



GRASS2ROUTE SDN BHD  
(773042-K)

**REFERENCE ACCESS OFFER  
(RAO)**

*Version 1.0 of 2020*

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## **PART 1: INTRODUCTION, BACKGROUND AND SCOPE**

- 1.1. This Reference Access Offer is made by Grass2Route Sdn Bhd (Company No: 773042-K) (“G2R”), a company incorporated under the laws of Malaysia and having its registered office at 736, Jalan Batik 3/2, Taman Batik, 08000 Sungai Petani, Kedah Darul Aman on 14 May 2007 will pursuant of the Commission Determination on Access List, Determination No. 2 of 2015 which come into operation on 1 September 2015 and the Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016, which comes into force on the 1st January 2017 (“the MSA Determination”).
- 1.2. This References Access Offer is hereby referred to as G2R’s RAO.
- 1.3. The MSA Determination deals with access to network facilities and network services included in the Access List and obligation that apply to operators concern various Standard on access which include:
  - i. Disclosure Obligations (Section 5.3 of the MSA Determination)
  - ii. Negotiation Obligations (Section 5.4 of the MSA Determination)
  - iii. Forecasting Obligations (Section 5.6 of the MSA Determination)
  - iv. Ordering and Provisioning Obligations (Section 5.7 of the MSA Determination)
  - v. Decommissioning Obligations (Section 5.9 of the MSA Determination)
  - vi. Billing and Settlement Obligations (Section 5.11 of the MSA Determination)
  - vii. Terms, Suspension and Termination Obligations. (Section 5.14 of the MSA Determination)
  - viii. Legal Boilerplate Obligations (Section 5.16 of the MSA Determination)
  - ix. Infrastructure Sharing (Section 6.8 of the MSA Determination)
- 1.4. This G2R RAO may be subject to amendments form time to time.
- 1.5. Where an amendment is proposed to be made to the G2R RAO, G2R will provide a copy of amended RAO showing the proposed of changes to the existing RAO, no less than twenty (20) Business Days before the date G2R proposes to effect the changes, to:
  - 1.5.1. All Access Seekers who are being provided with access to Facilities and/or Services under the existing RAO; and

- 1.5.2. All Access Seekers who have requested access to Facilities and/or Services under the existing RAO within the period of three (3) months prior to the making of such amendments, but excluding any such Access Seeker who has
- 1.6. For the purposes of the G2R RAO, an amendment shall mean an addition, deletion, or substitution to the provisions of the G2R RAO other than:
  - 1.7. An addition, deletion or substitution, which is undertaken to correct a typographical error; or
  - 1.8. Which is specifically mentioned in the G2R RAO not to amount to an amendment of the G2R RAO; or
  - 1.9. An amendment made to the G2R RAO to comply with the MSA or direction or determination of the Minister or Commission.
- 1.10. For clarification:
  - 1.10.1. Where the terms and conditions of an Access Agreement are not identical to those in the existing RAO, an amendment to the RAO will not alter the terms of that Access Agreement except as agreed between Digi and Access Seeker; and
  - 1.10.2. Without prejudice to an Access Seeker's right to dispute a change to a RAO, where the terms and conditions of an Access Agreement are identical to those in the existing RAO, an amendment to the RAO will be deemed to alter the relevant terms and conditions of that Access Agreement. However, if the Access Seeker disputes the change to the existing RAO, no amendments to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favour of G2R.
- 1.11. Upon expiry of the twenty (20) Business Days (or such longer period as G2R determines is necessary to finalise the amendments to its RAO);
- 1.12. Make available the amended RAO on G2R's publicly accessible website without delay and

1.13. Provide the updated RAO to the Commission within ten (10) Business Days after being made available under Subsection 3.1.7 of this G2R RAO.

#### NOTICE

1.14. All notices, forms, requests which are required to be sent by the provisions set out herein, shall be marked "G2R RAO" and sent to the following:

Grass2Route Sdn. Bhd.  
736, Jalan Batik 3/2,  
Taman Batik,  
08000 Sungai Petani,  
Kedah, Malaysia.

Attention : Business Development Department  
Email : procurement@g2r.com.my

For the avoidance of doubt, a change of address shall not be construed as an amendment to the RAO.

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## PART 2: SCOPE OF THE REFERENCES ACCESS OFFER (RAO)

### 2.1 INTERPRETATION

**“Access Agreement”** means an agreement:

- a) entered into between Grass2route Sdn. Bhd. and the Access Seeker pursuant to this RAO; or
- b) which is commercially negotiated between the Operators, which terms and conditions shall not be less favorable than the terms and conditions guaranteed by the MSA.

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

**“Access Provider”** means:

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

For the purpose of clarification, in this RAO the Access Provider is “G2R”.

**“Access Request”** means a request for access to Facilities or Services on the Access Service made by the Access Seeker to G2R and containing the information in Section 3.2.5 of Part 3 and any additional information requested under 3.2.6.

**“Access Seeker”** means an Operator who:

- a) is a network facilities provider, network services provider, application service provider or content application service provider and who is a licensee as defined in the Act; and
- b) makes a written request for access to Facilities or Services listed in the Access Service.

**“Access to Network Elements” or “ANE”** means Full Access Service, Line Sharing Service, Bitstream with Network Service, Bitstream without Network Service and Sub-loop Service.

**“Billing Period”** means the period over which the supply of access to Facilities or Services is measured for the purposes of billing, which shall be no more than thirty one (31) days and in accordance with the relevant calendar month, unless otherwise agreed between the Operators.

**“Billing Cycle”** means the regular periodic basis on which the Access Provider shall issues Invoices for the supply of access to Facilities and/or Service during each Billing Period, as specified in subsection 3.6.3 of this standard.

**“Billing Dispute”** means the dispute of an invoice prepared by an Operator to the Other Operator which is made in good faith.

**“Business Day”** means a day (other than a Saturday and Sunday or public holiday) on which commercial banks are open for general banking business in Kuala Lumpur.

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

- a) Information which is or becomes part of the public domain (other than through any breach of an Access Agreement)
- b) Information rightfully received by the Receiving Party from a third person without a duty confidentially being owed to the third person, except where the Receiving Party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the disclosing party;
- c) Information which has been independently developed by the receiving party; or
- d) Information required by law or the business rules of any stock exchange to be disclosed, provided that
  - i. The receiving party, gives twenty-four (24) hours’ notice to the Disclosing party of the particulars of the required disclosure; and
  - ii. The receiving Party provides the Disclosing Party with all assistance reasonably required by the Disclosing Operator (at the Disclosing party’s cost) to enable the Disclosing Party to take any steps available to it to prevent that disclosure or to ensure subject to a reasonable obligation of confidence;

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

**“Disclosure Obligations”** means those obligations set out in subsection 3.1 of this RAO.

**“Disclosing party”** means the Party disclosing the Confidential Information;

**“Effective Date”** means the date on which the relevant portions of the Access Agreement requiring registration is duly registered with the Commission under Section 150 of the Act in its entirety (and such registration is notified by the Commission in writing to either of the Operators);

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

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

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

**“Forecast”** means a forecast made by the Access Seeker

**“Infrastructure Sharing”** has the meaning as describe in paragraph 4(7) of the Access List Determination

**“Invoice”** means the invoice for amounts due in respect of the supply of requested Facilities or Services during a Billing Period.

**“Negotiation Obligation”** means those obligations set out in subsection 3.2 of this RAO

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

**“Network Co-Location Service”** has the meaning as described in paragraph 4(9) of the Access List Determination;

**“Rejection Notice”** means the notice of rejection made by an Access Provider in response to an Access Seeker’s Forecast as described in subsection 3.3.13 of this RAO

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

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



“**Validity Period**” has the meaning given to the term in paragraph 3.4.11(e) of this RAO

## **2.2 INFRASTRUCTURE SHARING**

2.2.1 Infrastructure sharing is a facility and/or services which comprises the following:

2.2.1.1 Provision of physical access, which refers to the provision of space as specified networks facilities to enable an Access Seeker to install and maintain its own equipment; or

2.2.1.2 Provision of access to in-building Common Antenna Systems and physical access to central equipment room.

2.2.2 Specified network facilities include type of Towers and Associated Tower Sites

2.2.3 Physical access includes power, environmental services (such as heat, light, and ventilation), security, site maintenance and access for the personnel of the Access Seeker.

2.2.4 Provision of Space at Associated Tower Site includes space where the Access Seeker may place its cabin or outdoor equipment and space required for cable gantry connecting to the tower and generator set.

2.2.5 Charges and rate of Facilities and Towers to be charges to Access Seeker as available under paragraph 5.1.4.1 of this RAO

## **PART 3: OPERATOR ACCESS OBLIGATIONS**

### **Introduction**

- i. This Part 3 imposes obligations on all network facilities providers and/or networks service providers who required to provide Facilities.
- ii. Subject to Part 3, this RAO applies only to Facilities or Services listed on the Access List Determination.

### **3.1 DISCLOSURE OBLIGATIONS**

#### **3.1.1 General duty**

All operations shall, subject to the provisions of this Standard and the terms and conditions of any confidentiality agreement- entered into pursuant to subsection 3.1.8 of this RAO, provide, in response to a request in a good faith from any other Operator, any information which is reasonably necessary for the negotiation, conclusion and implementation of the provision of access as contemplated in this RAO and in the Act. No Operator may enter into any agreement which would prevent it from making information available to other Operators unless:

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

#### **3.1.2 Freedom to negotiate**

Without limiting its obligations under the Act, an Access Provider shall not;

- (a) refuse to negotiate an Access Agreement with an Access Seeker, whether the access sought is based on a RAO or otherwise; or
- (b) refuse to provide information required under subsection 3.0 of this RAO on the basis that the Access Seeker wishes to negotiate an

Access Agreement, whether the access sought is based on a RAO or otherwise.

### 3.1.3 Reference Access Offer

Each Access Provider shall prepare and maintain a RAO for each Facility and/or Service listed in the Access List Determination which such Access Provider provides to itself or third parties. The RAO shall:

- (a) set out the full terms and conditions on which the Access Provider is prepared to supply Facilities to any other Operator, including the rate and charges to be applied for Facilities and/or Services
- (b) incorporate the details of all available POIs offered by the Access Provider, as specified on its publicly accessible website from time to time in this RAO;
- (c) the Access Provider's RAO confidentiality agreement which shall comply with subsection 3.1.8 of this RAO;
- (d) contain only terms and conditions which are consistent with the rights and obligations set out in this RAO; and
- (e) not contain any terms and conditions which are inconsistent with the rights and obligations set out in this RAO.

For clarification, the requirement to prepare and maintain a RAO shall be without prejudice to any rights and obligations of Access Providers and Access Seekers under an Access Agreement.

### 3.1.4 Availability

Each Access Provider shall ensure that each RAO prepared by it shall:

- (a) be in writing (which includes legible electronic format);

- (b) contain all information required to be included under subsection 3.2 of this RAO;
- (c) be accurate;
- (d) be modular, so that details about the terms and conditions, including the rates, for each of the Facilities are available individually and separately under a RAO;
- (e) be consistent with:
  - i. the Act
  - ii. this RAO; and
  - iii. any applicable decision or determination of the Commission;
- (f) be made available on the Access Provider's publicly accessible website as soon as the RAO is finalised by the Access Provider;
- (g) specify its date and version number, both on the cover and on each page of the document and on the Access Provider's accessible website; and
- (h) be provided to the Commission within ten (10) Business Days after being made available under paragraph 3.1.4(f) of this RAO.

### 3.1.5 Amendment

If an Access Provider proposes to amend a RAO, that Access Provider must, no less than twenty (20) Business Days before the Access Provider proposes to effect the changes, provide a copy of the amended RAO showing the proposed changes to the existing RAO, to:

- (a) all Access Seekers who are being provided with access to Facilities under existing RAO; and
- (b) all Access Seekers who have requested access to Facilities under the existing RAO within the period of three (3) months prior of the making

of such as amendments, excluding any such Access Seeker who has since indicated that it does not wish to proceed with its Access Request.

For clarification:

- i. nothing in subsection 3.1.5 of this RAO prevents an Access Seeker from initiating a dispute in relation to an amendment to a RAO made by an Access Provider under this subsection;
- ii. where the terms and conditions of an Access Agreement are not identical to those in the existing RAO, an amendment to the RAO will not alter the terms of that Access Agreement except as agreed between the Access Provider and Access Seeker; and
- iii. without prejudice to an Access Seeker's right to dispute a change to a RAO, where the terms and conditions of an Access Agreement are identical to those in the existing RAO, an amendment to the RAO will be deemed to alter the relevant terms and conditions of that Access Agreement. However, if the Access Seeker disputes the change to the existing RAO, no amendments to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favour of the Access Provider.

### 3.1.6 Amended RAO

Upon expiry of the twenty (20) Business Days in subsection 3.1.5 of this RAO (or such longer period as the Access Provider determines is necessary to finalise the amendments to its RAO), the Access Provider will:

- (a) make available the amended RAO on the Access Provider's publicly accessible website without delay (including updating its date and version number, both on the cover and on each page of the document); and
- (b) provide the updated RAO to the Commission within ten (10) Business Days after being made available under paragraph 3.1.6(a) of this RAO.

### 3.1.7 Information disclosure

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

- (a) any supplementary details of a Facility and/or Service offered by the Access Provider not included in RAO, including details concerning all POIs and other locations (including sites deemed to be critical national information infrastructure and other secure sites) at which physical co-location, virtual co-location or in-span interconnection is available to Access Seekers;
- (b) any supplementary access charges for access to Facilities not included in the RAO (for example, discounts for inferior service levels or surcharges for enhanced services level);
- (c) all supplementary technical information relating to the Facilities which may be the subject of the Access Request, which are not included in the RAO, including but not limited to any physical and logical interfaces of its Network necessary to allow the development and deployment of communications services, value-added services and communications equipment that can interconnect to, and interoperate with, the Access Provider's Network;
- (d) supplementary details of the Access Provider's operational processes and procedures not included in the RAO (e.g. regarding escorted access at sites deemed to be critical national information infrastructure or other secure site);
- (e) supplementary details of the Access Provider's provisioning cycles not included in the RAO and any impact such cycles may have upon an Access Request by the Access Seeker (e.g. capacity constraints);
- (f) details of the Access Provider's alternative quality of service targets not included in the RAO and actual achievements of service targets in

respects of the Facilities which may be the subject of the Access Request.

- (g) any security requirements, insurance requirements and creditworthiness information (including a credit assessment form, if available) required by the Access Provider under subsections 3.1.9, 3.1.10 and 3.1.11 of this RAO; and
- (h) the Access Provider's reasons for failing to supply any of the information referred to in paragraphs 3.1.7(a) to 3.1.7(g) of subsection 3.1.7 of this RAO.

Prior to the provision of information under subsection 3.1.7 of this RAO, the Access Provider may request the Access Seeker to enter into a confidentiality agreement in accordance with subsection 3.1.8 of this RAO.

### 3.1.8 Confidentiality Agreement

An Access Provider's confidentiality agreement:

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

3.1.9 Security requirements:

- (a) An Access Provider shall not impose any security requirements on an Access Seeker unless the Access Provider determines, acting reasonably, that the Access Seeker presents a credit risk and that imposing the security requirement will materially reduce or remove that risk.
  
- (b) An Access Provider shall ensure that the amount and type of any security requirements to be imposed on an Access Seeker is only imposed in the Access Provider's security policy and is commensurate with:
  - i. a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over:
    - for Facilities with a minimum period of access, the minimum period of access to those Facilities; and
    - for Facilities without a minimum period of access, a single Billing Period for those Facilities,

in an Access Agreement;

- ii. the creditworthiness of the Access Seeker (including prior record of payment by the Access Seeker;
  - iii. security previously reasonable required by the Access Provider.
  
- (c) The Access Provider must not impose a security requirement on an Access Seeker which:
  - i. Exceeds a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to Facilities to be provided by the Access Provider to the Access Seeker; or



- ii. Is designed to, or has the effect of, denying or delaying the Access Seeker's access to Facilities.

#### 3.1.10 Insurance requirements

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

- (a) insurance beyond that necessary for worker's compensation, social security, employer's liability insurance and insurance within statutory limits as required by the laws of Malaysia in respect of its employees employed in connection with the work covered by the Access Agreement that may be entered into; and
- (b) comprehensive general liability insurance for any one claim or series of claims arising out of an accident or occurrence in connection with the Access Agreement that may be entered into.

#### 3.1.11 Creditworthiness information

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

- (a) if the Access Provider reasonably believes that the Access Seeker may not be able to meet any liabilities that may arise under an Access Agreement with the Access Seeker;
- (b) If the creditworthiness information sought is limited to information which is publicly available (on this basis, the Access Provider may request the Access Seeker to warrant that such information is accurate); and
- (c) to the extent commensurate with a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to Facilities

(d) in an Access Agreement.

#### 3.1.12 Reporting obligations

On 1 April and 1 October of each year, in respect of the Facilities set out in subsection 3.1.13 of this RAO, each Access Provider shall notify the Commission in writing of:

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

subsection 3.1.12 of this RAO and the name and the details of the party to which they were supplied;

- (e) Each Access Agreement which has expired or has been terminated (if any) since the previous reporting period under subsection 3.1.12 of this RAO;
- (f) Details of any security required by the Access Provider from Access Seeker under subsection 3.1.9 or subsection 3.8.8 of this RAO, as revised or varied under subsection 3.8.7 of this RAO;
- (g) Details of all ongoing negotiations with Access Seeker, including the date on which the negotiation commenced and updated where an extension of time for negotiation has been granted;
- (h) Details of all ongoing disputes with Access Seeker to which the Dispute Resolution Procedures apply;
- (i) Details of any ongoing space constraints at any POI and other locations including due to technical reasons;
- (j) Details of any constrained capacity and how it has been allocated in accordance with the Access Provider's Capacity Allocation Policy (or the Access Provider's Capacity Allocation Policy for Duct and Manhole Access, as the case may be);
- (k) Summary details of all refused requests for interconnection or access by Access Seeker since the previous reporting period under subsection 3.1.12 of this RAO;
- (l) Any other information requested by the Commission.

## 3.2 NEGOTIATION OBLIGATIONS

### 3.2.1 Timing

If an Operator wishes to negotiate an Access Agreement with another Operator:

- (a) both parties shall notify the Commission when the negotiations for the Access Agreement begin under the subsection;
- (b) both parties shall use their best endeavours to conclude the Access Agreement within:
  - i. where there is no Access Agreement in place between the Operators, four (4) months; or
  - ii. where there is already a commercial agreement or an Access Agreement in place between the Operators, three (3) months, after a written request by the Access Seeker to commence negotiations under paragraph 3.2.6(c) of this RAO and the Access Provider's response confirming it is willing to proceed to negotiate under paragraph 3.2.7(b) of this RAO;
- (c) if the negotiations are not completed within the applicable timeframe specified under paragraph 3.2.1(b) of this RAO:
  - i. the parties may jointly apply to the Commission for an extension of time to negotiate and if the extension of time is not granted by the Commission, there shall be deemed to be a dispute between the parties and the Dispute Resolution Procedures shall take effect; or
  - ii. either party may initiate the Dispute Resolution Procedures; and
- (d) if the Commission grants an extension of the time under paragraph 3.2.1(c)i of this RAO, may it do so subject to such conditions as it specifies (such as an ongoing requirement to provide updates on

negotiations at specified intervals and the right to reduce or extend any extension).

### 3.2.2 Good faith

An Operator shall co-operate, in good faith and in a commercially reasonable manner, in negotiating and implementing the terms of its Access Agreements. This includes:

- (a) acting promptly, honestly, and not perversely, capriciously or irrationally;
- (b) avoiding the imposition of unreasonable restrictions or limitations on the provision of access to Facilities (such as refusing to provide particular forms of access that the Access Provider provides to itself); and
- (c) avoiding unnecessary disputes and resolving disputes promptly and fairly.

### 3.2.3 Confidentiality

An Operator must protect from disclosure any Confidential Information provided by another Operator in the course of negotiating an Access Agreement and during the term of an Access Agreement in accordance with a confidentiality agreement prepared under subsection 3.1.8 of this RAO.

### 3.2.4 Intellectual Property

An Operator shall only use such Intellectual property and information provided by another Operator for the purposes of providing or acquiring access to requested Facilities. An Operator must not use such Intellectual Property or information for the development or marketing of other communication services or Equipment by that Operator, its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest, or third parties.

### 3.2.5 Access Request

An Access Provider may require an Access Seeker to provide an Access Request to the Access Provider if:

- (a) there is no Access Agreement in force between the Access Provider and the Access Seeker governing access to the Facilities to which the Access Seeker seeks access; or
- (b) there is such an Access Agreement, but:
  - i. the current term of that Access Agreement will expire or terminate within the next four (4) months; or
  - ii. the requested Facilities are outside the scope of that agreement

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

### 3.2.6 Required information

An Access Request must contain the following information:

- (a) the name and contact details of the Access Seeker;
- (b) the Facilities in respect of which access is sought;
- (c) whether the Access Seeker wishes to accept the Access Provider's RAO, to negotiate amendments to the RAO, or to negotiate an Access Agreement on alternative terms;
- (d) the information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of the negotiations. The type of information which may be requested by the Access Seeker is described in, but not limited to, subsection 3.1.7 of this RAO;

- (e) two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the form prescribed by the Access Provider in accordance with subsection 3.1.8 of this RAO;
- (f) preliminary information regarding the scale and scope of Facilities and/or Services that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request;
- (g) relevant technical information relating to the interface standards of the Equipment of the Access Seeker;
- (h) relevant information relating to the Access Seeker's Network and the functionality of its services, to the extent that the Access Seeker is aware that such information may affect the Access Provider's Network;
- (i) creditworthiness information in accordance with the Access Provider's requirements, as set out in subsection 3.1.11 of this RAO;
- (j) assessed security (or, if applicable, confirmation of security provided) in accordance with the Access Provider's security requirements, as set out in subsection 3.1.9 of this RAO;
- (k) insurance information in accordance with the Access Provider's insurance requirements, as set out in subsection 3.1.10 of this RAO; and
- (l) such other information as the Access Provider may reasonably request for the sole purpose of providing access to the requested Facilities.

### 3.2.7 Obligations upon receipt

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

- (a) if the Access Seeker is willing to accept a RAO from the Access Provider, the Access Provider will provide access in accordance with the RAO;
- (b) if paragraph 3.2.7 (a) of this RAO does not apply, the Access Provider is willing to proceed to negotiate amendments to the RAO or an Access Agreement on alternative terms;
- (c) the Access Provider refuses the Access Request in accordance with subsection 3.2.10 of this RAO; or
- (d) the Access Provider requires specified additional information to make a decision on the Access Request in accordance with paragraphs 3.2.7 (a) to 3.2.7 (c) of this RAO, and once such information is received from the Access Seeker, the Access Provider shall reconsider in the Access Request in accordance with this subsection and the ten (10) Business Days for the Access Provider to consider the Access Request will recommence from the receipt of the information from the Access Seeker.

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

### 3.2.8 Acceptance response

If the Access Provider responds that access will be provided in accordance with a RAO, the Access Provider must, within ten (10) Business Days of such response, provide two copies of the RAO 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.



### 3.2.9 Negotiation response

If the Access Provider is willing to proceed with negotiation of the Access Request (as described in paragraph 3.2.7 (b) of this RAO), the Access Provider must set out in its response to the Access Seeker:

- (a) a place, date and time, not later than fifteen (15) Business Days from the date of the Access Provider's response, when the Access Provider's representative that is authorised to negotiate on an Access Agreement, will be available for an initial meeting with Access Seeker's representative that is authorised to negotiate on the Access Agreement; and
- (b) one (1) copy of the executed confidentiality agreement returned by the Access Seeker [in accordance with paragraph 3.2.6 (e) of this RAO] that has also been properly executed by the Access Provider.

### 3.2.10 Refusal response

If the Access Provider decides to refuse the Access Request [as described in paragraph 3.2.7(c) of this RAO}, the Access Provider must set out in its response to the Access Seeker:

- (a) the grounds in subsection 3.2.11 of this RAO on which the Access Provider is relying;
- (b) the basis of the Access Provider's decision with the sufficient particulars to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of refusal; and
- (c) a place, date and time, not later than seven (7) Business Days from the date of the Access Provider's response, at which representatives of the Access Provider authorised to review the Access Provider's assessment of the Access Request will be available to meet with representatives of the Access Seeker, for the purpose of discussing of the refusal of the Access Request. At this meeting, the Access Seeker may request the Access Provider to substantiate its reasons for refusal (and the Access Provider shall do so), and if access has been refused on the basis of the grounds in:

- i. Paragraph 3.2.11(b) of this RAO, the Access Provider must reassess the Access Seeker's original Access Request considering any supplementary information provided by the supplementary information provided by the Access Seeker;
- ii. Paragraph 3.2.11(d) of this RAO, the Access Provider must identify when additional capacity or space is likely to be available; and
- iii. Paragraph 3.2.11(e) of this RAO, the Access Provider must identify the form of security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested facilities, its reasons for the security requirement and why it considers such concern cannot be addressed through a security requirement under subsection 3.1.9 of this RAO.

#### 3.2.11 Ground for refusal

Except where expressly permitted otherwise under the Act or section 6 of this Standard an Access Provider shall not refuse an Access Request, except on the ground that:

- (a) the Access Provider does not currently supply, or provide access to, the relevant Facilities 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 the access to Facilities and/so Services to the Access Seeker;
- (b) the Access Seeker had not provided all of the information required to be provided in accordance with subsection 3.2.6 of this RAO;
- (c) it is not technically feasible to provide access to the Facilities requested by the Access Seeker;

- (d) subject to this Standard, the Access Provider has insufficient capacity or space to provide the requested Facilities;
- (e) the access Provider has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested Facilities and such concern cannot be addressed through a security requirement in accordance with this Standard;
- (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities, or
- (g) there are reasonable grounds for the Access Provider to refuse access in the national interest.

#### 3.2.12 Dispute resolution

If, following the meeting between the parties required to be held pursuant to paragraph 3.2.10(c) of this RAO, for the purposes of discussing an Access Provider's refusal of an Access Request, the parties have been unable to resolve any differences about the validity of 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 Procedures.

#### 3.2.13 Initial meeting

Unless otherwise agreed between the Operators, each Operator shall ensure that its representatives meet on the date notified pursuant to paragraph 3.2.9(a) of this RAO and that such representatives:

- (a) agree on a timetable for the negotiations, including milestones and dates for subsequent meetings with then applicable timeframe for negotiations under paragraph 3.2.1(b) of this RAO;
- (b) Agree on negotiating procedure, including:

- i. Calling and chairing meetings;
  - ii. Responsibility for keeping minutes of the meetings
  - iii. Clearly defined pathways and timetables for escalation and resolution by each operator of matter not agreed in the meetings;
  - iv. procedures for consulting, and including in the negotiating process, relevant experts from each of the Operators; and
  - v. Procedures for preparing and exchanging position papers;
- (c) review the information requested and provided to date and identify information yet to provide by each Operator; and
- (d) Identify what technical investigations, if any, need to be made and by whom such investigations should be made.

#### 3.2.14 Facilities and services not specified in the Access List Determination

If an Access Seeker wishes to obtain access to additional facilities that are not specified in the Access List Determination, then the requirements under subsection 3.2 of this RAO may apply to any request for access to such additional facilities to the extent agreed by the parties.

#### 3.2.15 Additional matters

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

- (a) refuse to negotiate terms of access not related to price, for the reason that the rate, charge, charging principles or methodologies of access has not been agreed upon;

- (b) refuse to negotiate access to the Facilities because the Access Seeker has not agreed to acquire access to other Facilities a particular configuration, option or feature of a requested Facilities and/or Service;
- (c) require an Access Seeker to enter into a confidentially agreement the terms of which would preclude the disclosure of the information requested by the Commission or required to be disclosed for the purposes of dispute resolution;
- (d) require an Access Seeker to warrant that an Access Agreement complies with all applicable laws;
- (e) refuse to include in any Access Agreement a provision permitting variation of the Access Agreement in the event of any change in rules, applicable laws or applicable regulations (including Commission decisions and determination);
- (f) make any negotiation conditional on the Access Seeker first obtaining any regulatory approval or consent;
- (g) intentionally mislead or coerce an Access Seeker into reaching an agreement, which would not otherwise have been reached if not for the misleading act or coercion;
- (h) intentionally obstruct or delay negotiations or any dispute resolution process;
- (i) fail to nominate representatives who have sufficient authority and with sufficient availability to progress negotiations in a timely and efficient manner;
- (j) fail to provide information that is necessary to conclude an Access Agreement including, without limitation

- i. information about the Access Provider's Network that Access Seeker reasonably requires in identifying the network elements or network components to which it requires access ; and
- ii. information about the basis of the determination of rates, charges or fees.

### 3.2.16 Non-permitted information

Notwithstanding anything else in this Standard, an Access Provider shall not impose an obligation on an Access Seeker to provide any of the following information to the Access Provider (Whether as a condition of the provision of further information or as condition of accessing the Access Seeker application, or at any other time):

- (a) the Access Seeker's proposed service launch date (though the Access Provider may request the Access Seeker to specify any ready-for-service dates which the Access Seeker requires from the Access Provider in respect of the requested Facilities);
- (b) details of the functionality of the Access Seeker's proposed service except to the extent that such functionality may affect the Access Provider's Network;
- (c) details of the Access Seeker's network rollout plans except to the extent that such rollout plans relate to ready-for-service dates requested by the Access Seeker
- (d) details of the Access Seeker's current or proposed retail charges;
- (e) details of the Access Seeker's marketing strategy or proposed client base;
- (f) financial information relating to the Access Seeker's business, except to the extent such information may be requires pursuant to the creditworthiness requirements in subsection 3.1.11 of this RAO;

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

### 3.2.17 Technical Infeasibility

For the purposes of paragraph 3.2.11(c) of this RAO, an Access Provider shall not refuse an Access Request on the grounds of technical infeasibility unless the Access Provider establishes that there are substantial technical or operational concerns preventing the fulfilment of the Access Request. Each of the following matter shall be taken into account in determining whether access is technically feasible:

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

including for an interim period until any primary difficulties can be resolved).

### 3.2.18 Capacity Constraints

An Access Provider may only refuse an Access Request on the ground that an Access Provider has insufficient capacity or space under paragraph 3.2.11(d) of this RAO where the Access Provider notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is:

- (a) already carrying traffic to full capacity or near full capacity; or
- (b) already reserved for the future use by the Access Provider or another Access Seeker, where such future use shall commence not later than six (6) months from the date of the Access Request. If the reserved capacity is not subsequently used by the reserving party within seven (7) months from the date of the Access Request, the Access Provider must promptly inform the Access Seeker and, if required by the Access Seeker re-consider the Access Request in accordance with the process set out subsection 3.2 of this RAO; and
- (c) in the case of both paragraphs 3.2.18(a) and 3.2.18(b) of this RAO, the Access Provider is unable to expand capacity to meet the requirements in the Access Seeker's Access Request.

### 3.2.19 Reporting on refusals

If an Access Provider refuses an Access Request, it must notify the Commission within five (5) Business Days of that refusal together with an explanation of its reason for refusal under subsection 3.2.11 of this RAO.

### 3.2.20 Principles for the setting up fast-track process

The Access Provider shall set up, and publish on its publicly accessible website, the criteria on which Access Seeker will be eligible to apply according to the following principles:



- (a) the criteria must be determined and applied by the Access Provider on a non-discriminatory basis;
- (b) the process may be limited to supply of the facilities to the extent that such supplies do not have a material impact on the Access Provider's current level of network resources; and

### **3.3 FORECASTING OBLIGATIONS**

#### **3.3.1 General**

An Access Provider may require, as a condition of accepting Orders for access to Facilities from an Access Seeker (but not as a prerequisite for entering into an Access Agreement), that the Access Seeker provide Forecasts in good faith with regard to a certain period of supply of access to Facilities in accordance with subsection 3.3 of this RAO.

#### **3.3.2 Prerequisite information**

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

#### **3.3.3 Confirmation of Forecast**

If an Access Provider, acting reasonably will incur significant costs to ensure that access can be provided in accordance with a Forecast (for example, because it will need to proactively augment its Network to provide access within the requested timeframes), the Access Provider may request the Access Seeker to confirm the relevant Forecast. Once confirmed, the Forecast is deemed to be an Order for the purposes of this Standard, and subsection 3.4 of this RAO will apply.

#### **3.3.4 Alternative procedure**

An Access Provider and an Access Seeker may agree to an alternative forecasting and ordering procedure other than that set out in subsection 3.3 of this RAO as part of an Access Agreement. If agreement is reached about such matters, the Access Provider and Access Seeker will be bound by the terms of that alternative procedure and not subsection 3.3 of this RAO.

### 3.3.5 Non-binding

Subject to subsection 3.3.3 of this RAO, an Access Provider shall not require an Access Seeker to provide Forecast that are legally binding on the Access Seeker, except to the extent that the Access Provider is permitted to recover costs and expenses as set out in subsection 3.3.16 of this RAO.

### 3.3.6 Forecast request

An Access Provider may request an Access Seeker to provide, with a sufficient level of detail to enable the Access Provide to carry out network planning and provisioning, the following information (“Forecast Information”).

- (a) The Facilities in respect of which Forecasts are required;
- (b) The total period of time covered by each Forecast, which period:
  - i. Shall be determined having regard to the Access Provider’s own planning and provisioning cycles and the forecasting requirements which apply to the Access Seeker’s own business units in using the relevant Facilities; and
  - ii. Shall be the shorter of the period set out in the relevant Service Specific Obligations and the period of forecasting which the Access Provider provides to itself for network planning and provisioning purposes;
- (c) The intervals or units of time to be used in making the Forecast, which shall be the shorter of the period set out in the relevant Service Specific Obligations and the intervals of time in which the Access Provider provide forecasting to itself;
- (d) The network area or operational area to which Forecasts shall relate, which area shall correspond to that which the Access Provider uses for its own network planning and provisioning;
- (e) The frequency with which the Forecast must be updated or a further Forecast made in accordance with this Standard, which shall be the

shorter of the period set out in the relevant Service Specific Obligations and the length of time after which the Access Provider provides itself with the updated or further Forecasts; and

- (f) Such other information that the Access Provider reasonably requires in order to provide access to Facilities requested by the Access Seeker (which shall not include any information that the Access Provider does not provide to itself in connection with forecasting for its own facilities).

### 3.3.7 Non-permitted information

The Access Provider must not request an Access Seeker to provide a Forecast that contains:

- (a) Any information that is or would allow the Access Provider to infer any non-permitted information listed under subsection 3.3.16 of this RAO; or
- (b) Any information that identifies or would enable the identification of Customers or particular services of the Access Seeker.

### 3.3.8 Forecast provision

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

### 3.3.9 Use of Forecast Information

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

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

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

#### 3.3.10 Distribution of Forecast Information

An Access Provider may only distribute Forecast Information of an Access Seeker outside the groups of people referred to in subsection 3.3.9 of this RAO if:

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

#### 3.3.11 Time for response

The Access Provider must identify the Access Seeker within five (5) Business Days of receiving a Forecast whether or not the Access Provider considers the Forecast to be in compliance with the Forecast Request and:

- (a) if, the Access Provider considers that the Forecast does not comply with the Forecast Request, to specify in that notice the additional information which the Access Seeker is to provide to comply with the Forecast Request and the Access Provider will not require such information to be provided sooner than four (4) weeks after such a notice; or
- (b) if, the Access Provider considers that the Forecast does not comply with the Forecast Request, to specify in that notice that the Forecast is provisionally accepted subject to verification of the details of the forecast and the matters set out in paragraphs 3.3.12(a) to 3.3.12(d) of this RAO.

### 3.3.12 Reasons for rejection

An Access Provider may only reject a Forecast following provisional acceptance where the Access Provider and all Access Seekers;

- (a) total current usage of the Facilities by the Access Provider and all Access Seeker;
- (b) the current rate of growth of the Access Seeker's usage of the Facilities;
- (c) the current rate of growth of total usage of the Facilities by the Access Provider and all Access Seeker; and
- (d) subject to subsections 3.4.27 and 3.4.28 of this RAO, the amount of capacity in the Facilities that the Access provider currently has available and can reasonably provision for the Access Seeker over the Forecast period, which must be at least equivalent to that which the Access Provider can reasonably provision for itself.

### 3.3.13 Time for acceptance or rejection

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

- (a) within fifteen (15) Business Days of receipt of the relevant Forecast; and
- (b) such Rejection Notice (if any) must specify:
  - i. the grounds on which the Access Provider rejects the Forecast in accordance with subsection 3.3.2 of this RAO, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Forecast; and
  - ii. an offer to meet within five (5) Business Days of the Rejection Notice of the Forecast to discuss the reasons for rejection and alternative methods of compliance. The meeting shall take place

between the Access Provider and Access Seeker if the offer is accepted by the Access Seeker.

#### 3.3.14 Reconsideration by Access Seeker

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

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

#### 3.3.15 Reconsideration by Access Provider

The Access Provider shall reconsider any resubmitted or amended Forecast provided pursuant to subsection 3.3.14 of this RAO and subsections 3.3.11 to 3.3.13 of this RAO shall re-apply.

#### 3.3.16 Recovery for over-forecasting

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

- (a) such costs and expenses were reasonably and necessarily incurred by the Access Provider;
- (b) the Access Provider reasonably seeks to mitigate its loss (including through its own usage) provided the Access Provider shall not be required to do so for any greater period than the relevant Forecast period; and
- (c) the Access Provider only recovers from the Access Seeker, seventy-five percent (75%) of such costs and expenses which could not be mitigated under paragraph 3.3.16(b) above.

### 3.3.17 Meeting Forecasts

Subject to subsections 3.3.11 to 3.3.13 of this RAO, an Access Provider must carry out network planning in order to enable Forecast to be met. If an Access Seeker has confirmed a Forecast under subsection 3.3.3 of this RAO, it will be binding on the Access Seeker.

## 3.4 ORDERING AND PROVISIONING OBLIGATIONS

### 3.4.1 Contact point or mechanism

The Order must contain the following information:

- (a) Facilities or Services to which access is requested;
- (b) The location of the sites
- (c) A requested time for fulfilment of the Order (“Requested Delivery Date”);
- (c) Information on the Access Seeker’s
- (d) Such other information that Access Provider reasonably requires to provision the Order.
- (e) Order Access in any form of request (or any other material or electronic form as agreed by the parties)

### 3.4.2 Order content

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

- (a) The Facilities and/or Services to which access is requested

- (b) A requested date and time for delivery
- (c) The location of the point of delivery
- (d) Equipment of the access Seeker to be used in connection with the Order, to the extent it may adversely affect the Access Provider's network; and
- (e) Such other information that the Access Provider reasonably requires in order for it to provision access to the Facilities and/or services as requested by the access Seeker, provide that such information shall not include any information which:
  - i. The Access Provider does not require from itself for similar provisioning;
  - ii. Identifies, or which enables the identification of a Customer or services of the Access Seeker; or
  - iii. Is non-permitted information under subsection 3.2.16 of this RAO.

#### 3.4.3 Use of ordering information

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

- (a) the Access Provider's wholesale or interconnection group; and
- (b) that part of the network engineering group of the Access Provider responsible for interconnection or access, or the purpose of responding to and provisioning for the Order.

#### 3.4.4 Treatment of Orders and Services Qualifications

An Access Provider shall:



- (a) established a single queue for all Orders and Service Qualifications for a given type of Facility and/or Service, whether those Orders and Services Qualifications are required for itself or any Access Seekers;
- (b) give the equivalent priority to the handling of all Orders and Services Qualifications in each queue.

#### 3.4.5 Acknowledgement of receipt

An Access Provider shall acknowledged receipt of an Order for Facilities and/or Services, in writing (or any other material or electronic form as agreed by the parties), within the period specified in the Service Specific Obligations for the purpose of the subsection 3.4.5 of this RAO.

#### 3.4.6 Notice of Receipt

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

- (a) the time and date of receipt of the Order;
- (b) a list of any additional information reasonably required by the Access Provider from the Access Seeker to provision the Order;
- (c) if the relevant Facilities and/or Services available to the Access Provider are below the capacity required to provide the relevant Facilities and/or Services to the Access Seeker, the Access Provider shall inform the Access Seeker of the available capacity and (if relevant) with such augmentation as may be required to fulfil the Order as submitted;
- (d) whether the Access Provider needs to perform post-Order Service Qualification because information is not readily available to the Access Provider, for example in its Operational Support Systems, together with the reasons for needing to undertake the Service Qualification; and

#### 3.4.7 Further information

Access Provider may, at any time after the Order Date, request further information about the Order as is reasonably necessary to clarify an order. The Access Seeker will be given ten (10) business days or more to respond to Access Provider's request for further information and may, acting reasonably:

- (a) Treat the Order as suspended until the information requested is received; and
- (b) Remove the Order from Access Provider's queue and insert the Order at a later position in the queue when the information requested is received.

#### 3.4.8 Withdrawal of Order following Service Qualifications

An Access Provider shall permit an Access Seeker to withdraw its Order Without penalty (irrespective of whether the Access Provider has accepted the Order or not) before the earlier of:

- (a) One (1) Business Days before the Access Provider commences civil works to provision of Order (where the civil works are required to provision the Facility within the delivery timeframe specified in the Notice of Acceptance), and any civil works to be conducted must be subject to the issuance of a notice in writing by the Access Provider, which may be in the form of a Notice Acceptance if civil works is to occur after the Access Provider has accepted the order.

#### 3.4.9 Acceptance obligation

An Access Provider must use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Facilities and/or Services which comply with a Forecast accepted by the Access Provider pursuant to subsection 3.3 of this RAO.

#### 3.4.10 Time for acceptance or rejection

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

- (a) the specified timeframe in the Service Specific Obligations for the purposes of this subsection 3.4.10; or
- (b) the timeframe within which it accepts or rejects equivalent Orders for itself,

whichever is shorter.

If the Access Provider notifies the Access Seeker that an Order is rejected, the Access Provider must advise the Access Seeker to notify the rejection and acknowledge in writing (or any other materials or electronic form as agreed by the parties).

#### 3.4.11 Notice of Acceptance

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

- (a) the delivery date or activation date (as applicable), which must be the date that is requested by the Access Seeker, or, if that date cannot be met by the Access Provider, then no later than:
  - i. the indicative delivery timeframe or activation timeframe to Access Seeker; or
  - ii. the period of the time taken by Access Provider to deliver, or active, such Facilities and/or Service for itself,

whichever is shorter;

- (b) the date when civil works (if any) are intended to commence;
- (c) the charges applicable to fulfil the Order;
- (d) such information as is reasonably necessary for the Access Seeker to benefit from access to the Facilities and/or Services; and

- (e) the validity period, which shall be a period that is not shorter than three (3) months commencing from the date of the Notice of Acceptance (“Validity Period”)

#### 3.4.12 Commencement of delivery timeframes

The applicable delivery timeframe for an Order, as determined under paragraph 3.4.11(a) of this RAO, shall commence from:

- (a) where the Access Seeker’s confirmation of an Order is required under subsection 3.4.13 of this RAO, the date the Access Seeker confirms the Order in accordance with that subsection; and
- (b) in any other case, from the start of the Validity Period.

#### 3.4.13 Access Seeker’s confirmation:

- (a) The Access Seeker’s confirmation of an Order is not required if the Access Provider accepts the order without charge. A change may include circumstances where delivery dates are delayed, estimated charges are exceeded, a post-Order Services Qualification is required or any other matter that requires further confirmation from the Access Seeker before the Access Provider can proceed with order.
- (b) Where the Access Seeker’s confirmation is required for the Access Provider to proceed with fulfilling an Order as provided for under paragraph 3.4.13(a) above, the Access Provider shall permit the Access Seeker to provide its confirmation within the Validity Period and shall not provision the Order until the confirmation is received. Upon receipt of such confirmation, The Access Provider shall fulfil the Order in accordance with the Notice of Acceptance.

#### 3.4.14 Estimated charges

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

- (a) The Access Provider shall not exceed the estimate without providing the Access Seeker with a written notice prior to exceeding the estimate that:
  - i. the estimate will likely be exceeded
  - ii. an explanation of the reasons for exceeding the estimate: and
  - iii. a further estimate of the charge for the charges for the work necessary to fulfil the Order;
- (b) The Access Provider shall permit the Access Seeker to withdraw the Order without penalty within ten (10) Business Days of the notice given by the Access Provider under paragraph 3.4.14(a) above if the revised estimate in that notice exceeds the original estimated;
- (c) Where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope or work provided by the Access Provider due to;
  - i. information or facts provided by the Access Provider which are inaccurate or erroneous or not disclosed by the Access seeker
  - ii. a change in the scope of work by the Access Seeker;

The Access Seeker shall be obliged to pay the Access Provider for the actual cost incurred (but in no other circumstances); and

- (d) The Access Provider shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate, whereby such confirmation is to be provided by the Access Seeker within the timeframe set out in paragraphs 3.4.11(e) or 3.4.14(b) of this RAO, as applicable.

#### 3.4.15 Reason of rejections

An Access Provider may only reject an order from an Access Seeker where:

- (a) subject to subsection 3.4.15 of this RAO (as if references to 'Access Request' in that subsection were references to 'Order'), it is not technically feasible to provide access to the Facilities and/or Services requested by the Access Seeker;
- (b) subject to compliance with subsections 3.4.27 and 3.4.28 of this RAO, the Access Provider has insufficient capacity to provide the requested Facilities and/or Services;
- (c) subject to subsection 3.4.17 of this RAO, the Order is in excess of the agreed Forecast levels;
- (d) the Order or variation request duplicates an Order awaiting fulfilment
- (e) the Access Seeker has not obtained the necessary related agreements from the Access Provider;
- (f) there are reasonable grounds to believe that the Access Seeker would fail to a material extent, to comply with the terms and conditions of the Access Agreement and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through the application of a security requirement in accordance with this Standard); or
- (g) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities and/or Services to protect the integrity of a Network, or the safety of individuals working on, or using services supplied by means of a Network or Equipment and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through the application of reasonable security or escorted access requirements).

#### 3.4.16 Notice of rejection

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

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

#### 3.4.17 Order in excess of Forecast

Notwithstanding paragraph 3.4.15(b) of this RAO, an Access Provider must use its reasonable efforts to provide sufficient capacity to enable the Access Provider to accept and fulfil Orders from an Access Facilities and/or Services, which are in excess of the relevant Forecast. The Access Provider is only required to do so if, after meeting the Forecast requirements of other Access Seekers and itself, there is available capacity or the Access Provider could readily upgrade existing capacity. The Access Provider shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirements of all Access Seekers and itself. An Access Provider is not required to supply Facilities and/or Services in excess of the Forecast if, despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in quality of Facilities and/or Services provided to all Access Seeker and/or itself.

#### 3.4.18 Delivery dates

The Access Provider shall deliver the Order for the Facilities and/or Services by the delivery date or activation date (as applicable) as specified in the Notice of Acceptance or the extended delivery date (if any) as determined in accordance with subsection 3.4.20 of this RAO.

#### 3.4.19 Early Delivery Date

If the Access Provider, in the normal course of business, is able to offer a delivery date earlier than the delivery date that would otherwise apply, it must advise the Access Seeker and, if requested by the Access Seeker,

deliver access to the relevant Facilities and/or Services or both at the earlier delivery date.

#### 3.4.20 Delayed delivery dates

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

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



#### 3.4.21 Cancellation and variation of Orders

An Access Provider shall allow an Access Seeker to cancel or vary an Order at any time subject to subsection 3.4.22 of this RAO with notice in writing or any other materials or electronic form as agreed by the parties.

#### 3.4.22 Cancellation or variation penalty

Except where this RAO provides that cancellation of an Order is to be at no penalty:

- (a) the Access Provider may impose a charge for the cancellation or variation of the Order; and
- (b) the charge which the Access Seeker is required to pay shall not exceed the lesser of the following amounts:
  - i. the sum of costs necessarily incurred by the Access Provider which is directly attribute to the cancellation or variation; or
  - ii. an amount equal to the sum of charges that would have been payable by the Access Seeker in the six (6) months immediately following the cancellation or variation had the Order not been cancelled or varied,

and reduced to the extent that those costs have been mitigated, or would have been mitigated had the Access Provider used its best endeavours to do so.

#### 3.4.23 Testing and provisioning

An Access Provider:

- (a) co-operate with the Access Seeker in relation to the testing and provisioning of ordered Facilities and/or Services; and

- (b) treat an Access Seeker's testing and provisioning on an equivalent basis to that which Access Provider treats testing and provisioning for itself.

#### 3.4.24 Queuing Policy

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

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

#### 3.4.25 Acceptance on queue

An Access Provider shall promptly notify an Access Seeker at the time of providing an acknowledgement of receipt of the Order under Subsection 3.4.5 of this RAO (and as specified in the Notice of Receipt under subsection 3.4.6 of this RAO) with notice in writing or any other materials or electronic form as agreed by the parties, of their acceptance of, and position in, the Access Provider's queue.

#### 3.4.26 Constrained capacity

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

- (a) the Access Seeker pursuant to the relevant Forecast and/or Order;
- (b) other Access Seekers, pursuant to their relevant Forecasts and/or Orders; and

- (c) the Access Provider, for the purposes of its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest,

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

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

#### 3.4.27 Capacity Allocation Policy

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

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

- (c) shall:
  - i. be fair and reasonable;
  - ii. be consistent, so far as practicable, with the Access Provider's general duty non-discrimination in accordance with subsection 149(2) of the Act;
  - iii. 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
  - iv. allocate the available capacity in the relevant Facilities and/or Services in proportion to each Operator's Forecast and/or Order requirements; and
- (d) shall set out the Access Provider's plans to expand their capacity over time (if any), where such information must be provided to Access Seekers on a non-discriminatory basis in terms of its content and frequency of updates.

#### 3.4.28 Late delivery

If an Access Provider fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with paragraph 3.4.20(a) iii of this RAO, except where such failure has been caused solely by the Access Seeker's delay or a lack of the authorisation by a third party and the Access Provider shall have the burden of demonstrating, the Access Provider shall notify the Access Seeker that if an Order is rejected, and/or the Access Provider must advise the Access Seeker whether the Access Provider would be able to accept the order in a modified form.

### 3.5 DECOMMISSIONING OBLIGATIONS

#### 3.5.1 Decommissioning notice

Except where an Access Provider is required to vacate a site Facility and/or Service which relies on the Access Provider's use of that site, as a result of

a third party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, an Access Provider must provide no less than:

- (a) six (6) months' notice in writing to all relevant Access Seeker prior to the decommissioning of any Facilities and/or Services which rely in the Access Provider's use of that site.

Where an Access Provider is required to vacate the site as a result of a third party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, the Access Provider must provide all relevant Access Seekers with as much as possible in relation to the matters in paragraphs 3.5.1(a) above.

#### 3.5.2 Co-operation

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

#### 3.5.3 Alternative arrangements

An Access Provider which notifies and Access Seeker of its intention:

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

#### 3.5.4 Decommissioned Facilities and/or Services compensation

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

- (a) moving the Access Seeker's Equipment from the decommissioned Facilities to alternative Facilities offered in accordance with paragraph 3.5.3(b) of this RAO; or
- (b) re-arranging Equipment to connect to alternative Services offered in accordance with paragraph 3.5.3(b) of this RAO.

### **3.6 BILLING AND SETTLEMENT OBLIGATIONS**

3.6.1 Where relevant, the billing and settlement obligations set out in section 5.11 of the MSA shall be applicable.

3.6.2 Unless otherwise agreed in writing, Access Provider shall Invoice in writing or in electronic form (as requested by the Access Seeker) within one (1) month from the end of each Billing Cycle for amounts due in respect of the supply of Facilities and/or Services during the Billing Period.

3.6.3 Access Provider shall provide with each Invoice, such information as may be reasonably necessary for the Invoiced Operator to verify the rates and charges specified in the Invoice. In addition, the Invoiced Operator may request, in writing, for the billing report to be provided by the Invoicing Operator in an electronic format.

3.6.4 The Invoiced Operator must pay any amount due and owing to the Invoicing Operator on the Due Date unless otherwise agreed in writing by both Operators.

3.6.5 Methods of payment:

#### **3.6.5.1 All payments**

- (a) must be paid by electronic transfer to the Invoicing Operator or by cheque to the nominated account(s) of Access Provider;
- (b) unless otherwise agreed by the Operators, shall not be subject to any set-offs except where the Invoiced Operator is in

liquidation or at least three (3) invoices have been issued and such Invoices have not been paid.

- 3.6.6 If the Invoicing Operator is unable to submit an Invoice for actual charges for any Network Facilities and/or Network Services supplied in a Billing Period, then the Invoicing Operator may issue to the Invoiced Operator an Invoice for a provisional amount (“Provisional Amount”) based on the last Invoice (save and except for the first month commencing from the Effective Date) provided that the amount of the Provisional Amount is no more than the average of the most recent three (3) Invoices. Where there have not been three (3) past Invoices for access to the, the Invoicing Operator may issue a provisional Invoice up to the full value of the amount based on the most recent Invoice.
- 3.6.7 The Invoiced Operator shall pay the Provisional Amount by the Due Date. The Provisional Amount will be adjusted in the next invoice or as soon as practicable but not later than sixty (60) days after the month in which the charges were incurred or such other time period as may be agreed in writing (“Adjustment Period”). If an adjustment is not made within the Adjustment Period, the said Invoice issued by the Invoicing Operator shall be finalised based solely on the Invoiced Operators call data records / call records and such Invoice shall be treated as the actual invoice.
- (a) If the actual amount for a particular Billing Period is higher than the Provisional Amount for the Billing Period, then the Invoiced Operator will pay in full such difference (free of interest) within thirty one (31) days from the receipt of the invoice to the Invoicing Operator.
  - (b) If the actual amount for a particular Billing Period is lower than the Provisional Amount for the same Billing Period, the Invoicing Operator will reimburse in full or issue a credit note for such difference free of interest within thirty one (31) days from the receipt of the invoice to the Invoiced Operator. Such payment must be forwarded to the Invoiced Operator together with the relevant monthly statement of the actual interconnect usage.

3.6.8 The Invoicing Operator may include omitted or miscalculated Charges from an Invoice at a later date provided that the Invoicing Operator is able to substantiate the Charges to the Invoiced Operator and:

- (a) with respect to Charges for Interconnect Traffic, the inclusion or amendment is made within:-
  - i. three (3) months of the end of the Billing Period in which the omitted or miscalculated Charges for Interconnect Traffic should have been included; or
  - ii. (three (3) months from the end of the Billing Period in which the Call Communication were made or other services provided, if there was no relevant original Invoice for Interconnect Traffic; and
- (b) with respect to any other Charges (other than Charges for Interconnect Traffic), the inclusion or amendment is made within three (3) months from the end of the Billing Period for the Facilities and/or Services provided.

For the avoidance of doubt, in the event the Invoicing Operator fails, neglects, or omits to submit an omitted or miscalculated Charge in a later invoice, or fails, neglects or omits to submit an invoice for any Charges within the time period specified in 3.6.8, then the Invoicing Operator shall be deemed to have waived and/or forfeited its right to make any further claims on the said omitted Charge.

3.6.9 For the avoidance of doubt, all taxes, duties or other imposts stated in any Invoice, shall be paid in full by the Invoiced Operator by the Due Date without any deductions or set-off save and except where the Invoiced Operator is able, before the Due Date, to adduce to the Invoicing Operator the official or certified true copy of the exemption issued by the relevant tax authority exempting the Invoiced Operator from paying the applicable taxes, duties or imposts stated in the Invoice. It shall be the duty of the Invoiced Operator to



apply to the relevant tax authority for the said exemption to avoid double taxation of the same service rendered to its own end-user.

- (a) Where the Invoiced Operator is only able to adduce the official or certified true copy of the exemption issued by the relevant tax authority after the Due Date for the Invoice, the Invoicing Operator will provide to the Invoiced Operator a credit note equivalent to the amount of taxes, duties or imposts which the Invoiced Operator is entitled for exemption Provided Always that:
  - i. such exemption is submitted to the Invoicing Operator within six (6) months from the date the Facilities and/or Services are provided; and/or
  - ii. the Invoicing Operator is first granted a refund from the relevant tax authority (where such taxes, duties or imposts have already been paid by the Invoicing Operator to the relevant tax authority).
  
- (b) The Invoicing Operator is not responsible or accountable for any refund of taxes, duties or imposts where:
  - i. the Invoiced Operator fails to provide to the Invoicing Operator the necessary exemption within six (6) months from the date the Facilities and/or Services are provided; and/or
  - ii. where the relevant tax authority refuses, fails or neglects to grant a refund to the Invoicing Operator (for taxes, duties or imposts which have already been paid).

In such circumstances, the Invoiced Operator shall be responsible and liable for all taxes, duties or other imposts stated in any Invoice.

#### 3.6.10 Sales and Services Tax

Where Sales and Services Tax (“SST”) is non-applicable to any Facilities and/or Services provided by Access Provider, Access Provider shall not be entitled to charge SST on the amount payable for the provisions of the said

Facilities and/or Services to the Access Seeker due to exemptions of SST approved by the government.

- 3.6.11 Unless otherwise agreed all invoices shall be stated in Ringgit Malaysia and payment must be made in Ringgit Malaysia; and
- 3.6.12 It is hereby expressly agreed that the Invoicing Operator is entitled to the payment of interest without prejudice to any other rights of the Invoicing Operator. Interest on due and unpaid amounts is payable (as well as before judgment and after judgement) at the rate of two percent (2%) per annum above Malayan Banking Berhad Base Lending Rate (BLR) calculated daily from the Due Date until the date of actual payment. Payments which are overdue by more than sixty (60) days will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad BLR (as well before judgment and after judgement) calculated from the Due Date until the date of receipt by the Invoicing Operator of full payment. Further, the BLR rate to be used shall be the published rate prevailing on the date of payment.
- 3.6.13 Notwithstanding anything to the contrary, the Invoicing Operator shall be entitled to deduct or withhold such taxes, duties, levies or such other sums imposed by such governmental authorities (“said taxes”) from any sum or sums due to the Invoiced Operator in the event the Invoicing Operator is required by law to pay the said taxes for and on behalf of the Invoicing Operator.

### **3.7 TERM, SUSPENSION AND TERMINATION OBLIGATIONS**

#### **3.7.1 Term of supply**

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

Facilities and/or Services	Minimum term
Network Facilities Access	Three (3) years

3.7.2 Termination circumstances

Access Provider may only terminate an Access Agreement in any of the circumstances below, and the Access Provider has notified the Access Seeker that it will terminate where:

- (a) the Access Seeker has materially breached the Access 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 by the end of that period and the Access Seeker has failed to remedy its breach in accordance with such a notification;
- (b) the Access Seeker has become subject to a winding up order (whether compulsorily or voluntarily) or ceases to trade in the normal course of business or becomes insolvent or a receiving order is made against is or has entered into any agreement or composition with or assignment for the benefit of its creditors or the Access Seeker's assets are subject of any form of distress or execution or any analogous insolvency event related to the Access Seeker has occurred in any jurisdiction; or
- (c) a force majeure has continued for a period of more than three (3) months.

The Access Provider shall forward to the Commission a copy of the notice of termination at the same time as providing the notice of termination to the Access Seeker. For clarification, a notice to be given under this subsection 3.7.3 is in addition to the notice required under subsection 3.7.6 of this RAO.

### 3.7.3 Change in law

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

### 3.7.4 Suspension

Access Provider may only suspend access to any Facilities and/or Services in the following circumstances:

- (a) the Access Seeker's Facilities and/or Services or the supply of services pose an imminent threat to life or property of the Access Provider, its employees or contractors;
- (b) the Access Seeker's Facilities and/or Services cause material, physical or technical harm to any Facilities and/or Services of the Access Provider or any other person;
- (c) where the Access Seeker has failed to pay invoices in accordance with subsection 3.6 of this RAO (and subject to any right that the Access Seeker has under subsection 3.6 of this RAO to dispute any amount in an invoice);
- (d) where the Access Seeker has failed to provide the new security amount as required under subsection 3.8.7 and 3.8.8 of this RAO;
- (e) where Force Majeure applies; or

- (f) the Access Seeker breaches any laws, regulation, rules or standard which has a material and adverse effect on the Access Provider or the provision by the Access Provider Facilities and/or Services under this Access Agreement.
- (g) For the purposes of this Subsection 3.7.5, an Access Provider must provide the Access Seeker with five (5) Business Days' notice including reasons, prior to suspending access to any Facilities and/or Services. The Access Provider shall forward to the commission a copy of the notice of suspension at the same time as providing the notice of suspension to the Access Seeker. For clarification, a notice to be given under this subsection 3.7.5 is in addition to the notice required under subsection 3.7.6 of this RAO.

#### 3.7.5 Notice

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

- (a) shall only give effect to the proposed termination, suspension or material variation with the Commission's written consent and subject to any time delay or conditions which the Commission may specify (if any). The Commission will endeavour to the Access Provider's notice within ten (10) Business Days or such other period that the Commission considers is reasonable;
- (b) must not give effect to the proposed termination, suspension or material variation unless the Access Provider has received written consent from the Commission to such termination, suspension or material variation; and
- (c) shall take all steps practicable to minimise disruptions and inconvenience to the Customers of the Access Seeker, including

providing the Access Seeker with a reasonable period to make alternative arrangements prior to the suspension or termination of the Access Agreement, or access to Facilities and/or Service provided under it.

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

#### 3.7.6 Undertakings

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

#### 3.7.7 Post-termination fees

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

- (a) charges invoiced in arrears not yet paid; or
- (b) charge arising during an applicable minimum contractual period (as described in subsection 3.7.2 of this RAO) provided that:

- i. such charges must be reduced to reflect any cost saving to the Access Provider from not having to supply the Facilities and/or Services to the extent that they have been terminated or suspended; and
- ii. the Access Provider must use reasonable endeavours to mitigate its costs of termination or suspension and maximise cost saving under paragraph 3.7.8(b)i above.

#### 3.7.8 Upfront charges refund

On termination of an Access Agreement or access to any Facilities and/or Services provided under it, the Access Provider shall refund the Access Seeker all amount paid in advance to the extent that the amount (or part of amount calculated on a pro-rata basis) relate to the period after the date of effect of such termination.

#### 3.7.9 Deposits and guarantees

Notwithstanding the obligation in subsection 3.7.9 of this RAO, the Access Provider shall:

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

### **3.8 LEGAL BOILERPLATE OBLIGATIONS**

#### 3.8.1 Reciprocity

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

### 3.8.2 Conditional supply

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

- (a) other Facilities from the Access Provider as a condition of providing access to Facilities and/or Services under this Standard (for example, an Access Provider shall not make access to Facilities conditional on the acquisition of Services, such as Transmission Services, or other services, such as maintenance services); and
- (b) any Facilities and/or Services in any minimum or maximum quantity.



## **PART 4 : INFRASTRUCTURE SHARING**

### **4.1 Application**

This subsection 4 applies where Infrastructure Sharing has been requested or is to be provided.

### **4.2 Provision of Infrastructure Sharing**

Infrastructure Sharing is a Facility and/or Service which comprises the following:

- (a) provision of physical access, which refers to the provision of space at specified network Facilities and/or Services to enable an Access Seeker to install and maintain its own equipment; or
- (b) provision of access to in-building common Antenna Systems and physical access to central equipment room

### **4.3 Physical Access**

Where required to fulfil an Order for Infrastructure Sharing or for the Access Seeker to perform operations or maintenance activities, an Access Provider shall allow an Access Seeker, its nominated employees and/or contractors to physically access the Access Provider's network Facilities and the Access Seeker's Equipment, and to have physical control over the Access Seeker's Equipment located at such network Facilities, at equivalent times and in accordance with equivalent processes and procedures as are applicable to itself. Physical access shall also include power, environmental services (such light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker.

### **4.4 Infrastructure Sharing Forecast**

The Access Seeker must submit a forecast to Access Provider for the required Infrastructure Sharing on a yearly basis where:

- (a) the maximum period of time covered by Forecasts regarding Infrastructure Sharing is one (1) year;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Infrastructure Sharing is one (1) year; and

- (c) the maximum frequency to update or to make further Forecasts regarding Infrastructure Sharing is once a year.

#### 4.5 Negotiation of Unreasonable Forecast

If Access Provider consider that any forecast is unreasonable, or that the work which it would be required to carry out based on the forecast is not reasonably achievable within the delivery periods contemplated under this schedule, the Access Seeker is required to resubmit a more reasonable forecast to Access Provider. Access Provider will promptly negotiate a reasonable forecast. Pursuant to such an agreement, the Access Seeker and Access Provider will only be required to carry-out the work which is reasonably achievable within the delivery periods contemplated under this schedule. To assist the negotiations:

- (a) Access Provider will provide information in relation to the work which it would be required to carry out to meet the forecast which it considers to be unreasonable and the time frame of that works;
- (b) Both parties will provide information upon which its assessment of the reasonableness (or otherwise) of the forecast is based; and
- (c) Both parties will endeavour to put forward proposals to produce a satisfactory outcome for both.

Pending the outcome of this negotiation, Access Provider shall not be obliged to accept any order or provide any Infrastructure Sharing in respect of the portion of the forecast which it considers being unreasonable or pursuant to which it would be required to carry out work which is not reasonably achievable within the delivery periods contemplated.

#### 4.6 Acknowledge Receipts

Access Provider shall acknowledge receipt of each Order for Infrastructure Sharing within two (2) Business Days.

#### 4.7 Acceptance or Rejection of Order

Access Provider shall notify an Access Seeker that an Order for Infrastructure Sharing is accepted or rejected within ten (10) Business Days after:

- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification; or
- (b) Providing the Access Seeker with the results of post-Order Service Qualification, where Access Provider has undertaken post-Order Service Qualification for that Order

#### 4.8 Indicative delivery timeframe

For Infrastructure Sharing is forty (40) Business Days from the Notice of Acceptance under section 3.4.11, of G2R' RAO.

#### 4.9 Billing Cycle

Billing Cycle for Infrastructure Sharing will be one (1) year in advance for the first year and quarterly in advance for subsequent years.

#### 4.10 Nominated personnel

The employees and/or contractors nominated by the Access Seeker will be reasonable, having regards to:

- (a) the position of each person and the number of persons nominated; and
- (b) the position of each of the Access Provider own personnel and the number of the Access Provider personnel to which Access Provider provides physical access to such network Facilities.

#### 4.11 Escorts

Access Provider is only permitted to require an escort to be present when nominated employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property if Access Provider requires an escort for its own employees or contractors in the same circumstances. If Access Provider determines that it is necessary to have an escort present when the nominated employees and/or

contractors of the Access Seeker wish to enter into the Access Provider property, the Access Provider shall:

- (a) bear the costs of such escort service;
- (b) provide immediate physical access to the Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
- (c) provide physical access at the time requested by an Access Seeker for planned maintenance requests on the shorter of:
  - i. two (2) Business Days' notice for manned sites and five (5) Business Days' notice for unmanned sites; and
  - ii. the period of notice which it requires from itself when providing itself with physical access for planned maintenance;

#### 4.10 Absence of escort

If an escort does not arrive at the Access Provider's property within the timeframe, the Access Seeker's nominated employees and/or contractors may proceed to enter the Access Provider property without an escort.

#### 4.11 Site register

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

#### 4.12 Cost

The utility and ancillary costs in respect of the network facilities shall be apportioned (in accordance with fair and equitable principles) between Access Provider and all Access Seekers at the relevant location.

## PART 5 : CHARGES AND CHARGING PRINCIPLES

### 5.1 INFRASTRUCTURE SHARING

- 5.1.1 The applicable Charges for Infrastructure Sharing shall be commercially negotiated and agreed between the Access Seeker and Access Provider in accordance to the Access Agreement.
- 5.1.2 Refer to the Table 5.1.3.1 and Table 5.1.4.1 below are sets out the indicative reference Charges for Infrastructure Sharing in respect of In Building Coverage (IBC) sites and Outdoor sites. Final pricing shall be subject to negotiations and mutual agreement between Access Provider and the Access Seeker.
- 5.1.3 In Building Coverage (IBC) Infrastructure based on operator sharing shall refer below based on recurring/Rental Charges for Peninsular Malaysia:

<b>No. of sharer/operator</b>	<b>(RM per antenna/per month)</b>
1 Ways	50.00
2 Ways	30.00
3 Ways	25.00
4 Ways	22.00

*Table 5.1.3.1 In building Infrastructure Coverage charges per sharing for Access Seeker*

5.1.4 Outdoor Infrastructure based on operator sharing shall refer below based on recurring/Rental Charges for Peninsular Malaysia

No	Site Type	OUM	1 Operator	2 Sharing Operator	3 Sharing Operator	4 Sharing Operator	5 Sharing Operator
<b>Lease Rate (Peninsular Malaysia)</b>							
1	Tower 76m	Per Site/Month	9,450.00	5,400.00	4,320.00	3,888.00	3,499.00
2	Tower 60m	Per Site/Month	8,883.00	5,076.00	4,104.00	3,694.00	3,324.00
3	Tower 45m	Per Site/Month	6,425.00	3,672.00	2,916.00	2,624.00	2,362.00
4	Monopole 45m	Per Site/Month	7,000.00	5,750.00	4,907.00	4,318.00	N/A
5	Monopole 30m	Per Site/Month	5,399.00	4,571.00	3,901.00	N/A	N/A
6	Monopole Tree 45m	Per Site/Month	7,588.00	5,991.00	5,112.00	4,498.00	N/A
7	Monopole Tree 30m	Per Site/Month	6,150.00	4,794.00	4,091.00	N/A	N/A
8	Lamp pole 24m	Per Site/Month	5,000.00	3,800.00	3,300.00	N/A	N/A
9	Lamp pole 30m	Per Site/Month	5,370.00	4,230.00	3,540.00	N/A	N/A
10	Lamp pole 24m/30m (Camo)	Per Site/Month	TBD	TBD	TBD	N/A	N/A
11	Roof Top	Per Site/Month	3,800.00	3,500.00	3,000.00	N/A	N/A
12	Rapole 30m	Per Site/Month	4,200.00	3,500.00	3,000.00	N/A	N/A
13	Street pole 18m	Per Site/Month	3,800.00 (w/o cabinet)	N/A	N/A	N/A	N/A
14	Street pole 18m	Per Site/Month	4,000.00 (with cabinet)	N/A	N/A	N/A	N/A

Table 5.1.4.1 Outdoor Infrastructure Coverage charges per sharing for Access Seeker