



REFERENCE ACCESS OFFER (RAO)

VERSION: 1.0
Dated: 4 March 2026

INDEX

ARTICLE I

EXECUTION COPY
AND
STRUCTURE OF THE AGREEMENT

ARTICLE I: Execution Copy and Structure of the Agreement

This AGREEMENT is made **BETWEEN**:

MICROTELECOM SDN BHD (Company No.: 201701038048 (1252219-U)), formerly known as Melewar TE Sdn Bhd), a company incorporated in Malaysia and having its registered office at [●] (“**Access Provider**”);

AND

[●] (Company No.: ●) a company incorporated in Malaysia and having its registered office at [●] (“**Access Seeker**”).

The Access Provider and the Access Seeker are collectively referred to as the “**Parties**” and individually referred to as a “**Party**” in this Agreement.

WHEREAS

- A. The Access Provider is a licensed operator under the Act (as defined in **Schedule 1** (Definitions and Interpretation)) and may, among others, own and/or provide, as the case may be, certain network facilities, network services and/or applications services regulated under the Act within Malaysia pursuant to its licences under the Act, and certain other facilities and/or services.
- B. The Access Seeker is a licensed operator under the Act and may, among others, own and/or provide, as the case may be, certain network facilities, network services and/or applications services regulated under the Act within Malaysia pursuant to its licences under the Act, and certain other facilities and/or services.
- C. This Agreement sets out the terms and conditions governing the provisioning of, and/or the provisioning of access to, the Facilities and Services (as defined in **Schedule 1** (Definitions and Interpretation)) by the Access Provider to the Access Seeker.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 Unless the context requires otherwise, the capitalised terms, words and expressions used in this Agreement shall have the meanings ascribed to them in **Schedule 1** (Definitions and Interpretation) or as otherwise defined within this Agreement.
- 1.2 The interpretation principles and rules set forth in **Schedule 1** (Definitions and Interpretation) shall apply to this Agreement.

2 STRUCTURE OF THE AGREEMENT

- 2.1 The following shall form, and be read and construed as, an integral part of this Agreement (“**Agreement**”):

ARTICLE I: Execution Copy and Structure of the Agreement

PARTS	SUB-PARTS	Brief Description*
MAINBODY	ARTICLE I	EXECUTION COPY AND STRUCTURE OF THE AGREEMENT Sets out the structure of this Agreement and applies generally to all matters under this Agreement.
	ARTICLE II	GENERAL TERMS AND CONDITIONS Sets out the general terms and conditions and applies generally to all matters under this Agreement.
	ARTICLE III	TERMS AND CONDITIONS FOR REGULATED FACILITIES AND SERVICES Governs the provisioning and/or use of the Regulated Facilities and Services.
SCHEDULES	SCHEDULE 1	DEFINITIONS AND INTERPRETATION
	SCHEDULE 2	ORDERING MECHANISM AND POLICIES
	SCHEDULE 3	SECURITY, INSURANCE AND CREDIT INFORMATION REQUIREMENTS
	SCHEDULE 4	GOVERNANCE AND COMMITTEE
	SCHEDULE 5	DISPUTE RESOLUTION PROCEDURE
	SCHEDULE 6	CONFIDENTIALITY AGREEMENT
DOCUMENTS	1. TECHNICAL AND COMMERCIAL DOCUMENT	

*The above is only a broad summary of the structure of this Agreement and shall not be construed as limiting the scope of the respective parts or documents forming part of this Agreement.

- 2.2 This Agreement governs the provisioning of the Facilities and Services by the Access Provider to the Access Seeker. For the avoidance of doubt, provisioning of any facilities shall be construed as provisioning of access to those facilities.
- 2.3 This is a framework Agreement and the provisioning of any Facilities and Services shall be agreed upon in accordance with the procedures, and subject to the other terms and conditions, set out in this Agreement. The scope of this Agreement is, unless otherwise specified in this Agreement, limited only to the provision of the agreed Facilities and Services.

3 PROVISIONING OF FACILITIES AND SERVICES

ARTICLE I: Execution Copy and Structure of the Agreement

- 3.1 The provisioning of the Facilities and Services by the Access Provider, and the use of the same by the Access Seeker, shall be governed by, and subject to the terms and conditions contained in, this Agreement.
- 3.2 The Parties hereby agree to be bound by the terms and conditions contained in this Agreement in relation to the provisioning and/or use of the Facilities and Services. The contractual obligations of the Access Provider under this Agreement are solely owed to the Access Seeker having signed this Agreement.

[The remainder of this page is intentionally left blank]

ARTICLE I: Execution Copy and Structure of the Agreement

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on the date first above written.

Signed for and on behalf of)
the Access Provider)
)
in the presence of)
)
)

Witness Name:
Identification Card no.:

Director/Authorised signatory
Name:
Identification Card no.:

Witness Name:
Identification Card no.:

Director/Authorised signatory
Name:
Identification Card no.:

Signed for and on behalf of)
the Access Seeker)
)
in the presence of)
)
)

Witness Name:
Identification Card no.:

Director/Authorised signatory
Name:
Identification Card no.:

Witness Name:
Identification Card no.:

Director/Authorised signatory
Name:
Identification Card no.:

ARTICLE II
GENERAL TERMS AND CONDITIONS

ARTICLE II: General Terms and Conditions

1 APPLICABILITY

- 1.1 This **ARTICLE II** (General Terms and Conditions) applies to all matters under this Agreement, including without limitation the provisioning and/or use of the Facilities and Services.

2 EFFECTIVENESS AND TERM

- 2.1 **Lodgement/Registration of Agreement:** The Parties hereby agree and acknowledge that this Agreement shall only be effective and enforceable upon lodgement and/or registration of the relevant portions of this Agreement which require lodgement and/or registration pursuant to section 150 of the Act (“**Effective Date**”). To the extent this Agreement is required to be lodged or registered with the Commission pursuant to the Act, each Party shall notify the other Party as soon as possible of the status of such lodgement and/or registration. To the extent this Agreement is required to be registered with the Commission, the Parties shall negotiate in good faith to decide on the next course of action to be undertaken in the event the Commission refuses or fails to register the same.
- 2.2 **Term of Agreement:** Save where this Agreement is terminated earlier in accordance with the terms and conditions contained in this Agreement, this Agreement shall become effective on the Effective Date and shall continue for an initial term of five (5) years (“**Initial Term**”). Any renewal of this Agreement shall be subject to mutual agreement between the Parties from time to time (“**Renewal Period**”). The Initial Term together with the Renewal Period shall be collectively referred to as the “**Term**” of this Agreement.
- 2.3 **Term of Access/Services:** For the avoidance of doubt, the term for the provisioning of any Facilities and Services shall be as set out in the Order, subject to the procedures and the other terms and conditions set out in this Agreement, including without limitation the Minimum Contractual Term set out in the Technical and Commercial Document, if any and where applicable (“**Term of Access/Services**”).

3 ORDER PROCEDURE

- 3.1 **Order:** The Access Seeker may request to access or use any Facilities and Services from the Access Provider from time to time in accordance with the applicable procedure set out in **ARTICLE III** (Terms and Conditions for Regulated Facilities and Services) of this Agreement. In this regard, **Schedule 2** (Ordering Mechanism and Policies) shall apply. Each Party shall comply with its obligations and responsibilities, and may exercise its rights, as set out in **Schedule 2** (Ordering Mechanism and Policies).
- 3.2 **Order to be Confirmed or Accepted:** The Facilities and Services to be provided by the Access Provider to the Access Seeker under this Agreement shall be as set out in the relevant Order accepted or confirmed (as the case may be) by both the Access Provider and the Access Seeker in writing pursuant to this Agreement. The Access Provider shall be obliged to provide the Facilities and Services only to the extent that the underlying Order has been mutually confirmed or accepted by both Parties in writing, save and except as otherwise stated in this Agreement.

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- 3.3 **Technical and Commercial Document:** The Technical and Commercial Document outlines the Facilities and Services which may be offered by the Access Provider, along with the applicable technical requirements and specific terms. The Access Seeker may request access to or use of any of the Facilities and Services listed in the Technical and Commercial Document, or may request access to or use of any other facilities and services from the Access Provider. Upon confirmation or acceptance of an Order by both Parties in writing, the Access Provider will deliver the confirmed and accepted Order in accordance with and subject to this Agreement.
- 3.4 **Overarching Reasonableness:** Without limiting the generality of any other provisions contained in this Agreement, the Access Provider may refuse a request from the Access Seeker for access to any Facilities and Services if:
- 3.4.1 supply of the relevant Facilities and Services would not be reasonable. A request for access to any Regulated Facilities and Services may not be reasonable if one or more of the criteria in **Clause 7.13** (Grounds of Refusal) of **ARTICLE III** (Terms and Conditions for Regulated Facilities and Services) are satisfied; or
- 3.4.2 supply of the relevant Facilities and Services would be reasonable, but the terms and conditions requested by the Access Seeker are not reasonable.
- For the avoidance of doubt, this Agreement does not intend or attempt to narrow the grounds of refusal upon which the Access Provider may rely upon under the Act.
- 3.5 **Access Seeker to Provide Necessary Information/Assistance:** In respect of each Order, the Access Seeker shall, and shall ensure that its Personnel shall, provide and secure for the Access Provider:
- 3.5.1 all accurate, necessary and complete Materials in connection with the Access Seeker's use of or access to the Facilities and Services, to the extent necessary for the Access Provider to carry out its activities and obligations hereunder;
- 3.5.2 all necessary right for the Access Provider to access and/or modify the Network of the Access Seeker, to the extent necessary for the Access Provider to carry out its activities and obligations hereunder; and
- 3.5.3 shall promptly notify the Access Provider of any matter in relation to the Access Seeker's sites, premises, Network and/or activities which may materially affect the Access Seeker's activities and obligations under this Agreement, or otherwise may pose any security or other material risks to the Network of the Access Provider.
- 3.6 **Dependencies:** The Access Seeker acknowledges that the provisioning, and/or use of the Facilities and Services may be dependent on the Access Seeker carrying out its activities and obligations under this Agreement in a timely and efficient manner and subject to any assumptions, restrictions, limitations and qualifications set out in this Agreement. Any deviations from or use exceeding any assumptions, restrictions,

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limitations and qualifications or failure of the Access Seeker to carry out, or delay in carrying out, the Access Seeker's activities or obligations hereunder, may adversely affect the Facilities and Services and result in additional fees and/or charges, without prejudice to other rights and/or remedies of the Access Provider under this Agreement and/or at law. The Access Provider shall not be made responsible for, and shall be reimbursed of all reasonable costs and/or expenses caused by or due to, the Access Seeker's failure to carry out, or delay in carrying out, its activities and obligations as required under this Agreement.

- 3.7 **Delay not caused by Access Provider:** Unless otherwise stated in this Agreement, where a timeline is agreed and stipulated in this Agreement, an extension of time reasonable under the circumstances shall be granted by the Access Seeker for any delay to the extent such delay is not caused by or attributable to the Access Provider's breach, fault or negligence under this Agreement, including without limitation due to Force Majeure and/or any breach, delay and/or fault on the part of the Access Seeker (and/or its Personnel). The Access Provider shall be entitled to claim, and be reimbursed, for any costs and expenses reasonably incurred by the Access Provider in relation to such delay.

4 GENERAL OBLIGATIONS

4.1 Each Party shall:

- 4.1.1 co-operate fully with the other Party with all matters in connection with this Agreement in a commercially reasonable manner;
- 4.1.2 deal with the other Party with utmost good faith and in a professional and appropriate manner, including without limitation:
- (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 any Facilities and Services or request for access to any Facilities and Services in an unreasonable manner; and
 - (c) avoiding unnecessary disputes and resolving disputes promptly and fairly.
- 4.1.3 carry out its activities and obligations hereunder in a timely and diligent manner, with reasonable care and skill; and
- 4.1.4 declare, make or sign all documents and do all things necessary or desirable to give effect to this Agreement.

5 FEES AND TAXES

- 5.1 **Fees and Charges:** Subject to the specific billing procedure and obligations as set out in **ARTICLE III** (Terms and Conditions for Regulated Facilities and Services) of this Agreement, the Access Seeker shall pay the Access Provider all fees and/or charges mutually agreed between the Parties in a timely manner.

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- 5.2 **Taxes:** Unless otherwise stated or agreed between the Parties, all agreed fees and/or charges shall be, and are stated as, exclusive of all Taxes and all such Taxes shall be borne by the Access Seeker. The Taxes shall be payable by the Access Seeker in addition to the agreed fees and charges in a timely manner and the Access Seeker shall keep the Access Provider fully indemnified of any such Taxes.
- 5.3 **Withholding Tax:** If the Access Seeker is required to withhold any withholding tax imposed by any governmental or regulatory authority/body from payments due under this Agreement, then the amount payable by the Access Seeker shall be increased by the amounts of such withholdings unless otherwise agreed between the Parties or prohibited by applicable laws.
- 5.4 **Out-of-Pocket Expenses:** Unless otherwise stated or agreed between the Parties, the Access Provider shall be entitled to claim all Out-of-Pocket Expenses reasonably incurred by the Access Provider in carrying out its obligations under this Agreement from the Access Seeker and the Access Provider shall be fully reimbursed by the Access Seeker of such Out-of-Pocket Expenses.
- 5.5 **Currency:** If any change in, or the introduction of, any laws, including without limitation any direction, request or requirement of any central bank, monetary, regulatory or other authority, results in a currency depreciation of the Malaysian Ringgit or the appreciation of any other currency against the Malaysian Ringgit or any other currency control that will increase the cost to, or impose an additional cost on, either Party in making or keeping its Network available, or maintaining its Network, then the affected Party may request for a review of the agreed fees and/or charges which are affected by it and the Parties shall, in good faith, negotiate and agree on any amendments to the agreed fees and/or charges.

6 SECURITY, INSURANCE AND CREDITWORTHINESS INFORMATION REQUIREMENTS

- 6.1 The Security Requirements, Insurance Requirements and Creditworthiness Information Requirements set out in **Schedule 3** (Security, Insurance and Credit Information Requirements) shall apply.
- 6.2 Each Party shall comply with its obligations and responsibilities, and may exercise its rights, as set out in **Schedule 3** (Security, Insurance and Credit Information Requirements).

7 EACH PARTY RESPONSIBLE FOR ITS OWN NETWORK

- 7.1 Each Party shall be responsible for the operation and maintenance of its own Network, except as otherwise expressly provided in this Agreement. In this regard, the Access Seeker shall be solely responsible for the operation and maintenance of its own Network, to the extent such responsibilities do not fall within the Access Provider's obligations and responsibilities under this Agreement.
- 7.2 The Access Seeker acknowledges that any changes to the Access Seeker's Network may adversely affect the use of the Facilities and Services and accordingly, the Access Provider shall not be held responsible in any manner whatsoever for any liability

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attributable to any changes made to the Access Seeker's Network by the Access Seeker (or its Personnel).

8 USE OF FACILITIES AND SERVICES

- 8.1 The Access Seeker shall, and shall ensure its Personnel, use the Facilities and Services, Network, sites and/or other Materials provided or made available by the Access Provider and/or its Personnel (or on their behalf) to the Access Seeker (and/or its Personnel) under this Agreement (“**AP Materials/Facilities/Services**”) in strict accordance with, and subject always to, this Agreement and all applicable laws. The Access Seeker shall not, and shall ensure its Personnel shall not, use the AP Materials/Facilities/Services in any improper, unauthorised and/or unlawful manner, for any unlawful purpose, or in any manner inconsistent with or not authorised by this Agreement. Any use of, or access to, any AP Materials/Facilities/Services that is not expressly granted or made available by the Access Provider to the Access Seeker under this Agreement is strictly prohibited and is hereby reserved by the Access Provider.
- 8.2 Without limiting the generality of the foregoing, the access to, and/or use of, the AP Materials/Facilities/Services shall be subject to the following (save and except as otherwise authorised by the Access Provider in writing or expressly set out in this Agreement):
- 8.2.1 all access to and/or use of the AP Materials/Facilities/Services shall only be to the extent provided or made available for use and/or access by the Access Provider under this Agreement and shall be subject to the Access Provider's standard access control procedure;
- 8.2.2 no alterations or modifications shall be made to the whole or any part of the AP Materials/Facilities/Services unless otherwise approved by the Access Provider;
- 8.2.3 any access to and use of the AP Materials/Facilities/Services shall be on a strictly necessary basis and limited to the scope permitted under this Agreement; and
- 8.2.4 the Access Seeker shall not and shall not attempt to, and shall ensure that its Personnel shall not and shall not attempt to, where applicable:
- (a) gain unauthorised access to, misuse, abuse or hack into, the AP Materials/Facilities/Services and/or any associated systems in any manner whatsoever or otherwise compromise the integrity of the same;
 - (b) commercialise the AP Materials/Facilities/Services in any manner whatsoever (save and except to the extent strictly necessary in respect of the operator-to-operator relationship of the Parties in the manner reasonably contemplated under this Agreement);
 - (c) use any device, software or routine to interfere or attempt to interfere with the proper working of the AP Materials/Facilities/Services and/or any associated systems;

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- (d) transmit or distribute, or cause to be transmitted or distributed, any malicious or harmful code or data, viruses, and/or other cyberthreats into or through the AP Materials/Facilities/Services and/or any associated systems. The Access Seeker shall, and shall ensure that its Personnel, operate and maintain up-to-date virus scanning and prevention software in accordance with good industry practice to ensure that the their Networks which are integrated with or connected to the Access Provider's Network do not contain, and are reasonably free from, any malicious or harmful code or data, viruses, and/or other cyberthreats;
- (e) collect, obtain, share or harvest any Materials from or through the AP Materials/Facilities/Services and/or any associated systems not intended for or not intentionally made available to the Access Seeker (except where such act is incidental to the normal use of the Facilities and Services for the Permitted Purpose or where it is necessary for back-up, operational and/or security reasons, as authorised by the Access Provider);
- (f) use the AP Materials/Facilities/Services in a way that could damage, disable, overburden, impair or compromise the Network or security of the Access Provider, adversely affect the quality of any facilities and/or services owned or provided by the Access Provider, or interfere with other users' use of the Facilities and Services; and
- (g) bypass or circumvent measures employed to prevent or limit access to the AP Materials/Facilities/Services and/or any associated systems.

8.3 Where any Equipment and/or software is required to be connected to or integrated with the Access Provider's Network for the Access Seeker to use or access the Facilities and Services, the Access Seeker shall ensure that such Equipment and/or software complies with the requirements specified by the Access Provider and are type approved.

8.4 The Access Seeker acknowledges that the Access Provider may monitor (remotely or otherwise) the use of and/or access to the AP Materials/Facilities/Services for compliance with this Agreement and, where requested by the Access Provider, the Access Seeker shall provide information requested by the Access Provider necessary for such purpose. The Access Seeker shall maintain adequate records of the use of and/or access to the AP Materials/Facilities/Services throughout the term of this Agreement and for a period of seven (7) years thereafter.

9 COMPLIANCE WITH LAWS, LICENCES AND CHANGE IN LAWS

9.1 **Access Provider to Comply with Laws/Licences:** The Access Provider shall:

- 9.1.1 comply with all applicable laws relating to the provisioning of the Facilities and Services and its business activities and obligations in connection with this Agreement; and

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- 9.1.2 procure, obtain and maintain all necessary licences, consents, approvals and permits (regulatory, contractual or otherwise) relating to the provisioning of the Facilities and Services and its business activities and obligations in connection with this Agreement.
- 9.2 **Access Seeker to Comply with Laws/Licences:** The Access Seeker shall:
- 9.2.1 comply with all applicable laws relating to the use of the Facilities and Services and its business activities and obligations in connection with this Agreement; and
- 9.2.2 procure, obtain and maintain all necessary licences, consents, approvals and permits (regulatory, contractual or otherwise) relating to the use of the Facilities and Services and its business activities and obligations in connection with this Agreement.
- 9.3 **Change in Laws:** Where continued operation of this Agreement or access to any Network, and/or Facilities and Services provided under this Agreement is or will be unlawful as a result of a legislative change or change in laws, the Access Seeker and the Access Provider must meet within five (5) Business Days of becoming aware of the relevant legislative change to review whether the access to the relevant Network, and/or Facilities and Services may be provided by the Access Provider on different terms and conditions which are acceptable to the Access Seeker. If the Parties are unable to amicably agree to the provision of access on different terms and conditions, either Party may request resolution of the dispute in accordance with the Dispute Resolution Procedure. The Access Provider shall be entitled to charge additional fees to implement any changes due to any legislative change or change in laws.
- 9.4 **Act:** Nothing in this Agreement shall be construed to prevent any Party from carrying out any activities it is required to perform by virtue of, and only to the extent mandated under, the Act. Each Party shall comply with the Act to the extent it relates to that Party's activities and obligations under or in connection with this Agreement, including without limitation all applicable directions, determinations, and guidelines having the force of law issued pursuant to the Act.

10 COMPENSATION ARRANGEMENTS, LIABILITY AND INDEMNITY

- 10.1 **General Liability Principle:** Save to the extent that another provision of this Agreement expressly provides for (or expressly excludes or limits) a remedy, a liability or a form of compensation in relation to an act, omission or event, this **Clause 10** (Compensation Arrangements, Liability and Indemnity) of this **ARTICLE II** shall regulate the liability (whether arising in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or any other cause) of a Party to the other Party under and in relation to this Agreement and in relation to any act, omission or event relating to or arising out of this Agreement.
- 10.2 **Exclusion for Indirect Losses:** To the maximum extent permitted by all applicable laws and notwithstanding anything contained in this Agreement, in no event shall a Party be liable to the other Party for any indirect, incidental, punitive and/or consequential damages and/or losses of any kind (asserted on the basis of contract, equity, tort or otherwise) for any reason, including without limitation any loss of profit

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or goodwill and/or loss of business, production or revenue, whether or not such damages and/or losses were reasonably foreseeable or the other Party had been advised of the possibility of the same incurring.

10.3 Indemnity

10.3.1 **General Indemnity:** Subject to **Clause 10.4** (Limitation and Exclusion) of this **ARTICLE II**, a Party (“**Indemnifying Party**”) shall fully indemnify, hold harmless, and if reasonably requested by the other Party (“**Indemnified Party**”), defend the Indemnified Party from and against any and all actions, claims, proceedings, costs (including reasonable legal fees and expenses), damages, demands, expenses, losses, fines, penalties and other liabilities of any nature made against, suffered, or incurred by the Indemnified Party arising howsoever from or in connection with any wilful act, breach, fraud, misconduct, fault, omission, misrepresentation, negligence, non-observance and/or non-performance of, under or in connection with this Agreement (whether in tort, contract or otherwise) by or on the part of the Indemnifying Party or of any other person for whose acts and/or omissions the Indemnifying Party is responsible or liable, vicariously or otherwise.

10.3.2 **Indemnification Procedure:** Where the Indemnified Party requests the Indemnifying Party to defend any claim or proceeding pursuant to **Clause 10.3.1** (General Indemnity) of this **ARTICLE II**, the Indemnifying Party shall defend such claim or proceeding in good faith, in the best interest of the Indemnified Party and in accordance with the Indemnified Party’s reasonable instruction. The defence strategy and any settlement in respect of the claim or proceeding shall be subject to the Indemnified Party’s reasonable approval. In the event the Indemnifying Party fails to conduct the defence, or settlement, of the claim or proceeding to the reasonable satisfaction of the Indemnified Party or if the defence or settlement of such claim or proceeding is conducted by the Indemnifying Party in a manner which may prejudice the interest of the Indemnified Party (in the Indemnified Party’s reasonable opinion), the Indemnified Party shall be entitled to conduct or take control of the defence and/or the settlement of such claim or proceeding at the Indemnifying Party’s costs and expense and the Indemnified Party’s conducting or taking control of the defence and/or the settlement in such event shall be without prejudice in any manner whatsoever to the right of the Indemnified Party to claim full indemnity from the Indemnifying Party under this Agreement.

10.4 Limitation and Exclusion

10.4.1 **AP Liability Cap:** To the maximum extent permitted by all applicable laws and notwithstanding anything contained in this Agreement, the Access Provider’s maximum, aggregate and cumulative total liability to the Access Seeker, however arising under or in connection with this Agreement (whether arising in contract, tort or otherwise), shall not exceed Ringgit Malaysia Five Million (RM 5,000,000) (“**AP Liability Cap**”) save and except that the AP Liability Cap shall not apply to any liability of the

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Access Provider to the extent caused by or attributable to the Access Provider's:

- (a) fraud, wilful default or gross negligence; and/or
- (b) breach of **Clause 9.1** (Access Provider to Comply with Laws/Licences) of this **ARTICLE II**.

10.4.2 **AS Liability Cap:** To the maximum extent permitted by all applicable laws and notwithstanding anything contained in this Agreement, the Access Seeker's maximum, aggregate and cumulative total liability to the Access Provider, however arising under or in connection with this Agreement (whether arising in contract, tort or otherwise), shall not exceed Ringgit Malaysia Five Million (RM 5,000,000) ("**AS Liability Cap**") save and except that the AS Liability Cap shall not apply to any liability of the Access Seeker to the extent caused by or attributable to Access Seeker's:

- (a) fraud, wilful default or gross negligence;
- (b) breach of **Clause 9.2** (Access Seeker to Comply with Laws/Licences) and/or **Clause 8** (Use of Facilities and Services) of this **ARTICLE II**; and/or
- (c) liability to pay all fees and charges under this Agreement for any access to, or use of, any Facilities and Services. For the avoidance of doubt, in calculating the AS Liability Cap, all fees and charges payable by the Access Seeker under this Agreement for any access to, or use of, any Facilities and Services shall be excluded from the computation of such AS Liability Cap. All such fees and charges due under this Agreement shall be paid in full regardless of whether the other liability of the Access Seeker has reached the AS Liability Cap.

10.4.3 **Exclusion of Warranties:** The warranties expressly set out in this Agreement are the only warranties agreed between the Parties. Save and except as expressly provided in this Agreement and to the maximum extent permitted by applicable laws, all conditions, endorsements, guarantees, assurances, representations and warranties of any kind (whether express, statutory, implied or otherwise), including without limitation any implied warranty of merchantability, satisfactory quality, non-infringement or fitness for a particular purpose, with respect to the provisioning of Facilities and Services are hereby disclaimed, negative and excluded. Without in any way limiting the generality of the foregoing and except as otherwise stated in this Agreement, nothing in this Agreement will imply, and the Access Provider does not warrant or provide any other similar assurance, that: (i) the Facilities and Services will meet the Access Seeker's requirements save and except for the Requirements set out in this Agreement; (ii) the use or operation of any Facilities and Services will be uninterrupted or error free or that any defects or cyberthreats (including without limitation any harmful code, virus and/or malware) affecting the Facilities and Services will be discovered, detected, remedied and/or rectified (except to the extent agreed between the Parties as part of the Requirements); and/or (iii) data to

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be transmitted through the Facilities and Services will be transmitted timely and accurately.

10.4.4 **Exclusion for Contents Liability:** Unless otherwise stated herein, the Parties acknowledge and agree that, subject to the quality of standards stipulated in this Agreement, the Access Provider has no control whatsoever over:

- (a) the contents accessed or transmitted through its Network and accordingly, the Access Provider shall not be responsible for the contents of any communications conveyed by making use of its Facilities and Services (save and except for the contents of any communications created or owned by the Access Provider); and
- (b) the accuracy, quality or integrity of the contents accessed or transmitted via its Network and accordingly, the Access Provider shall not be responsible for any delays, non-deliveries, mis-deliveries, interruptions, and/or loss of any contents resulting therefrom.

10.5 **Survival:** This **Clause 10** (Compensation Arrangements, Liability and Indemnity) of this **ARTICLE II** shall survive the termination or expiry of this Agreement for whatsoever reason.

11 CONFIDENTIALITY

11.1 **Confidentiality Agreement:** The Parties shall be bound by the Confidentiality Agreement executed between the Parties. This **Clause 11** (Confidentiality) of this **ARTICLE II** shall not supersede, and shall be read together with, the Confidentiality Agreement and to the extent of any conflict between this **Clause 11** (Confidentiality) of this **ARTICLE II** and any provisions contained in the Confidentiality Agreement, the provision which offers stricter protection shall prevail to the extent necessary to resolve such conflict. Both Parties agree that this **Clause 11** (Confidentiality) of this **ARTICLE II** is necessary to protect the legitimate commercial interests of the Parties.

11.2 **Definition of Confidential Information:** The “**Confidential Information**” of a Party (“**disclosing Party**”) shall mean all Materials of any kind, whether in writing, machine readable or visually readable form, oral or otherwise and whether or not labelled as “Confidential”: (i) that are made available, communicated or released by, or on behalf of, the disclosing Party to the other Party (“**receiving Party**”) or to the receiving Party’s Personnel or other persons who are receiving such Materials on the receiving Party’s behalf (whether prior to or after the Effective Date) under, for the purpose in connection with or as a result of this Agreement; and (ii) that are obtained by the receiving Party or the receiving Party’s Personnel or other persons who are obtaining such Materials on the receiving Party’s behalf (whether prior to or after the Effective Date), relating to the disclosing Party’s business, products, services, Personnel, customers and/or operations under, for the purpose in connection with or as a result of this Agreement.

11.3 **Excluded Information:** Notwithstanding anything contained herein, the disclosing Party’s Confidential Information shall exclude any Materials that:

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- 11.3.1 is or becomes publicly known through no wrongful act or default of the receiving Party (and/or its Personnel and/or any party for whose acts and/or omissions the receiving Party is responsible or liable); or
 - 11.3.2 is independently developed by the receiving Party.
- 11.4 **Permitted Disclosure:** Unless otherwise stated in this Agreement, the receiving Party shall not disclose the disclosing Party's Confidential Information to any person except:
- 11.4.1 to the relevant governmental or statutory authorities, officers or bodies or any other person to the extent required by any applicable laws subject always to **Clause 11.9** (Disclosure Required by Laws) of this **ARTICLE II**;
 - 11.4.2 to any relevant tribunals, court officers, parties and/or court to the extent necessary to resolve any disputes under this Agreement;
 - 11.4.3 to its auditors and/or legal, financial and/or accounting advisors (in their professional capacity), who have a definite need to know the disclosing Party's Confidential Information for professional advice relating to the internal affairs of the receiving Party;
 - 11.4.4 to its Personnel and/or Customer to the extent such disclosure is strictly necessary for the Permitted Purpose provided always that such Personnel and/or Customer are bound confidentiality obligation no less stringent than those set out in this Agreement; and/or
 - 11.4.5 to any person expressly permitted under this Agreement or approved by the disclosing Party in writing,
- collectively "**Permitted Disclosure**".
- 11.5 **Limiting Disclosure and Permitted Use:** The receiving Party shall limit the disclosure of the disclosing Party's Confidential Information and shall only disclose such part of the disclosing Party's Confidential Information as may be necessary on a need-to-know basis having regard to the purpose relating to the Permitted Disclosure. Each Party shall use the other Party's Confidential Information only to the extent necessary for the Permitted Purpose in accordance with the terms and conditions contained in this Agreement.
- 11.6 **Standard of Protection:** The standard, measures and degree of care used by the receiving Party to protect the disclosing Party's Confidential Information shall not be lesser than the standard, measures and degree of care it uses to protect its own confidential information and in no event shall such standard, measures and degree of care be lesser than a reasonable standard and/or any standard, measures and degree of care required by applicable laws.
- 11.7 **Ensuring Protection for Disclosed Information:** Subject to **Clause 11.8** (Ensuring Protection to the Extent Reasonable) of this **ARTICLE II**, the receiving Party shall

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use, and ensure that all its Personnel and/or other third parties who have access to the disclosing Party's Confidential Information through the receiving Party ("**Recipients of CI**") use, the disclosing Party's Confidential Information solely for the Permitted Purpose and shall supervise and control the use of the disclosing Party's Confidential Information by all such Recipients of CI. The receiving Party shall ensure that all the Recipients of CI have been duly apprised of the requirements of this **Clause 11** (Confidentiality) of this **ARTICLE II** and are or will be bound to keep the disclosing Party's Confidential Information confidential as required under this Agreement. The receiving Party shall be responsible for, and assume full liability arising from, any disclosure or use of the disclosing Party's Confidential Information in a manner not permitted under this Agreement by any of the Recipients of CI. If reasonably requested by the disclosing Party, the receiving Party shall procure that the relevant Recipients of CI enter into a non-disclose or confidentiality agreement with the disclosing Party.

- 11.8 **Ensuring Protection to the Extent Reasonable:** In respect of disclosure made pursuant to **Clauses 11.4.1** and/or **11.4.2** (Permitted Disclosure) of this **ARTICLE II**, **Clause 11.7** (Ensuring Protection for Disclosed Information) of this **ARTICLE II** shall apply only to the extent practicable and reasonable.
- 11.9 **Disclosure Required by Laws:** In the event that any disclosing Party's Confidential Information is required to be disclosed by the receiving Party (and/or any of its Recipients of CI) in any manner due to the requirements of any applicable laws, the receiving Party shall give prompt written notice to the disclosing Party unless prohibited by applicable laws. The receiving Party shall, and shall ensure its relevant Recipients of CI: (i) take all necessary steps to verify the authority of the officer requesting for such information and only disclose such minimum information as is legally required. The receiving Party shall, at the request of the disclosing Party, use commercially reasonable efforts to obtain confidential treatment for any of the disclosing Party's Confidential Information that is to be disclosed; (ii) allow the disclosing Party, if it wishes, to take such measures as it deems necessary or desirable to challenge any such disclosure or to otherwise redact or minimize such disclosure; and (iii) fully cooperate with the disclosing Party.
- 11.10 **Terms of Agreement to be Treated as Confidential Info:** For the avoidance of doubt, the terms of this Agreement shall be treated as Confidential Information of another Party and subject to the confidentiality obligations contained in this **Clause 11** (Confidentiality) of this **ARTICLE II**.
- 11.11 **Survival:** This **Clause 11** (Confidentiality) of this **ARTICLE II** shall survive the termination or expiry of this Agreement for whatsoever reason.

12 INTELLECTUAL PROPERTY RIGHTS AND MATERIALS

- 12.1 **Existing IP:** All existing Intellectual Property Rights of a Party (and/or its third party suppliers, licensors, service providers or affiliates) shall continue to be owned by the Party (and/or its third party suppliers, licensors, service providers or affiliates). Nothing in this Agreement shall transfer or assign any such Intellectual Property Rights to the other Party.

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- 12.2 **Creator/Facility Owner to Own:** As between the Parties and unless otherwise agreed between the Parties, all Materials, including any Intellectual Property Rights subsisting therein, created or developed by a Party pursuant to this Agreement shall be owned by, and vest in, the Party that created or developed such Materials, provided that where any Materials created or developed relate to and/or form an extension of a Party's Network, including those owned or provided by such Party's third party suppliers, licensors, service providers or affiliates ("**Facility Owner**"), such Materials, including any Intellectual Property Rights subsisting therein, shall be owned by, and vest in, the Facility Owner.
- 12.3 **Joint IP to be Negotiated:** Subject always to **Clause 12.2** (Creator/Facility Owner to Own) of this **ARTICLE II**, the Parties will negotiate the ownership and other arrangements in respect of any Materials jointly developed by the Parties, if any, in the course of performing, or in connection with, this Agreement.
- 12.4 **Right to Use to Other Party's Materials:** Each Party grants the other Party a non-exclusive, non-transferrable, revocable right and licence to use any Materials owned by it or in which any of its Intellectual Property Rights subsist, solely to the extent such Materials are expressly made available by that Party to the other Party, and only as necessary for the on-going operation of this Agreement and the interoperability of the Parties' respective Networks, strictly for the Permitted Purpose and in accordance with the terms and conditions contained in this Agreement.
- 12.5 **Use of Logos/Trademark:** No Party shall use the names, logos, trade names, trademarks, service names and/or service marks of the other Party (and/or its affiliates) unless it has procured such other Party's prior written approval for each specific use and subject to such conditions as may be imposed by such other Party.

13 PERSONAL DATA

- 13.1 Each Party shall comply with the Data Protection Legislation in respect of its processing of personal data and/or personal information under this Agreement. The receiving Party shall process personal data made available, extended or disclosed to it by the disclosing Party in compliance with the Data Protection Legislation in its capacity as a Data Processor.

14 PERSONNEL

- 14.1 Each Party shall procure and ensure that its Personnel comply with all applicable terms and conditions of this Agreement as if they were that Party itself, whether or not such terms and conditions expressly refer to or mention such Party's Personnel. Each Party shall take all necessary steps and measures to ensure such compliance by its Personnel.
- 14.2 Each Party shall be fully responsible for, and assume full liability in respect of, any acts, omissions, and/or negligence of any of its Personnel under or in connection with this Agreement, as if such acts, omissions, and/or negligence were those of that Party.
- 14.3 All Personal of a Party shall be deemed to be acting under the direction or control of that Party for the purpose of this Agreement.

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15 EXTENT OF LIABILITY

- 15.1 Unless otherwise stated herein and without prejudice to the Access Provider's other rights and/or remedies under this Agreement and/or at law, the Access Provider shall not be liable or held responsible in any manner whatsoever for any liability to the extent such liability arises from, or is attributable or due to, any of the following:
- 15.1.1 any unilateral or unauthorised alteration or modification by the Access Seeker and/or its Personnel of the AP Materials/Facilities/Services;
 - 15.1.2 the improper or unauthorised use or operation of the AP Materials/Facilities/Services by the Access Seeker and/or its Personnel;
 - 15.1.3 the use of the AP Materials/Facilities/Services through the Access Seeker and/or its Personnel by any person not authorised hereunder;
 - 15.1.4 any works made pursuant to the Access Seeker's unique or specific requirements and the Access Provider's compliance with any unique or specific requirements and/or instructions of the Access Seeker, or another party on behalf of the Access Seeker;
 - 15.1.5 anything which the Access Seeker and/or its Personnel provides which is incorporated into the AP Materials/Facilities/Services (if any);
 - 15.1.6 any error, issue, defect and/or problem originating from the AS Materials, Access Seeker's Network or any POIs under the Access Seeker's control or responsibility;
 - 15.1.7 any failure, delay, wilful act, misconduct, fault, breach, negligence and/or omission on the part of the Access Seeker and/or its Personnel, whether in tort, contract or otherwise;
 - 15.1.8 any Force Majeure Event; or
 - 15.1.9 any third party (including such third party's items, products and/or services), other than the subcontractors engaged directly by the Access Provider who are involved in the performance of this Agreement.
- 15.2 If the Access Provider agrees to attend to any non-conformity, error, issue, defect and/or problem due to or caused by any of the foregoing events, such works or services may be additionally chargeable by the Access Provider.

16 ACCESS SEEKER MATERIALS

- 16.1 Any Materials originated from and furnished by the Access Seeker in relation to the Access Seeker's business and operations ("**AS Materials**") shall be owned by the Access Seeker and the Access Seeker shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of such AS Materials.
- 16.2 The Access Seeker grants the Access Provider (and/or the Access Provider's Personnel) the royalty-free right and licence, and shall procure and secure all the

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necessary right, licence, approval, consent and/or permit, for the Access Provider (and/or the Access Provider's Personnel), to use the AS Materials to the extent necessary for the Permitted Purpose. The Access Seeker warrants, and shall ensure, that all such AS Materials, and the use of the same by the Access Provider (and/or the Access Provider's Personnel) to the extent necessary for the Permitted Purpose, will not violate any applicable laws and/or infringe the rights (including the Intellectual Property Rights) of any third party.

17 GOVERNANCE AND COMMITTEE

17.1 The requirements set out in **Schedule 4** (Governance and Committee) shall apply. Each Party shall comply with its obligations and responsibilities, and may exercise its rights, as set out in **Schedule 4** (Governance and Committee).

18 COMPLIANCE AUDIT

18.1 The Access Provider shall have the right to audit the Access Seeker's compliance with this Agreement through an independent auditor and/or itself.

18.2 The Access Seeker shall, upon the Access Provider's notice, permit (and procure its Personnel to permit) the Access Provider (and/or any third party appointed by the Access Provider) to audit, review and inspect the Access Seeker's and/or its Personnel's compliance with this Agreement.

18.3 This audit right shall not be exercised more than once every year and shall be exercised by the Access Provider in such a manner as not to substantially interfere with and disrupt the normal conduct of business of the Access Seeker.

19 MISCELLANEOUS

19.1 **Review:** This relevant part of this Agreement shall be reviewed:

19.1.1 if the Minister issues a direction or determination relating to its subject matter;

19.1.2 if the Commission issues a direction or determination relating to its subject matter;

19.1.3 if the Act or the Mandatory Standard on Access is amended in relation to its subject matter;

19.1.4 by agreement of the Parties; or

19.1.5 if a condition of any of the Party's licence is amended or deleted or a new condition is imposed in relation to its subject matter.

19.2 **Force Majeure.** Save and except for the obligation to make payments, no Party shall be liable for, nor shall such Party be considered in breach of this Agreement due to, any delay or failure to perform its obligations hereunder as a result of or due to any Force Majeure Event, to the extent that such delay, failure or breach is caused by or due to the Force Majeure Event. If any Force Majeure Event affecting any Party

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continues for thirty (30) days consecutively or accumulatively (in any calendar year), the Parties shall meet and discuss in good faith.

- 19.3 **Third Party Rights.** For the avoidance of doubt, this Agreement is intended to apply only to the provision of the Facilities and Services by the Access Provider to the Access Seeker and to related matters concerning the Parties and shall not be construed as conferring benefits on any third persons.
- 19.4 **Complete Agreement.** This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any prior agreements, understandings or arrangements between the Parties, whether oral or in writing relating to the subject matter hereof and no representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to this Agreement except as set out in this Agreement.
- 19.5 **Binding Effect.** This Agreement shall be binding upon the Parties hereto, and inure to the benefit of Access Provider and the Access Seeker and their respective permitted assigns and successors. This Agreement shall continue to be valid notwithstanding any changes in the Parties whether in name, style, constitution or composition.
- 19.6 **Assignability and Subcontract.** No Party shall assign and/or novate any of its rights and/or obligations under this Agreement to any third party without the prior written approval of the other Party, such approval not to be unreasonably withheld, provided always that the Access Provider shall be entitled to sub-contract its obligations to any third parties based on the Access Provider's sub-contract procedure in its sole discretion.
- 19.7 **Governing Law and Dispute Resolution.** This Agreement shall be governed by, construed and enforced under, and subject to, the law of Malaysia, and subject to **Schedule 5** (Dispute Resolution Procedure), the Parties agree to submit to the jurisdiction of the Courts of Malaysia. Any dispute which may arise between the Parties under this Agreement shall be resolved in accordance with and subject to **Schedule 5** (Dispute Resolution Procedure).
- 19.8 **Variation.** Unless otherwise agreed herein, any changes (whether required by applicable laws or otherwise) shall be subject to mutual agreement (agreement not to be unreasonably withheld) and may be implemented by the Access Provider subject to additional fees and charges. Where any changes in respect of the Regulated Facilities and Services are required to be registered with or notified to the Commission in accordance with the Act to be valid, such changes shall not be valid or effective until such required registration or notification has been done.
- 19.9 **Severability.** Any provision contained in this Agreement which is illegal, invalid or unenforceable under any applicable law shall, to the maximum extent possible, continue to apply with the necessary modification in order that the provision is legal, valid and enforceable provision which most closely reflects the original provision. Subject to the foregoing or if the foregoing is not possible, any provision which is illegal, invalid or unenforceable under applicable law shall be fully severable and ineffective to the extent of such illegality, invalidity or unenforceability without

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invalidating the remaining provisions contained in this Agreement (such remaining provisions shall remain in full force and effect).

- 19.10 **Notices.** Unless otherwise stated herein, all notices which are required to be given hereunder shall be in writing and in English and shall be sent to the address of the recipient Party set out in this Agreement below or such other address, email address and/or facsimile as duly notified by the recipient Party:

To the Access Provider

Attn : [insert]
Address : [insert]
Email : [insert]

To the Access Seeker

Attn : [insert]
Address : [insert]
Email : [insert]

Any such notice may be delivered personally, by courier service or by registered or pre-paid post, by email or by facsimile transmission and shall be deemed to have been served if by hand when delivered, if by courier, registered or pre-paid post seventy two (72) hours after posting, if by email when successfully sent and registered as a sent email provided that no notification of error or failure in transmission is received by the sender and if by facsimile transmission when successfully despatched with a successful transmission report. If deemed service or receipt is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), such notice is deemed to have been served or received when business next starts in the place of receipt. Notwithstanding anything to the contrary in this Clause, any legal notices or communications sent by email shall be deemed validly served only if a corresponding hard copy of the same notice is sent by registered or pre-paid post within twenty four (24) hours of the email transmission.

- 19.11 **Waiver.** No failure or delay on the part of a Party in exercising any rights or remedies under this Agreement at any time or for any period of time shall operate as or be deemed to be a waiver thereof or otherwise diminish or affect the Party's other rights and remedies under this Agreement. Any knowledge or acquiescence by a Party of, or in, any breach of any provision of this Agreement shall not operate as or be deemed to be a waiver. No single or partial exercise of any rights or remedies by a Party shall affect the other rights or remedies the party may have under this Agreement. A waiver by a Party of any breach shall not constitute a continuing waiver in respect of any subsequent or continuing breach. A provision of right or remedy under this Agreement may not be waived except in writing signed by the Party so waiving.
- 19.12 **Costs.** Each party shall bear its own costs incurred in the preparation, negotiation and execution of this Agreement (including but not limited to legal expenses) and all documents contemplated by it (except where this Agreement or those other documents expressly provides to the contrary). The Access Seeker shall pay for the applicable stamp duty and be responsible for effecting any necessary stamping required under applicable law.

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- 19.13 **Cumulative.** The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law or in equity unless otherwise stated. Unless otherwise stated, all rights and remedies hereunder are cumulative and are in addition to all other rights and remedies provided by law, agreement or otherwise and any express statement of a right or remedy conferred upon a Party shall be in addition to and without prejudice to any other rights and remedies which are available to the said Party.
- 19.14 **Survival.** The provisions contained in this Agreement which are: (i) expressed to survive the termination or expiration of this Agreement; or (ii) capable of having effect and which by their nature, sense and context are intended to survive the termination or expiration of this Agreement, shall remain in full force and effect following the termination or expiration of this Agreement. Termination or expiration of this Agreement for any reason shall not release any Party hereto from any liability which, at the time of such termination or expiration, has already accrued to the other Party or which is attributable to a period prior to such termination or expiration, nor preclude either Party from pursuing or enforcing any rights and/or remedies it may have under this Agreement, at law and/or in equity.
- 19.15 **Counterpart.** This Agreement may be executed in counterparts by the respective Parties, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement, provided that this Agreement shall be of no force and effect until the counterparts are exchanged.
- 19.16 **Relationship between the Parties.** The relationship of the Parties to this Agreement is one of independent contractors only. No Party shall hold itself out to be the principal or agent of the other Party for any purpose and under any circumstances. Nothing herein contained shall create or imply a partnership, trust and/or joint venture between the Parties. No Party has any authority to act, make representations or bind or contract on behalf of the other Party. Each Party shall be responsible for its Personnel and the Personnel of a Party shall not be deemed to be the Personnel of the other Party in any manner whatsoever. The Access Seeker shall not represent to its Customers that the Access Provider jointly participates in the provisioning of services by the Access Seeker to its Customers.

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ARTICLE III

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

ARTICLE III: Terms and Conditions for Regulated Facilities and Services

1 APPLICATION

- 1.1 **Capacity of Access Seeker:** This **ARTICLE III** governs, and shall only apply to, the provisioning of the Regulated Facilities and Services by the Access Provider in its capacity as a network facilities provider and/or a network services provider duly licensed under the Act to the Access Seeker, who shall be a:
- 1.1.1 network facilities provider;
 - 1.1.2 network services provider;
 - 1.1.3 applications services provider; or
 - 1.1.4 content applications services provider,
- duly licensed under the Act, and any other matters related thereto as set out in this **ARTICLE III**.
- 1.2 **Provisioning subject to Written Request:** The Access Provider will provide the Access Seeker access to the Regulated Facilities and Services provided that the Access Seeker makes a written request to the Access Provider, subject to and in accordance with the Act (including without limitation any exemptions made pursuant thereto) and this Agreement.
- 1.3 **Wholesale Relationship:** This **ARTICLE III** shall only apply in respect of the wholesale (operator-to-operator) relationship between the Parties.
- 1.4 **Subject to Other Parts:** This **ARTICLE III** shall be read together with the other parts of this Agreement to the extent not inconsistent with the terms contained in this **ARTICLE III**.

ARTICLE III: Terms and Conditions for Regulated Facilities and Services

2 SUBJECT TO LICENCE AND NO CONDITIONAL SUPPLY

- 2.1 **Subject to Licence (AP):** The provisioning of the Regulated Facilities and Services by the Access Provider shall at all times be subject to the Regulated Facilities and Services which the Access Provider is permitted to provide under its Licence.
- 2.2 **Subject to Licence (AS):** The Regulated Facilities and Services provided to the Access Seeker shall only be used in connection with any activities in which the Access Seeker is authorised to provide under its Licence.
- 2.3 **Restriction on Conditional Supply and Minimum/Maximum Quantity:** The Access Provider shall not require the Access Seeker to acquire:
 - 2.3.1 other facilities and/or services from the Access Provider as a condition of providing access to the Regulated Facilities and Services under this Agreement; and
 - 2.3.2 any Regulated Facilities and Services, or elements thereof (for example ports or lines) in any minimum or maximum quantity or ratio (including for example any minimum bandwidth).

3 NON-DISCRIMINATION

- 3.1 **Non-Discrimination:** The access to the Regulated Facilities and Services provided by the Access Provider to the Access Seeker shall be:
- 3.1.1 of at least the same or more favourable technical standard and quality as the technical standard and quality provided by the Access Provider for itself on the Access Provider's own Regulated Facilities and Services; and
 - 3.1.2 on an equitable and non-discriminatory basis.
- 3.2 **Non-Discrimination Principle:** The non-discrimination principle and the term "*non-discriminatory*" set out above apply on an equivalence of inputs basis and require a comparison of the basis on which any particular Regulated Facilities and Services is provided by the Access Provider to the Access Seeker with the basis on which that Regulated Facilities and Services is provided by the Access Provider to itself and to Other Access Seekers. The term "*equivalence of inputs*" means a concept that describes the Access Provider providing to itself (including without limitation its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest) and to All Access Seekers the same Regulated Facilities and Services on the same terms and conditions including at the same prices and service levels, using the same systems and processes and to the same timescales.
- 3.3 **Superior/Inferior Facilities/Services:** Nothing in this Agreement, however, shall limit the Access Seeker's ability to request and agree on access to the Regulated Facilities and Services that are either superior or inferior (in terms of technical standard and quality) to that which the Access Provider provides to itself (or to the Other Access Seekers).

4 CUSTOMER PRINCIPLES

4.1 **Customer Relationship Principles:** The Parties acknowledge and agree to comply with the following Customer relationship principles:

4.1.1 a Customer will be regarded as a Customer of a Party when the Customer utilises facilities and/or services provided to that Customer by the said Party;

4.1.2 the same person may be a Customer of either or both of the Parties:

(a) in respect of the same or different Regulated Facilities provided by different Parties;

(b) in respect of the same or different Regulated Services provided by different Parties; or

(c) in respect of Regulated Facilities provided by one Party and Regulated Services provided by the other Party;

4.1.3 the supply by a Party to the other Party, which the latter Party then utilises in providing Regulated Facilities and Services to its Customers, does not mean that those Customers are also Customers of the first-mentioned Party; and

4.1.4 each Party 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:

(a) the Access Provider billing on behalf of the Access Seeker; or

(b) the Access Provider in its own right billing the Customer of the Access Seeker and making a separate payment to the Access Seeker.

4.2 **Use of Customer Information:** The Access Provider shall not use the Access Seeker's Customer information to market or offer to supply its goods or services to that or any other Customer, except where:

4.2.1 the Customer information is publicly available; or

4.2.2 the Customer information has been received or developed by the Access Provider from sources other than the Access Seeker,

and, in either case, the information has not been collected or generated with reference to, or combined with or compared to, information provided in connection with the Access Provider's supply of the Regulated Facilities and Services. This includes any use or intended use by the Access Provider to dissuade that Customer from entering into a contractual relationship with the Access Seeker for retail services that use the Regulated Facilities and Services as an input or more generally, to persuade that Customer to enter into a contractual relationship with the Access Provider for the Access Provider's retail services.

5 RESTRICTION ON RE-SUPPLY

- 5.1 **Re-Supply:** Except for Duct and Manhole Access, the Access Provider must not, in relation to the supply of any Regulated Facilities and Services, prevent the Access Seeker from re-supplying that Regulated Facilities and Services to any person.
- 5.2 **No Re-Supply of Duct and Manhole Access:** The Access Seeker shall not re-supply the Duct and Manhole Access to any person save as except as otherwise authorised by the Access Provider in writing.

6 REPORTING OBLIGATIONS AND PROVISIONING OF INFORMATION

- 6.1 **Reporting to Commission:** The Access Seeker acknowledges that the Access Provider will, from time to time, be required to provide information and report certain matters to the Commission pursuant to applicable laws. In this regard, the Access Seeker shall co-operate fully with and assist the Access Provider in providing information requested by, and/or complying with its reporting obligations to, the Commission.
- 6.2 **Provisioning of Information to Commission:** Nothing herein shall prohibit any Party from providing any relevant information directly to the Commission to the extent required pursuant to applicable laws.
- 6.3 **Provisioning of Information for this Agreement:** Each Party shall provide the other Party the reports and information set out in this Agreement and other reports and information which may be reasonably required by the other Party from time to time for the purpose of this Agreement in a timely manner. All such reports and information to be provided shall be materially accurate, sufficient and up-to-date.

7 PRE-AA ACCESS REQUEST PROCEDURE UNDER RAO

7.1 **Access Request:** The Access Seeker may request access to any of the Regulated Facilities and Services by submitting an Access Request to the Access Provider. This **Clause 7** (Pre-AA Access Request Procedure Under RAO) of this **ARTICLE III** shall only apply if:

7.1.1 **No Access Agreement in Place:** there is no access agreement in force between the Access Provider and the Access Seeker governing access to the Regulated Facilities and/or Regulated Services to which the Access Seeker seeks access; or

7.1.2 **Enter into New Access Agreement Pursuant to RAO:** the current term of this Agreement will expire or terminate within the next four (4) months and the Access Seeker intends to enter into a new access agreement pursuant to the RAO.

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

7.2 **Access Request Details:** The Access Request shall contain the following information:

7.2.1 the name and contact details of the Access Seeker;

7.2.2 the Regulated Facilities and Services in respect of which access is sought;

7.2.3 a list of the relevant licences under the Act held by the Access Seeker;

7.2.4 whether the Access Seeker wishes to accept the RAO, to negotiate amendments to the RAO or an access agreement on alternative terms;

7.2.5 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, **Clause 7.3** (Required Information to be Provided by Access Provider) of this **ARTICLE III**;

7.2.6 two (2) copies of the Confidentiality Agreement properly executed by the Access Seeker;

7.2.7 preliminary information regarding the scale and scope of the Regulated Facilities and Services that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request;

7.2.8 relevant technical information relating to the interface standards of the Equipment of the Access Seeker;

7.2.9 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;

ARTICLE III: Terms and Conditions for Regulated Facilities and Services

- 7.2.10 creditworthiness information in accordance with the Access Provider's Creditworthiness Requirements;
 - 7.2.11 assessed security or, if applicable, confirmation of security provided in accordance with the Access Provider's Security Requirements;
 - 7.2.12 insurance information in accordance with the Access Provider's Insurance Requirements; and
 - 7.2.13 such other information as the Access Provider may reasonably request for the sole purpose of providing access to the requested Regulated Facilities and Services.
- 7.3 **Required Information to be Provided by Access Provider:** The Access Provider must provide the following information to the Access Seeker within ten (10) Business Days of receipt of the Access Request, or any written request, from the Access Seeker for the provision of access (whether or not on the basis of the RAO):
- 7.3.1 any supplementary details of any Regulated Facilities and Services offered by the Access Provider not included in the RAO, including details concerning all POIs and other locations (including sites deemed to be critical national information infrastructure and other secure sites) at which physical co-location, virtual co-location or in-span interconnection is available to Access Seekers;
 - 7.3.2 any supplementary access charges for access to Regulated Facilities and Services not included in the RAO (for example, discounts for inferior service levels or surcharges for enhanced service levels);
 - 7.3.3 all supplementary technical information relating to the Regulated Facilities and Services which may be the subject of the Access Request, which are not included in the RAO, including but not limited to any proof of concept (POC) information where available, physical and logical interfaces of the Access Provider's 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;
 - 7.3.4 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);
 - 7.3.5 supplementary details of the Access Provider's provisioning cycles not included in the RAO and any impact such cycles may have upon the Access Request by the Access Seeker (e.g. capacity constraints);
 - 7.3.6 details of the Access Provider's alternative quality of service targets not included in the RAO and actual achievements of service targets in respect of

ARTICLE III: Terms and Conditions for Regulated Facilities and Services

the Regulated Facilities and Services which may be the subject of the Access Request; and

- 7.3.7 any Security Requirements, Insurance Requirements and Creditworthiness Requirements (including a credit assessment form, if available) of the Access Provider.
- 7.4 **Reasons for Failure to provide the Required Information:** If the Access Provider is unable to supply any of the information referred to in **Clause 7.3** (Required Information to be Provided by Access Provider) of this **ARTICLE III**, the Access Provider shall provide reason(s) for failing to supply such information.
- 7.5 **Condition prior to Providing the Required Information:** Prior to the provision of any information, the Access Provider may request the Access Seeker to enter into a Confidentiality Agreement.
- 7.6 **Non-Permitted Information:** Notwithstanding anything contained herein, the Access Provider shall not impose an obligation on the 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 ("**Non-Permitted Information**"):
- 7.6.1 the Access Seeker's proposed service launch date provided that the Access Provider shall be entitled to 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 Regulated Facilities and Services;
- 7.6.2 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;
- 7.6.3 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;
- 7.6.4 details of the Access Seeker's current or proposed retail charges;
- 7.6.5 details of the Access Seeker's marketing strategy or proposed client base;
- 7.6.6 financial information relating to the Access Seeker's business, except to the extent that such information may be required pursuant to the Creditworthiness Requirements;
- 7.6.7 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 Regulated Facilities and Services; or
- 7.6.8 any other commercially sensitive information of the Access Seeker which is not strictly required by the Access Provider to supply any requested Regulated Facilities and Services.

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- 7.7 **Obligations Upon Receipt of Access Request:** The Access Provider shall, within ten (10) Business Days of receipt of any Access Request, respond to the Access Seeker in writing acknowledging receipt of the Access Request and stating that:
- 7.7.1 if the Access Seeker is willing to accept the RAO, the Access Provider will provide access in accordance with and subject to the RAO, subject to signing the access agreement based on the RAO;
 - 7.7.2 if the Access Seeker is not willing to accept the RAO, the Access Provider is willing to proceed to negotiate amendments to the RAO or negotiate an access agreement on alternative terms;
 - 7.7.3 the Access Provider refuses the Access Request in accordance with **Clause 7.13** (Grounds of Refusal) of this **ARTICLE III**; or
 - 7.7.4 the Access Provider requires specified additional information to make a decision on the Access Request in accordance with **Clauses 7.7.1 to 7.7.3** (Obligations Upon Receipt of Access Request) of this **ARTICLE III**, and once such information is received from the Access Seeker, the Access Provider shall reconsider the Access Request in accordance with this **Clause 7.7** (Obligations Upon Receipt of Access Request) of this **ARTICLE III** 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.
- 7.8 **Acceptance Response:** If the Access Provider responds that the Access Provider will provide access in accordance with the RAO pursuant to **Clause 7.7.1** (Obligations Upon Receipt of Access Request) of this **ARTICLE III**, the Access Provider must, within ten (10) Business Days of such response, provide two (2) copies of the RAO (or the underlying access agreement) executed by the Access Provider to the Access Seeker and one (1) copy of the executed Confidentiality Agreement returned by the Access Seeker that has also been properly executed by the Access Provider.
- 7.9 **Initial Meeting and Negotiation Arrangement:** If the Access Provider is willing to proceed with negotiation pursuant to **Clause 7.7.2** (Obligations Upon Receipt of Access Request) of this **ARTICLE III**, the Access Provider must set out in its response to the Access Seeker:
- 7.9.1 a place, date and time, not later than fifteen (15) Business Days from the date of the Access Provider's response, when the Access Provider's representative that is authorised to negotiate on an access agreement, will be available for a meeting with the Access Seeker's representative that is authorised to negotiate on the access agreement. Unless otherwise agreed between the Parties, each Party shall ensure that its representatives meet on the date so notified and that such representatives:
 - (a) agree on a timetable for the negotiations, including milestones and dates for subsequent meetings within the applicable timeframe for

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negotiations subject to **Clause 7.10.2** (Negotiation Timeframe and Notification) of this **ARTICLE III**;

- (b) agree on negotiation procedures, including calling and chairing meetings, responsibility for keeping minutes of the meetings, clearly defined pathways and timetables for escalation and resolution by each Party of matters not agreed in the meetings, procedures for consulting, and including in the negotiating process, relevant experts from each of the Parties, and 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 Party; and
- (d) identify what technical investigations, if any, need to be made and by whom such investigations should be made; and

7.9.2 one (1) copy of the executed Confidentiality Agreement returned by the Access Seeker that has also been properly executed by the Access Provider.

7.10 **Negotiation Timeframe and Notification:** If any Party wishes to negotiate an access agreement with the other Party:

7.10.1 both Parties shall notify the Commission when the negotiations for the access agreement begin;

7.10.2 both Parties shall use their best endeavours to conclude the access agreement within:

- (a) where there is no existing access agreement in place between the Parties, four (4) months; or
- (b) where there is already a commercial agreement or an access agreement in place between the Parties, three (3) months,

after a written request by the Access Seeker to commence negotiations under **Clause 7.2.4** (Access Request Details) of this **ARTICLE III** and the Access Provider's response confirming it is willing to proceed to negotiate under **Clause 7.7.2** (Obligations Upon Receipt of Access Request) of this **ARTICLE III**;

7.10.3 if the negotiations are not completed within the applicable timeframe specified under **Clause 7.10.2** (Negotiation Timeframe and Notification) of this **ARTICLE III**:

- (a) 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 procedure under the RAO shall take effect. If the Commission grants an extension of time, it may do

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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); or

(b) either Party may initiate the dispute resolution procedure under the RAO.

7.11 Negotiation Principles: The Access Provider shall not do, or threaten to do, anything that has the effect or likely effect of, any of the following:

- 7.11.1 refuse to negotiate terms of access not related to price, for the reason that the rate, charge, charging principles or methodologies of access has not been agreed upon;
- 7.11.2 refuse to negotiate access to the Regulated Facilities and Services because the Access Seeker has not agreed to acquire access to other Regulated Facilities and Services or because the Access Seeker has not agreed to acquire a particular configuration, option or feature of a requested Regulated Facilities and Services;
- 7.11.3 require the Access Seeker to enter into a confidentiality agreement the terms of which would preclude the disclosure of information, requested by the Commission, or required to be disclosed for the purposes of dispute resolution;
- 7.11.4 require the Access Seeker to warrant that the access agreement complies with all applicable laws;
- 7.11.5 refuse to include in the access agreement a provision permitting variation of the access agreement in the event of any change in mandatory rules, applicable laws or applicable regulations (including Commission's decisions and determinations);
- 7.11.6 make any negotiation conditional on the Access Seeker first obtaining any regulatory approval or consent;
- 7.11.7 intentionally mislead or coerce the Access Seeker into reaching an agreement, which would not otherwise have been reached if not for the misleading act or coercion;
- 7.11.8 intentionally obstruct or delay negotiations or any dispute resolution process;
- 7.11.9 fail to nominate representatives who have sufficient authority and with sufficient availability to progress negotiations in a timely and efficient manner;
- 7.11.10 fail to provide information that is necessary to conclude an access agreement including, without limitation:

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- (a) information about the Access Provider's Network that the Access Seeker reasonably requires in identifying the network elements or network components to which it requires access; and
 - (b) information about the basis of the determination of rates, charges or fees.
- 7.12 **Form of Meeting/Negotiation:** Any meeting or negotiation may take place in person, or virtually by conference call, video conference or using other communications technology with participants in one or more geographical places (or in a combined form).
- 7.13 **Grounds of Refusal:** Except where expressly permitted otherwise under the Act or the RAO, the Access Provider shall not refuse an Access Request, except on the grounds that:
 - 7.13.1 **Does Not Currently Supply:** the Access Provider does not currently supply, or provide access to, the relevant Regulated Facilities and 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 the Regulated Facilities and Services to the Access Seeker;
 - 7.13.2 **Insufficient Information:** the Access Seeker has not provided all of the information required to be provided in accordance with **Clause 7.2** (Access Request Details) of this **ARTICLE III**;
 - 7.13.3 **Technical Infeasibility:** it is not technically feasible to provide access to the Regulated Facilities and Services requested by the Access Seeker;
 - 7.13.4 **Insufficient Capacity:** subject to the RAO, the Access Provider has insufficient capacity or space to provide the requested Regulated Facilities and Services;
 - 7.13.5 **Failure to Pay (Cannot be Addressed Through Security Requirements):** the Access Provider has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested Regulated Facilities and Services and such concern cannot be addressed through the Security Requirements;
 - 7.13.6 **Failure to Comply:** 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 or use of the Regulated Facilities and Services; or
 - 7.13.7 **National Interest:** there are reasonable grounds for the Access Provider to refuse access in the national interest.
- 7.14 **Technical Infeasibility:** For the purposes of **Clause 7.13.3** (Technical Infeasibility) of this **ARTICLE III**, the Access Provider shall not refuse the

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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:

- 7.14.1 **Factors to be Disregarded:** 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;
 - 7.14.2 **Requirement to Modify Not Sufficient in itself to mean it is Technically Infeasible:** 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;
 - 7.14.3 **Specific and Significant Adverse Impact on Network Reliability with Evidence:** 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 Regulated Facilities and Services would result in a specific and significant adverse impact on network reliability; and
 - 7.14.4 **Demonstrate it Has Considered and Found Not to Have Technically Feasible Improvements:** the Access Provider must be able to demonstrate that it has considered and found not to have technically feasible (in accordance with this **Clause 7.14** (Technical Infeasibility) of this **ARTICLE III**) 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).
- 7.15 **Capacity Constraints:** The Access Provider may only refuse the Access Request on the ground that the Access Provider has insufficient capacity or space under **Clause 7.13.4** (Grounds of Refusal) of this **ARTICLE III** 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:
- 7.15.1 already carrying traffic to full capacity or near full capacity and the Access Provider is unable to expand capacity to meet the requirements in the Access Seeker's Access Request; or
 - 7.15.2 already reserved for future use by the Access Provider or any Other Access Seekers, where such future use shall commence not later than six (6) months from the date of the Access Request and the Access Provider is unable to expand capacity to meet the requirements in the Access Seeker's 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, re-consider the Access Request in accordance with the process set out in this **Clause 7** (Pre-AA Access Request Procedure Under RAO) of this **ARTICLE III**.

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- 7.16 **Refusal Response:** If the Access Provider decides to refuse the Access Request, the Access Provider must set out in its response to the Access Seeker:
- 7.16.1 **Grounds:** the grounds of refusal (any of the grounds set out in **Clause 7.13** (Grounds of Refusal) of this **ARTICLE III**) on which the Access Provider is relying;
 - 7.16.2 **Basis of Decision with Sufficient Particulars:** 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
 - 7.16.3 **Propose Place, Date and Time to Discuss the Refusal:** 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:
 - (a) **Clause 7.13.2** (Insufficient Information) of this **ARTICLE III**, the Access Provider must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;
 - (b) **Clause 7.13.4** (Insufficient Capacity) of this **ARTICLE III**, the Access Provider must identify when additional capacity or space is likely to be available; and
 - (c) **Clause 7.13.5** (Failure to Pay (Cannot be Addressed Through Security Requirements)) of this **ARTICLE III**, the Access Provider must identify the form of (additional) security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested Regulated Facilities and Services, its reasons for the security requirement and why it considers such concern cannot be addressed through the existing Security Requirements.
- 7.17 **Refusal Notification:** If the Access Provider refuses any Access Request, the Access Provider must notify the Commission within five (5) Business Days of that refusal together with an explanation of its reason for refusal under **Clause 7.13** (Grounds of Refusal) of this **ARTICLE III**.
- 7.18 **Dispute Resolution for Refusal:** If, following the meeting between the Parties required to be held pursuant to **Clause 7.16.3** (Propose Place, Date and Time to Discuss the Refusal) of this **ARTICLE III**, for the purposes of discussing the Access Provider's refusal of any Access Request, the Parties have been unable to resolve any differences about the validity of the Access Request and the Access Seeker disagrees with the Access Provider's refusal of the Access Request, either Party may request resolution of the dispute in accordance with the dispute resolution procedure under the RAO.

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- 7.19 **Fast-Track Application:** Fast-track application is available to the extent published on the Access Provider's website subject to the following:
- 7.19.1 the fast-track process is limited to the criteria as published on the Access Provider's website according to the following principles: (i) such criteria must be determined and applied by the Access Provider on a non-discriminatory basis; (ii) the fast-track process may be limited to the supply of Regulated Facilities and Services to the extent that such supplies do not have a material impact on the Access Provider's current level of network resources; and (iii) the Regulated Facilities and Services which may be the subject of a fast track application may be limited to Fixed Network Termination Service, Mobile Network Termination Service, Transmission Services, Interconnect Link Service, and HSBB Network Services;
 - 7.19.2 the fast-track application form: (i) shall be limited to gathering the name and contact details of the Access Seeker and the Regulated Facilities and Services in respect of which access is sought only; and (ii) in respect of any requirement to provide security, shall set out a process for determining the required security sums based on the Security Requirements within five (5) Business Days of the Access Provider's receipt of a fast-track application;
 - 7.19.3 the Access Provider may only refuse the Access Seeker's fast-track application for the reasons set out in **Clauses 7.13.1** (Does Not Currently Supply), **7.13.5** (Failure to Pay (Cannot be Addressed Through Security Requirements)) and **7.13.6** (Failure to Comply) of this **ARTICLE III**;
 - 7.19.4 the fast-track agreement between the Access Provider and the Access Seeker must be on the terms of the RAO; and
 - 7.19.5 within ten (10) Business Days of the Access Provider's receipt of a fast-track application, the Access Provider must:
 - (a) provide the Access Seeker with two (2) copies of the Executable Document executed by the Access Provider (without any deviations), or a notice of refusal that sets out the grounds for refusal under **Clause 7.19.3** (Fast-Track Application) of this **ARTICLE III** (including the basis on which those grounds apply); and
 - (b) provide the Commission with a copy of the response at the same time that it provides the response to the Access Seeker.
- 7.20 **Access Request becomes Order Form:** For the avoidance of doubt,
- 7.20.1 any Access Request accepted by the Access Provider under the RAO, which subsequently leads to the negotiation and finalisation of this Agreement, shall be deemed an agreed Order under this Agreement, and shall be subject to and retrospectively governed by this Agreement; and

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- 7.20.2 any security sums, certifications and other information provided by the Access Seeker for the purposes of the Access Request which subsequently leads to the negotiation and finalisation of this Agreement shall be deemed to be provided by the Access Seeker under and for the purpose of this Agreement.
- 7.21 **Included for Completeness:** Save and except as expressly stated otherwise herein, this **Clause 7** (Pre-AA Access Request Procedure Under RAO) of this **ARTICLE III** merely sets out the Access Request procedure under RAO and is included solely for completeness. Nothing contained in this **Clause 7** (Pre-AA Access Request Procedure Under RAO) of this **ARTICLE III** shall impose or create any obligations on any Party under this Agreement, save and except as expressly stated otherwise herein or to the extent referred to in other parts of this Agreement.

8 FORECASTING OBLIGATIONS

- 8.1 **General:** The Access Provider may from time to time require, whether as a condition of accepting any Order for access to Regulated Facilities and Services from the Access Seeker or otherwise, that the Access Seeker provides Forecast in good faith with regard to a certain period of supply of access to the Regulated Facilities and Services in accordance with this **Clause 8** (Forecasting Obligations) of this **ARTICLE III**.
- 8.2 **Confirmation of Forecast:** If the Access Provider, acting reasonably will incur costs to ensure that access can be provided in accordance with a Forecast, the Access Provider may request the Access Seeker to confirm the relevant Forecast (“**Confirmed Forecast**”). The Access Seeker warrants and undertakes that it shall meet the Confirmed Forecast and will place Order for, and based on, the Confirmed Forecast. The Access Provider shall be entitled to recover any costs and/or expenses reasonably incurred by the Access Provider in relation to any Confirmed Forecast if the Confirmed Forecast is not met by the Access Seeker.
- 8.3 **Agreement on Alternative or No Procedure:** The Access Provider and the Access Seeker may agree to an alternative forecasting and ordering procedure other than that set out in this **Clause 8** (Forecasting Obligations) of this **ARTICLE III**, or to dispense with such procedure altogether in writing. If agreement is reached about such matters, the Access Provider and Access Seeker shall be bound by the terms of that alternative procedure or mutual dispensation and this **Clause 8** (Forecasting Obligations) of this **ARTICLE III** shall not apply (to the extent dispensed with or modified by mutual agreement).
- 8.4 **Forecast Information:** The Access Provider may request the Access Seeker to provide, with a sufficient level of detail to enable the Access Provider to carry out network planning and provisioning, any relevant information pertaining to the Access Seeker’s Forecast.
- 8.5 **Non-Permitted Information:** The Access Provider must not request the Access Seeker to provide a Forecast that contains:
- 8.5.1 any Non-Permitted Information; or
 - 8.5.2 any information that identifies or would enable the identification of Customers of the Access Seeker.
- 8.6 **Use of Forecast Information:** Forecast information provided by the Access Seeker shall be treated by the Access Provider as the Confidential Information of the Access Seeker and shall only be used by those Personnel (including without limitation vendors and/or service providers) of the Access Provider for the purpose of this Agreement, including without limitation budgetary and planning purposes and other Permitted Purpose.
- 8.7 **Distribution of Forecast Information:** The Access Provider may distribute Forecast Information of the Access Seeker outside the groups of people referred to in **Clause 8.6** (Use of Forecast Information) of this **ARTICLE III** if:

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- 8.7.1 the Forecast Information of the Access Seeker is aggregated (in a de-identified manner) with Forecast provided by the Other Access Seekers and the Access Provider's own requirements; and
- 8.7.2 the Forecast Information or its use does not otherwise identify the Access Seeker, its services or its Customers in any manner.

9 ORDERING AND PROVISIONING OBLIGATIONS

- 9.1 **Order and Contact Point or Mechanism for Order:** The Access Seeker shall submit a written Order containing the Ordering Information set out in **Clause 9.2** (Order and Order Content) of this **ARTICLE III** to the Access Provider for any request to access any of the Regulated Facilities and Services, such Order to be delivered or submitted in accordance with **Schedule 2** (Ordering Mechanism and Policies).
- 9.2 **Order and Order Content:** The Access Seeker shall submit a written Order for any request to access any of the Regulated Facilities and Services and such Order shall outline the Access Seeker's access requirements and provide, at a level of detail (sufficient for planning and provisioning), the following information ("**Ordering Information**"):
- 9.2.1 the Regulated Facilities and Services to which access is requested;
 - 9.2.2 a requested date and time for delivery;
 - 9.2.3 the specific location of the points of delivery;
 - 9.2.4 the 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;
 - 9.2.5 contact details of the Access Seeker's designated contact person(s);
 - 9.2.6 space availability at the Access Seeker's site or premises, where relevant;
 - 9.2.7 any condition and factors in relation to the Access Seeker's activities and/or sites which may be relevant to, or affect, the provisioning of the requested Regulated Facilities and Services by the Access Provider; and
 - 9.2.8 such other information that the Access Provider reasonably requires in order for it to provision access to the Regulated Facilities and Services as requested by the Access Seeker, provided that such information shall not include any information which:
 - (a) the Access Provider does not require from itself for similar provisioning;
 - (b) identifies, or which enables the identification of, a Customer or services of the Access Seeker; or
 - (c) contains any Non-Permitted Information.
- 9.3 **Use of Ordering Information:** Ordering Information provided by the Access Seeker shall be treated by the 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:
- 9.3.1 the Access Provider's wholesale or interconnection group; and

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- 9.3.2 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.
- 9.4 **Treatment of Orders and Service Qualifications:** The Access Provider shall:
- 9.4.1 establish a single queue for all orders received by it, and Service Qualifications, for the access to any given type of the Regulated Facilities and Services, whether required for itself or Any Access Seekers;
- 9.4.2 give the equivalent priority to the handling of all such orders and Service Qualifications in each queue; and
- 9.4.3 otherwise treat all such orders and Service Qualifications in each queue in compliance with its Queuing Policy.
- 9.5 **Acknowledgment of Receipt:** The Access Provider shall acknowledge receipt of an Order for the access of any Regulated Facilities and Services, in writing (or in any other form as agreed by the Parties), within the period specified in the Technical and Commercial Document (“**Notice of Receipt**”).
- 9.6 **Notice of Receipt and Further Information:** The Access Provider must include in its Notice of Receipt the following information:
- 9.6.1 the time and date of receipt of the Order;
- 9.6.2 a list of any additional information reasonably required by the Access Provider from the Access Seeker to provision the Order. The Access Provider shall allow the Access Seeker a period of up to ten (10) Business Days to provide the Access Provider with such information. If the Access Seeker fails to provide such additional information within the said ten (10) Business Days, the Access Seeker’s request under such Order shall be deemed cancelled and withdrawn unless otherwise agreed by the Access Provider in writing;
- 9.6.3 whether the Access Provider needs to perform post-Order Service Qualifications 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 Qualifications; and
- 9.6.4 the position of the Order in the Access Provider's queue (subject to the Queuing Policy).
- 9.7 **Pre-Order Service Qualifications:** The Access Provider shall make Service Qualifications available to the Access Seeker prior to placing Orders if such pre-Order Service Qualifications are undertaken for any given Regulated Facilities and Services by the Access Provider for itself.

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- 9.8 **Post-Order Service Qualifications:** The Access Provider shall only require post-Order Service Qualifications to be requested if:
- 9.8.1 no pre-Order Service Qualifications has been performed in respect of the relevant Regulated Facilities and Services in accordance with the process developed under **Clause 7.1** (Access Request) under this **ARTICLE III**;
 - 9.8.2 the Access Provider reasonably requires information from such post-Order Service Qualifications which is not readily available; and
 - 9.8.3 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, or, if further information has been requested under **Clause 9.6.2** (Notice of Receipt and Further Information) of this **ARTICLE III**, within two (2) Business Days upon the expiry of the period specified in **Clause 9.6.2** (Notice of Receipt and Further Information) of this **ARTICLE III**.
- 9.9 **Service Qualifications Requested by Access Seeker:** For clarification, the Access Seeker may also seek the consent of the Access Provider to perform any Service Qualifications, and such consent must not be unreasonably withheld.
- 9.10 **Commencement and Completion of Service Qualifications:**
- 9.10.1 The Access Provider shall commence any relevant Service Qualifications on the date of issuing the relevant Notice of Receipt and complete, and notify the Access Seeker of the result of, such Service Qualifications 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 Qualifications undertaken for itself.
 - 9.10.2 Where there is a delay in the commencement and/or completion of any relevant Service Qualifications, and the delay is caused by the Access Seeker and/or by a third party that is not acting under the Access Provider's direction or control:
 - (a) 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;
 - (b) the Access Provider and the Access Seeker must work together to minimise the delay; and
 - (c) 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 completion date.

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- 9.10.3 If the relevant Regulated Facilities and Services available to the Access Provider are below the capacity required to provide the relevant Regulated Facilities and Services to the Access Seeker, the Access Provider shall notify the Access Seeker, at the same time as providing notice under **Clause 9.10.1** (Commencement and Completion of Service Qualifications) of this **ARTICLE III**, 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.
- 9.11 **Withdrawal of Order following Service Qualifications:** Following Service Qualifications, the Access Provider shall permit the Access Seeker to withdraw its Order without penalty, except that it may recover from the Access Seeker reasonable costs incurred by the Access Provider for any Service Qualifications undertaken in respect of the withdrawn Order (irrespective of whether the Access Provider has accepted the Order or not) before the earlier of:
- 9.11.1 ten (10) Business Days after the Access Seeker receives the result of the relevant Service Qualifications under **Clause 9.10** (Commencement and Completion of Service Qualifications) of this **ARTICLE III**; and
- 9.11.2 one (1) Business Day before the Access Provider commences civil works to provision the Order (where the civil works are required to provision the relevant Regulated Facilities and Services within the delivery timeframe specified in the Notice of Acceptance) provided that a notice of intent to withdraw the Order shall have been submitted to the Access Provider seven (7) Business Days prior to the date the Access Provider intends to commence civil works, 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,
- failing which the Access Seeker shall be deemed to have waived its right to withdraw the Order on any grounds relating to the results or reports of the Service Qualifications and the Order, if subsequently accepted by the Access Provider pursuant to this Agreement, shall be subject to the results and reports of the Service Qualifications as notified to the Access Seeker by the Access Provider.
- 9.12 **Fulfilment of Confirmed Forecast:** The Access Provider will use its reasonable efforts to accept and fulfil any Order from the Access Seeker for Regulated Facilities and Services which comply with the Confirmed Forecast, subject to the Service Qualifications and this Agreement.
- 9.13 **Time for Acceptance or Rejection of Order:** The Access Provider must notify the Access Seeker that an Order is accepted or rejected within:
- 9.13.1 the specified timeframe in the Technical and Commercial Document; or
- 9.13.2 the timeframe within which it accepts or rejects equivalent Order for itself,
- whichever is shorter.

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- 9.14 **Notice of Acceptance:** If the Access Provider accepts an Order, the Access Provider must provide a notice of acceptance to the Access Seeker in accordance with this Agreement (“**Notice of Acceptance**”). The Access Provider's Notice of Acceptance to the Access Seeker must contain the following information:
- 9.14.1 **Delivery/Activation Date or Timeframe:** the delivery or activation date/timeframe (as applicable), which must be the date/timeframe that is requested by the Access Seeker (subject to **Clause 9.15** (Commencement of Delivery Timeframes) of this **ARTICLE III**), or, if that date/timeframe cannot be met by the Access Provider, then no later than the shorter of: (a) the indicative delivery timeframe or activation timeframe specified in the Technical and Commercial Document; or (b) the period of time taken by the Access Provider to deliver, or activate, such Regulated Facilities and Services for itself;
 - 9.14.2 **Date of Commencement of Civil Works:** the date when civil works (if any) are intended to commence;
 - 9.14.3 **Charges:** the charges applicable to fulfil the Order, including without limitation additional works such as internal wiring, right of way, land rental, local authority permits and third-party deposits;
 - 9.14.4 **Reasonably Necessary Info:** such information as is reasonably necessary for the Access Seeker to benefit from access to the Regulated Facilities and Services; and
 - 9.14.5 **Validity Period:** 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**”).
- 9.15 **Commencement of Delivery Timeframes:** The applicable delivery timeframe for an Order, as determined under **Clause 9.14.1** (Delivery/Activation Date or Timeframe) of this **ARTICLE III**, shall commence from:
- 9.15.1 where the Access Seeker's confirmation of an Order is required under **Clause 9.16** (Access Seeker's Confirmation of Order) of this **ARTICLE III**, the date the Access Seeker confirms the Order in accordance therewith; and
 - 9.15.2 in any other case (i.e., where the Access Seeker's confirmation of an Order is not required under **Clause 9.16** (Access Seeker's Confirmation of Order) of this **ARTICLE III**), from the start of the Validity Period,
- subject always to and conditional upon the Access Seeker procuring and maintaining all necessary approvals, rights, licences and permits (regulatory, contractual or otherwise) in respect of the Access Seeker's sites, facilities and/or activities to allow the Access Provider to perform the Order (to the extent applicable).
- 9.16 **Access Seeker's Confirmation of Order:**

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- 9.16.1 **Confirmation Not Required if Accepted without Change:** The Access Seeker's confirmation of an Order is not required if the Access Provider accepts the Order without change. A change may include circumstances where delivery dates are delayed, estimated charges are exceeded, a post-Order Service Qualification is required or any other matter that requires further confirmation from the Access Seeker before the Access Provider can proceed with the Order.
- 9.16.2 **Confirmation Required if there are Changes:** Where the Access Seeker's confirmation is required for the Access Provider to proceed with fulfilling an Order as provided for under **Clause 9.16.1** (Confirmation Not Required if Accepted without Change) of this **ARTICLE III**, 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.
- 9.17 **Delivery/Activation Date or Timeframe Changes and Extension:** Upon the receipt of the Access Provider's Notice of Acceptance or, if the Access Seeker's confirmation is required under **Clause 9.16** (Access Seeker's Confirmation of Order) of this **ARTICLE III**, upon the confirmation of an Order by the Access Seeker, the Access Seeker may request for a change in the delivery or activation date/timeframe in relation to an Order subject to the Access Provider's approval. The Access Provider shall be entitled an extension of time reasonable under the circumstances for any delay not caused by the Access Provider or any personnel directly engaged by the Access Provider acting under the control or direction of the Access Provider.
- 9.18 **Estimated Charges:** If the Notice of Acceptance provided by the Access Provider contains estimates of charges (e.g. based on time and materials):
- 9.18.1 the Access Provider shall not exceed the estimate without providing the Access Seeker with a written notice prior to exceeding the estimate that:
- (a) the estimate will likely be exceeded;
 - (b) an explanation of the reasons for exceeding the estimate; and
 - (c) a further estimate of the charges for the work necessary to fulfil the Order;
- 9.18.2 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 **Clause 9.18.1** (Estimated Charges) of this **ARTICLE III** if the revised estimate in that notice exceeds the original estimate by more than ten percent (10%); and
- 9.18.3 the Access Provider shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate, whereby such confirmation is to be provided by the Access Seeker within the

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timeframe set out in **Clause 9.18.2** of this **ARTICLE III** or within the Validity Period, as applicable.

- 9.19 **Exceeding Estimated Charges Not Due to Access Provider:** 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:
- 9.19.1 information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; or
 - 9.19.2 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).
- 9.20 **Notice of Rejection:** If the Access Provider rejects an Order, the Access Provider shall notify the Access Seeker that such Order is rejected, and the Access Provider must provide a notice of rejection to the Access Seeker in accordance with this Agreement (“**Notice of Rejection**”). The Access Provider's Notice of Rejection of an Order to the Access Seeker must:
- 9.20.1 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 whether the Access Provider would be able to accept the Order in a modified form; and
 - 9.20.2 offer to meet, and meet if the offer to meet is accepted by the Access Seeker, within five (5) Business Days of the Notice of Rejection to discuss the reasons for rejection and alternative methods of compliance.
- 9.21 **Reasons for Rejection:** Subject always to the other applicable terms and conditions contained in this Agreement, the Access Provider may only reject an Order from the Access Seeker where:
- 9.21.1 **Technical Infeasibility:** subject to **Clause 7.14** (Technical Infeasibility) of this **ARTICLE III** (*mutatis mutandis*, as if references to 'Access Request' were references to 'Order'), it is not technically feasible to provide access to the Regulated Facilities and Services requested by the Access Seeker;
 - 9.21.2 **Insufficient Capacity:** subject to (compliance with) **Clauses 9.35** (Constrained Capacity) and **9.36** (Capacity Allocation Policy) of this **ARTICLE III**, the Access Provider has insufficient capacity to provide the requested Regulated Facilities and Services;
 - 9.21.3 **In Excess of Forecast:** subject to **Clause 9.22** (Order in Excess of Forecast) of this **ARTICLE III**, the Order is in excess of the Confirmed Forecast levels;
 - 9.21.4 **Duplicated Order:** the Order or variation request duplicates an Order awaiting fulfilment;

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- 9.21.5 **Grounds to Believe Access Seeker Would Fail to Comply:** there are reasonable grounds to believe that the Access Seeker would fail to a material extent, to comply with the terms and conditions of this Agreement and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through the application of any Security Requirements in accordance with this Agreement); or
- 9.21.6 **Grounds to Believe Access Seeker Would Fail to Protect Network's Integrity/Safety of Individuals:** there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Regulated Facilities and 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).
- 9.22 **Order in Excess of Forecast:** The Access Provider will endeavour to use its reasonable efforts to provide sufficient capacity to enable the Access Provider to accept and fulfil Orders from the Access Seeker for Regulated Facilities and Services, which are based on, and in excess of, the relevant Confirmed Forecast (to the extent such provisioning will not incur substantial cost and is commercially reasonable and viable), subject to this Agreement. 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 without incurring substantial cost and to the extent commercially reasonable and viable. The Access Provider shall not be required to supply the Regulated Facilities and Services in excess of the Forecast if, despite adopting any reasonable and commercially viable improvements (including upgrading capacity), this would cause a material degradation in the quality of the Regulated Facilities and Services provided to Any Access Seekers and/or itself.
- 9.23 **Extra Capacity Required from Access Seeker:** The Access Provider may require the Access Seeker to procure 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 Parties may require additional capacity to meet demand and a failure by the Access Seeker to procure that additional capacity may cause an adverse impact on the operation of the Access Provider's Network. Where the Access Seeker fails to so procure additional capacity and the demand exceeds the capacity on the Access Seeker's Network, the Access Provider must notify the Access Seeker in writing, and the Access Seeker and the Access Provider must meet no later than five (5) Business Days after receipt of the notice from the Access Provider to attempt to identify alternative sources of capacity. If the matter cannot be resolved within ten (10) Business Days of the date of that meeting, the Access Provider may bar or block calls or traffic to the Access Seeker's Network to the extent necessary to minimise congestion within the Access Provider's Network.
- 9.24 **Other Uses:** The Access Provider shall permit capacity installed in connection with the provision of a network service to be used, to the extent technically feasible, in connection with another network service, at the Access Seeker's option, subject to the applicable terms under this Agreement.

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- 9.25 **Delivery Dates:** The Access Provider shall deliver the Order for the Regulated Facilities and Services by the delivery date or activation date (as applicable) as specified in the Notice of Acceptance or the extended date (if any) as determined in accordance with, and subject to, this Agreement, including without limitation **Clause 9.27** of this **ARTICLE III**.
- 9.26 **Early Delivery:** 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 Regulated Facilities and Services at such earlier delivery date.
- 9.27 **Delay in Delivery:** Where there is a delay in the delivery of an Order, and:
- 9.27.1 the delay is caused by either the Access Provider or by a third party that is not acting under the Access Provider's direction or control (but excluding a third party acting under the Access Seeker's direction or control):
- (a) 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;
 - (b) the Access Provider shall permit the Access Seeker to cancel the Order without penalty if the delay is longer than the equivalent time period for delivery of the Regulated Facilities and Services; and
 - (c) in the event the Order is not cancelled by the Access Seeker, 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
- 9.27.2 the delay is caused by the Access Seeker or by a third party acting under the Access Seeker's direction or control:
- (a) 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 (based on the information available to the Access Provider);
 - (b) the Access Provider and the Access Seeker must work together to minimise the delay; and
 - (c) 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.
- 9.28 **Rebate for Delay:** If the Access Provider fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with **Clause 9.27.1(c)** (Delay in Delivery) of this **ARTICLE III**, except where such failure has been, and to the extent solely, caused by either the Access Seeker's delay or a delay

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by a third party that is not acting under the Access Provider's direction or control (for example, where a local authority or landowner delays providing necessary approvals for works to commence), the Access Provider shall, without limitation to any other rights the Access Seeker may have under **Clause 9** (Ordering and Provisioning Obligations) of this **ARTICLE III** or at law, pay liquidated damages to the Access Seeker in the form of a rebate, as agreed between the Parties under this Agreement. If the Access Provider alleges that a failure has been caused by the Access Seeker's delay or a delay by a third party not acting under the Access Provider's direction or control, the Access Provider shall: (a) have the burden of demonstrating the allegation and that the Access Provider has done all things reasonably necessary practicable to minimise or avoid such failure; and (b) be entitled to claim all costs reasonably incurred by the Access Provider in respect of such delay, without prejudice to the Access Provider's other rights and/or remedies under this Agreement and/or at law.

9.29 **Cancellation and Variation of Orders:** The Access Provider shall allow the Access Seeker to cancel or vary an Order at any time subject to **Clause 9.30** (Cancellation or Variation Penalty) of this **ARTICLE III**, provided that the Access Seeker's variation is reasonable and any requested variation shall be subject to the Access Provider's reasonable approval.

9.30 **Cancellation or Variation Penalty:** Except where this Agreement provides that cancellation of an Order is to be at no penalty:

9.30.1 the Access Provider may impose a charge for the cancellation or variation of the Order; and

9.30.2 the charge which the Access Seeker is required to pay shall not exceed the lesser of the following amounts:

(a) the sum of costs necessarily incurred by the Access Provider which is directly attributable to the cancellation or variation; or

(b) 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.

9.31 **Testing and Provisioning:** The Access Provider:

9.31.1 shall co-operate with the Access Seeker in relation to the testing and provisioning of ordered Regulated Facilities and Services, including, but not limited to, by implementing a proof of concept if requested by the Access Seeker;

9.31.2 shall treat the Access Seeker's testing and provisioning on an equivalent basis to that which the Access Provider treats testing and provisioning for itself; and

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- 9.31.3 may require reasonable co-operation by the Access Seeker in respect of such activities.
- 9.32 **Recoverable Resource Charges:** The Access Provider:
- 9.32.1 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 fulfil an Order for new Regulated Facilities and Services, provided that such one-off fee is reasonably justified by the Access Provider, to the Access Seeker, as necessary for the Access Provider to provide the requested Regulated Facilities and Services; and
- 9.32.2 must specify the methodology and unit rates (including any potential or contingent unit rates) for calculating any fees under **Clause 9.32.1** (Recoverable Resource Charge) of this **ARTICLE III**. All such information shall be protected as the Access Provider's confidential information and subject to confidentiality treatment and obligations under this Agreement.
- 9.33 **Queuing Policy:** The Access Provider shall establish and maintain a queuing policy for each of the Regulated Facilities and Services ("**Queuing Policy**"), which:
- 9.33.1 shall be non-discriminatory;
- 9.33.2 shall be applied to orders and Service Qualifications of All Access Seekers and orders and Service Qualifications for itself, for the access to same or similar Regulated Facilities and Services, and shall treat all such orders and Service Qualifications of All Access Seekers on an equivalent basis to that which the Access Provider treats orders and Service Qualifications for itself for the access to same or similar Regulated Facilities and Services; and
- 9.33.3 shall seek to maximise the efficiency of its ordering and provisioning process.
- 9.34 **Acceptance on Queue:** The Access Provider shall promptly notify the Access Seeker, at the time of providing the Notice of Receipt, of the receipt of the Order, and the position of the Order in the Access Provider's queue.
- 9.35 **Constrained Capacity:** If the Access Provider reasonably believes that the capacity in any Regulated Facilities and Services required by:
- 9.35.1 the Access Seeker pursuant to the relevant Order and/or Forecast;
- 9.35.2 other Access Seekers, pursuant to their relevant orders and/or forecasts in respect of the access to the Regulated Facilities and Services pursuant to the Mandatory Standard on Access; and
- 9.35.3 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,

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

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

9.36 **Capacity Allocation Policy:** If the Access Provider claims or is likely to claim that it has insufficient capacity to meet the Access Seeker's Order, the Access Provider shall maintain a capital allocation policy ("**Capacity Allocation Policy**"), which:

9.36.1 shall be disclosed, free of charge, to the Access Seeker (upon entry into this Access Agreement), the Commission upon the Effective Date, and to both the Access Seeker and the Commission each time it is amended;

9.36.2 shall set out the principles in accordance with which the Access Provider shall determine how to allocate capacity between its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest and any Access Seekers, in circumstances where the amount of capacity available is less than the aggregate of capacity required by the Access Provider's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest, and the Access Seekers;

9.36.3 shall:

- (a) be fair and reasonable;
- (b) 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;
- (c) treat the requirements of All Access Seekers on an equivalent basis to the requirements of Access Provider's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest; and
- (d) allocate the available capacity in the relevant Regulated Facilities and Services in proportion to each of the Access Seekers' forecast (where applicable) and/or order requirements pursuant to the Mandatory Standard on Access; and

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

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as compared to the information generally provided to the Other Access Seekers in this respect.

10 INTERCONNECTION AND POINT OF INTERFACE PROCEDURE

10.1 **Interconnection:** Each Party shall interconnect and keep its Network interconnected with the Network of the other Party in accordance with the terms of this Agreement.

10.2 Point of Interface Locations and Technical Considerations

10.2.1 Save and except where the publication of information may be declined by the Access Provider pursuant to this Agreement or the Mandatory Standard on Access, the general locations and technical feasible points offered by the Access Provider at which physical collocation is available, in respect of which virtual co-location is available and in respect of which in-span interconnection is available, if any and to the extent relevant, are listed in the Technical and Commercial Document and/or the Access Provider's website, and will be available on and from the date of publication and for the following twelve (12) month period ("**AP POIs**").

10.2.2 The Access Provider shall ensure that network co-location at each of the AP POIs is offered to the Access Seeker in accordance with this Agreement (i.e., the relevant parts of the Technical and Commercial Document).

10.2.3 The Access Provider may decline to publish information in connection with particular POIs and other locations where Facilities are located, for national or operational security reasons, but in such circumstances, the Access Provider must:

(a) promptly provide such information to the Access Seeker on request, subject only to the Access Seeker entering into or having in place a Confidentiality Agreement with the Access Provider; and

(b) offer to provide, and if the offer is accepted, provide updated location details to the Access Seeker as POIs and related Facilities are withdrawn, introduced and changed.

10.2.4 The technical consideration for determining the locations for POIs may include, without limitation, the following: (a) whether switching and transmission facilities have the capacity to interconnect with other networks; (b) timely and efficient deployment of sufficient capacity to support the required grade of service to Customers; (c) preservation of network security; and (d) such other factors as outlined in the Technical and Commercial Document. The Access Provider may in its sole discretion determine not to establish a POI at a location where the establishment of such POI is not warranted upon considering the above factors.

10.3 **Access Seeker requested Point of Interface Other Than Listed AP POIs:** The Access Provider shall reasonably consider a request by the Access Seeker to interconnect at a point other than the listed AP POIs. The Access Provider shall promptly notify the Access Seeker whether it accepts or refuses such request by the Access Seeker under this subsection, and provide the Access Seeker with reasons if it refuses the Access Seeker's request.

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- 10.4 **Network Responsibility:** Each Party shall be responsible for the provisioning and maintenance of the POIs (including those facilities which form part of the interconnection links and the transmission equipment) on its side of the Network as may be necessary for the purpose of this Agreement. Each Party will be responsible for all its Network (including infrastructure) up to and including the connection to the POIs. Each Party shall at all times ensure its Network, to the extent that its Network may affect the other Party's Network, meets any compatibility requirements reasonably required by the other Party. Each Party shall ensure that any connection made by it ("**Connecting Operator**") to the other Party's Network is made and maintained by the Connecting Operator in compliance with this Agreement and all applicable laws.
- 10.5 **Third-party Point of Interface:** The Access Provider shall permit the Access Seeker to nominate a POIs of a third party for the purposes of interconnection and access between the Access Provider and the Access Seeker to the extent necessary, 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 POIs.
- 10.6 **Point of Interface Factors:** When determining which locations are to be listed as part of the AP POIs, or when determining a request under **Clause 10.3** (Access Seeker requested Point of Interface Other Than Listed AP POIs) of this **ARTICLE III**, the Access Provider must have regard to each of the following:
- 10.6.1 the Access Provider shall offer (but shall not require) POIs and co-location for every Closed Number Area throughout Malaysia in which the Access Provider has network facilities;
 - 10.6.2 in addition to offering AP POIs and co-location in accordance with **Clause 10.6.1** (Point of Interface Factors) of this **ARTICLE III**, the Access Provider shall offer (but shall not require) interconnection and co-location at each other technically feasible point;
 - 10.6.3 the Access Provider shall offer (but shall not require) physical co-location in at least one POIs location for every Closed Number Area throughout Malaysia in which the Access Provider has network facilities, but may additionally offer (but shall not require) other forms of co-location in relation to a particular location (e.g. virtual co-location) if requested by the Access Seeker;
 - 10.6.4 the Access Provider shall not reserve space other than: (a) current needs for itself; (b) future needs for itself calculated by use of a reasonably projected rate of growth over two (2) years; and (c) the needs of Other Access Seekers who are currently occupying or have ordered additional space from the Access Provider; and
 - 10.6.5 any possible re-arrangement of the configuration of its Equipment to eliminate space inefficiencies.

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- 10.7 **Physical Access:** The Access Provider may establish reasonable security procedures and processes to apply to personnel of the Access Seeker who will physically access the POIs or other locations where the Regulated Facilities and Services are located or provided from, provided that such procedures and processes shall not completely or substantially prohibit the personnel of the Access Seeker from physically accessing the AP POIs or other relevant location unless the Access Provider has been directed in writing to do so by any regulatory authorities, the government or under applicable laws and be no more restrictive or onerous than procedures and processes the Access Provider imposes on its own personnel in respect of such physical access, subject always to the Technical and Commercial Document.

11 DECOMMISSIONING OBLIGATIONS

11.1 **Application of Decommissioning Obligations:** This **Clause 11** (Decommissioning Obligations) of this **ARTICLE III** applies only where the Access Provider initiates the decommissioning of:

11.1.1 any AP POIs provided by the Access Provider and utilised by the Access Seeker hereunder (“**Active AP POIs**”); or

11.1.2 any Regulated Facilities and Services to which access is provided to the Access Seeker hereunder (“**Active Sites**”).

11.2 **Decommissioning Notice:** Where the Access Provider wishes to decommission any Active AP POIs or any Active Sites, the Access Provider must provide no less than:

11.2.1 one (1) year's notice in writing to the Access Seeker prior to any decommissioning of any Active AP POIs; or

11.2.2 six (6) months' notice in writing to the Access Seeker prior to the decommissioning of any Active Sites,

except where the Access Provider is required to vacate a site where any Active AP POIs hereunder, or any Active Sites, is located, as a result of a third party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, in which case the Access Provider will only be required to provide the Access Seeker with as much notice as possible.

11.3 **Co-operation:** Each Party must co-operate and negotiate with the other Party in relation to the timetable for decommissioning of the relevant Active POIs and/or Active Sites.

11.4 **Alternative Arrangements:** The Access Provider which notifies the Access Seeker of its intention:

11.4.1 to decommission any Active POIs, shall provide to the Access Seeker a functionally equivalent interconnection at another AP POIs on terms 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 relevant Active POIs that is proposed to be decommissioned, for a period that is not less than three (3) years from the date of decommissioning (or such other period mutually agreed between the Parties); or

11.4.2 to decommission any Active Sites, shall provide to the Access Seeker access to alternative Regulated Facilities and Services which are offered by the Access Provider 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 Active Sites that are proposed to be decommissioned, for a period that is not less than three

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(3) years from the date of decommissioning (or such other period mutually agreed between the Parties).

11.5 **Decommissioned Active POIs Compensation:** Except where decommissioning is required due to the request, breach or fault of the Access Seeker, Force Majeure or any third-party not under the direction or control of the Access Provider, the Access Provider shall pay the Access Seeker reasonable costs, necessarily incurred in:

11.5.1 decommissioning any links to the Active POIs that is (proposed to be) decommissioned, that are, or will be, rendered redundant by the (proposed) decommissioning;

11.5.2 installing or otherwise procuring links between the Active POIs that is (proposed to be) decommissioned and the substitute AP POIs to be provided pursuant to **Clause 11.4.1** (Alternative Arrangements) of this **ARTICLE III**; and

11.5.3 the carriage of traffic between the Active POIs that is (proposed to be) decommissioned and the substitute AP POIs to be provided pursuant to **Clause 11.4.1** (Alternative Arrangements) of this **ARTICLE III** for a period that is not less than three (3) years from the date of decommissioning or such other period mutually agreed between the Parties.

11.6 **Decommissioned Active Sites Compensation:** Except where decommissioning is required due to the request, breach or fault of the Access Seeker, Force Majeure or any third-party not under the direction or control of the Access Provider, the Access Provider shall pay the Access Seeker's reasonable costs, necessarily incurred in:

11.6.1 moving the Access Seeker's Equipment from the decommissioned Active Sites to alternative Regulated Facilities offered in accordance with **Clause 11.4.2** (Alternative Arrangements) of this **ARTICLE III**; or

11.6.2 re-arranging Equipment to connect to alternative Regulated Services offered in accordance with **Clause 11.4.2** (Alternative Arrangements) of this **ARTICLE III**.

12 NETWORK CHANGE OBLIGATIONS

- 12.1 **Application of Network Change Obligations:** This **Clause 12** (Network Change Obligations) of this **ARTICLE III** applies where a Party proposes to implement any Relevant Changes of a type referred to in **Clause 12.2** (Network Change) of this **ARTICLE III** which necessitates a change in the hardware or software (including interface software) of the other Party's Network in order to ensure the continued proper operation and compatibility of the Parties' respective Networks, services and procedures for the purpose of this Agreement.
- 12.2 **Network Change:** The following kinds of proposed Network changes are within the scope of this **Clause 12** (Network Change Obligations) of this **ARTICLE III** ("**Relevant Changes**"):
- 12.2.1 any change by a Party proposing to make the change ("**Notifying Party (Network Change)**") to any technical specification of the interconnection interface between the Parties' respective Networks ("**Interface Change**");
- 12.2.2 any change by the Notifying Party (Network Change) to any technical specification or characteristic of its Regulated Facilities and Services or its facilities and/or services regulated under the Mandatory Standard of Access (as the case may be) to which the other Party ("**Recipient Party (Network Change)**") has access to hereunder, which will or might affect:
- (a) the Recipient Party (Network Change)'s Network; or
- (b) the Recipient Party (Network Change)'s use of the Regulated Facilities and Services and/or other facilities and/or services regulated under the Mandatory Standard on Access provided by the Notifying Party (Network Change),
- (**"Facility and/or Service Change"**)
- 12.2.3 any change by the Notifying Party (Network Change) to any technical specification or characteristic of that Notifying Party (Network Change)'s Network which will or might affect the Network of the Recipient Party (Network Change), such change shall be referred to as the "**Other Network Change**";
- 12.2.4 any change by the Notifying Party (Network Change) to any of its Operational Support Systems used in inter-carrier processes, including without limitation ("**OSS Change**"):
- (a) the billing system;
- (b) portals for service fulfilment, service assurance and network and home pass information;
- (c) the ordering and provisioning systems; or

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(d) the Customer's Churn process, and

12.2.5 any enhancement by the Notifying Party (Network Change) of the features, functions or capabilities of its Regulated Facilities and Services or its facilities and/or services regulated under the Mandatory Standard of Access (as the case may be) to which the Recipient Party (Network Change) has access hereunder, which enhancement the Notifying Party (Network Change) proposes to make available either to itself or to the Recipient Party (Network Change) (“**Functionality Change**”).

12.3 **Notification of Change:** If the Notifying Party (Network Change) proposes to make any Relevant Changes to its Network, services or procedures, the Notifying Party (Network Change) shall provide the Recipient Party (Network Change) with notice in writing (“**Change Notice**”) of:

12.3.1 the nature, effect, technical details, potential impact on the Recipient Party (Network Change)'s Network and the expected completion date of the proposed Relevant Changes, described at a sufficient level of detail to enable the Recipient Party (Network Change) to identify and begin planning such changes as may be necessary or desirable for the Recipient Party (Network Change) to make to its Network, services or procedures in consequence of the Relevant Changes; and

12.3.2 a date, which shall be no later than ten (10) Business Days from the date of the Change Notice, on which the representatives of the Notifying Party (Network Change) will be available to discuss with the representatives of the Recipient Party (Network Change), the proposed Relevant Changes and the changes that may be necessary or desirable for the Recipient Party (Network Change) to make to its Network, services or procedures in consequence of the Relevant Changes,

as soon as reasonably practicable and, in any case, with not less than the period set out in the table below or such other period as agreed between the Parties:

Types of Relevant Changes	Period
Interface Change, Facility and/or Service Change, Other Network Change, OSS Change, and Functionality Change	Three (3) months (unless otherwise agreed)

12.4 **Post-Notification Procedures:** The Notifying Party (Network Change) shall:

12.4.1 meet with the representatives of the Recipient Party (Network Change) on the date set out in the Change Notice or as soon as practicable thereafter (but no later than the period set out in the table in **Clause 12.3** (Notification of Change) of this **ARTICLE III**), for the purpose of discussing the Relevant Changes and any changes that may be necessary or desirable for the Recipient Party (Network Change) to make to its Network, services or procedures in consequence of the Relevant Changes;

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- 12.4.2 provide any additional information reasonably requested by the Recipient Party (Network Change) no later than ten (10) Business Days after the Recipient Party (Network Change)'s request for such additional information; and
 - 12.4.3 take reasonable account of concerns raised and proposals made by the Recipient Party (Network Change) to minimise any adverse impact of the Relevant Changes on the Recipient Party (Network Change) and revise the Change Notice accordingly.
- 12.5 **Testing:** The Notifying Party (Network Change) shall, bearing its own costs in doing so:
- 12.5.1 co-operate with the Recipient Party (Network Change) to develop procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Parties' respective Networks, including where required by implementing a proof of concept; and
 - 12.5.2 jointly carry out testing with the Recipient Party (Network Change) in a timely manner, using its best endeavours to accommodate any timing requested by the Recipient Party (Network Change) and, in any case, no less than twenty (20) Business Days before the Notifying Party (Network Change) proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under **Clause 12.5.1 (Testing)** of this **ARTICLE III**.
- 12.6 **Testing Failure:** Subject to the Recipient Party (Network Change) having co-operated with the Notifying Party (Network Change) in relation to the conduct of tests under **Clause 12.5 (Testing)** of this **ARTICLE III**, if such tests:
- 12.6.1 are not accepted by ten (10) Business Days prior to the date when the Notifying Party (Network Change) proposes to effect the Relevant Changes; or
 - 12.6.2 do not provide reasonable assurance of the continued proper operation and compatibility of the Parties' respective Networks, services and procedures,
- the Notifying Party (Network Change) must postpone implementation of the Relevant Changes. The period of postponement will be the period necessary to allow the Parties to repeat the steps in **Clauses 12.3 (Notice of Change)** to **12.5 (Testing)** of this **ARTICLE III** until this **Clause 12.6 (Testing Failure)** of this **ARTICLE III** is not triggered.

13 BILLING AND SETTLEMENT OBLIGATIONS

- 13.1 **Invoices:** The 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 Cycle in accordance with **Clause 13** (Billing and Settlement Obligations) of this **ARTICLE III** for amounts due in respect of the supply of the Regulated Facilities and Services during the relevant Billing Period, provided that such failure shall not prejudice the Access Provider's right to issue the invoice at a later date to recover any such amounts due.
- 13.2 **Currency:** Unless otherwise agreed by the Access Provider and the Access Seeker, the Access Provider shall state all invoice in Ringgit Malaysia and payment shall be made by the Access Seeker in Ringgit Malaysia.
- 13.3 **Billing Cycle:** The Access Provider shall issue invoice in accordance with the agreed Billing Cycle.
- 13.4 **Billing Verification Information:** The 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.
- 13.5 **Other Billing Information:** Each Party must provide to the other Party with which it interconnects, information within its possession that is reasonably necessary to allow such other Party to provide accurate and timely billing services to itself, Other Access Seekers and Customers.
- 13.6 **Summarised Invoice and Billing Information:** The Access Provider shall provide the Access Seeker, on written request, with an aggregated summary of billings for access to the Regulated Facilities and Services provided to the Access Seeker, in monthly tranches.
- 13.7 **Billing Error and Correction:** If any Party discovers an error in an invoice, it must promptly notify the other Party. The Party which made the error must make necessary adjustments to correct that error within one (1) month of notification.
- 13.8 **Time for Payment:** Subject to the right to withhold payments under **Clause 13.11** (Withholding of Disputed Amounts) of this **ARTICLE III**, the Access Seeker shall pay any invoice within one (1) month from the date of receipt of such invoice.
- 13.9 **Method of Payment:** The Access Seeker shall pay an invoice by bank cheque or electronic funds transfer directly to an account nominated by the Access Provider.
- 13.10 **No Set-off:** All invoice shall be paid in accordance with this Agreement without any set-off or deductions whatsoever save and except that the Access Seeker shall be permitted to withhold payment under **Clause 13.11** (Withholding of Disputed Amounts) of this **ARTICLE III**.

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13.11 **Withholding of Disputed Amounts:** The Access Seeker may withhold payment of any amount stated in an invoice which is, and to the extent, disputed by the Access Seeker in good faith if and provided that:

13.11.1 the Access Seeker notifies the Access Provider within fifteen (15) Business Days (unless otherwise agreed between the Parties) from the date of receipt of the invoice of such dispute and its intention to withhold the disputed amount; and

13.11.2 the Access Seeker's notification specifies the information referred to in **Clause 13.13** (Billing Dispute Notification Information) of this **ARTICLE III**.

13.12 **Billing Disputes:** The Access Seeker may dispute any amount in an invoice in good faith if the Access Seeker notifies the Access Provider within the time period stated below, to be calculated from the date of receipt of the relevant invoice provided that the Access Seeker's notification specifies the information referred to in **Clause 13.13** (Billing Dispute Notification Information) of this **ARTICLE III**, failing which the Access Seeker is deemed to have accepted the invoice:

No.	In the case of	Time Period
1	Domestic calls and interconnection	within thirty (30) Business Days
2	Outgoing and incoming international calls and interconnection	within six (6) months
3	Other Regulated Facilities and Services	within thirty (30) Business Days

13.13 **Billing Dispute Notification Information:** When disputing any amount in an invoice, the Access Seeker shall provide the following information in its notification:

13.13.1 the reasons for which the invoice is disputed together with supporting documentation as may be reasonably necessary to substantiate the dispute;

13.13.2 the amount in dispute;

13.13.3 details required to identify the relevant invoice and charges or amount in dispute including:

- (a) the account number;
- (b) the invoice reference number;
- (c) the invoice date;
- (d) the invoice amount; and
- (e) billing verification information; and

13.13.4 evidence in the form of a report, indicating any relevant traffic data which is in dispute (where applicable).

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13.14 **Billing Dispute Resolution:** The Access Provider and the Access Seeker must comply with the Dispute Resolution Procedure applicable to Billing Disputes.

13.15 **Interest:** Without prejudice to any other rights and/or remedies of the Access Provider under this Agreement and/or at law, late payment interest will be charged on the outstanding or overdue amount in accordance with the following, to be calculated daily from the due date until the date of receipt by the Access Provider of full payment:

Overdue Amount	Late Payment Interest
Any amount in an invoice being disputed by the Access Seeker in good faith in accordance with Clause 13.12 (Billing Disputes) of this ARTICLE III	No late payment interest
Payments which are overdue by two (2) months or less (except for disputed amount pursuant to Clause 13.12 (Billing Disputes))	two percent (2%) per annum above Malayan Banking Berhad's base rate published as at the date of payment
Payments which are overdue by more than two (2) months (except for disputed amount pursuant to Clause 13.12 (Billing Disputes))	three percent (3%) per annum above Malayan Banking Berhad's base rate published as at the date of payment

13.16 **Backbilling:** The Access Provider shall be entitled include omitted or miscalculated amounts or 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 amounts or charges to the Access Seeker and such inclusion, amendment or issuance is made within five (5) years from the end of the Billing Cycle in which the Regulated Facilities and Services were provided.

13.17 **Provisional Billing:** Where the Access Provider is unable to issue an invoice within one (1) month after the end of the Billing Cycle in accordance with **Clause 13.1** (Invoices) of this **ARTICLE III**, it may issue an invoice to the 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 that the total provisional amount 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 Regulated Facilities and Services, the Access Provider may issue a Provisional Invoice up to the full value of the amount based on the most recent invoice.

13.18 **Adjustment Period:** Where a Provisional invoice is issued by the Access Provider, within the next six (6) months ("**Adjustment Period**"), the Access Provider must issue an invoice for the actual amount due for access to the relevant Regulated Facilities and Services. If that invoice for the actual amount is not issued within the Adjustment Period, the Access Seeker shall treat the Provisional invoice as the actual invoice. If

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the actual amount for a particular Billing Period is higher than the provisional amount for such 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 such 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.

- 13.19 **Complete Charges:** The Access Provider shall specify all fees and charges in this Agreement (including without limitation an Order) and shall not attempt to recover any other costs, expenses or charges which are not specified in this 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 or Order agreed with the Access Seeker under this Agreement.

14 TERM, SUSPENSION AND TERMINATION OBLIGATIONS

14.1 Termination Circumstances:

14.1.1 **Termination by Access Provider:** Subject to **Clause 14.1.3** (Affected Orders Only) and **Clause 14.3** (Notification to Commission) of this **ARTICLE III**, the Access Provider may only terminate this Agreement, whether in whole or in part (for example, only to the extent relating to any particular affected Regulated Facilities and Services, or at a particular site), if any of the circumstances below apply or occur, and the Access Provider has notified the Access Seeker that it will terminate:

- (a) **Material Breach by Access Seeker:** where the Access Seeker has materially breached this Agreement, 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 notification;
- (b) **Winding Up/Cessation of Business:** where the Access Seeker has become subject to a winding up order (whether compulsorily 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) **Force Majeure:** a Force Majeure has continued for a period of more than three (3) months.

Upon the occurrence of any of the events above and subject to **Clause 14.3** (Notification to Commission) of this **ARTICLE III**, the Access Provider may terminate this Agreement by providing the Access Seeker a written termination notice.

14.1.2 **Termination by Access Seeker:** Except where permitted to terminate any particular Regulated Facilities and Services after its Minimum Contractual Period in accordance with this Agreement, the Access Seeker may only terminate this Agreement, whether in whole or in part (for example, only to the extent relating to any particular affected Regulated Facilities and Services, or at a particular site), if any of the circumstances below apply or occur, and the Access Seeker has notified the Access Provider that it will terminate, subject always to **Clause 14.1.3** (Affected Orders Only) and **Clause 14.3** (Notification to Commission) of this **ARTICLE III**:

- (a) **Material Breach by Access Provider:** where the Access Provider has materially breached this Agreement, the Access Seeker has notified the Access Provider that it will terminate in no less than one (1) month if the

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Access Provider has not remedied its breach by the end of that period and the Access Provider has failed to remedy its breach in accordance with such notification;

- (b) **Winding Up/Cessation of Business:** where the Access Provider has become subject to a winding up order (whether compulsorily 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 Provider's assets are subject of any form of distress or execution or any analogous insolvency event related to the Access Provider has occurred in any jurisdiction; or
- (c) **Force Majeure:** a Force Majeure has continued for a period of more than three (3) months.

Upon the occurrence of any of the events above and subject to **Clause 14.3** (Notification to Commission) of this **ARTICLE III**, the Access Seeker may terminate this Agreement by providing the Access Provider a written termination notice.

- 14.1.3 **Affected Orders Only:** Where the circumstances giving rise to termination concern only a particular Order, the terminating Party shall have the right to terminate only that specific Order and any other Order which is adversely and unavoidably affected by the termination of the relevant terminable Order, provided that where the breach or circumstances giving rise to termination are fundamental in nature and generally or materially affect the performance of this Agreement as a whole, the terminating Party shall be entitled to terminate this Agreement in its entirety.
- 14.2 **Suspension:** Subject to **Clause 14.3** (Notification to Commission) of this **ARTICLE III**, the Access Provider may only suspend access to any Regulated Facilities and Services, whether in whole or in part and without any liability, by providing the Access Seeker with five (5) Business Days' notice, including reasons, prior to suspending access to the relevant Regulated Facilities and Services in the following circumstances:
 - 14.2.1 **Affecting Access Provider's Network/Material Safety Threat:** 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;
 - 14.2.2 **Threat to Life/Property of Access Provider/Employees/Contractors:** 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;
 - 14.2.3 **Harm to Facilities:** the Access Seeker's facilities cause material, physical or technical harm to any facilities of the Access Provider or any other person;
 - 14.2.4 **Failure to Pay:** where the Access Seeker has failed to pay invoices in accordance with **Clause 13** (Billing and Settlement Obligations) of this

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ARTICLE III, and has failed to rectify such non-compliance within thirty (30) days of receiving notice from the Access Provider (and subject to any right that the Access Seeker has under **Clause 13** (Billing and Settlement Obligations) of this **ARTICLE III** to dispute any amount in an invoice);

- 14.2.5 **Breach of Security Requirements:** where the Access Seeker has failed to provide and maintain any security sum as required under the Security Requirements (or pursuant to any security review conducted in accordance with this Agreement);
- 14.2.6 **Force Majeure:** where Force Majeure applies;
- 14.2.7 **Breach of Laws:** 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 the Regulated Facilities and Services under this Agreement; or
- 14.2.8 **Operation of Laws:** where any suspension is required due to the operation or requirement of any applicable laws, provided that in such circumstances, the Access Provider will give as much notice as possible and the abovesaid five (5) Business Days' notice requirement shall not apply to the extent not practicable.

Save and except where otherwise stipulated in this Agreement, each Party shall bear costs and expenses incurred by it under this Agreement during and in connection with the suspension period to the extent such suspension is not due to or caused by any breach, fault and/or negligence of other Party (or any third party acting under the direction or control of such other Party). For the avoidance of doubt, the exercising of the right to suspend under this Agreement shall not in any way prejudice the Access Provider's right to terminate this Agreement (or any part thereof).

- 14.3 **Notification to Commission:** Prior to terminating or suspending this Agreement (including any part thereof) or access to any Regulated Facilities and Services provided under it, the terminating or suspending Party will notify the Commission in writing of the action the terminating or suspending Party proposes to take and the reasons why it considers such action is appropriate. The Commission may invite the other Party (to the extent affected by such termination or suspension) to make submissions to the Commission regarding the proposed termination or suspension. The terminating or suspending Party or the Access Provider (as the case may be):
 - 14.3.1 **Commission's Consent:** shall only give effect to the proposed termination or suspension with the Commission's written consent and subject to any time delay or conditions which the Commission may specify (if any). The Commission will endeavour to respond to the terminating or suspending Party's notice within ten (10) Business Days or such other period that the Commission considers is reasonable. The terminating or suspending Party or the Access Provider (as the case may be) must not give effect to the proposed termination or suspension unless the terminating or suspending Party or the Access Provider (as the case may be) has received written consent from the Commission to such termination or suspension; and

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- 14.3.2 **Practicable Steps to Minimise Disruptions/Inconvenience:** shall take all steps practicable to minimise disruptions and inconvenience to the other Party and, where applicable, the Customers of the other Party (including providing the other Party with a reasonable period to make alternative arrangements prior to the suspension or termination of this Agreement, or where relevant, prior to the suspension or termination of access to Regulated Facilities and Services provided under it).
- 14.4 **Reinstating Access:** In the event the circumstances or causes that led to any suspension under this Agreement have been remedied, resolved or no longer exist, the Access Provider may reinstate access to the relevant Regulated Facilities and Services, to the extent such reinstatement is commercially and reasonably viable.
- 14.5 **Penalty and Termination Costs:** The Access Provider shall not recover any additional charges, costs or expenses to penalise the Access Seeker on termination or suspension of this Agreement or access to any Regulated Facilities and Services provided under it provided that the Access Provider shall be entitled to charge the following:
- 14.5.1 charges invoiced in arrears and not yet paid; and/or
- 14.5.2 charges arising during an applicable Minimum Contractual Period provided that:
- (a) such charges must be reduced to reflect any cost savings to the Access Provider from not having to supply the Regulated Facilities and Services to the extent that they have been terminated or suspended; and
 - (b) the Access Provider must use reasonable endeavours to mitigate its costs of termination or suspension and maximise cost savings under **Clause 14.5.2(a)** (Penalty and Termination Costs) of this **ARTICLE III**.
- Nothing in this **Clause 14.5** (Penalty and Termination Costs) of this **ARTICLE III** shall in any way limit, prejudice or negate the Access Provider's right to seek redress and/or claim full compensation and damages from the Access Seeker due to or caused by any breach, fault and/or negligence of the Access Seeker (or any third party acting under the direction or control of the Access Seeker) under this Agreement and to enforce its other rights and/or remedies under this Agreement and/or at law.
- 14.6 **Effect of Termination:** Without prejudice to any other rights and/or remedies any Party may have under this Agreement and/or at law, on termination of this Agreement or access to any Regulated Facilities and Services provided under it:
- 14.6.1 **Refund by Access Provider:** 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, subject always to **Clause 14.5** (Penalty and Termination Costs) of this **ARTICLE III**;

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- 14.6.2 **Access Seeker to Pay Amounts Due:** the Access Seeker shall immediately pay all amounts due to the Access Provider for the provision of the Regulated Facilities and Services prior to and up to termination (save for disputed amounts which the Access Seeker is entitled to withhold under this Agreement);
- 14.6.3 **Access Seeker to Pay Post Termination-fees:** the Access Seeker shall pay the fees and charges as set out in **Clause 14.5** (Penalty and Termination Costs) of this **ARTICLE III**;
- 14.6.4 **Access Provider to Return Security Sum:** the Access Provider shall, within two (2) months of termination of this Agreement, refund to the Access Seeker any balance of the security sum paid provided all other amounts payable by the Access Seeker to the Access Provider have been paid;
- 14.6.5 **Access Provider to Waive Performance Guarantee:** except in respect of amounts payable by the Access Seeker to the Access Provider as at the date of termination, the Access Provider shall immediately upon termination of this Agreement return any performance guarantee provided by the Access Seeker, provided that all matters to which the performance guarantee relate has been discharged by the Access Seeker unless otherwise agreed by the Access Provider; and
- 14.6.6 **Disconnecting Network:** Each Party (disconnecting Party) shall disconnect its Equipment and facilities and where required, shall disconnect and remove its Equipment and facilities from the premises and Network of the other Party (Party to be disconnected). In this respect, the Party to be disconnected shall provide reasonable access to its premises during operating hours to enable the disconnecting Party to remove and disconnect its Equipment and facilities from the premises of the Party to be disconnected. In the event that the disconnecting Party fails to comply with this Clause within the agreed time period or in its absence, a reasonable time period, the Party to be disconnected may take such necessary steps to disconnect and remove the Equipment and facilities of the disconnecting Party without liability to the disconnecting Party. The Party to be disconnected shall be entitled to recover from the disconnecting Party all costs and expenses reasonably incurred by the Party to be disconnected for carrying out such disconnection, removal, disposal or return of the Equipment and facilities of the disconnecting Party and making good of its site.
- 14.7 **Rights Expressly Reserved:** For the avoidance of doubt:
- 14.7.1 the exercising of any termination or suspension rights by a Party under this Agreement, and the return of security sum or performance guarantee by the Access Provider, shall not in any way be deemed to be a waiver of any breach, fault or negligence of or by the other Party or the Access Seeker (as the case may be), and shall be without prejudice to the other rights and/or remedies of the Party exercising the termination or suspension rights or returning the security sum or performance guarantee (as the case may be) under this Agreement, at law or otherwise; and

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14.7.2 any affected Party shall be entitled to seek interlocutory action or relief without the necessity of first exercising its rights herein and nothing herein shall preclude any Party the right to seek interlocutory action or relief in the event of breach, fault or negligence by or of the other Party.

15 MATERIAL VARIATION

- 15.1 Any Party seeking to materially vary (“**Varying Party**”) any access to any Regulated Facilities and Services under this Agreement or the other parts of this Agreement to the extent it may affect the provisioning of and/or access to any Regulated Facilities and Services as required under the Mandatory Standard on Access shall, prior to effecting any such material variation:
- 15.1.1 negotiate and agree with the other Party in relation to such material variation (agreement not to be unreasonably withheld); and
 - 15.1.2 upon such agreement with the other Party, notify the Commission in writing of such agreed material variation, the action the Varying Party proposes to take, and the reasons why it considers such action is appropriate.
- 15.2 The Commission may invite the other Party to make submissions to the Commission regarding the proposed material variation. The Varying Party:
- 15.2.1 **Commission’s Consent:** shall only give effect to the proposed 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 Varying Party's notice within ten (10) Business Days or such other period that the Commission considers is reasonable. The Varying Party must not give effect to the proposed material variation unless the Varying Party has received written consent from the Commission in respect of such material variation; and
 - 15.2.2 **Practicable Steps to Minimise Disruptions/Inconvenience:** shall take all steps practicable to minimise disruptions and inconvenience to the other Party and, where applicable, the Customers of the other Party.

16 RECIPROCAL ACCESS

- 16.1 If the Access Provider requires access to the Access Seeker's facilities and services regulated under the Mandatory Standard on Access, the Access Seeker shall provide the Access Provider access subject to the Parties negotiating and entering into an access agreement with terms substantially similar to the terms contained in the relevant parts of this Agreement to the extent applicable to the regulated facilities and/or services, unless and save as otherwise agreed between the Parties.

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