services to the extent that they have been terminated or suspended; and
 - ii. the Access Provider must use reasonable endeavours to mitigate its costs of termination or suspension and maximise cost savings under paragraph 4.14.8(b)i above.

4.14.9 **Upfront charges refund:** On termination of an Access Agreement or access to any Facilities and/or Services provided under it, the Access Provider shall refund to the Access Seeker all amounts paid in advance to the extent that the

amount (or part of the amount calculated on a pro-rata basis) relate to the period after the date of effect of such termination.

4.14.10 Deposits and guarantees: Notwithstanding the obligation in subsection 4.14.9 of this RAO, the Access Provider shall:

- (a) within two (2) months of termination of the Access Agreement refund to the Access Seeker any deposit paid provided all other amounts payable by the Access Seeker to the Access Provider have been paid; and
- (b) immediately upon termination of the Access Agreement unconditionally waive any rights under any guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to the Access Provider as at the date of termination.

4.15 CHURN OBLIGATIONS

4.15.1 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.

4.15.2 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.

4.15.3 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 subsection 4.15.2 of this RAO, 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).

4.15.4 Response to invalid Churn notification: If a notification is made under subsection 4.15.3 of this RAO, 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 may be provided to the Access Service Provider immediately.

- 4.15.5 **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.
- 4.15.6 **Facilitation of Churn:** An Access Service Provider must facilitate and implement Churns between Operators in accordance with the obligations specified in subsection 4.15.5, even if the Access Service Provider is not the Releasing Service Provider or the Gaining Service Provider.
- 4.15.7 **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.
- 4.15.8 **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 the Standard) must not refuse an Access Request (under subsection 4.4.10 of the RAO) on the ground that the Releasing Service Provider is currently using the Service specified in the Access Request.

4.16 LEGAL BOILERPLATE OBLIGATIONS

- 4.16.1 **Obligation to supply:** Each Operator shall have an absolute obligation to supply access to the Facilities and/or Services in accordance with this RAO. Such obligation shall not be conditional upon the use of that Operator's reasonable or best endeavours. Each Operator shall ensure that it shall not enter into any arrangement which will prevent, hinder or restrict the fulfilment of the Operator's obligation under this RAO.
- 4.16.2 **Mutual compensation:** Each Operator must establish mutually acceptable compensation arrangements with the each other Operator (including bill-and-keep arrangements).
- 4.16.3 **Equal representatives:** Each Operator must appoint an equal number of representatives to an Interconnect Steering Group (and such other working groups as may be agreed upon) to manage the smooth and timely implementation of the terms and conditions of Access Agreement or Dispute Resolution Procedures, as applicable.

- 4.16.4 **Dispute resolution:** Each Operator must comply with the Dispute Resolution Procedures.
- 4.16.5 **Complete charges:** Each Operator shall specify all charges in an Access Agreement and shall not attempt to recover any other costs, expenses or charges which are not specified in the Access Agreement except where such work is to be done on a time and materials basis in which case the Access Provider shall do such work in accordance with a quotation agreed with the Access Seeker as set out in this RAO.
- 4.16.6 **Intellectual Property:** Each Operator shall licence to other Operator under an Access Agreement on a royalty-free basis, all Intellectual Property rights necessary for the ongoing operation of the Access Agreement and the interoperability of the Operators' Networks, subject to any relevant third party licences. The term of the licence must be consistent with the term of the relevant Access Agreement.
- 4.16.7 **Security review:** An Operator shall only vary the amount and type of any security requirements imposed on another Operator:
- (a) a maximum of once in any twelve (12) month period;
 - (b) if there is a material increase in the credit risk to the Operator due to changes in either or both of the circumstances under paragraphs 4.3.5(b)i and 4.3.5(b)ii of this RAO; and
 - (c) if the Operator determines, acting reasonably, that the variation will materially reduce or remove the increased credit risk.
- If amounts contained in Invoices are disputed in good faith, this will not constitute a material increase in the credit risk to the Operator for the purposes of paragraph 4.16.7(b) above.
- 4.16.8 **Additional security:** For the purposes of subsection 4.16.7 of this RAO, an Operator may only request additional or substitute security from another Operator, in a manner consistent with subsection 4.3 of of this RAO, if the other Operator was making a new Access Request under subsection 4.3 of this RAO.
- 4.16.9 **Assignment:** An Operator's right to assign its rights under an Access Agreement prepared by it shall be reciprocal with the other Operator's rights of assignment.
- 4.16.10 **Review:** An Operator shall specify in an Access Agreement prepared by it that such Access Agreement shall be reviewed:
- (a) if the Minister issues a direction or determination relating to its subject matter;

- (b) if the Commission issues a direction or determination relating to its subject matter;
- (c) if the Act or this RAO is amended in relation to its subject matter;
- (d) by agreement of each of the parties; or
- (e) if a condition of the Operator's licence is amended or deleted or a new condition is imposed in relation to its subject matter.

4.16.11**Costs and expenses:** Each Operator shall bear its own costs and expenses in relation to the preparation, negotiation and execution of an Access Agreement to which they are parties.

4.16.12**Applicable laws:** An Operator shall include a provision in all Access Agreements prepared by it which provides that the Access Agreement will be governed by the laws of Malaysia and that Operator will comply with all applicable directions issued by the Malaysian regulatory authorities.

4.16.13**Reciprocity:** An Access Provider must offer to acquire access to Facilities and/or Services on the same terms that it provides access to those Facilities and/or Services, where the Facilities and/or Services are the same or similar in nature.

4.16.14**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 RAO (for example, an Access Provider shall not make access to Facilities conditional on the acquisition of Services, or other services, such as maintenance services); and
- (b) any Facilities and/or Services in any minimum or maximum quantity.

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5 SERVICE DESCRIPTION & SPECIFIC OBLIGATION

PART A – END-TO-END TRANSMISSION SERVICE

This **Part A of Section 5** sets out the terms and conditions which are applicable to End-to-End Transmission Service under the Access List.

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 Points of Presence; or
- iii. One End User location and one Access Seeker Point of Presence.

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

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

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

- (i) Transmission and switching, whether packet or circuit;
- (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.

2. SERVICE SPECIFIC OBLIGATIONS

2.1 **Application:** This subsection 2 of Part B of Section 5 applies where access to the End-to-End Transmission Service has been requested or is to be provided.

2.2 **Forecasts:** For the purposes of subsection 4.6.6 of this RAO, 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.

- 2.3 **Acknowledgement of receipt:** For the purposes of subsection 4.7.5 of this RAO, an Access Provider shall acknowledge receipt of each Order for End-to-End Transmission Service within two (2) Business Days.
- 2.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 4.7.12 of this RAO, 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 4.7.8 of this RAO; or
 - b) providing the Access Seeker with the result of post-Order Service Qualification information under subsection 4.7.9 of this RAO, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 4.7.8 of this RAO.
- 2.5 **Indicative delivery timeframe:** For the purposes of paragraph 4.7.13(a)j of this RAO, 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.
- 2.6 **Billing Cycle:** For the purposes of subsection 4.11.3 of this RAO, between the Operators, the Billing Cycle for End-to-End Transmission Service will be quarterly.
- 2.7 **Reporting:** 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.

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6 PRICE LIST FOR ACCESS SERVICES

6.1 End-to-End Transmission Service

The prices below shall be applied for the End-to-End Transmission Service :

	Ringgit Malaysia per month		
	2018	2019	2020
Within Penang Island and Mainland			
1 Mbps	105	106	108
10 Mbps	1,353	1,302	1,256
100 Mbps	2,130	2,000	1,895
200 Mbps	2,993	2,775	2,606
500 Mbps	5,582	5,102	4,737
750 Mbps	7,739	7,041	6,512
1 Gbps	10,103	9,166	8,459
3 Gbps	28,406	25,660	23,597
5 Gbps	46,078	41,543	38,144
Installation (non-recurring charge)	5,110	5,365	5,633

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 Period Cycle.

7.2 An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:

- (a) in case of End-to-End Transmission Facilities and Services or 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 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 4.11.11 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 4.11.15 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 4.11.15 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.

ANNEXURE B: NON-DISCLOSURE AGREEMENT (NDA)

THIS NON DISCLOSURE AGREEMENT (“AGREEMENT”) is made on _____ 20[] between

XXX (Co. No. XXX) a company incorporated in Malaysia under the Companies Act 1965, and having its business address at Address (hereinafter referred to as “Access Seeker” or “Customer”) of the one part;

AND

MYISP Dot Com Sdn Bhd (Co. No. 706993-V), a company incorporated under the laws of Malaysia and having its registered office at No. 1-2-1, Suntech @ Penang Cybercity, Lintang Mayang Pasir 3, 11900 Bayan Baru, Pulau Pinang (herein referred to as “MYISP”), of the other part.

WHEREAS:

1. The principal business objective of the Access Seeker is to provide [].
2. Among the principal business objective of MYISP is to provide network facilities, services and solutions involved in the business of information and communications technology and holds licenses issued by the Malaysian Communications and Multimedia Commission.
3. The above parties contemplate discussions and analysis concerning a business possibility and the parties may disclose information to each other.
4. In consideration of the disclosure to be made and the mutual covenants contained herein, each Party agrees to the terms and conditions as hereinafter appearing.

NOW THIS AGREEMENT WITNESSETH as follows:

1. DEFINITION

- (a) “Confidential Information” means any oral, written, graphic or machine-readable information including, but not limited to, that which relates to the Disclosing Party’s current, future and potential business, trade secrets of any kind and to all forms and types of financial, business, scientific, technical, economic or engineering information including without limitation patents, patent applications, research, product plans, products, technology, developments, inventions, processes, techniques, designs, drawings, prototypes, methods, patterns, markets, software (including source and object code), hardware configuration, computer programs, program devices, formulas, algorithms, compilations, business plans and strategies (financial, strategic, marketing or otherwise), market research methodology, market research processing and analysis products, Intellectual Property, agreements with third parties, services, operations, customers, or finances of the Disclosing Party, whether tangible or intangible, and whether or

how stored, compiled, or memorialized (whether physically, electronically, graphically, photographically or in writing) which Confidential Information:

- (i) is designated in writing to be confidential or proprietary; or
- (ii) if given orally, as having been disclosed as confidential or proprietary; or
- (iii) given the nature of the information and the circumstances surrounding its disclosure, would be deemed to be confidential or proprietary by a reasonable person.

Confidential Information also includes anything the Receiving Party creates which is derived from or based upon the information or materials disclosed to it by the Disclosing Party including but not limited to analyses, compilations, studies, minutes of meetings or other documents or physical materials prepared by the Receiving Party.

- (b) "Disclosing Party" means the party from whom the Confidential Information originates and is disclosed to the Receiving Party.
- (c) "Project" means to explore opportunities between the Parties.
- (d) "Receiving Party" means the party to whom the Confidential Information is given or disclosed.
- (e) "Intellectual Property" means:
 - (i) copyrights, database rights, know-how, trademarks, service marks, patents, registered designs, applications for any of those rights, trade and business names (including internet domain names and e-mail address names), patents, unregistered trademarks and service marks, rights in designs and inventions; and
 - (ii) rights of the same or similar effect or nature as to those in paragraph (i)

2. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

- (a) The Receiving Party agrees not to use any Confidential Information disclosed to it by the Disclosing Party for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of the Project. The Receiving Party shall not disclose or permit disclosure of, either directly or indirectly, any Confidential Information of the Disclosing Party to third parties or to employees of the Receiving Party, other than directors, officers, employees, consultants and agents of the Receiving Party or its parent company, its subsidiaries or its affiliated entities, who are reasonably required to have the information in order to carry out the discussions, assist the Receiving Party in its evaluation of the Confidential Information, or make decisions or render advice regarding the project, and who are subject to confidentiality obligations in substance at least as restrictive as those contained herein. The Receiving Party agrees that it shall take all reasonable measures to protect the secrecy of, secure from theft and avoid disclosure or use of Confidential Information of the Disclosing Party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such Confidential Information. Such measures shall include, but not be limited to, the

highest degree of care that the Receiving Party utilizes to protect its own Confidential Information of a similar nature, but in no event shall be less than reasonable care. The Receiving Party agrees to notify the Disclosing Party in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information of the Disclosing Party which may come to the Receiving Party's attention.

- (b) The Receiving Party shall not, without the express written consent of the Disclosing Party, disclose the Confidential Information or any part of the Confidential Information to any person except to the Receiving Party's directors, employees, professional advisors (that is internal and independent external lawyers, accountants, bankers) and /or subcontractors, who need access to such Confidential Information for solely considering, advising, evaluating and/or acting upon the Business and who are bound by appropriate confidentiality and non-use obligations in respect of such Confidential Information.
- (c) Exceptions. 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; or
 - (vii) is required to be disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental or regulatory body of competent jurisdiction; provided, however, that the Receiving Party shall provide prompt notice of such court order or requirement to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure, and to reasonably cooperate with the Disclosing Party, at the Disclosing Party's expense, in obtaining confidential treatment of the Confidential Information.

2A PERSONAL DATA PROTECTION

2A.1 The Parties hereby agree and acknowledge that in the process of discussion or negotiation of the Project as hereby contemplated, either Party may be required to provide or disclose to the other Party (hereinafter referred to as the "Data User") certain data which are personal to the disclosing Party (hereinafter referred to as the "Data Subject") including such personal data as defined in the relevant personal data protection legislations (hereinafter referred to as the "Personal Data") which are or may come into force at any time hereafter (hereinafter referred to as the "Personal Data Protection Law"), or that the product, software, hardware, equipment and/or gadget used or supplied to the other Party in course of the discussion or negotiation by the Parties hereunder may contain routines which have the capability of collecting Personal Data from users. Accordingly, the Parties hereby undertake and warrant to each other as follows:

2A.1.1 prior to transferring any Personal Data to the Data User, the Data Subject shall obtain the consent of each relevant individual (including the Data Subject itself) to the releasing or transfer of their Personal Data to the Data User and to the processing of their Personal Data by the Data User for the purposes of the Project and any other ancillary matters to the preparation and/or performance of the Project; and

2A.1.2 to comply and will continue to comply with Personal Data Protection Law and any enabling or other similar legislation, and the Parties hereby agree and undertake to indemnify and keep the other Party indemnified from and against all costs, claims, liabilities and expenses arising out of or in connection with any breach of the warranties in this Clause 2A.1 hereof. The indemnity provision provided herein shall survive the expiration or early determination of this Agreement

3. NO MODIFICATION

3.1 The Receiving Party agrees that it shall not modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Confidential Information of the Disclosing Party.

4. TERM

4.1 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.

5. TERMINATION

5.1 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.

6. RETURN OR DESTRUCTION OF MATERIALS

6.1 Any materials or documents that have been furnished by one Party to the other Party (all copies, summaries and extracts of such Confidential Information) in connection with the Project shall be promptly destroyed by the Receiving Party or returned to the Disclosing Party, accompanied by all copies of such documentation, within seven (7) days after:

- (a) the Project has been rejected or concluded; or
- (b) the written request of the Disclosing Party. Such destruction shall be certified in writing to the Disclosing Party by an authorized officer of the Receiving Party supervising such destruction.

7. PATENT OR COPYRIGHT INFRINGEMENT

7.1 Nothing in this Agreement shall be construed as the Disclosing Party granting or conferring any rights, by license or otherwise, either express or implied, to the Receiving Party under any patent, patent application, copyright, trademark, trade secret, or other intellectual property right, nor shall this Agreement grant either Party any rights in or to the other Party's Confidential Information other than the limited right to review such Confidential Information solely for the purpose of determining whether to enter into the Project.

7.2 Neither this Agreement nor any disclosure of Confidential Information by the Parties hereunder shall result in any obligation on the part of either Party to enter into any future arrangement or agreement relating to such Confidential Information or the project, or to undertake any obligation not set forth in a written agreement signed by both Parties hereto.

8. ASSIGNMENT

8.1 Neither Party may assign or transfer of any part or all of its rights and obligations under this Agreement to any person or entity without the prior written consent of the other Party, which consent shall not unreasonably withheld.

9. SUCCESSOR'S BOUND

9.1 This Agreement shall be binding upon all successors and assigns of the Parties and any reference to a Party in this Agreement includes such successors and assigns.

9.2 Duties and obligations of the respective Parties stipulated in this Agreement shall continue in full force and effect at all times, subject to clause 4.

10. SEVERABILITY

10.1 If one or more provisions of this Agreement are held to be unenforceable under applicable law, the Parties agree to renegotiate such provision in good faith. In the

event that the Parties cannot reach a mutually agreeable and enforceable replacement for such provision, then:

- (a) such provision shall be excluded from this Agreement;
- (b) the balance of the Agreement shall be interpreted Non-Disclosure Agreement as if such provision were so excluded; and
- (c) the balance of the Agreement shall be enforceable in accordance with its terms.

11. INDEPENDENT ENTITIES

11.1 The Parties are independent entities, and nothing contained in this Agreement shall be construed to constitute the Parties as partners, joint ventures, agents, employees, representatives, co-owners or otherwise as participants in a joint or common undertaking. The Disclosing Party understands that the Receiving Party may currently or in the future be developing information internally, or receiving information from third parties, that may be similar to the Disclosing Party's Confidential Information or developing relationships similar to the Project. Accordingly, nothing in this Agreement nor the disclosure of Confidential Information hereunder shall be construed as prohibiting either Party from proceeding independently to develop products or services competitive with those involved herein and/or associating with competitors of the other Party for purposes substantially similar to those involved herein.

12. WARRANTY; DISCLAIMER

12.1 Each Party warrants to the other Party hereto that it has the right to enter into this Agreement and to disclose the Confidential Information to the other Party, and that it is not a party to any other agreement or under any obligation to any third party that would prevent it from entering into this Agreement. Otherwise, all Confidential Information is provided "as is" and any and all express and implied warranties of any kind whatsoever, including those of merchantability, non-infringement, and/or fitness for a particular purpose, or those arising by statute or usage of trade are expressly excluded.

12.2 The Parties hereby acknowledge and agree that no representations or warranties are made by either Party with regard to the accuracy or completeness of the Confidential Information disclosed hereunder and that the Disclosing Party shall not have any liability for errors or omissions in, or reliance made by the Receiving Party upon, the Confidential Information. Except as otherwise provided herein, neither party shall be liable in any way whatsoever for any consequential, incidental, indirect, direct, special, economic, exemplary, or punitive damages, including those for business interruption, loss of profits or business revenue, failure to realize expected savings or other commercial or economic loss of any kind whatsoever, whether or not such damages are foreseeable or even if either party has been advised of the possibility of such damages.

13. AMENDMENT AND WAIVER

13.1 Any term of this Agreement may be amended with the written consent of both Parties. Any amendment or waiver affected in accordance with this section shall be binding upon the Parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a Party shall not constitute a waiver of any term hereof by such Party.

14. GOVERNING LAW

14.1 This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the Parties hereto shall be governed, construed and interpreted in accordance with the laws of Malaysia. The Malaysian Courts shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of the Agreement and the Receiving Party hereby submits to the jurisdiction of the Malaysian Courts for the purpose of any such actions and proceedings.

15. REMEDIES; INDEMNIFICATION

15.1 Each Party agrees that its obligations set forth in this Agreement are necessary and reasonable in order to protect the Disclosing Party and its business. Each Party expressly agrees that due to the unique nature of the Disclosing Party's Confidential Information, monetary damages would be inadequate to compensate the Disclosing Party for any breach by the Receiving Party of its covenants and agreements set forth in this Agreement. Accordingly, each Party agrees and acknowledges that any such violation or threatened violation shall cause irreparable injury to the Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Disclosing Party shall be entitled:

- (i) to obtain equitable relief, including without limitation injunctive relief and specific performance, without the necessity of proving actual damages; and
- (ii) to be indemnified by the Receiving Party from any loss or harm, including but not limited to attorney's fees and expenses, arising out of or in connection with any breach or enforcement of the Receiving Party's obligations under this Agreement or the unauthorized use or disclosure of the Disclosing Party's Confidential Information. This will be subjected to actual proof to be produced by the defaulting party. Such relief and indemnity shall be in lieu of, all other remedies available at law or in equity to the Disclosing Party.

15.2 The Parties agree that damages alone would not be an adequate remedy for breach of any provision of this Agreement and accordingly that, without prejudice to any other rights and remedies available to it, the Disclosing Party will be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement by the Receiving Party. Each party's liabilities to the other are limited to direct losses only (thus excluding liability for loss of revenue, loss of profits and any consequential loss).

16. NO PUBLICITY

16.1 Except as provided for above neither Party shall publicly announce, make any comment or provide any information to any third party concerning this Agreement, including the fact that the Parties are engaging in discussions or disclose the existence of this Agreement or its terms and conditions, or advertise or release any publicity regarding this Agreement, without the prior written consent of the other Party.

17. ENTIRE AGREEMENT

17.1 This Agreement is the product of both of the Parties hereto, and constitutes the entire agreement between such Parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the Parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the Parties hereto regarding such transactions are expressly cancelled.

18. NOTICES

18.1 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 Customer :
Customer's Address :
Attention:
Telephone No :
Facsimile No :

If to MYISP:
MYISP DOT COM SDN BHD
No. 1-2-1, Suntech @ Penang Cybercity,
Lintang Mayang Pasir 3,
11900 Bayan Baru, Pulau Pinang
Attention: Grace Ng, Senior Manager
Telephone No : 04-6838888 / 019-380 7487
Facsimile No : 04-2299807

18.2 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 dialling 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.

18.3 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 dispatching machine showing the relevant number of pages, the correct destination facsimile machine number and the result of the transmission as "OK" or "CONFIRMED".

19. COST

19.1 Each of the Parties shall bear any costs or expenses incurred by it in connection with this Agreement. The stamp duty, if any, shall be borne by Customer.

(End)

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

SIGNED for and on behalf }
XXX SDN BHD }
(Company No: XXX) }

in the presence of:

SIGNED for and on behalf }
MYISP DOT COM SDN BHD }
(Company No: 706993-V) }

in the presence of: