



Suruhanjaya Komunikasi dan Multimedia Malaysia
Malaysian Communications and Multimedia Commission

COMMUNICATIONS AND MULTIMEDIA ACT 1998

**COMMISSION DETERMINATION ON THE
MANDATORY STANDARD ON ACCESS**

DETERMINATION NO. 3 OF 2016

Pursuant to the Ministerial Direction to Determine a Mandatory Standard on Access, Direction No. 2 of 2003 and in exercise of the powers conferred by sections 55, 56, 104(2) and 106 of the Communications and Multimedia Act 1998 [Act 588] ("Act"), the Commission hereby determines as follows:

Citation and commencement

1. This Determination may be cited as the **Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016**.
2. This Determination shall come into force on 1 January 2017.

Definitions and Interpretation

3. For the purposes of this Determination, unless the context otherwise requires:

"Access Agreement" means an agreement entered into between Operators whereby the Access Provider provides access to an Access Seeker in accordance with the terms contained in such agreement;

"Access List Determination" means the Commission Determination on Access List, Determination No. 2 of 2015 which contains the list of Facilities and Services determined by the Commission under Chapter 3 of Part VI of the Act;

“Access Provider” means:

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

“Access Request” means a request for access made by an Access Seeker under subsection 5.4.5 of this Standard and containing the information contained in subsection 5.4.6 of this Standard;

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

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

“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 and/or Services is measured for the purposes of billing as contemplated in subsection 5.11.1 of this Standard, which shall be no more than one (1) month and in accordance with the relevant calendar month, unless otherwise agreed between the parties;

“Billing Cycle” means the regular periodic basis on which the Access Provider shall issue Invoices for the supply of access to Facilities and/or Services during each Billing Period, as specified in subsection 5.11.3 of this Standard;

“Billing Dispute” has the meaning given to it in subsection 1.1 of the Dispute Resolution Procedures in Annexure A of this Standard;

“Bitstream with Network Service” has the meaning as described in paragraph 4(12) of the Access List Determination;

“Bitstream without Network Service” has the meaning as described in paragraph 4(13) of the Access List Determination;

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

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

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

“B2B” means Business to Business;

“Calling Line Identification” or “CLI” means the information generated from the Network which identifies and forwards through the Network the calling number;

“Capacity Allocation Policy” has the meaning given to it in subsection 5.7.32 of this Standard;

“Change Notice” has the meaning given to it in subsection 5.10.3 of this Standard;

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

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

“Closed Number Area” means a set of digit(s) beginning with the trunk prefix “0” which forms the first part of a national number, and which indicates the defined geographical area within Malaysia where the Customer’s fixed number is located, provided always that “09” in the states of Pahang, Terengganu and Kelantan will be treated as one Closed Number Area, “082” to “086” in the state of Sarawak will be treated as one

Closed Number Area and "087" to "089" in the state of Sabah will be treated as one Closed Number Area;

"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 of confidentiality being owed to the third person, except where the Receiving Party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the Disclosing Party;
- (c) information which has been independently developed by the Receiving Party;
or
- (d) information required by law or the business rules of any stock exchange to be disclosed, provided that:
 - i. the Receiving Party, gives twenty-four (24) hours' notice to the Disclosing Party of the particulars of the required disclosure; and
 - ii. the Receiving Party provides the Disclosing Party with all assistance reasonably required by the Disclosing Operator (at the Disclosing Party's cost) to enable the Disclosing Party to take any steps available to it to prevent that disclosure or to ensure that it occurs subject to a reasonable obligation of confidence;

"Content Obligations" means those obligations set out in subsections 5.5 to 5.16 (inclusive) of this Standard;

"Customer" means in relation to an Operator, a person having a contractual relationship with that Operator for the provision of communications by means of that Operator's Facilities and/or Services;

“Digital Subscriber Line Resale Service” has the meaning as described in paragraph 4(15) of the Access List Determination;

“Digital Terrestrial Broadcasting Multiplexing Service” has the meaning as described in paragraph 4(16) of the Access List Determination;

“Disclosure Obligations” means those obligations set out in subsection 5.3 of this Standard;

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

“Dispute Resolution Procedures” means the procedures outlined in Annexure A of this Standard;

“DSL” means Digital Subscriber Line;

“Domestic Connectivity to International Service” has the meaning as described in paragraph 4(8) of the Access List Determination;

“Effective Date” means the date on which this Standard comes into effect as specified in paragraph 2 of this Determination;

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

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

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

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

“Facility and/or Service Change” has the meaning given to it in paragraph 5.10.2(b) of this Standard;

"Far End Handover" means:

- (a) in relation to calls terminating on a Fixed Network, the delivery of calls to a POI within the same Closed Number Area where the call is to be terminated; and
- (b) in relation to calls terminating on a Mobile Network, the delivery of calls to a POI nearest to the location of the called number as requested by the Access Seeker or as mutually agreed between the Access Provider and the Access Seeker;

"Fixed Network" means network facilities and/or network services comprising the public switched telephone network and/or networks based on Internet Protocols for the provision of communications by guided electromagnetic energy or by point-to-point unguided electromagnetic energy;

"Fixed Network Origination Service" has the meaning as described in paragraph 4(1) of the Access List Determination;

"Fixed Network Termination Service" has the meaning as described in paragraph 4(2) of the Access List Determination;

"Force Majeure" means an event or circumstance beyond the reasonable control of an Operator which affects the Operator's ability to perform its obligations under this Standard or under an Access Agreement;

"Forecast" means a forecast made by the Access Seeker referred to in subsection 5.6 of this Standard;

"Forecast Information" has the meaning given to it in subsection 5.6.6 of this Standard;

"Forecast Request" means a request by the Access Provider for Forecast Information from the Access Seeker, as described in subsection 5.6.6 of this Standard;

"Full Access Service" has the meaning as described in paragraph 4(10) of the Access List Determination;

"Functionality Change" has the meaning given to it in paragraph 5.10.2(e) of this Standard;

"Gaining Service Provider" means an Operator to whom another Operator's Customer requests for a transfer to be made to;

“HDF” means Handover Distribution Frame;

“HSBB Network” has the meaning given to it in paragraph 3 of the Access List Determination;

“HSBB Network Service” means each of the Layer 2 HSBB Network Service with QoS and the Layer 3 HSBB Network Service;

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

“Interconnect Link Service” has the meaning as described in paragraph 4(5) of the Access List Determination;

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

“Interface Change” has the meaning given to it in paragraph 5.10.2(a) of this Standard;

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

“Invoice” means the invoice for amounts due in respect of the supply of Facilities and/or Services during a Billing Period as contemplated in subsection 5.11.1 and 5.11.3 of this Standard;

“Layer 2 HSBB Network Service with QoS” has the meaning as described in paragraph 4(18) of the Access List Determination;

“Layer 3 HSBB Network Service” has the meaning as described in paragraph 4(21) of the Access List Determination;

“Line Sharing Service” has the meaning as described in paragraph 4(11) of the Access List Determination;

“MCMCA” means the Malaysian Communications and Multimedia Commission Act 1998, [Act 589];

“MDF” means Main Distribution Frame;

“Mobile Network” means network facilities and/or network services comprising the public cellular mobile network and/or the public mobile radio network, for the provision of communications;

“Mobile Network Origination Service” has the meaning as described in paragraph 4(3) of the Access List Determination;

“Mobile Network Termination Service” has the meaning as described in paragraph 4(4) of the Access List Determination;

“Mobile Virtual Network Operator” or “MVNO” has the meaning given to it in paragraph 3 of the Access List Determination;

“MNVO Access” has the meaning as described in paragraph 4(23) of the Access List Determination;

“Near End Handover” means:

- (a) in relation to calls terminating on a Fixed Network, the delivery of calls to a POI within the same Closed Number Area where the calling number is registered; and
- (b) in relation to calls terminating on a Mobile Network, the delivery of calls to a POI nearest to the location of the calling number as requested by the Access Seeker or as mutually agreed between the Access Provider and the Access Seeker;

“Negotiation Obligations” means those obligations set out in subsection 5.4 of this Standard;

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

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

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

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

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

“O&T Service” means an originating or terminating service in the Access List Determination, which on the Effective Date includes:

- (a) Fixed Network Origination Service;
- (b) Fixed Network Termination Service;
- (c) Mobile Network Origination Service; and
- (d) Mobile Network Termination Service;

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

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

“Order” means the Order which an Access Seeker must give to an Access Provider to obtain access to Facilities and/or Services, as described in subsection 5.7.2 of this Standard;

“OSS Change” has the meaning given to it in paragraph 5.10.2(d) of this Standard;

“Other Network Change” has the meaning given to it in paragraph 5.10.2(c) of this Standard;

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

“Point of Interface” means a point at or between network facilities which demarcates the Network of an Access Provider and the Network of an Access Seeker and is the

point at which a communication is transferred between those network facilities and includes POI and POP;

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

“Provisional Invoice” means an Invoice issued under subsection 5.11.17 of this Standard;

“QoS” means Quality of Service;

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

“Reference Access Offer” or “RAO” has the meaning given to that term in subsection 5.3.3 of this Standard;

“Rejection Notice” means the notice of rejection made by an Access Provider in response to an Access Seeker’s Forecast as described in subsection 5.6.13 of this Standard;

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

“Relevant Change” has the meaning given to it in subsection 5.10.2 of this Standard, and includes any Interface Change, Service Change, Network Change, OSS Change and Functionality Change;

“Service Qualifications” means:

- (a) in relation to O&T Services, Network Co-Location Service, Infrastructure Sharing, Duct and Manhole Access, Interconnect Link Service, Transmission Service, Domestic Connectivity to International Services or MVNO Access, a desk and/or field study that may be conducted under subsections 5.4 and 5.7 of this Standard, and may include (where relevant) the testing of a line to ascertain whether it could be used in response to an Access Request and/or an Order or proposed Order; and
- (b) in relation to all other Facilities and Services, includes the interrogation of an Access Provider’s OSS to confirm availability of network facilities to fulfil an Order or proposed Order;

"Services" means network services and/or other services which facilitate the provision of network services or applications services, including content applications services, as listed in the Access List Determination;

"Service Specific Obligations" means the obligations which relate to specific types of Facilities and/or Services set out in section 6 of this Standard and which add to or vary the Content Obligations in respect of those Facilities and/or Services;

"Standard" means the Mandatory Standard on Access as determined by the Commission in this Determination;

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

"Sub-loop Service" has the meaning as described in paragraph 4(14) of the Access List of Determination;

"Transfer Form" means a form which is executed by a Customer for the purpose of authorising a Churn;

"Transfer Request" means a request from a Gaining Service Provider to an Access Service Provider to implement a Churn, including a Transfer Form;

"Transmission Services" means each of the Trunk Transmission Service, the Wholesale Local Leased Circuit Service and the End-to-End Transmission Service;

"Trunk Transmission Service" has the meaning as described in paragraph 4(19) of the Access List Determination;

"Validity Period" has the meaning given to the term in paragraph 5.7.13(e) of this Standard;

"VLAN" means Virtual Local Area Network;

"Wholesale Line Rental Service" has the meaning as described in paragraph 4(17) of the Access List Determination; and

"Wholesale Local Leased Circuit Service" has the meaning as described in paragraph 4(6) of the Access List Determination.

4. In this Determination, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) a reference to, this Determination or other forms of legal instruments issued under the Act or the Access Agreement, includes any variation or replacement of any of them;
 - (c) a reference to an annexure or schedule is a reference to an annexure or schedule to this Standard and a reference to this Standard includes an annexure or schedule;
 - (d) a reference to a section is a reference to a section of this Standard and a reference to a paragraph is a reference to a paragraph of this Standard;
 - (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under them and consolidations, amendments, re-enactments or replacements of any of them;
 - (f) the word "person" includes a firm, body corporate, unincorporated association or an authority;
 - (g) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns;
 - (h) all monetary amounts are expressed in Ringgit Malaysia;
 - (i) if the day on which the payment of money or the performance of an obligation falls due is not a Business Day, the due date or performance date shall be deemed to be the next Business Day;
 - (j) a reference to a third person or a third party is a reference to a person who is not the Access Provider or the Access Seeker; and
 - (k) a term or expression starting with a capital letter:
 - i. which is defined in paragraph 3 of this Determination, has the meaning given to it in paragraph 3;

- ii. which is defined in the body of this Standard, has the meaning given to it in the body of this Standard unless the context indicates otherwise; and
 - iii. which is defined in the Act, the relevant subsidiary legislations made under it or the Access List Determination, but is not expressly defined in paragraph 3 of this Determination, has the same meaning as in the Act, the relevant subsidiary legislations made under it or the Access List Determination, as the case may be.
5. A definition provided in the Act shall prevail over a definition provided in this Determination to the extent of any inconsistency.

Mandatory Standard on Access

6. The Mandatory Standard on Access determined under this Determination is as follows:

SECTION 1: PRELIMINARY

1.1 STRUCTURE

This Standard is divided into:

- (a) major sections of this Standard, described as sections (e.g. section 1: Preliminary);
- (b) subsections within each section, described as subsections (e.g. subsection 1.2 and subsection 1.2.1); and
- (c) paragraphs within subsections, described as paragraphs [i.e. paragraph 1.1(a) and paragraph 1.2.5(a)].

1.2 OUTLINE OF CONTENTS OF THIS STANDARD

The sections of this Standard deal with the following issues:

- 1.2.1 Section 1 titled **Preliminary** sets out the structure and outline of this Standard.
- 1.2.2 Section 2 titled **Background** provides an introduction and background to this Standard.
- 1.2.3 Section 3 titled **Scope** sets out the scope of this Standard in terms of the Facilities and/or Services to be covered and the persons who are subject to this Standard.
- 1.2.4 Section 4 titled **General Principles** sets out the general principles applicable to access regulation in Malaysia, including principles to implement the SAO contained in section 149 of the Act.
- 1.2.5 Section 5 titled **Operator Access Obligations** sets out the general obligations that apply to all Operators concerning access to Facilities and/or Services under this Standard, which build upon the basic obligations or SAO set out in the Act. These obligations include:

- (a) Disclosure Obligations;
- (b) Negotiation Obligations; and
- (c) Content Obligations.

1.2.6 Section 6 titled **Service Specific Obligations** sets out the obligations that apply to all Operators concerning various access issues in connection with specific Facilities and/or Services included in the Access List Determination. These obligations build upon the Operator Access Obligations in section 5 either by providing additional detail or introducing specific concepts relevant to a subset of the Facilities and/or Services in the Access List Determination, including:

- (a) O&T Services;
- (b) Wholesale Line Rental Service;
- (c) Interconnect Link Service;
- (d) ANE;
- (e) Digital Subscriber Line Resale Service;
- (f) HSBB Network Services;
- (g) Transmission Services;
- (h) Infrastructure Sharing;
- (i) Network Co-Location Service;
- (j) Domestic Connectivity to International Services;
- (k) Duct and Manhole Access;
- (l) Digital Terrestrial Broadcasting Multiplexing Service; and
- (m) MVNO Access.

1.2.7 Section 7 titled **Standard Administration and Compliance** sets out the administrative and compliance matters that are applicable to this Standard, including:

- (a) enforcement of this Standard;
- (b) implementation of this Standard;
- (c) compliance review;
- (d) transitional measures; and
- (e) review of this Standard.

SECTION 2: BACKGROUND

2.1 LEGISLATIVE BASIS FOR THIS STANDARD

- 2.1.1 This Standard is determined by the Malaysian Communications and Multimedia Commission, established under the MCMCA pursuant to subsection 106(2) of the Act and the Ministerial Direction to Determine a Mandatory Standard on Access, No. 2 of 2003 ("Direction").
- 2.1.2 Subsection 55(6) of the Act provides that any determination by the Commission shall be consistent with the objects of, and any requirements provided in the Act which are relevant to the particular matter or activity.
- 2.1.3 The Commission take cognizance of the objects of the Act as provided in subsection 3(1) of the Act in determining this Standard including without limitation:
- (a) promotion of the national policy objectives for the communications and multimedia industry;
 - (b) establishment of a licensing and regulatory framework in support of national policy objectives for the communications and multimedia industry; and
 - (c) establishment of the powers and procedures for the administration of the Act.
- 2.1.4 The Commission also take cognizance of the national policy objectives for the communications and multimedia industry as provided under subsection 3(2) of the Act, including without limitation:
- (a) to regulate for the long-term benefit of the end user;
 - (b) to ensure an equitable provision of affordable services over ubiquitous national infrastructure; and
 - (c) to facilitate the efficient allocation of resources.
- 2.1.5 In accordance with the Direction, the Commission followed the public inquiry procedures prescribed in Chapter 3, Part V of the Act in the course of developing this Standard.

2.2 OVERVIEW

- 2.2.1 This Standard sets out general principles as well as mandatory regulated terms on key rights and obligations concerning interconnection and access.
- 2.2.2 Under this Standard, Access Providers are required to make their terms and conditions of access publicly available in the form of Reference Access Offers which must comply with this Standard. The RAOs of Access Providers must be capable of being signed as an Access Agreement or further negotiated by the Access Provider and Access Seeker.
- 2.2.3 The Commission considers the implementation of the RAO model will help balance the need to ensure expeditious and efficient access on transparent terms whilst providing flexibility to accommodate operator-specific matters and the interests of end users which may change over time.

SECTION 3: SCOPE

3.1 TYPES OF FACILITIES AND SERVICES COVERED BY THIS STANDARD

3.1.1 This Standard deals with access to Facilities and/or Services included in the Access List Determination. This Standard aims to be sufficiently flexible to deal with change as it occurs, and includes review provisions and transitional provisions (see subsection 7.4 and subsection 7.5 of this Standard).

3.2 APPLICATION OF THIS STANDARD

3.2.1 Any person who is a licensee as defined in the Act and who acts in one or more of the following capacities is subject to this Standard, and in accordance with subsection 7.1.3 of this Standard, may be directed to comply with subsection 105(3) of the Act by the Commission:

- (a) network facilities providers, in their capacity as Access Providers or Access Seekers;
- (b) network service providers, in their capacity as Access Providers or Access Seekers;
- (c) applications service providers, in their capacity as Access Seekers; and
- (d) content applications service providers, in their capacity as Access Seekers.

3.2.2 Consistent with the approach of the access regime established by the Act, this Standard confers the same rights and applies the same obligations on persons listed in subsection 3.2.1 of this Standard and as between a particular class of person (e.g. network facilities providers), making no distinction between large or small providers nor does it distinguish between established or new providers.

3.2.3 This Standard shall only apply in respect of the wholesale relationship between Operators in relation to access to Facilities and/or Services included in the Access List Determination. The Commission encourages all Operators to treat the provisions of this Standard, where relevant, as a guideline for any other wholesale access arrangements that may be entered into in respect of facilities and services which are not included in the Access List Determination.

SECTION 4: GENERAL PRINCIPLES

4.1 PRINCIPLES OF ACCESS TO FACILITIES AND SERVICES IN THE ACCESS LIST DETERMINATION

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

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

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

4.1.2 **Reasonableness:** An Access Provider may refuse a request if:

- (a) supply of the relevant listed Facilities and/or Services would not be reasonable (see subsection 4.1.3 of this Standard); or
- (b) supply of the relevant listed Facilities and/or Services would be reasonable, but the terms and conditions requested by the Access Seeker are not reasonable (see subsection 4.1.4 of this Standard).

4.1.3 **Unreasonable request:** Although not prescribed by the Act, a request for access to a listed Facilities and/or Services may not be reasonable if one or more of the criteria in subsection 5.4.11 of this Standard are satisfied. For clarification, this Standard does not intend or attempt to narrow the grounds of refusal upon which a party may rely upon under the Act.

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

4.1.5 **Non-discrimination:** As required by subsection 149(2) of the Act, an Access Provider must provide access to those Facilities and/or Services specified in the Access List Determination, and such access must be:

- (a) of at least the same or more favourable technical standard and quality as the technical standard and quality provided for itself on the Access Provider's Facilities and/or Services; and
- (b) provided on an equitable and a non-discriminatory basis.

4.1.6 **Meaning of non-discriminatory:** For the purposes of this Standard, the non-discrimination principle and the term "non-discriminatory" apply on an Equivalence of Inputs basis and require a comparison of:

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

4.2 APPLICATION OF NON-DISCRIMINATION PRINCIPLE

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

- (a) processing of applications for access;
- (b) acceptance or refusal of Access Requests;
- (c) provision of information required to provide Forecasts or place Orders;
- (d) provisioning of Facilities and/or Services;
- (e) allocation of constrained capacity;
- (f) fault reporting and fault rectification;
- (g) Network Conditioning;
- (h) allocation of space at exchanges;

- (i) the purpose or use for which access is provided; and
- (j) access to Operational Support Systems in respect of service fulfilment and service assurance.

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

4.3 CUSTOMER PRINCIPLES

4.3.1 **Recognition of principle:** All Operators must recognise and act consistently with the Customer relationship principles referred to in subsection 4.3.2 of this Standard.

4.3.2 **Customer relationship principles:**

- (a) A Customer will be regarded as a Customer of an Operator when the Customer utilises Facilities and/or Services provided to that Customer by the Operator.
- (b) The same person may be a Customer of more than one Operator:
 - i. in respect of the same or different Facilities provided by different Operators;
 - ii. in respect of the same or different Services provided by different Operators; or
 - iii. in respect of Facilities provided by one Operator and Services provided by another Operator.
- (c) The supply by an Operator to another Operator, which the latter Operator then utilises in providing Facilities and/or Services to its Customers, does not mean that those Customers are also Customers of the first-mentioned Operator.
- (d) Each Operator will be responsible for billing its own Customers, unless express agreement to the contrary is made by the Access Provider and

the Access Seeker. An agreement to the contrary may include, without limitation:

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

4.4 NO EXCLUSIVITY AND NO RESTRICTION ON RESALE

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

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

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

4.5.1 If:

- (a) an Access Provider fails to comply with a timeframe under this Standard; and
- (b) the Access Provider considers that such failure was caused or contributed to by necessary third party involvement or other matters reasonably outside the Access Provider's control (for example, where approval from local or other authority is required),

the Access Provider must notify the Commission of such non-compliance and such third party involvement, and provide the contact details of such third party, to permit the Commission to investigate the non-compliance.

SECTION 5: OPERATOR ACCESS OBLIGATIONS

5.1 SCOPE

5.1.1 This section 5 imposes obligations on all network facilities providers and/or network service providers who are required to provide Facilities and/or Services listed in the Access List Determination under section 149 of the Act.

5.2 APPLICABLE OBLIGATIONS

5.2.1 All persons described in subsection 5.1.1 of this Standard must comply with each relevant subsection of this Standard, which address the following:

- (a) Disclosure Obligations;
- (b) Negotiation Obligations;
- (c) Content Obligations; and
- (d) Service Specific Obligations.

5.3 DISCLOSURE OBLIGATIONS

5.3.1 **General duty:** All Operators shall, subject to the provisions of this Standard and the terms and conditions of any confidentiality agreement entered into pursuant to subsection 5.3.8 of this Standard, provide, in response to a request in good faith from any other Operator, any information which is reasonably necessary for the negotiation, conclusion and implementation of the provision of access as contemplated in this Standard 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.

5.3.2 **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 5.3 of this Standard on the basis that the Access Seeker wishes to negotiate an Access Agreement, whether the access sought is based on a RAO or otherwise.

5.3.3 **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 and/or Services to any other Operator, including the rates, charges, charging principles and methodologies to be applied for Facilities and/or Services and any applicable fees or rebates (such as those referred to in subsection 5.7.28 and 5.7.33 of this Standard);
- (b) incorporate the details of all available POIs offered by the Access Provider, as specified on its publicly accessible website from time to time under paragraph 5.8.2(a) of this Standard;
- (c) contain a copy of the application forms required to be completed by the Access Seeker to apply for access to Facilities and/or Services, including a copy of the fast-track application form required for use under subsection 5.4.20 of this Standard;
- (d) contain a copy of the Access Provider's standard confidentiality agreement which shall comply with subsection 5.3.8 of this Standard;
- (e) contain only terms and conditions which are consistent with the rights and obligations set out in this Standard; and
- (f) not contain any terms and conditions which are inconsistent with the rights and obligations set out in this Standard.

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.

5.3.4 **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 5.3 of this Standard;
- (c) be accurate;
- (d) be modular, so that details about the terms and conditions, including the rates, for each of the Facilities and/or Services are available individually and separately under a RAO;
- (e) be consistent with:
 - i. the Act;
 - ii. this Standard; 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 publicly accessible website; and
- (h) be provided to the Commission within ten (10) Business Days after being made available under paragraph 5.3.4(f) of this Standard.

5.3.5 **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 and/or Services under the existing RAO; and

- (b) 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, 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 5.3.5 of this Standard 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.

5.3.6 Amended RAO: Upon expiry of the twenty (20) Business Days in subsection 5.3.5 of this Standard (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 5.3.6(a) of this Standard.

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

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

available) required by the Access Provider under subsections 5.3.9, 5.3.10 and 5.3.11 of this Standard; and

- (h) the Access Provider's reasons for failing to supply any of the information referred to in paragraphs 5.3.7(a) to 5.3.7(g) of subsection 5.3.7 of this Standard.

Prior to the provision of information under subsection 5.3.7 of this Standard, the Access Provider may request the Access Seeker to enter into a confidentiality agreement in accordance with subsection 5.3.8 of this Standard.

5.3.8 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 to third parties or using information other than as necessary for the purposes of assessing a request for access; and
- (e) shall not prevent the disclosure of Confidential Information or other information to the Commission by the Receiving Party.

5.3.9 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 and/or Services with a minimum period of access, the minimum period of access to those Facilities and/or Services; and
 - for Facilities and/or Services without a minimum period of access, a single Billing Period for those Facilities and/or Services,in an Access Agreement;
 - ii. the creditworthiness of the Access Seeker (including prior record of payment by the Access Seeker); and
 - iii. security previously reasonably required by the Access Provider.
- (c) The Access Provider must not impose a security requirement on an Access Seeker which:
- i. exceeds a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to Facilities and/or Services to be provided by the Access Provider to the Access Seeker; or
 - ii. is designed to, or has the effect of, denying or delaying the Access Seeker's access to Facilities and/or Services.

5.3.10 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 interest that the circumstances require and shall not be permitted to require:

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

- (b) comprehensive general liability insurance in excess of Ringgit Malaysia Twenty Million (RM20,000,000.00) for any one claim or series of claims arising out of an accident or occurrence in connection with the Access Agreement that may be entered into.

5.3.11 **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 and/or Services in an Access Agreement.

5.3.12 **Reporting obligations:** On 1 April and 1 October of each year, in respect of the Facilities and/or Services set out in subsection 5.3.13 of this Standard, each Access Provider shall notify the Commission in writing of:

- (a) each Facility and/or Service which is included in the Access Provider's RAO as published on its publicly accessible website;
- (b) each Facility and/or Service which is not included in the Access Provider's RAO as published on its publicly accessible website;
- (c) each Access Agreement which the Access Provider has entered into, including:
 - i. the name and contact details of the relevant Access Seeker;
 - ii. the Facilities and/or Services made available under the Access Agreement;
 - iii. any other products or services made available under the Access Agreement;

- iv. the 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 is negotiated on alternative terms; and
 - vi. any further details of the Access Agreement that may be requested by the Commission from time to time;
- (d) each Facility and/or Service which has been supplied under an Access Agreement during the period since the previous reporting period under subsection 5.3.12 of this Standard and the name and 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 5.3.12 of this Standard;
 - (f) details of any security required by the Access Provider from Access Seekers under subsection 5.3.9 or subsection 5.16.8 of this Standard, as revised or varied under subsection 5.16.7 of this Standard;
 - (g) details of all ongoing negotiations with Access Seekers, including the date on which the negotiation commenced and updates where an extension of time for negotiation has been granted;
 - (h) details of all ongoing disputes with Access Seekers to which the Dispute Resolution Procedures apply;
 - (i) details of any ongoing space constraints at any POI 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 Seekers since the previous reporting period under subsection 5.3.12 of this Standard;

- (l) the information required to be provided under subsections 6.6.16, 6.7.7, 6.9.20, 6.11.7, 6.12.12 and 6.13.8 of this Standard; and
- (m) any other information requested by the Commission.

5.3.13 Facilities and/or Services subject to reporting: The reporting obligations set out in subsection 5.3.12 of this Standard apply to the following Facilities and/or Services:

- (a) HSBB Network Services;
- (b) Transmission Services;
- (c) Network Co-Location Service;
- (d) Duct and Manhole Access;
- (e) Digital Terrestrial Broadcasting Multiplexing Service;
- (f) MVNO Access; and
- (g) such other Facilities and/or Services that the Commission may nominate from time to time.

5.4 NEGOTIATION OBLIGATIONS

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

- (a) both parties shall notify the Commission when the negotiations for the Access Agreement begin under this subsection;
- (b) both parties shall use their best endeavours to conclude the Access Agreement within:
 - i. where there is no Access Agreement in place between the Operators, four (4) months; or
 - ii. where there is already a commercial agreement or an Access Agreement in place between the Operators, three (3) months,

after a written request by the Access Seeker to commence negotiations under paragraph 5.4.6(c) of this Standard and the Access Provider's response confirming it is willing to proceed to negotiate under paragraph 5.4.7(b) of this Standard;

- (c) if the negotiations are not completed within the applicable timeframe specified under paragraph 5.4.1(b) of this Standard:
 - i. the parties may jointly apply to the Commission for an extension of time to negotiate and if the extension of time is not granted by the Commission, there shall be deemed to be a dispute between the parties and the Dispute Resolution Procedures shall take effect; or
 - ii. either party may initiate the Dispute Resolution Procedures; and
- (d) if the Commission grants an extension of time under paragraph 5.4.1(c)i of this Standard, it may do so subject to such conditions as it specifies (such as an ongoing requirement to provide updates on negotiations at specified intervals and the right to reduce or extend any extension).

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

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

5.4.3 Confidentiality: An Operator must protect from disclosure any Confidential Information provided by another Operator in the course of negotiating an Access Agreement and during the term of an Access Agreement in accordance with a confidentiality agreement prepared under subsection 5.3.8 of this Standard.

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

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

- (a) there is no Access Agreement in force between the Access Provider and the Access Seeker governing access to the Facilities and/or Services to which the Access Seeker seeks access; or
- (b) there is such 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 and/or Services are outside the scope of that agreement.

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

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

- (a) the name and contact details of the Access Seeker;
- (b) the Facilities and/or Services in respect of which access is sought;
- (c) whether the Access Seeker wishes to accept the Access Provider's RAO, to negotiate amendments to the RAO, or to negotiate an Access Agreement on alternative terms;
- (d) the information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of the negotiations. The

type of information which may be requested by the Access Seeker is described in, but not limited to, subsection 5.3.7 of this Standard;

- (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 5.3.8 of this Standard;
- (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 5.3.11 of this Standard;
- (j) assessed security (or, if applicable, confirmation of security provided) in accordance with the Access Provider's security requirements, as set out in subsection 5.3.9 of this Standard;
- (k) insurance information in accordance with the Access Provider's insurance requirements, as set out in subsection 5.3.10 of this Standard; and
- (l) such other information as the Access Provider may reasonably request for the sole purpose of providing access to the requested Facilities and/or Services.

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

- (a) if the Access Seeker is willing to accept a RAO from the Access Provider, the Access Provider will provide access in accordance with the RAO;

- (b) if paragraph 5.4.7(a) of this Standard 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 5.4.10 of this Standard; or
- (d) the Access Provider requires specified additional information to make a decision on the Access Request in accordance with paragraphs 5.4.7(a) to 5.4.7(c) of this Standard, and once such information is received from the Access Seeker, the Access Provider shall reconsider the Access Request in accordance with this subsection and the ten (10) Business Days for the Access Provider to consider the Access Request will recommence from the receipt of the information from the Access Seeker.

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

5.4.8 Acceptance response: If the Access Provider responds that access will be provided in accordance with a RAO [as described in paragraph 5.4.7(a) of this Standard], 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 [in accordance with paragraph 5.4.6(e) of this Standard] that has also been properly executed by the Access Provider.

5.4.9 Negotiation response: If the Access Provider is willing to proceed with negotiation of the Access Request [as described in paragraph 5.4.7(b) of this Standard], 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 the 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 5.4.6(e) of this Standard] that has also been properly executed by the Access Provider.

5.4.10 **Refusal response:** If the Access Provider decides to refuse the Access Request [as described in paragraph 5.4.7(c) of this Standard], the Access Provider must set out in its response to the Access Seeker:

- (a) the grounds in subsection 5.4.11 of this Standard on which the Access Provider is relying;
- (b) the basis of the Access Provider's decision with sufficient particulars to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of refusal; and
- (c) a place, date and time, not later than seven (7) Business Days from the date of the Access Provider's response, at which representatives of the Access Provider authorised to review the Access Provider's assessment of the Access Request will be available to meet with representatives of the Access Seeker, for the purpose of discussing the refusal of the Access Request. At this meeting, the Access Seeker may request the Access Provider to substantiate its reasons for refusal (and the Access Provider shall do so), and if access has been refused on the basis of the grounds in:
 - i. paragraph 5.4.11(b) of this Standard, the Access Provider must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;
 - ii. paragraph 5.4.11(d) of this Standard, the Access Provider must identify when additional capacity or space is likely to be available; and
 - iii. paragraph 5.4.11(e) of this Standard, the Access Provider must identify the form of security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested Facilities and/or Services, its reasons for the security requirement and why it considers such concern cannot be addressed through a security requirement under subsection 5.3.9 of this Standard.

5.4.11 **Grounds 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 grounds that:

- (a) the Access Provider does not currently supply, or provide access to, the relevant Facilities and/or Services to itself or to any third parties (in which case it shall identify any alternative facilities and/or services which it does provide to itself or to any third parties, which may be acceptable substitutes), except where the Access Seeker compensates the Access Provider for the original supply of access to Facilities and/or Services to the Access Seeker;
- (b) the Access Seeker has not provided all of the information required to be provided in accordance with subsection 5.4.6 of this Standard;
- (c) it is not technically feasible to provide access to the Facilities and/or Services requested by the Access Seeker;
- (d) subject to this Standard, the Access Provider has insufficient capacity or space to provide the requested Facilities and/or Services;
- (e) the Access Provider has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested Facilities and/or Services and such concern cannot be addressed through a security requirement in accordance with this 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 and/or Services; or
- (g) there are reasonable grounds for the Access Provider to refuse access in the national interest.

5.4.12 **Dispute resolution:** If, following the meeting between the parties required to be held pursuant to paragraph 5.4.10(c) of this Standard, 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 the Access Request and the Access Seeker disagrees with the Access Provider's refusal of the Access Request, either party may request resolution of the dispute in accordance with the Dispute Resolution Procedures.

5.4.13 **Initial meeting:** Unless otherwise agreed between the Operators, each Operator shall ensure that its representatives meet on the date notified pursuant to paragraph 5.4.9(a) of this Standard and that such representatives:

- (a) agree on a timetable for the negotiations, including milestones and dates for subsequent meetings within the applicable timeframe for negotiations under paragraph 5.4.1(b) of this Standard;
- (b) agree on negotiating procedures, 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 matters 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 be provided by each Operator; and
- (d) identify what technical investigations, if any, need to be made and by whom such investigations should be made.

5.4.14 **Facilities and services not specified in the Access List Determination:** If an Access Seeker wishes to obtain access to additional facilities and/or services that are not specified in the Access List Determination, then the requirements under subsection 5.4 of this Standard may apply to any request for access to such additional facilities and/or services to the extent agreed by the parties.

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

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

- i. information about the Access Provider's Network that the Access Seeker reasonably requires 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.

5.4.16 **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 a condition of assessing the Access Seeker's application, or at any other time):

- (a) the Access Seeker's proposed service launch date (though the Access Provider may request the Access Seeker to specify any ready-for-service dates which the Access Seeker requires from the Access Provider in respect of the requested Facilities and/or Services);
- (b) details of the functionality of the Access Seeker's proposed service, except to the extent that such functionality may affect the Access Provider's Network;
- (c) details of the Access Seeker's network rollout plans, except to the extent that such rollout plans relate to ready-for-service dates requested by the Access Seeker;
- (d) details of the Access Seeker's current or proposed retail charges;
- (e) details of the Access Seeker's marketing strategy or proposed client base;
- (f) financial information relating to the Access Seeker's business, except to the extent that such information may be required pursuant to the creditworthiness requirements in subsection 5.3.11 of this Standard;
- (g) details of any other supply arrangements or Access Agreements to which the Access Seeker is or may be a party, except to the extent that such details are directly relevant to technical characteristics of the requested Facility and/or Service; or

- (h) any other commercially sensitive information of the Access Seeker which is not strictly required by the Access Provider to supply a requested Facility and/or Service.

5.4.17 **Technical infeasibility:** For the purposes of paragraph 5.4.11(c) of this Standard, an Access Provider shall not refuse an Access Request on the grounds of technical infeasibility unless the Access Provider establishes that there are substantial technical or operational concerns preventing the fulfilment of the Access Request. Each of the following matters shall be taken into account in determining whether access is technically feasible:

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

5.4.18 **Capacity constraints:** An Access Provider may only refuse an Access Request on the ground that an Access Provider has insufficient capacity or space under paragraph 5.4.11(d) of this Standard 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 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 in subsection 5.4 of this Standard; and
- (c) in the case of both paragraphs 5.4.18(a) and 5.4.18(b) of this Standard, the Access Provider is unable to expand capacity to meet the requirements in the Access Seeker's Access Request.

5.4.19 Reporting on refusals: If an Access Provider refuses an Access Request, it must notify the Commission within five (5) Business Days of that refusal together with an explanation of its reason for refusal under subsection 5.4.11 of this Standard.

5.4.20 Fast-track application and agreement: Notwithstanding and as an alternative process to that set out in subsections 5.4.1 to 5.4.18 of this Standard, an Access Provider shall make available a fast-track application and agreement process for Access Seekers based on the following principles:

- (a) the fast-track process shall be limited to the criteria set out by the Access Provider in accordance with subsection 5.4.21 of this Standard;
- (b) the fast-track application form:
 - i. shall be limited to gathering information from the Access Seeker as set out in paragraphs 5.4.6(a) and 5.4.6(b) of this Standard; and
 - ii. in respect of any requirement to provide security, shall set out a process for determining the required security sums under subsection 5.3.9 of this Standard within five (5) Business Days of the Access Provider's receipt of a fast-track application;
- (c) the Access Provider may only refuse the Access Seeker's fast-track application for the reasons set out in paragraphs 5.4.11(a), 5.4.11(e) or 5.4.11(f) of this Standard;

- (d) the fast-track agreement between the Access Provider and the Access Seeker must be on the terms of the Access Provider's RAO; and
- (e) within ten (10) Business Days of the Access Provider's receipt of a fast-track application, the Access Provider must:
 - i. provide the Access Seeker with two (2) copies of the RAO executed by the Access Provider, or a notice of refusal that sets out the grounds for refusal under paragraph 5.4.20(c) of this Standard (including the basis on which those grounds apply); and
 - ii. provide the Commission with a copy of the response at the same time that it provides the response to the Access Seeker under paragraph 5.4.20(e)i of this Standard.

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

- (a) the criteria must be determined and applied by the Access Provider on a non-discriminatory basis;
- (b) the fast-track process may be limited to the supply of Facilities and/or Services to the extent that such supplies do not have a material impact on the Access Provider's current level of network resources; and
- (c) the Facilities and/or Services which may be the subject of a fast track application may be limited to Fixed Network Termination Service, Mobile Network Termination Service, Transmission Services, Interconnect Link Service, HSB Network Services, Digital Subscriber Line Resale Service and ANE.

5.5 CONTENT OBLIGATIONS: GENERAL

5.5.1 **Content Obligations:** The Content Obligations referred to in this Standard are as follows:

- (a) General Obligations as described in subsection 5.5 of this Standard;
- (b) Forecasting Obligations as described in subsection 5.6 of this Standard;
- (c) Ordering and Provisioning Obligations as described in subsection 5.7 of this Standard;
- (d) Point of Interface Procedures as described in subsection 5.8 of this Standard;
- (e) Decommissioning Obligations as described in subsection 5.9 of this Standard;
- (f) Network Change Obligations as described in subsection 5.10 of this Standard;
- (g) Billing and Settlement Obligations as described in subsection 5.11 of this Standard;
- (h) Operations and Maintenance Obligations as described in subsection 5.12 of this Standard;
- (i) Technical Obligations as described in subsection 5.13 of this Standard;
- (j) Term, Suspension and Termination Obligations as described in subsection 5.14 of this Standard;
- (k) Churn Obligations as described in subsection 5.15 of this Standard; and
- (l) Legal Boilerplate Obligations as described in subsection 5.16 of this Standard.

5.5.2 **Application:** Unless otherwise specifically provided in this Standard, the Content Obligations shall apply to all Facilities and/or Services subject to the Service Specific Obligations which are set out in section 6 of this Standard.

5.5.3 **General:** All Access Providers must:

- (a) include in each RAO, obligations which are consistent with these Content Obligations; and
- (b) not include in any RAO, obligations which are inconsistent with these Content Obligations.

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

- (a) subsection 5.5 of this Standard;
- (b) the following subsections 5.6 to 5.16 of this Standard (inclusive); and
- (c) the Service Specific Obligations in section 6 of this Standard, as may be applicable.

5.6 FORECASTING OBLIGATIONS

5.6.1 **General:** Subject to subsections 5.6.3 and 5.6.4 of this Standard, an Access Provider may require, as a condition of accepting Orders for access to Facilities and/or Services from an Access Seeker (but not as a prerequisite for entering into an Access Agreement), that the Access Seeker provide Forecasts in good faith with regard to a certain period of supply of access to Facilities and/or Services in accordance with subsection 5.6 of this Standard.

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

5.6.3 **Confirmation of Forecast:** If an Access Provider, acting reasonably will incur significant costs to ensure that access can be provided in accordance with a Forecast (for example, because it will need to proactively augment its Network to provide access within the requested timeframes), the Access Provider may request the Access Seeker to confirm the relevant Forecast. Once confirmed, the Forecast is deemed to be an Order for the purposes of this Standard, and subsection 5.7 of this Standard will apply.

5.6.4 **Alternative procedure:** An Access Provider and an Access Seeker may agree to an alternative forecasting and ordering procedure other than that set

out in subsection 5.6 of this Standard 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 5.6 of this Standard.

- 5.6.5 **Non-binding:** Subject to subsection 5.6.3 of this Standard, an Access Provider shall not require an Access Seeker to provide Forecasts that are legally binding on the Access Seeker, except to the extent that the Access Provider is permitted to recover costs and expenses as set out in subsection 5.6.16 of this Standard.
- 5.6.6 **Forecast request:** An Access Provider may request an Access Seeker to provide, with a sufficient level of detail to enable the Access Provider to carry out network planning and provisioning, the following information ("**Forecast Information**"):
- (a) the Facilities and/or Services in respect of which Forecasts are required;
 - (b) the total period of time covered by each Forecast, which period:
 - i. shall be determined having regard to the Access Provider's own planning and provisioning cycles and the forecasting requirements which apply to the Access Seeker's own business units in using the relevant Facilities and/or Services; and
 - ii. shall be the shorter of the period set out in the relevant Service Specific Obligations and the period of forecasting which the Access Provider provides to itself for network planning and provisioning purposes;
 - (c) the intervals or units of time to be used in making the Forecast, which shall be the shorter of the period set out in the relevant Service Specific Obligations and the intervals of time in which the Access Provider provides forecasting to itself;
 - (d) the network area or operational area to which Forecasts shall relate, which area shall correspond to that which the Access Provider uses for its own network planning and provisioning;

- (e) the frequency with which a Forecast must be updated or 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 and/or Services requested by the Access Seeker (which shall not include any information that the Access Provider does not provide to itself in connection with forecasting for its own facilities and/or services).

5.6.7 **Non-permitted information:** The Access Provider must not request an Access Seeker to provide a Forecast that contains:

- (a) any information that is or would allow the Access Provider to infer any non-permitted information listed under subsection 5.4.16 of this Standard; or
- (b) any information that identifies or would enable the identification of Customers or particular services of the Access Seeker.

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

5.6.9 **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 Provider whose role is within either:

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

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

5.6.10 Distribution of Forecast Information: An Access Provider may only distribute Forecast Information of an Access Seeker outside the groups of people referred to in subsection 5.6.9 of this Standard if:

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

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

- (a) if, the Access Provider considers that the Forecast does not comply with the Forecast Request, to specify in that notice the additional information which the Access Seeker is to provide to comply with the Forecast Request and the Access Provider will not require such information to be provided sooner than four (4) weeks after such a notice; or
- (b) if, the Access Provider considers that the Forecast does 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 5.6.12(a) to 5.6.12(d) of this Standard.

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

- (a) total current usage of the Facilities and/or Services by the Access Provider and all Access Seekers;
- (b) the current rate of growth of the Access Seeker's usage of the Facilities and/or Services;

- (c) the current rate of growth of total usage of the Facilities and/or Services by the Access Provider and all Access Seekers; and
- (d) subject to subsections 5.7.31 and 5.7.32 of this Standard, the amount of capacity in the Facilities and/or Services that the Access Provider currently has available and can reasonably provision for the Access Seeker over the Forecast period, which must be at least equivalent to that which the Access Provider can reasonably provision for itself.

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

- (a) within fifteen (15) Business Days of receipt of the relevant Forecast; and
- (b) such Rejection Notice (if any) must specify:
 - i. the grounds on which the Access Provider rejects the Forecast in accordance with subsection 5.6.12 of this Standard, 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.

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

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

5.6.15 **Reconsideration by Access Provider:** The Access Provider shall reconsider any re-submitted or amended Forecast provided pursuant to subsection 5.6.14 of this Standard and subsections 5.6.11 to 5.6.13 of this Standard shall re-apply.

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

- (a) such costs and expenses were reasonably and necessarily incurred by the Access Provider;
- (b) the Access Provider reasonably seeks to mitigate its loss (including through its own usage) provided the Access Provider shall not be required to do so for any greater period than the relevant Forecast period; and
- (c) the Access Provider only recovers from the Access Seeker, seventy-five percent (75%) of such costs and expenses which could not be mitigated under paragraph 5.6.16(b) above.

5.6.17 **Meeting Forecasts:** Subject to subsections 5.6.11 to 5.6.13 of this Standard, an Access Provider must carry out network planning in order to enable Forecasts to be met. If an Access Seeker has confirmed a Forecast under subsection 5.6.3 of this Standard, it will be binding on the Access Seeker.

5.7 ORDERING AND PROVISIONING OBLIGATIONS

5.7.1 **Contact point or mechanism:** The Access Provider shall designate and notify an Access Seeker of one or more of the following:

- (a) a person to whom Orders for access to Facilities and/or Services are to be delivered;
- (b) a contact point to which Orders for access to Facilities and/or Services are to be delivered (such as an e-mail address); and
- (c) a mechanism where Orders for access to Facilities and/or Services can be made (such as a web portal or B2B gateway), provided that if such a mechanism is the only method which the Access Provider provides for the receipt of Orders for that Facility and/or Service, the Access

Provider cannot require the Access Seeker to unreasonably invest in specialised technology or systems (such as an automated interface between the Operational Support Systems of the Operators).

5.7.2 Order content: Prior to access being provided, an Access Provider may require an Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. An Access Provider may request an Access Seeker to provide, at a level of detail (sufficient for planning and provisioning), the following information in an Order for access to Facilities and/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 points of delivery;
- (d) Equipment of the Access Seeker to be used in connection with the Order, to the extent it may adversely affect the Access Provider's Network; and
- (e) such other information that the Access Provider reasonably requires in order for it to provision access to the Facilities and/or Services as requested by the Access Seeker, provided that such information shall not include any information which:
 - i. the Access Provider does not require from itself for similar provisioning;
 - ii. identifies, or which enables the identification of, a Customer or services of the Access Seeker; or
 - iii. is non-permitted information under subsection 5.4.16 of this Standard.

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

- (a) the Access Provider's wholesale or interconnection group; and

- (b) that part of the network engineering group of the Access Provider responsible for interconnection or access,

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

5.7.4 Treatment of Orders and Service Qualifications: An Access Provider shall:

- (a) establish a single queue for all Orders and Service Qualifications for a given type of Facility and/or Service, whether those Orders and Service Qualifications are required for itself or any Access Seekers;
- (b) give the equivalent priority to the handling of all Orders and Service Qualifications in each queue; and
- (c) otherwise treat all Orders and Service Qualifications in each queue in compliance with its queuing policy established under subsection 5.7.29 of this Standard.

5.7.5 Acknowledgment of receipt: An Access Provider shall acknowledge receipt of an Order for Facilities and/or Services, in writing (or any other material or electronic form as agreed by the parties), within the period specified in the Service Specific Obligations for the purposes of this subsection 5.7.5 of this Standard.

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

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

Provider, for example in its Operational Support Systems, together with the reasons for needing to undertake the Service Qualification; and

(e) the position of the Order in the Access Provider's queue.

5.7.7 Further information: The Access Provider shall allow the Access Seeker a period of up to ten (10) Business Days after a request for additional information under paragraph 5.7.6(b) of this Standard to provide the Access Provider with such information.

5.7.8 Service Qualifications: The Access Provider shall make Service Qualifications available to the Access Seekers prior to placing Orders if such pre-Order Service Qualifications are undertaken for a given Facility and/or Service by the Access Provider for itself (for example, for marketing purposes in respect of HSBB Network Service-based services offered to Customers). The Access Provider shall only require post-Order Service Qualifications to be requested if:

- (a) no pre-Order Services Qualification has been completed in accordance with the process to be developed under subsection 5.4.5 of this Standard;
- (b) the Access Provider reasonably requires information from post-Order Service Qualifications which are not readily available, for example in its Operational Support Systems; and
- (c) the Access Provider notifies the Access Seeker that the post-Order Service Qualifications are necessary (together with the reasons for needing to take such Service Qualifications) at the time of providing (and as specified in) the Access Provider's Notice of Receipt under subsection 5.7.6 of this Standard, or, if further information has been requested under subsection 5.7.7 of this Standard, within two (2) Business Days upon the expiry of the period specified in subsection 5.7.7 of this Standard.

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

5.7.9 Commencement and completion of Service Qualifications: The Access Provider shall commence a Service Qualification on the date of issuing a

Notice of Receipt and complete and notify the Access Seeker of the result of any Service Qualification within the shorter of:

- (a) fifteen (15) Business Days after the date of the Notice of Receipt; and
- (b) the time within which the Access Provider performs and notifies the result of an equivalent Service Qualification undertaken for itself.

5.7.10 Withdrawal of Order following Service Qualifications: An Access Provider shall permit an Access Seeker to withdraw its Order without penalty (irrespective of whether the Access Provider has accepted the Order or not) before the earlier of:

- (a) ten (10) Business Days after the Access Seeker receives the result of a Service Qualification under subsection 5.7.9 of this Standard; and
- (b) one (1) Business Day before the Access Provider commences civil works to provision the Order (where the civil works are required to provision the Facility and/or Service within the delivery timeframe specified in the Notice of Acceptance), and any civil works to be conducted must be subject to the issuance of a notice in writing by the Access Provider, which may be in the form of a Notice of Acceptance if civil works is to occur after the Access Provider has accepted the Order.

5.7.11 Acceptance obligation: An Access Provider must use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Facilities and/or Services which comply with a Forecast accepted by the Access Provider pursuant to subsection 5.6 of this Standard.

5.7.12 Time for acceptance or rejection: The Access Provider must notify the Access Seeker that an Order is accepted or rejected within:

- (a) the specified timeframe in the Service Specific Obligations for the purposes of this subsection 5.7.12; 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 whether the Access Provider would be able to accept the Order in a modified form.

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

- (a) the delivery date or activation date (as applicable), which must be the date that is requested by the Access Seeker, or, if that date cannot be met by the Access Provider, then no later than:
 - i. the indicative delivery timeframe or activation timeframe specified in the Service Specific Obligations for the purpose of this subsection 5.7.13; or
 - ii. the period of time taken by the Access Provider to deliver, or activate, such Facilities and/or Services for itself,whichever is shorter;
- (b) the date when civil works (if any) are intended to commence;
- (c) the charges applicable to fulfil the Order;
- (d) such information as is reasonably necessary for the Access Seeker to benefit from access to the Facilities and/or Services; and
- (e) the validity period, which shall be a period that is not shorter than three (3) months commencing from the date of the Notice of Acceptance ("**Validity Period**").

5.7.14 Commencement of delivery timeframes: The applicable delivery timeframe for an Order, as determined under paragraph 5.7.13(a) of this Standard, shall commence from:

- (a) where the Access Seeker's confirmation of an Order is required under subsection 5.7.15 of this Standard, 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.

5.7.15 Access Seeker's confirmation:

- (a) The Access Seeker's confirmation of an Order is not required if the Access Provider accepts the Order without change. A change may include circumstances where delivery dates are delayed, estimated charges are exceeded, a post-Order Service Qualification is required or any other matter that requires further confirmation from the Access Seeker before the Access Provider can proceed with the Order.
- (b) Where the Access Seeker's confirmation is required for the Access Provider to proceed with fulfilling an Order as provided for under paragraph 5.7.15(a) above, the Access Provider shall permit the Access Seeker to provide its confirmation within the Validity Period and shall not provision the Order until the confirmation is received. Upon receipt of such confirmation, the Access Provider shall fulfil the Order in accordance with the Notice of Acceptance.

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

- (a) the Access Provider shall not exceed the estimate without providing the Access Seeker with a written notice prior to exceeding the estimate that:
 - i. the estimate will likely be exceeded;
 - ii. an explanation of the reasons for exceeding the estimate; and
 - iii. a further estimate of the charges for the work necessary to fulfil the Order;
- (b) the Access Provider shall permit the Access Seeker to withdraw the Order without penalty within ten (10) Business Days of the notice given by the Access Provider under paragraph 5.7.16(a) above if the revised estimate in that notice exceeds the original estimate by more than ten percent (10%);
- (c) where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of work provided by the Access Provider due to:

- i. information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker;
or
- ii. a change in the scope of work by the Access Seeker,

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

- (d) the Access Provider shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate, whereby such confirmation is to be provided by the Access Seeker within the timeframe set out in paragraphs 5.7.13(e) or 5.7.16(b) of this Standard, as applicable.

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

- (a) subject to subsection 5.4.17 of this Standard (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 5.7.31 and 5.7.32 of this Standard, the Access Provider has insufficient capacity to provide the requested Facilities and/or Services;
- (c) subject to subsection 5.7.19 of this Standard, 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 (e.g. regarding access to a new Point of Interface);
- (f) there are reasonable grounds to believe that the Access Seeker would fail to a material extent, to comply with the terms and conditions of the Access Agreement and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through 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).

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

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

5.7.19 Order in excess of Forecast: Notwithstanding paragraph 5.7.17(b) of this Standard, an Access Provider must use its reasonable efforts to provide sufficient capacity to enable the Access Provider to accept and fulfil Orders from an Access Seeker for Facilities and/or Services, which are in excess of the relevant Forecast. The Access Provider is only required to do so if, after meeting the Forecast requirements of other Access Seekers and itself, there is available capacity or the Access Provider could readily upgrade existing capacity. The Access Provider shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirements of all Access Seekers and itself. An Access Provider is not required to supply Facilities and/or Services in excess of the Forecast if, despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of Facilities and/or Services provided to all Access Seekers and/or itself.

5.7.20 Required extra capacity: An Access Provider may require an Access Seeker to procure additional capacity on the Access Seeker's side of the Network to

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

5.7.21 Other uses: An Access Provider shall permit capacity installed in connection with the provision of a network service to be used, to the extent technically feasible, in connection with another network service, at the Access Seeker's option.

5.7.22 Delivery dates: The Access Provider shall deliver the Order for the Facilities and/or Services by the delivery date or activation date (as applicable) as specified in the Notice of Acceptance or the extended delivery date (if any) as determined in accordance with subsection 5.7.24 of this Standard.

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

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

(a) the delay is caused by the Access Provider:

- i. the Access Provider shall notify the Access Seeker of the delay to the delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;

- ii. the Access Provider shall permit the Access Seeker to cancel the Order without penalty if the delay is longer than the equivalent time period for delivery of the Facility and/or Service; and
 - iii. the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date; or
- (b) where the delay is caused by the Access Seeker:
- i. the Access 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.

5.7.25 Cancellation and variation of Orders: An Access Provider shall allow an Access Seeker to cancel or vary an Order at any time subject to subsection 5.7.26 of this Standard.

5.7.26 Cancellation or variation penalty: Except where this Standard provides that cancellation of an Order is to be at no penalty:

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

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

5.7.27 Testing and provisioning: An Access Provider shall:

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

5.7.28 Resource charge: An Access Provider:

- (a) may charge the Access Seeker a one-off fee, to be determined by reference to the costs incurred by the Access Provider, for allocation of manpower and other resources to enable the Access Provider to test and fulfil an Order for new Facilities and/or Services, provided that such one-off fee is justified by the Access Provider to the Access Seeker as necessary for the Access Provider to provide the requested Facilities and/or Services; and
- (b) must specify the methodology and unit costs for calculating any fees under paragraph 5.7.28(a) above, and in its RAO.

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

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

5.7.30 **Acceptance on queue:** An Access Provider shall promptly notify an Access Seeker at the time of providing an acknowledgment of receipt of the Order under subsection 5.7.5 of this Standard (and as specified in the Notice of Receipt under subsection 5.7.6 of this Standard), of their acceptance of, and position in, the Access Provider's queue.

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

- (a) the Access Seeker pursuant to the relevant 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.

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

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

(c) shall:

- i. be fair and reasonable;
- ii. be consistent, so far as practicable, with the Access Provider's general duty of non-discrimination in accordance with subsection 149(2) of the Act;
- iii. treat the requirements of 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.

5.7.33 Late delivery: If an Access Provider fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with paragraph 5.7.24(a)iii of this Standard, except where such failure has been caused solely by the Access Seeker's delay or a lack of authorisation by a third party, the Access Provider shall, without limitation to any other rights the Access Seeker may have under subsection 5.7 of this Standard or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities and/or Services for the period of the Access Provider's delay, and the methodology and unit rates for calculating such rebates shall be set out in the Access Provider's RAO. If the Access Provider alleges that a failure has been caused solely by the Access Seeker's delay or a lack of authorisation by a third party, the Access Provider shall have the burden of demonstrating:

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

5.8 POINT OF INTERFACE PROCEDURES

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

5.8.2 Point of Interface locations:

(a) Subject to subsection 6.9.31 of this Standard, each Access Provider shall publish on its publicly accessible website and keep updated a list of the general locations and technically feasible points:

- i. at which physical co-location is available;
- ii. in respect of which virtual co-location is available; and
- iii. in respect of which in-span interconnection is available,

on and from the date of publication for the following twelve (12) months.

(b) The Access Provider shall ensure that network co-location at each POI is offered to the Access Seeker in accordance with subsection 6.9 of this Standard.

5.8.3 **Access Seeker requested Point of Interface:** An Access Provider shall reasonably consider a request by an Access Seeker to interconnect at a point other than that specified under subsection 5.8.2 of this Standard. The Access Provider shall promptly notify the Access Seeker whether it accepts or refuses a request by an Access Seeker under this subsection, and provide the Access Seeker with reasons if it refuses the Access Seeker's request.

5.8.4 **Network responsibility:** Each Operator is responsible for the provisioning and maintenance of Facilities (including those Facilities which form part of the interconnection links and the transmission equipment) on its side of the Point of Interface.

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

5.8.6 **Point of Interface factors:** When determining which locations are to be listed under paragraph 5.8.2(a) of this Standard, or when determining a request under subsection 5.8.3 of this Standard, each Access Provider must have regard to each of the following:

- (a) the Access Provider shall offer (but shall not require) POI and co-location for every Closed Number Area throughout Malaysia in which the Access Provider has network facilities;
- (b) in addition to offering POI and co-location in accordance with paragraph 5.8.6(a) above, the Access Provider shall offer interconnection and co-location at each other technically feasible point;
- (c) the Access Provider shall offer physical co-location in at least one POI location for every Closed Number Area throughout Malaysia in which the Access Provider has network facilities, but may additionally offer other forms of co-location in relation to a particular location (e.g. virtual co-location);
- (d) the Access Provider shall not reserve space other than current needs for itself, future needs for itself [calculated by use of a reasonably projected rate of growth over two (2) years] and the needs of other Access Seekers who are currently occupying or have ordered additional space from that Access Provider; and
- (e) any possible re-arrangement of the configuration of its Equipment to eliminate space inefficiencies.

5.9 DECOMMISSIONING OBLIGATIONS

5.9.1 **Decommissioning notice:** Except where an Access Provider is required to vacate a site where a Point of Interface is located, or any other Facility and/or Service which relies on the Access Provider's use of that site, as a result of a

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

- (a) one (1) year's notice in writing to all relevant Access Seekers prior to any decommissioning of a Point of Interface; or
- (b) six (6) months' notice in writing to all relevant Access Seekers prior to the decommissioning of any Facilities and/or Services which rely on the Access Provider's use of that site.

Where an Access Provider is required to vacate the site as a result of a third party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, the Access Provider must provide all relevant Access Seekers with as much notice as possible in relation to the matters in paragraphs 5.9.1(a) and 5.9.1(b) above.

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

5.9.3 Alternative arrangements: An Access Provider which notifies an Access Seeker of its intention:

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

5.9.4 Decommissioned Point of Interface compensation: An Access Provider shall pay the Access Seeker reasonable costs, necessarily incurred in:

- (a) decommissioning any links to the Point of Interface that is proposed to be decommissioned, that are, or will be, rendered redundant by the proposed decommissioning;
- (b) installing or otherwise procuring links between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to paragraph 5.9.3(a) of this Standard; and
- (c) the carriage of traffic between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to paragraph 5.9.3(a) of this Standard for a period that is not less than three (3) years from the date of decommissioning.

5.9.5 **Decommissioned Facilities and/or Services compensation:** Except where decommissioning is caused by Force Majeure, an Access Provider shall pay the Access Seeker's reasonable costs, necessarily incurred in:

- (a) moving the Access Seeker's Equipment from the decommissioned Facilities to alternative Facilities offered in accordance with paragraph 5.9.3(b) of this Standard; or
- (b) re-arranging Equipment to connect to alternative Services offered in accordance with paragraph 5.9.3(b) of this Standard.

5.10 NETWORK CHANGE OBLIGATIONS

5.10.1 **Scope:** This subsection 5.10 applies where an Operator proposes to implement a Network Change of a type referred to in subsection 5.10.2 of this Standard which necessitates a change in the hardware or software (including interface software) of the other Operator's Network in order to ensure the continued proper operation and compatibility of the Operators' respective Networks, services and procedures.

5.10.2 **Types of changes:** The following kinds of proposed Network Changes may be within the scope of subsection 5.10.1 of this Standard:

- (a) any change by the Operator proposing to make the change ("**Notifying Operator**") to any technical specification of the interconnection interface between their respective Networks ("**Interface Change**");

(b) any change by the Notifying Operator to any technical specification or characteristic of the Facilities and/or Services to which the other Operator ("**Recipient Operator**") has access to, which will or might affect:

- i. the Recipient Operator's Network; or
- ii. the Recipient Operator's use of the Facilities and/or Services provided by the Notifying Operator,

("Facility and/or Service Change");

(c) any change by the Notifying Operator to any technical specification or characteristic of that Notifying Operator's Network which will or might affect the Recipient Operator's Network ("**Other Network Change**");

(d) any change by the Notifying Operator to any of the Operational Support Systems used in inter-carrier processes, including without limitation:

- i. the billing system;
- ii. the ordering and provisioning systems; or
- iii. the Customer's Churn process,

("OSS Change"); and

(e) any enhancement by the Notifying Operator of the features, functions or capabilities of the Facilities and/or Services to which the Recipient Operator has access, which enhancement the Notifying Operator proposes to make available either:

- i. to itself; or
- ii. to any other Operator,

("Functionality Change"),

(collectively, "**Relevant Changes**").

5.10.3 **Notification of change:** If a Notifying Operator proposes to make a Relevant Change to its Network, services or procedures, the Notifying Operator shall provide the Recipient Operator with notice in writing ("**Change Notice**") of:

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

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

Relevant Change	Notice period
Interface Change	Three (3) months
Other Network Change	Three (3) months
Facility and/or Service Change	Three (3) months
OSS Change	Three (3) months
Functionality Change	Three (3) months

5.10.4 **Post-notification procedures:** The Notifying Operator shall:

- (a) meet with the representatives of the Recipient Operator on the date set out in the Change Notice or as soon as practicable thereafter (but no later than the notice period set out in the table in subsection 5.10.3 of this Standard), for the purpose of discussing the Relevant Changes and any changes that may be necessary or desirable for the Recipient Operator to make to its Network, services or procedures in consequence of the Relevant Changes;

- (b) provide any additional information reasonably requested by the Recipient Operator no later than ten (10) Business Days after the Recipient Operator's request for such additional information; and
- (c) take reasonable account of concerns raised and proposals made by the Recipient Operator to minimise any adverse impact of the Relevant Changes on the Recipient Operator and revise the Change Notice accordingly.

5.10.5 **Testing:** A Notifying Operator shall, bearing its own costs in doing so:

- (a) co-operate with a Recipient Operator to develop procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Operators' respective Networks; and
- (b) jointly carry out testing with the Recipient Operator in a timely manner, using its best endeavours to accommodate any timing requested by the Recipient Operator and, in any case, no less than twenty (20) Business Days before the Notifying Operator proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under paragraph 5.10.5(a) above.

5.10.6 **Testing failure:** Subject to the Recipient Operator having co-operated with the Notifying Operator in relation to the conduct of tests under subsection 5.10.5 of this Standard, if such tests:

- (a) are not accepted by ten (10) Business Days prior to the date when the Notifying Operator proposes to effect the Relevant Changes; or
- (b) do not provide reasonable assurance of the continued proper operation and compatibility of the Operators' respective Networks, services and procedures, the Notifying Operator must postpone implementation of the Relevant Changes. The period of postponement will be the period necessary to allow the Operators to repeat the steps in subsections 5.10.3 to 5.10.5 of this Standard.

5.11 BILLING AND SETTLEMENT OBLIGATIONS

5.11.1 **Invoices:** An Access Provider shall use its best endeavours to issue to the Access Seeker an Invoice in writing or in electronic form (as requested by the Access Seeker) within one (1) month of the end of each Billing Cycle in

accordance with subsection 5.11.3 of this Standard for amounts due in respect of the supply of Facilities and/or Services during the relevant Billing Period.

- 5.11.2 **Currency:** Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, an Access Provider shall state all Invoices in Ringgit Malaysia and payment shall be made by the Access Seeker in Ringgit Malaysia.
- 5.11.3 **Billing Cycle:** An Access Provider shall issue Invoices in accordance with the Billing Cycles specified in the Service Specific Obligations, except where a different Billing Cycle is agreed with the Access Seeker in an Access Agreement.
- 5.11.4 **Billing verification information:** An Access Provider shall provide, with each Invoice, such information as may be reasonably necessary for the Access Seeker to verify rates and charges contained in an Invoice.
- 5.11.5 **Other billing information:** An Operator must provide to any Operator with which it interconnects, information within its possession that is reasonably necessary to allow the other Operator to provide accurate and timely billing services to itself, other Operators and Customers.
- 5.11.6 **Summarised Invoice and billing information:** An Access Provider shall provide the Access Seeker, on written request, with an aggregated summary of billings for access to the Facilities and/or Services provided to the Access Seeker, in monthly tranches.
- 5.11.7 **Billing error:** If an Operator discovers an error in an Invoice, it must promptly notify the other Operator. The Operator which made the error must make necessary adjustments to correct that error within one (1) month of notification.
- 5.11.8 **Time for payment:** Subject to subsection 5.11.11 of this Standard, an Access Provider shall allow an Access Seeker no less than one (1) month from the date of receipt of an Invoice for the Access Seeker to make the payment. This subsection 5.11.8 should not be construed as preventing an Access Provider from granting a discount to an Access Seeker as an incentive to make early payments.
- 5.11.9 **Method of payment:** An Access Provider shall allow an Access Seeker to pay an Invoice by bank cheque or electronic funds transfer directly to an account nominated by the Access Provider.

5.11.10 **No set-off:** Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, an Access Provider may not set-off Invoices except where the Access Seeker is in liquidation or at least three (3) Invoices have been issued and such Invoices have not been paid (excluding disputed amounts).

5.11.11 **Withholding of disputed amounts:** An Access Provider shall allow an Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker if:

- (a) the Access Seeker notifies the Access Provider within fifteen (15) Business Days from the date of receipt of the Invoice of such dispute (unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement); and
- (b) the Access Seeker's notification specifies the information referred to in subsection 5.11.13 of this Standard.

5.11.12 **Billing Disputes:** An Access Provider shall allow an Access Seeker to dispute any amount in an Invoice if:

- (a) in the case of domestic calls and interconnection, the Access Seeker notifies the Access Provider within thirty (30) Business Days after the date of receipt of such Invoice;
- (b) in the case of outgoing and incoming international calls and interconnection, the Access Seeker notifies the Access Provider within six (6) months after the date of receipt of such Invoice; or
- (c) in case of any other Facilities and/or Services, the Access Seeker notifies the Access Provider within thirty (30) Business Days after the date of receipt of such Invoice,

provided that, in any case specified above, the Access Seeker's notification specifies the information referred to in subsection 5.11.13 of this Standard.

5.11.13 **Notification of Billing Dispute:** An Access Provider may require an Access Seeker to provide the following information when disputing any amount in an Invoice:

- (a) the reasons for which the Invoice is disputed;

- (b) the amount in dispute;
- (c) details required to identify the relevant Invoice and charges in dispute including:
 - i. the account number;
 - ii. the Invoice reference number;
 - iii. the Invoice date;
 - iv. the Invoice amount; and
 - v. billing verification information; and
- (d) evidence in the form of a report, indicating the relevant traffic data which is in dispute.

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

5.11.15 Interest: Except for any amount in an Invoice being disputed by an Access Seeker in good faith in accordance with subsection 5.11.12 of this Standard, an Access Provider may charge interest on any amount outstanding from an Access Seeker from time to time, in respect of that overdue sum for the period beginning on its due date and ending on the date of the receipt of the overdue sum by the Access Provider. The interest that may be charged by the Access Provider shall be at the rate of two percent (2%) per annum above Malayan Banking Berhad's base rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than two (2) months will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad's base rate calculated from the due date until the date of receipt by the Access Provider of full payment. For clarification, an Access Provider shall not charge interest on an amount which is disputed by an Access Seeker in good faith.

5.11.16 Backbilling: Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, the Access Provider may include omitted or miscalculated charges from an earlier Invoice in a later Invoice, or issue an Invoice for charges which have previously not been invoiced provided that the Access Provider is able to substantiate the charges to the Access Seeker and

such inclusion, amendment or issuance is made within three (3) months from the end of the Billing Cycle in which the calls were made or in which other Facilities and/or Services were provided.

5.11.17 **Provisional billing:** Where an Access Provider is unable to issue an Invoice within one (1) month after the end of the Billing Cycle in accordance with subsection 5.11.1 of this Standard, it may issue an Invoice to an Access Seeker for a provisional amount, based on the last Invoice (“**Provisional Invoice**”). In such circumstances, the Access Provider may invoice the Access Seeker for a provisional amount for a period of not more than three (3) successive Billing Cycles, provided that the total provisional amount is no more than the average of the three (3) most recent Invoices. Where there have not been three (3) past Invoices for access to the relevant Facilities and/or Services, the Access Provider may issue a Provisional Invoice up to the full value of the amount based on the most recent Invoice.

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

5.12 OPERATIONS AND MAINTENANCE OBLIGATIONS

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

5.12.2 **Fault reporting service:** Each Operator shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of that Operator and to whom that Operator supplies Facilities and/or

Services (inter alia) to report faults relating to any Network, Facility and/or Service.

5.12.3 **Customer notification:** Each Operator will advise all of its directly connected Customers to report all faults to the fault reporting service described in subsection 5.12.2 of this Standard.

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

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

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

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

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

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

5.12.7 **Major inter-working faults:** If a major fault occurs which affects communication that crosses or would cross both Operators' Networks, initial responsibility for identifying the fault rests with the Operator who first becomes aware of the fault.

5.12.8 **Faults affecting other Networks or Equipment:** If an Operator identifies a fault occurring in its Network or with its network facilities which may have an adverse effect on another Operator's Network, network facilities, network

services or Equipment, the first-mentioned Operator must promptly inform the other Operator of:

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

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

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

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

5.12.11 **Fault rectification:** Each Operator shall rectify faults on a non-discriminatory basis.

5.12.12 **Target times:** Each Operator shall respond to and rectify faults within the lesser of:

- (a) timeframes set out in a relevant Service Specific Obligation or, if there is no such timeframe, the response timeframes, progress update frequencies and rectification timeframes set out in the table below;
- (b) timeframes which will result in compliance by all affected Operators with any applicable mandatory standards that apply to service availability and restoration; and
- (c) timeframes equivalent to that which the Access Provider provides to itself.

Priority Level	Fault Types (examples)	Response Timeframe	Progress Update Frequency	Rectification Timeframe
Level 1	1. Major switch outage 2. Transmission bearer total outage 3. Route blocking > 30% 4. Major signalling problem 5. Major routing issues 6. Fraudulent calls	Within one (1) hour	Every one (1) hour	Four (4) hours
Level 2	1. Minor switch outage 2. Minor routing issue 3. Minor signalling problems 4. Route blocking 10%-30% 5. Cross line and silent calls 6. Mobile number portability issues	Within four (4) hours	Every four (4) hours	Twenty-four (24) hours
Level 3	1. Faults affecting single or small number of Customers 2. Route blocking <10%	Within twenty-four (24) hours	Every twenty-four (24) hours	Seventy-two (72) hours
Level 4	1. Remote congestion 2. External Technical Irregularities ("ETI") 3. Other performance related issues	Within forty-eight (48) hours	Every forty-eight (48) hours	Ten (10) Business Days

Explanatory Notes to subsection 5.12.12 of this Standard:

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

basis, the Operator must continue attempting to achieve a permanent rectification without delay).

5.12.13 Planned maintenance: If an Operator intends to undertake planned maintenance ("**Maintenance Operator**") which may affect an Access Seeker's Network, Facilities and/or Services, the Maintenance Operator must:

- (a) provide at least the greater of the time which it notifies its own Customers and ten (10) Business Days' notice of the planned maintenance;
- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications that crosses or would cross both Operators' Networks, and which are caused by the maintenance or re-routing; and
- (c) where the Operators agree that it is practicable, provide alternative routing or carriage at no additional cost to the Access Seeker.

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

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

- (a) provide at least twenty-four (24) hours' notice of the planned maintenance;
- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications that crosses or would cross both Operators' Networks, and which are caused by the maintenance or re-routing; and
- (c) where the Operators agree that it is practicable, provide alternative routing or carriage at no additional cost to the other Operator.

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

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

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

5.13 TECHNICAL OBLIGATIONS

5.13.1 **Compliance:** Operators shall adhere to the relevant guidelines issued by the Commission from time to time to the extent that they have not been expressly revoked and are not inconsistent with any technical obligations set out in this Standard.

5.13.2 **Prevention of technical harm:** An Operator must take reasonable measures to ensure that interconnection and access do not cause physical or technical harm to the other Operator's Network, which measures shall be no less robust than the measures which the Operator takes in respect of new facilities or Equipment incorporated into its own Network.

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

5.13.4 **No Interference:** An Operator must not do anything, or knowingly permit any third person to do anything, in relation to Network, network facilities, network services or Equipment which:

(a) causes interference; or

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

5.13.5 **Notice of interference and rectification:** If an Operator notifies ("**Notifying Operator**") another Operator that the other Operator's Network, network facilities, network services or Equipment is causing interference to the Notifying Operator's Network, network facilities, network services or Equipment:

- (a) the other Operator shall rectify the situation as soon as possible, and in any case, within twenty-four (24) hours of receiving notice from the Notifying Operator, so that no interference is caused; or
- (b) if the other Operator is not able to locate the source of the interference within twenty-four (24) hours under paragraph 5.13.5(a) above, the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet as soon as possible, and in any case, within twenty-four (24) hours of such notice and jointly examine each other's Network, network facilities, network services or Equipment to locate the source of the interference.

5.14 TERM, SUSPENSION AND TERMINATION OBLIGATIONS

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

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

Facilities and/or Services	Minimum term
Access Services (e.g. originating and terminating access)	No minimum term
Access to Network Elements	Twelve (12) months
Transmission Services	Twelve (12) months
HSBB Network Services	Twelve (12) months
Network facilities access	Three (3) years

5.14.3 **Termination circumstances:** Subject to subsection 5.14.6 of this Standard, an Access Provider may only terminate an Access Agreement if any of the circumstances referred to in paragraphs 5.14.3(a), 5.14.3(b) or 5.14.3(c) of this Standard apply, and the Access Provider has notified the Access Seeker that it will terminate where:

- (a) the Access Seeker has materially breached the Access Agreement, the Access Provider has notified the Access Seeker that it will terminate in

- no less than one (1) month if the Access Seeker has not remedied its breach by the end of that period and the Access Seeker has failed to remedy its breach in accordance with such a notification;
- (b) the Access Seeker has become subject to a winding up order (whether compulsorily or voluntarily) or ceases to trade in the normal course of business or becomes insolvent or a receiving order is made against it or has entered into any agreement or composition with or assignment for the benefit of its creditors or the Access Seeker's assets are subject of any form of distress or execution or any analogous insolvency event related to the Access Seeker has occurred in any jurisdiction; or
 - (c) 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 5.14.3 is in addition to the notice required under subsection 5.14.6 of this Standard.

5.14.4 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 a result of a legislative change), the Access Seeker and the Access Provider must meet within five (5) Business Days of becoming aware of the relevant change in law to review whether access to the relevant Network, Facilities and/or Services may be provided by the Access Provider on different terms and conditions (which are acceptable to the Access Seeker). If the parties cannot agree to the provision of access on different terms and conditions, the Access Provider may terminate the provision of access to the relevant Network, Facilities and/or Services.

5.14.5 Suspension: Subject to subsection 5.14.6 of this Standard, an Access Provider may only suspend access to any Facilities and/or Services in the following circumstances:

- (a) the Access Seeker's facilities materially and adversely affect the normal operation of the Access Provider's Network, or are a material threat to any person's safety;

- (b) the Access Seeker's facilities or the supply of services pose an imminent threat to life or property of the Access Provider, its employees or contractors;
- (c) the Access Seeker's facilities cause material, physical or technical harm to any facilities of the Access Provider or any other person;
- (d) where the Access Seeker has failed to pay Invoices in accordance with subsection 5.11 of this Standard (and subject to any right that the Access Seeker has under subsection 5.11 of this Standard to dispute any amount in an Invoice);
- (e) where the Access Seeker has failed to provide the new security amount as required under subsections 5.3.9, 5.16.7 and 5.16.8 of this Standard;
- (f) where Force Majeure applies; or
- (g) the Access Seeker breaches any laws, regulations, rules or standards which has a material and adverse effect on the Access Provider or the provision by the Access Provider of Facilities and/or Services under this Access Agreement.

For the purposes of this subsection 5.14.5, an Access Provider must provide the Access Seeker with five (5) Business Days' notice, including reasons, prior to suspending access to any Facilities and/or Services. The Access Provider shall forward to the Commission a copy of the notice of suspension at the same time as providing the notice of suspension to the Access Seeker. For clarification, a notice to be given under this subsection 5.14.5 is in addition to the notice required under subsection 5.14.6 of this Standard.

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

- (a) shall only give effect to the proposed termination, suspension or material variation with the Commission's written consent and subject to any time delay or conditions which the Commission may specify (if any).

The Commission will endeavour to respond to the Access Provider's notice within ten (10) Business Days or such other period that the Commission considers is reasonable;

- (b) must not give effect to the proposed termination, suspension or material variation unless the Access Provider has received written consent from the Commission to such termination, suspension or material variation; and
- (c) shall take all steps practicable to minimise disruptions and inconvenience to the Customers of the Access Seeker, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the suspension or termination of the Access Agreement, or access to Facilities and/or Services provided under it.

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

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

- (a) charges invoiced in arrears and not yet paid; or
- (b) charges arising during an applicable minimum contractual period (as described in subsection 5.14.2 of this Standard) provided that:
 - i. such charges must be reduced to reflect any cost savings to the Access Provider from not having to supply the Facilities and/or Services to the extent that they have been terminated or suspended; and

- ii. the Access Provider must use reasonable endeavours to mitigate its costs of termination or suspension and maximise cost savings under paragraph 5.14.8(b)i above.

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

5.14.10 **Deposits and guarantees:** Notwithstanding the obligation in subsection 5.14.9 of this Standard, the Access Provider shall:

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

5.15 CHURN OBLIGATIONS

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

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

5.15.3 **Notification of invalid Churns:** Within two (2) Business Days of the receipt by the Releasing Service Provider of the notice from the Gaining Service Provider under subsection 5.15.2 of this Standard, the Releasing Service Provider must advise the Gaining Service Provider if it believes, on reasonable grounds, that the Transfer Request is invalid because:

- (a) the Transfer Request resulted from a processing error; or

- (b) the Transfer Request was incomplete (for reasons including that the Customer or their agent did not execute the Transfer Form).

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

- 5.15.4 **Response to invalid Churn notification:** If a notification is made under subsection 5.15.3 of this Standard, the Releasing Service Provider must provide the Gaining Service Provider with evidence upon which the notification is based. In such circumstances, the Releasing Service Provider and the Gaining Service Provider must take immediate action to rectify the invalid Churn in accordance with the Customer's wishes. If the Customer wishes to proceed with the transfer to the Gaining Service Provider, and the Gaining Service Provider provides the Releasing Service Provider with a Transfer Form, the Transfer Request may be provided to the Access Service Provider immediately.
- 5.15.5 **Implementation of Churn:** Within two (2) Business Days after the receipt of a Transfer Request, the Access Service Provider must implement the Churn and advise each of the Gaining Service Provider and the Releasing Service Provider that the transfer has been completed.
- 5.15.6 **Facilitation of Churn:** An Access Service Provider must facilitate and implement Churns between Operators in accordance with the obligations specified in subsection 5.15.5 of this Standard, even if the Access Service Provider is not the Releasing Service Provider or the Gaining Service Provider.
- 5.15.7 **Confidentiality:** Unless otherwise specifically provided in this Standard, the Access Service Provider and the Releasing Service Provider must not use information disclosed for the purposes of a Churn (including information contained in a Transfer Request or a Transfer Form) for other purposes. In particular, the Access Service Provider and the Releasing Service Provider must handle information disclosed for the purposes of a Churn as Confidential Information of the Gaining Service Provider, and must not use such information in connection with marketing to, or offering services to, a Customer.

5.15.8 **Availability:** If a Service is subject to a Churn, a Releasing Service Provider or an Access Service Provider (acting as an Access Provider for the purposes of this Standard) must not refuse an Access Request (under subsection 5.4.10 of this Standard) on the ground that the Releasing Service Provider is currently using the Service specified in the Access Request.

5.16 LEGAL BOILERPLATE OBLIGATIONS

5.16.1 **Obligation to supply:** Each Operator shall have an absolute obligation to supply access to Facilities and/or Services in accordance with this Standard. Such obligation shall not be conditional upon the use of that Operator's reasonable or best endeavours. Each Operator shall ensure that it shall not enter into any arrangement which will prevent, hinder or restrict the fulfilment of the Operator's obligation under this Standard.

5.16.2 **Mutual compensation:** Each Operator must establish mutually acceptable compensation arrangements with each other Operator (including bill-and-keep arrangements).

5.16.3 **Equal representatives:** Each Operator must appoint an equal number of representatives to an Interconnect Steering Group (and such other working groups as may be agreed upon) to manage the smooth and timely implementation of the terms and conditions of Access Agreements or Dispute Resolution Procedures, as applicable.

5.16.4 **Dispute resolution:** Each Operator must comply with the Dispute Resolution Procedures.

5.16.5 **Complete charges:** Each Operator shall specify all charges in an Access Agreement and shall not attempt to recover any other costs, expenses or charges which are not specified in the Access Agreement except where such work is to be done on a time and materials basis in which case the Access Provider shall do such work in accordance with a quotation agreed with the Access Seeker as set out in this Standard.

5.16.6 **Intellectual Property:** Each Operator shall licence to the other Operator under an Access Agreement on a royalty-free basis, all Intellectual Property rights necessary for the ongoing operation of the Access Agreement and the inter-operability of the Operators' Networks, subject to any relevant third party licences. The term of the licence must be consistent with the term of the relevant Access Agreement.

5.16.7 **Security review:** An Operator shall only vary the amount and type of any security requirements imposed on another Operator:

- (a) a maximum of once in any twelve (12) month period;
- (b) if there is a material increase in the credit risk to the Operator due to changes in either or both of the circumstances under paragraphs 5.3.9(b)i and 5.3.9(b)ii of this Standard; and
- (c) if the Operator determines, acting reasonably, that the variation will materially reduce or remove the increased credit risk.

If amounts contained in Invoices are disputed in good faith, this will not constitute a material increase in the credit risk to the Operator for the purposes of paragraph 5.16.7(b) above.

5.16.8 **Additional security:** For the purposes of subsection 5.16.7 of this Standard, an Operator may only request additional or substitute security from another Operator, in a manner consistent with subsection 5.3 of this Standard, if the other Operator was making a new Access Request under subsection 5.3 of this Standard.

5.16.9 **Assignment:** An Operator's right to assign its rights under an Access Agreement prepared by it shall be reciprocal with the other Operator's rights of assignment.

5.16.10 **Review:** An Operator shall specify in an Access Agreement prepared by it that such Access Agreement shall be reviewed:

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

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

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

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

5.16.14 **Conditional supply:** An Access Provider shall not require an Access Seeker to acquire:

- (a) other facilities and/or services from the Access Provider as a condition of providing access to Facilities and/or Services under this 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.

SECTION 6: SERVICE SPECIFIC OBLIGATIONS

6.1 O&T SERVICES

- 6.1.1 **Application:** This subsection 6.1 applies where access to an O&T Service has been requested or is to be provided.
- 6.1.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding O&T Services is one (1) year;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding O&T Services is six (6) months; and
 - (c) the maximum frequency to update or to make further Forecasts regarding O&T Services is once every six (6) months.
- 6.1.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for an O&T Service within one (1) Business Day.
- 6.1.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for an O&T Service is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.
- 6.1.5 **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)i of this Standard, the indicative delivery timeframe for O&T Services is twenty (20) Business Days. For clarification, the indicative delivery timeframe in this subsection 6.1.5 commences from the Notice of Acceptance or confirmation

of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

- 6.1.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for O&T Services will be monthly.
- 6.1.7 **Non-discrimination:** An Access Provider shall perform Network Conditioning on an equivalent basis to that which the Access Provider performs Network Conditioning for itself for the same or similar type of O&T Services.
- 6.1.8 **Impact of retail commercial arrangements:** An Access Provider must not refuse to commence or complete Network Conditioning on the basis that the commercial arrangements (other than arrangements in relation to matters specified under subsection 6.1.9 of this Standard, to the extent relevant) are not agreed between the parties in relation to the retail service for which Network Conditioning is to be provided.
- 6.1.9 **Commencement of Network Conditioning:** An Access Provider must commence Network Conditioning for a Facility and/or Service which requires the Access Provider to conduct such Network Conditioning immediately following the acknowledgement of receipt of an Order from an Access Seeker and agreement by the Access Provider and the Access Seeker in relation to the following matters, to the extent relevant:
- (a) geographical coverage;
 - (b) number information (i.e. length and code allocation);
 - (c) origins from or destinations to which access is required;
 - (d) network routes (including which Operator is responsible for the provisioning of the interconnection links); and
 - (e) handover arrangements and relevant Points of Interface.
- 6.1.10 **Number range activation:** Subject to subsection 6.1.11 of this Standard, if the supply of a Facility and/or Service requires the Access Provider to activate a code or number range on its Network, the Access Provider shall:
- (a) use its best endeavours to activate in the Access Provider's Network the code or number range within the shorter of the timeframe between

the time that the Access Provider would activate the code or number range for itself, including on an urgent basis, and ten (10) Business Days of being requested to do so by the Access Seeker; and

- (b) in any event, activate the code or number range within one (1) month of being requested to do so by the Access Seeker.

6.1.11 **Intra-Network codes and numbers:** Subsection 6.1.10 of this Standard does not apply to codes or number ranges not intended for use across interconnected Networks.

6.1.12 **Inter-Closed Number Area service:** An Access Provider shall offer interconnection to permit calls to be transmitted across Closed Number Area boundaries, whether directly or in transit.

6.1.13 **Costs:** The costs incurred in Network Conditioning shall be apportioned between the Operators as follows:

- (a) if the work has been carried out in accordance with a Government or Commission requirement, the Operators will bear their own costs; and
- (b) if the work has been carried out to fulfil an Order made in accordance with this Standard, the costs shall be apportioned in an equitable manner between the Operators having regard to cost causation.

6.1.14 **Handover principles:** Where access is provided to an O&T Service, an Operator shall handover interconnected calls to the other Operator on the basis requested by the Access Seeker, unless otherwise agreed in an Access Agreement. For clarification:

- (a) for originating Services provided by an Access Provider, the terminating Operator (as an Access Seeker) may elect whether handover will be on a Near End Handover basis or on a Far End Handover basis; and
- (b) for terminating Services provided by an Access Provider, the originating Operator (as an Access Seeker) may elect whether handover will be on a Near End Handover or on a Far End Handover basis.

6.1.15 **CLI:** For the purpose of billing reconciliation and call charge verification, Operators will provide CLI to each other subject to CLI being forwarded to it from another Network with which its Network is interconnected.

6.1.16 **Dummy CLIs:** An Operator must route a Customer's original CLI and must not translate numbers, use dummy numbers or dummy CLI, or use any means to alter numbers which may confuse or have the tendency to confuse the other Operator's Network (including transit Networks) or billing systems. Where technical problems for routing or billing so demand, then the use of dummy numbers shall only be permitted as agreed between the Operators.

6.1.17 **Quality of service:** An Access Provider shall provide access to O&T Services for Access Seekers in accordance with the quality of service parameters set out in the table below, and otherwise on an equivalent basis as it provides for itself:

Network Quality	Threshold %	Remarks
1.0 Successful Call 1.1 Answered Call 1.2 Busy Call 1.3 No Answer Call 1.4. Call Abandon	$\geq 94\%$	Number of calls that successfully seized a trunk group and are answered. Number of calls that successfully seized a trunk group and are terminated after connection due to 'terminating subscriber is busy'. Number of calls that successfully seized a trunk group and are rejected because either the called device did not answer or the calling party went on-hook during ringing. Indicates the unallocated numbers and incomplete dialling from calling party.
Call Establishment Rate (1.1 + 1.2 + 1.3)	$\geq 85\%$	Expressed as the sum of Answered, Busy and No Answer Calls and indicates the proportion of calls that successfully seized the circuits out of the total call attempts.
2.0 Unsuccessful Call 2.1 Network Congestion Internal Congestion (ICONG)	$\leq 6\%$ $\leq 3\%$ $\leq 1\%$	Number of calls offered to a trunk group that successfully overflowed or are rejected in their own switch. Internal congestion of originating POI and interconnect route congestion are due to insufficient capacity to support the current traffic. Short message service (" SMS ") is to be agreed with Access Seekers in accordance with best practices.

Network Quality	Threshold %	Remarks
External Congestion (OCONG)	≤ 2%	Number of calls that, after a trunk group is seized, are rejected upon receiving a backward signal indicating that far end congestion has occurred within the terminating POI and the subsequent terminating Network. SMS is to be agreed with Access Seekers in accordance with best practices.
2.2 Network Fault	≤ 3%	
External Technical Irregularities/Error (ETI)	≤ 2%	Calls which are successfully connected through the Network are rejected upon detection of technical irregularities or faults in the far end radio subsystem in the other network element.
Internal Technical Irregularities/Error (ITI)	≤ 1%	Calls which are successfully connected through the Network are rejected upon detection of technical irregularities in the originating Network.

6.2 WHOLESALE LINE RENTAL SERVICE

- 6.2.1 **Application:** This subsection 6.2 applies where access to the Wholesale Line Rental Service has been requested or is to be provided.
- 6.2.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding Wholesale Line Rental Service is three (3) months;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding Wholesale Line Rental Service is one (1) month; and
 - (c) the maximum frequency to update or to make further Forecasts regarding Wholesale Line Rental Service is once a month.
- 6.2.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for a Wholesale Line Rental Service within one (1) Business Day.
- 6.2.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for a Wholesale Line Rental Service is accepted or rejected within one (1) Business Day after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.
- 6.2.5 **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)i of this Standard, the indicative delivery timeframe for Wholesale Line Rental Service is five (5) Business Days. For clarification, the indicative delivery timeframe in this subsection 6.2.5 commences from the Notice of Acceptance

or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

6.2.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Wholesale Line Rental Service will be monthly.

6.2.7 **Sole relationship with Customer:** The Access Seeker has the sole relationship with the Customer when providing a service to the Customer which uses the Wholesale Line Rental Service as an input to that service provision.

6.2.8 **Prohibited use of Customer information:** The Access Provider is expressly prohibited from using any Access Seeker's Customer information to market or offer to supply its goods or services to that or any other Customer, except where:

- (a) information on the Customer is publicly available; or
- (b) information on the Customer has been received or developed by the Access Provider from sources other than the Access Seeker,

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

6.3 INTERCONNECT LINK SERVICE

- 6.3.1 **Application:** This subsection 6.3 applies where access to the Interconnect Link Service has been requested or is to be provided.
- 6.3.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding Interconnect Link Service is three (3) years;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding Interconnect Link Service is one (1) year; and
 - (c) the maximum frequency to update or to make further Forecasts regarding Interconnect Link Service is once a year.
- 6.3.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for an Interconnect Link Service within two (2) Business Days.
- 6.3.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for an Interconnect Link Service is accepted or rejected within fifteen (15) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.
- 6.3.5 **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)i of this Standard, the indicative delivery timeframe for Interconnect Link Service is:

- (a) twenty (20) Business Days if the Interconnect Link Service is requested at an existing POI between the Access Provider and the Access Seeker;
or
- (b) four (4) months if the Interconnect Link Service is requested at a new POI between the Access Provider and the Access Seeker.

For clarification, the activation timeframe in this subsection 6.3.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

6.3.6 **Billing cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Interconnect Link Service will be quarterly.

6.4 ACCESS TO NETWORK ELEMENTS

6.4.1 **Application:** This subsection 6.4 applies where Access to Network Elements has been requested or is to be provided.

6.4.2 **Seven access elements:** The elements to which access is required to be provided are as follows:

- (a) access to the copper elements of the access network, being:
 - i. the Full Access Service;
 - ii. the Line Sharing Service;
 - iii. the Bitstream Service with Network Service;
 - iv. the Bitstream without Network Service; and
 - v. the Sub-loop Service;
- (b) access to associated optical fibre services in the Full Access Service, the Line Sharing Service and the Sub-loop Service;
- (c) access to Network Co-Location Service in accordance with subsection 6.9 of this Standard and associated tie cable services;
- (d) access to Transmission Services in accordance with subsection 6.7 of this Standard (though such access shall not be a condition to the supply of ANE);
- (e) access to shared splitting services;
- (f) access to interfaces to Operational Support Systems in accordance with subsection 6.4.9 of this Standard; and
- (g) access to network information in accordance with subsection 6.4.3 of this Standard.

6.4.3 **Access to network information:** At an Access Seeker's request, subject to the Access Provider's confidentiality obligations in respect of the information, an Access Provider must provide the Access Seeker with the equivalent

network information as it gives to itself including (but not limited to) the following types of information:

(a) basic information on the cabling system, which includes but is not limited to the following:

- i. a list and/or map of MDFs including total number of usable loops and number of loops in use;
- ii. data on known disturbers per MDF and per cable;
- iii. line distribution per MDF (weighted average distribution);
- iv. general information concerning cable characteristics including typical type and quality of cable (e.g. diameter, results from quality tests that have been conducted, number of lines, technical interference control and spectral management plan);
- v. statistical information about the network e.g. loop characteristics;
- vi. standard spectrum masks and/or list of approved systems;
- vii. availability of co-location space and type;
- viii. availability of power;
- ix. availability of space at MDF; and
- x. co-location environmental services (such as air conditioning, uninterruptible power supply, security);

(b) detailed information on the cabling system, which includes but is not limited to the following:

- i. the latest update of information in addition to line distribution per MDF, described in paragraph 6.4.3(a)iii above, where the Access Seeker wants to have access;
- ii. location (physical address information) associated with the MDFs and the name of the associated local switch and/or number ranges associated with MDFs;

- iii. exact customer coverage of each MDF;
 - iv. detailed information concerning loop characteristics, any known limitations or incompatibilities;
 - v. results of any DSL tests;
 - vi. any foreseeable limitations of space for MDF extensions; and
 - vii. detailed description of procedures and conditions relating to requested form of ANE;
- (c) detailed information on access to MDFs, which includes, but is not limited to the type of access proposed by Access Provider, being one of:
- i. directly on the MDF;
 - ii. in-house on HDF [distance, cable type and size (number of pairs)];
 - iii. outside (remote) on HDF [distance, cable type and size (number of pairs)]; or
 - iv. cable entry points and capacity available; and
- (d) detailed information on co-location, which includes but is not limited to:
- i. availability of co-location space and type, detailed floor plan, if space is required by the Access Seeker;
 - ii. co-location environmental services (such as air conditioning, uninterruptible power supply, security), technical constraints (if any), terms and conditions of use; and
 - iii. conditions of physical access to the facilities.

6.4.4 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Access to Network Elements is three (3) months;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Access to Network Elements is one (1) month; and
- (c) the maximum frequency to update or to make further Forecasts regarding Access to Network Elements is once a month.

6.4.5 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for Access to Network Elements within one (1) Business Day.

6.4.6 **Grounds for refusal:** In addition to the grounds for refusal in subsection 5.4.11 of this Standard, an Access Provider may refuse an Access Request, or an Order, for access to ANE in respect of specific premises if the Access Provider provides evidence to the Access Seeker that those premises are actively connected to and retail services are being provided using HSBB Network Service. For clarification, subsection 5.4.19 of this Standard applies to any refusal under this subsection.

6.4.7 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for Access to Network Elements is accepted or rejected within one (1) Business Day after:

- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
- (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.

6.4.8 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Access to Network Elements will be monthly.

6.4.9 **Interface to OSS:** The Access Provider shall make available, for all Access Seekers, access to its OSS for ordering, maintenance, fault reporting and

billing purposes on an equivalent basis as it provides to itself, including through an electronic interface between the Access Provider's and the Access Seeker's systems which may be developed jointly by the Access Provider and the Access Seeker or as otherwise agreed between the parties. For the purposes of this subsection 6.4.9, the Access Provider must provide the Access Seeker with the necessary technical specifications for the development and use of the electronic interface between its own and the Access Seeker's systems.

6.4.10 **Indicative activation timeframes:** For the purposes of paragraph 5.7.13(a) of this Standard, with respect to each of the Services described in paragraph 6.4.2(a) of this Standard, the indicative activation timeframes are as follows:

Service	Indicative activation timeframe
Full Access Service	Within two (2) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable)
Line Sharing Service	Within two (2) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable)
Bitstream with Network Service	Within five (5) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable)
Bitstream without Network Service	Within five (5) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable)
Sub-loop Service	Within two (2) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable)

6.4.11 **Retail line rental services:** The Access Provider shall not require an end user to acquire a retail line rental service if the Access Seeker is acquiring the Wholesale Line Rental Service, Full Access Service, Bitstream with Network Service, Bitstream without Network Service or Sub-loop Service.

6.4.12 **Implementation and migration plan:** For clarification, subsection 6.6.10 of this Standard shall apply in relation to an Access Seeker who:

- (a) has entered into an Access Agreement with an Access Provider for the provision of Full Access Service, Line Sharing Service, Bitstream with

Network Service, Bitstream without Network Service and/or Sub-loop Service; and

- (b) is acquiring the Facilities and/or Services specified in paragraph 6.4.12(a) above at premises that will be served by a HSBB Network Service within five (5) years or less.

6.5 DIGITAL SUBSCRIBER LINE RESALE SERVICE

- 6.5.1 **Application:** This subsection 6.5 applies where access to the Digital Subscriber Line Resale Service has been requested or is to be provided.
- 6.5.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding Digital Subscriber Line Resale Service is three (3) months;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding Digital Subscriber Line Resale Service is one (1) month; and
 - (c) the maximum frequency to update or to make further Forecasts regarding Digital Subscriber Line Resale Service is once a month.
- 6.5.3 **Grounds for refusal:** In addition to the grounds for refusal in subsection 5.4.11 of this Standard, an Access Provider may refuse an Access Request, or an Order, for the Digital Subscriber Line Resale Service in respect of specific premises if the Access Provider provides evidence to the Access Seeker that those premises are actively connected to and retail services are being provided using HSBB Network Service. For clarification, subsection 5.4.19 of this Standard applies to any refusal under this subsection.
- 6.5.4 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for a Digital Subscriber Line Resale Service within one (1) Business Day.
- 6.5.5 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for a Digital Subscriber Line Resale Service is accepted or rejected within one (1) Business Day after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access

Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.

- 6.5.6 **Indicative activation timeframe:** For the purposes of paragraph 5.7.13(a)i of this Standard, the indicative activation timeframe for Digital Subscriber Line Resale Service is five (5) Business Days. For clarification, the indicative activation timeframe in this subsection 6.5.6 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.
- 6.5.7 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Digital Subscriber Line Resale Service will be monthly.

6.6 HSBB NETWORK SERVICES

- 6.6.1 **Application:** This subsection 6.6 applies where access has been requested or is to be provided to HSBB Network Services.
- 6.6.2 **Forms of HSBB Network Services:** There are two (2) forms of HSBB Network Services:
- (a) Layer 2 HSBB Network Services with QoS; and
 - (b) Layer 3 HSBB Network Service.
- 6.6.3 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding HSBB Network Services is one (1) year;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding HSBB Network Services is three (3) months; and
 - (c) the maximum frequency to update or to make further Forecasts regarding HSBB Network Services is once every three (3) months.
- 6.6.4 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for a HSBB Network Service within one (1) Business Day.
- 6.6.5 **Commencement and completion of post-Order Service Qualifications:** For the purposes of subsection 5.7.9 of this Standard, the Access Provider shall commence a Service Qualification on the date of issuing a Notice of Receipt and complete and notify the Access Seeker of the result of any post-Order Service Qualification within the shorter of:
- (a) five (5) Business Days after the commencement of the post-Order Service Qualification; and
 - (b) the time within which the Access Provider performs and notifies the result of an equivalent post-Order Service Qualification undertaken for itself.

In addition to subsection 5.7.8 of this Standard, the Access Provider shall only require post-Order Service Qualification to be requested in respect of a premises on a street that is not connected to the HSBB Network Service.

6.6.6 Time for acceptance or rejection: Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for a HSBB Network Service is accepted or rejected within one (1) Business Day after:

- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
- (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.

6.6.7 Indicative activation timeframe: For the purposes of paragraph 5.7.13(a)i of this Standard, the indicative activation timeframe for HSBB Network Services is:

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

The Access Provider will perform activations within the shorter of the timeframe specified in this subsection 6.6.7, the time within which the Access Provider performs activations for itself and the time which would permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service), Determination No. 2 of 2016 including such modification or variation as may be determined by the Commission from time to time. For clarification, the indicative activation timeframe in this subsection 6.6.7 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

6.6.8 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for HSBB Network Services will be monthly.

6.6.9 **Public information:** Each Access Provider must make available, on its publicly accessible website or through an interactive self-service portal in accordance with subsections 6.6.13 and 6.6.14 of this Standard, access to a mechanism which allows Access Seekers to query:

- (a) whether:
 - i. a premises is on a street which is connected to a HSBB Network and where a BTU is installed;
 - ii. a premises is on a street which is connected to the HSBB Network, but where a BTU is not installed; or
 - iii. a premises is in an exchange service area or part of an exchange service area in which the Access Provider has a HSBB Network;
- (b) whether the Access Provider offers the Layer 2 HSBB Network Service with QoS and/or the Layer 3 HSBB Network Service in respect of the premises, street, exchange area or part thereof;
- (c) the maximum bit rate at which the Access Provider offers the HSBB Network Service (subject to any necessary provisos or qualifications related to technology or network facility limitations);
- (d) the exchange buildings and other Access Provider premises at which Access Seekers may establish a POI to acquire the HSBB Network Services; and
- (e) information and parameters concerning service restoration including, without limitation, throughput achieved at the service boundaries of the HSBB Network Service, equivalent to that which the Access Provider provides to itself.

The Access Provider shall ensure that the information specified in subsections 6.6.9 and 6.6.10 of this Standard is accurate and made available as soon as the Access Provider makes that information available to itself and in any case, on and from the date of inclusion of the premises or exchange service area

(or part thereof) in the implementation and migration plan or any subsequent updates. The Access Provider shall pay to an Access Seeker on request, a rebate of RM 44.75 for each item of information that the Access Provider fails to provide, or which is inaccurate, in contravention of subsections 6.6.9 and 6.6.10 of this Standard.

6.6.10 Implementation and migration plan: The Access Provider shall maintain and publish on its publicly accessible website a detailed up-to-date implementation plan that provides its procedures and timing for the HSBB Network Services that includes:

- (a) the implementation plan covering a total period of time for which the Access Provider has any internal rollout plans;
- (b) the migration from copper to fibre at all existing nodes by location;
- (c) the construction of new nodes by location;
- (d) notification processes to Customers and Access Seekers for such migration and the minimum notice periods to be provided; and
- (e) ordering and provisioning procedures for HSBB Network Services including the applicable terms and conditions.

The Access Provider shall manage the implementation plan in a non-discriminatory manner. This includes giving the same information and priority to Access Seekers as it gives to itself in the handling of the migration or orders for HSBB Network Services. The information provided to Access Seekers must allow Access Seekers to:

- (f) market HSBB Network-based retail services to Customers and potential Customers;
- (g) compete for the delivery of HSBB Network-based retail services to Customers and potential Customers; and
- (h) order HSBB Network Services in order to deliver HSBB Network-based retail services to Customers and potential Customers,

on the same basis as the Access Provider (including with regard to Customers and potential Customers who are at the time acquiring retail services to which ANE Services or the Digital Subscriber Line Retail Service are an input).

6.6.11 **Availability to Access Seeker:** The implementation and migration plan specified in subsection 6.6.10 of this Standard shall be made available in electronic form to any Access Seeker on request.

6.6.12 **Mandatory Standard on QoS:** Each RAO for a HSBB Network Service shall:

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

6.6.13 **Service fulfilment timeline:** An Access Provider shall comply with the following service fulfilment timelines and obligations for the HSBB Network Service:

Parameters	Timelines and obligations
Service Gateway ("SG") configuration	The SG configuration shall be performed and completed by the Access Provider within twenty (20) Business Days from the date on which connectivity to the Access Seeker's equipment has been established.
Service availability check	<ul style="list-style-type: none"> • The Access Provider shall enable the Access Seeker to check whether a premises or exchange service area (or part thereof) is serviceable by the HSBB Network Service via its publicly accessible website or an interactive self-service portal in accordance with subsection 6.6.9 of this Standard. • The Access Provider shall provide the Access Seeker with access to the interactive self-service portal upon establishment of the SG and service acceptance handover. • The Access Seeker may request an appointment in an available appointment slot for a BTU installation in respect of a premises that is serviceable by the HSBB Network Service. • Where information about a premises or exchange service area (or part thereof) is not available on its publicly

Parameters	Timelines and obligations
	accessible website or through the interactive self-service portal, the Access Provider shall inform the Access Seeker whether the premises or exchange service area (or part thereof) is serviceable by the HSBB Network Service within five (5) Business Days of an Access Seeker's request.
BTU installation appointment	BTU installation appointments to be confirmed within one (1) Business Day of the Access Seeker requesting an appointment in an available appointment slot.
BTU installation	<ul style="list-style-type: none"> • Fifty percent (50%) of BTU installations per month to be completed within four (4) hours from the agreed installation time. • Eighty percent (80%) of BTU installations per month to be completed within six (6) hours from the agreed installation time. • One hundred percent (100%) of BTU installations per month to be completed within eight (8) hours from the agreed installation time.
Return Order management	For any faulty or incomplete BTU installations, the Access Provider shall resolve the problem and complete the installation within five (5) Business Days of Access Seeker's notification unless the installation was faulty or incomplete for reasons outside the Access Provider's reasonable control.
SG upgrade/downgrade	Within five (5) Business Days from the date that the Access Seeker's request is received if the HSBB Network has sufficient capacity to support the request (otherwise a notification of rejection on the basis of insufficient capacity will be provided to the Access Seeker and the Commission within one (1) Business Day of such request).
BTU upgrade/downgrade	Within two (2) Business Days from the date that the Access Seeker's request is received if the HSBB Network has sufficient capacity to support the request (otherwise a notification of rejection on the basis of insufficient capacity will be provided to the Access Seeker and the Commission within one (1) Business Day of such request).

6.6.14 **Service assurance timeline:** An Access Provider shall comply with the following service assurance timelines and obligations for the HSBB Network Service:

Parameters	Timelines and obligations
Mean time to restore for fault due to infrastructure from SG to BTU	As required to permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service), Determination No. 2 of 2016 including such modification or variation as may be determined by the Commission from time to time.
A complete failure of network elements and causing all services to be totally disrupted	As required to permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service), Determination No. 2 of 2016 including such modification or variation as may be determined by the Commission from time to time.
Any fault relating to breakdown of passive fibre	As required to permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service), Determination No. 2 of 2016 including such modification or variation as may be determined by the Commission from time to time.
On-site support	The Access Provider shall provide on-site support during Business Days.
Appointment for service restoration	The Access Provider shall provide an interactive service assurance portal, in accordance with subsection 6.6.9 of this Standard, to the Access Seeker which shall include the following functionality: <ul style="list-style-type: none"> • a common ticketing system to log, review and generate reports and progress updates; and • a common slotting system to enable the Access Seeker to view and book available appointment slots.
Throughput	As required to permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service), Determination No. 2 of 2016 including such modification or variation as may be determined by the Commission from time to time.
Network Latency (Layer 2 HSBB)	As required to permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband

Parameters	Timelines and obligations
Network Service with QoS only)	Access Service), Determination No. 2 of 2016 including such modification or variation as may be determined by the Commission from time to time.
Packet Loss and Jitter	As required to permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service), Determination No. 2 of 2016 including such modification or variation as may be determined by the Commission from time to time.
Service availability	The higher of ninety-five percent (95%) or such service availability required to permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service), Determination No. 2 of 2016 including such modification or variation as may be determined by the Commission from time to time.

6.6.15 **QinQ implementation:** An Access Provider shall provide the QinQ implementation to the Access Seeker to allow the Access Seeker freedom in choosing their VLAN identifiers. The QinQ features include:

- (a) providing a simple layer 2 virtual private network tunnel for the end user;
- (b) shielding the VLAN identifier of the end user, so as to save the public network VLAN identifier resource of the Access Seeker; and
- (c) enabling the Access Seeker to plan their private network VLAN identifier to avoid any conflict with the Access Provider and other operators' VLAN identifiers and to ensure that the Access Seeker's VLANs are not fully visible to the Access Provider.

6.6.16 **Reporting:** As required under paragraph 5.3.12(l) of this Standard, an Access Provider shall notify the Commission in writing of:

- (a) the locations at which the Access Provider offers for supply any services over the HSBB Network including to its own end user customers, together with the network types (e.g. fibre to the node or fibre to the home) which form the basis of the offer for supply at each location;

- (b) the locations at which the Access Provider supplies HSBB Network Services, together with the type of HSBB Network Service supplied at each location (being the Layer 2 HSBB Network Service with QoS or the Layer 3 HSBB Network Service);
- (c) the locations at which the Access Provider supplies an alternative commercially negotiated service to another Operator using the HSBB Network and any details of each such commercially negotiated service which may be requested by the Commission from time to time;
- (d) each Class of Service or QoS Class (as applicable); and
- (e) each bit rate offered in respect of each HSBB Network Service.

6.6.17 Equivalence of Inputs: An Access Provider must:

- (a) provide HSBB Network Services on an Equivalence of Inputs basis to Access Seekers, including the product, speed tiers, speed, price, timeframes, service level performance and terms and conditions that are equivalent to what it provides to itself;
- (b) provide access to Operational Support Systems for HSBB Network Services to itself and to Access Seekers using the same systems and processes (including for billing, information management, service fulfilment, service assurance and network performance); and
- (c) ensure that Access Seekers are able to use the HSBB Network Services, the OSS, the systems and processes that are used by the Access Provider in the same way and with the same degree of reliability, performance, accuracy and up-to-date information as it provides to itself.

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

6.7 TRANSMISSION SERVICES

- 6.7.1 **Application:** This subsection 6.7 applies where access to a Transmission Service has been requested or is to be provided.
- 6.7.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding Transmission Services is one (1) year;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding Transmission Services is one (1) year; and
 - (c) the maximum frequency to update or to make further Forecasts regarding Transmission Services is once a year.
- 6.7.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for a Transmission Service within two (2) Business Days.
- 6.7.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for a Transmission Service is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.
- 6.7.5 **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)i of this Standard, the indicative delivery timeframe for Transmission Services is:
- (a) if no new network facilities are required to supply the Transmission Services, twenty (20) Business Days; or

- (b) if new network facilities are required to supply the Transmission Services, sixty (60) Business Days.

For clarification, the indicative delivery timeframe in this subsection 6.7.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

6.7.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Transmission Services will be quarterly.

6.7.7 **Reporting:** As required under paragraph 5.3.12(l) of this Standard, an Access Provider shall notify the Commission in writing, in respect of each type of Transmission Service (i.e. any Trunk Transmission Service, Wholesale Local Leased Circuit Service or End-to-End Transmission Service) offered or supplied by the Access Provider, details of:

- (a) each technically feasible network point at which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied at those points);
- (b) each network interface through which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied using those interfaces);
- (c) each bit rate at which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied at those bit rates); and
- (d) whether the Transmission Service is supplied in conjunction with any other Facility and/or Service.

6.7.8 **No bundling:** An Access Provider shall not require an Access Seeker to purchase a Transmission Service together with any other Transmission Service. For example, an Access Provider shall not require an Access Seeker to purchase a Trunk Transmission Service between a pair of technically feasible network transmission points with another Trunk Transmission Service between another pair of technically feasible network transmission points.

6.8 INFRASTRUCTURE SHARING

- 6.8.1 **Application:** This subsection 6.8 applies where Infrastructure Sharing has been requested or is to be provided.
- 6.8.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts 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.
- 6.8.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for Infrastructure Sharing within two (2) Business Days.
- 6.8.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must 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 for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.
- 6.8.5 **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)i of this Standard, the indicative delivery timeframe for Infrastructure Sharing is forty (40) Business Days. For clarification, the indicative delivery timeframe in this subsection 6.8.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

- 6.8.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Infrastructure Sharing will be one (1) year in advance for the first year and quarterly in advance for subsequent years.
- 6.8.7 **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.
- 6.8.8 **Nominated personnel:** The employees and/or contractors nominated by the Access Seeker under subsections 6.8.7, 6.8.9 and 6.8.10 of this Standard will be reasonable, having regard to:
- (a) the position of each person and the number of persons nominated; and
 - (b) the position of each of the Access Provider's own personnel and the number of the Access Provider's personnel to which the Access Provider provides physical access to such network facilities.
- 6.8.9 **Escorts:** An 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 the Access Provider requires an escort for its own employees or contractors in the same circumstances. If an 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's property, the Access Provider shall:
- (a) bear the costs of such escort service;
 - (b) subject to paragraph 6.8.9(d) of this Standard, provide immediate physical access to the Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;

- (c) subject to paragraph 6.8.9(d) of this Standard, 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;
- (d) for both planned and emergency maintenance requests at unmanned sites only, have its escort arrive within the shorter of:
 - i. thirty (30) minutes of time required by the Access Seeker pursuant to paragraph 6.8.9(b) or 6.8.9(c) of this Standard (as applicable) plus a reasonable window to allow for travel time (which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and
 - ii. the period of time it requires for its escorts to arrive for planned and emergency maintenance at unmanned sites.

6.8.10 **Absence of escort:** For the purposes of subsection 6.8.7 of this Standard, if an escort does not arrive at the Access Provider's property within the timeframe specified in subsection 6.8.9, the Access Seeker's nominated employees and/or contractors may proceed to enter the Access Provider's property without an escort.

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

6.8.12 **Utilities and ancillary services:** The Access Provider must, where the relevant utilities and ancillary services are within the Access Provider's control, ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access to the same extent that the Access Provider provides to itself, including but not limited to:

- (a) access to roads;

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

6.8.13 **Cost:** The utility and ancillary costs in respect of the network facilities as contemplated in subsection 6.8.12 of this Standard shall be apportioned (in accordance with fair and equitable principles) between the Access Provider and all Access Seekers at the relevant location.

6.9 NETWORK CO-LOCATION SERVICE

- 6.9.1 **Application:** This subsection 6.9 applies where access to the Network Co-Location Service has been requested or is to be provided.
- 6.9.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding Network Co-Location Service is one (1) year;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding Network Co-Location Service is one (1) year; and
 - (c) the maximum frequency to update or to make further Forecasts regarding Network Co-Location Service is once a year.
- 6.9.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for a Network Co-Location Service within two (2) Business Days.
- 6.9.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for a Network Co-Location Service is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.
- 6.9.5 **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)i of this Standard, the indicative delivery timeframe for Network Co-Location Service is twenty (20) Business Days. For clarification, the indicative delivery timeframe in this subsection 6.9.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

- 6.9.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Network Co-Location Services will be one (1) year in advance for the first year and quarterly in advance for subsequent years.
- 6.9.7 **Inspection:** An Access Provider shall allow nominated employees and/or contractors of a potential Access Seeker to physically inspect network facilities of the Access Provider during normal business hours provided that the Access Seeker has provided no less than five (5) Business Days' notice of its request to perform a physical inspection and details of its nominees.
- 6.9.8 **Physical access:** Where required to fulfil an Order for a Network Co-Location Service or for the Access Seeker to perform operations or maintenance activities, an Access Provider shall allow an Access Seeker, its nominated employees and/or contractors to physically access the Access Provider's network facilities and the Access Seeker's Equipment, and to have physical control over the Access Seeker's Equipment located at such network facilities, at equivalent times and in accordance with equivalent processes and procedures as are applicable to itself. An Access Provider must not prevent or restrict access to any network facility or site for reasons concerning national or operational security reasons and may only apply reasonable security procedures and processes that comply with the obligations under paragraph 6.9.31(b) of this Standard.
- 6.9.9 **Nominated personnel:** The employees and/or contractors nominated by the Access Seeker under subsections 6.9.7, 6.9.8, 6.9.10 and 6.9.11 of this Standard will be reasonable, having regard to:
- (a) the position of each person and the number of persons nominated; and
 - (b) the position of each of the Access Provider's own personnel and the number of the Access Provider's personnel to which the Access Provider provides physical access to such network facilities.
- 6.9.10 **Escorts:** An 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 the Access Provider requires an escort for its own employees or contractors in the same circumstances. If an 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's property, the Access Provider shall:

- (a) bear the costs of such escort service;
- (b) subject to paragraph 6.9.10(d) of this Standard, provide immediate physical access to the Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
- (c) subject to paragraph 6.9.10(d) of this Standard, 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;
- (d) for both planned and emergency maintenance requests at unmanned sites only, have its escort arrive within the shorter of:
 - i. thirty (30) minutes of time required by the Access Seeker pursuant to paragraph 6.9.10(b) or 6.9.10(c) of this Standard (as applicable) plus a reasonable window to allow for travel time (which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and
 - ii. the period of time it requires for its escorts to arrive for planned and emergency maintenance at unmanned sites.

6.9.11 Absence of escort: For the purposes of subsection 6.9.10 of this Standard, if an escort does not arrive at the Access Provider's property within the timeframe specified in subsection 6.9.10, the Access Seeker's nominated employees and/or contractors may proceed to enter the Access Provider's property without an escort.

6.9.12 Site register: The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property on the Access Seeker's

behalf, which must be made available for inspection by the Access Provider, upon request.

6.9.13 Publication of co-location locations and provision of co-location by Access Provider:

- (a) Subject to subsection 6.9.31 of this Standard, each Access Provider shall publish on its publicly accessible website and keep updated a list of the general locations and technically feasible points at which physical co-location is available;
- (b) Subject to subsection 6.9.15 of this Standard, where required due to physical constraints, Access Providers should jointly agree with Access Seekers as to which Access Seekers should be given the right to physically co-locate at each POI and each network facility and such access shall be granted on a non-discriminatory basis; and
- (c) Where physical co-location cannot be granted to an Access Seeker, the Access Seeker shall be granted either virtual co-location or in-span interconnection as requested by the Access Seeker.

6.9.14 Deemed Access Providers: If an Access Seeker (referred to in this subsection 6.9.14 as the "**Deemed Access Provider**") obtains physical co-location at a POI or network facility from an Access Provider (referred to in this subsection 6.9.14 as the "**Principal Access Provider**"), and the Principal Access Provider is unable to provide virtual co-location or in-span interconnection as required under paragraph 6.9.13(c) of this Standard, it shall be deemed to be an Access Provider for the purposes of this subsection 6.9. The Deemed Access Provider shall be required to permit access to Access Seekers following the same procedures for permitting access as those required to be followed by the Principal Access Provider. Within two (2) Business Days of reaching a co-location agreement with an Access Seeker, the Deemed Access Provider must notify the Principal Access Provider of the existence of the agreement and the identity of the Access Seeker, and must ensure that the Access Seeker complies with the relevant co-location obligations contained in subsection 6.9 of this Standard. The Deemed Access Provider shall be responsible to the Principal Access Provider for all acts and omissions of any Access Seekers in connection with providing access to Facilities and/or Services under its co-location agreement.

6.9.15 **Lack of space:** Subject to subsection 6.9.16 of this Standard, if there are space constraints at a particular location, the Access Provider shall take reasonable steps to optimise its usage of the space, including through the upgrading of facilities and transferring Equipment to an alternative location. If the Access Provider has used its best efforts to accommodate all Access Seekers, and it is not physically possible for any further Access Seekers to be accommodated, the Access Provider shall:

- (a) notify the Commission of the lack of space at the location;
- (b) provide any supplementary information which may be requested by the Commission (which may include physical inspections by the Commission); and
- (c) be excused from providing physical co-location at that location unless and until the Commission notifies the Access Provider that the Commission considers that physical co-location can and must be provided, in which case the Access Provider shall provide physical co-location as directed by the Commission.

6.9.16 **Reservation of space:** An Access Provider shall not reserve space other than for its own current needs, its future needs, [calculated by use of a reasonably projected rate of growth over two (2) years] and the needs of other Access Seekers who are currently occupying or have ordered space from that Access Provider.

6.9.17 **Allocation of space:** An Access Provider shall allocate space at each location where physical co-location is to be permitted in a non-discriminatory way and will treat other Access Seekers as it treats itself.

6.9.18 **No minimum space requirements:** An Access Provider shall not impose minimum space requirements on an Access Seeker.

6.9.19 **Notice of refusal:** If an Access Provider proposes to refuse, or refuses, a request for physical co-location from an Access Seeker on the basis of current or future needs of the Access Provider and/or the needs of other Access Seekers who are currently occupying or have ordered additional space from the Access Provider, it must also notify the Access Seeker and the Commission of:

- (a) the space currently used by the Access Provider;

- (b) the amount of space reserved for the Access Provider's future needs;
- (c) the space currently occupied by other Access Seekers;
- (d) the space ordered by other Access Seekers; and
- (e) the total amount of space potentially available but for the uses set out above.

6.9.20 Reporting: As required under paragraph 5.3.12(l) of this Standard, an Access Provider shall notify the Commission in writing of:

- (a) its space requirements over the three (3) year period from the date of such notification, together with a reconciliation of its reservation over the previous twelve (12) months with its actual space needs; and
- (b) in respect of its POIs and other Facilities, including the locations which are the subject of subsection 6.9.31 of this Standard, to provide:
 - i. details of the locations at which the Network Co-Location Service is provided to another Operator; and
 - ii. details of locations in respect of which any request for Network Co-Location Service was refused, together with the reasons for the refusal.

6.9.21 Preparatory work by the Access Seeker: If preparatory work is necessary for the purposes of allowing the Access Seeker to obtain access to or co-locate at or on an Access Provider's network facilities, such Access Provider shall permit the Access Seeker's employees and/or contractors to perform such preparatory work if the Access Seeker satisfies the Access Provider (acting reasonably and in accordance with the policy referred to in this subsection 6.9.21) that such employees and/or contractors have the necessary qualifications. Each Access Provider shall publish and make available a policy about the necessary qualifications applicable to employees and/or contractors who will be permitted to perform preparatory work under this subsection 6.9.21, and such policy to be non-discriminatory in its application to the Access Provider's personnel and the Access Seeker's employees and/or contractors who perform similar functions.

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

- (a) the Access Provider shall not exceed the estimate without providing the Access Seeker with prior written notice that:
 - i. the estimate will likely be exceeded; and
 - ii. a further estimate of the charges for the work necessary to complete the preparatory work; and
- (b) the Access Provider shall permit the Access Seeker to withdraw the request for preparatory work without penalty if the revised estimate exceeds the original estimate by more than ten percent (10%) of the original estimate.

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

- (a) notify the relevant Access Seeker of the delay to a delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;
- (b) permit the Access Seeker notified under paragraph 6.9.23(a) above to cancel the preparatory work without penalty if the delay is longer than ten (10) Business Days; and
- (c) compensate the Access Seeker for the costs it has incurred as a result of delay, subject to the Access Seeker using reasonable endeavours to mitigate those costs.

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

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

6.9.25 **Cost:** The utility and ancillary costs in respect of the network facilities as contemplated in subsection 6.9.24 of this Standard shall be apportioned (in accordance with fair and equitable principles) between the Access Provider and all Access Seekers at the relevant location.

6.9.26 **Security caging:** An Access Provider shall not require the use of cages or similar structures to physically segregate co-located Equipment, or Equipment located at or on network facilities of the Access Provider.

6.9.27 **Equipment allowance:** An Access Provider shall permit an Access Seeker to locate Equipment on or at the Access Provider's network facilities which is necessary for the purposes of obtaining the benefit of access to the network services and network facilities provided in accordance with this Standard, including but not limited to multi-functional Equipment which may also be used for purposes other than those specified in this subsection 6.9.27.

6.9.28 **Marking:** All Operators shall mark or label their Equipment in such a manner that they can be easily identified as the Equipment of the Operator.

6.9.29 **Maintenance:** An Access Provider shall permit, and do all things reasonably necessary to allow, an Access Seeker to maintain its Equipment at or on the network facilities to which access has been granted under subsection 6.9.8 of this Standard.

6.9.30 **Extensions:** The Access Provider shall reasonably permit the Access Seeker, at the Access Seeker's cost, to extend network facilities of the Access Provider

as may reasonably be required to meet the Access Seeker's requirements in the circumstances and to the extent technically feasible.

6.9.31 Security and critical national information infrastructure:

- (a) An Access Provider may decline to publish information in connection with particular Points of Interface and other locations where Facilities are located, for national or operational security reasons, but in such circumstances, an Access Provider must:
 - i. promptly provide such information to other Operators on request, subject only to the Operators entering into a confidentiality agreement in accordance with this Standard;
 - ii. offer to provide, and if the offer is accepted, provide, updated location details to such Operators as Points of Interface and Facilities are withdrawn, introduced and changed; and
 - iii. provide all such information to the Commission and, on a 6-monthly basis, the locations at which the Access Provider is offering to supply Network Co-Location Service, the locations at which Access Seekers have requested Network Co-Location Service and the locations at which the Access Provider is actively supplying Network Co-Location Service.

- (b) An Access Provider may establish reasonable security procedures and processes (such as identity checks) to apply to personnel of Access Seekers who will physically access Points of Interface or other locations where Facilities are located. However, such procedures and processes shall:
 - i. not completely or substantially prohibit an Access Seeker from physically accessing a Point of Interface or other relevant location unless the Access Provider has been directed in writing to do so by the Government (in which case, the Access Provider shall notify the Commission); and
 - ii. be no more restrictive or onerous than the procedures and processes that the Access Provider imposes on its own personnel who physically access the same Points of Interface and locations.

6.10 DOMESTIC CONNECTIVITY TO INTERNATIONAL SERVICES

6.10.1 **Application:** This subsection 6.10 applies where access to Domestic Connectivity to International Services has been requested or is to be provided.

6.10.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard an Access Provider shall only request Forecasts where:

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

6.10.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for Domestic Connectivity to International Services within two (2) Business Days.

6.10.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for Domestic Connectivity to International Services is accepted or rejected within ten (10) Business Days after:

- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
- (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.

6.10.5 **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)i of this Standard, the indicative delivery timeframe for Domestic Connectivity to International Services is ten (10) Business Days. For clarification, the activation timeframe in this subsection 6.10.5 commences from the Notice of

Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

- 6.10.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Domestic Connectivity to International Services will be one (1) year in advance for the first year and quarterly in advance for subsequent years.
- 6.10.7 **Any cable system:** An Access Provider must provide connection services to an Access Seeker:
- (a) in respect of a cable system which the Access Seeker is authorised to connect to, irrespective of whether that Access Seeker is authorised by a third party or by virtue of its control over the cable system; and
 - (b) to enable transit between cable systems.
- 6.10.8 **New cable systems:** An Access Provider must provide each Domestic Connectivity for International Service in respect of all existing and new cable systems to which the Access Provider has access at equivalent times and in accordance with equivalent processes and procedures as that which it provides to itself. Such services must be provided from the ready-for-service date of the relevant cable system.
- 6.10.9 **Access and co-location:** An Access Provider must offer, and if requested by an Access Seeker, provide in accordance with this Standard, physical access to, and physical co-location at, any network facility or site to which the Access Seeker requires physical access or physical co-location in order to have the benefit of a Domestic Connectivity to International Service. The physical access or physical co-location to be provided to the Access Seeker, its nominated employees and/or contractors is at equivalent times and in accordance with equivalent processes and procedures as are applicable to the Access Provider. An Access Provider must not prevent or restrict access to any network facility or site for reasons concerning national or operational security reasons and may only apply reasonable security procedures and processes that comply with paragraph 6.9.31(b) of this Standard.
- 6.10.10 **Nominated personnel:** The employees and/or contractors nominated by the Access Seeker under subsections 6.10.9, 6.10.11 and 6.10.12 of this Standard will be reasonable, having regard to:

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

6.10.11 Escorts: An 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 the Access Provider requires an escort for its own employees or contractors in the same circumstances. If an Access Provider determines that it is necessary to have an escort present when nominated employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property, the Access Provider shall:

- (a) bear the costs of such escort service;
- (b) subject to paragraph 6.10.11(d) of this Standard, provide immediate physical access to the Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
- (c) subject to paragraph 6.10.11(d) of this Standard, 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;
- (d) for both planned and emergency maintenance requests at unmanned sites only, have its escort arrive within the shorter of:
 - i. thirty (30) minutes of time required by the Access Seeker pursuant to paragraph 6.10.11(b) or 6.10.11(c) of this Standard (as applicable) plus a reasonable window to allow for travel time (which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and

- ii. the period of time it requires for its escorts to arrive for planned and emergency maintenance at unmanned sites.

6.10.12 **Absence of escort:** For the purposes of subsection 6.10.10 of this Standard, if an escort does not arrive within the timeframe specified in subsection 6.10.11, the Access Seeker's nominated employees and/or contractors may proceed to enter the Access Provider's property without an escort.

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

6.10.14 **Publication of locations:** The Access Provider must make available on its publicly available website the locations at which the Domestic Connectivity to International Services is available. An Access Provider may decline to publish for national or operational security reasons information in connection with particular locations where Domestic Connectivity to International Services is available, but in such circumstances, an Access Provider must:

- (a) promptly provide such information to other Operators on request, subject only to the Operators entering into a confidentiality agreement in accordance with this Standard;
- (b) offer to provide, and if the offer is accepted, provide, updated location details to such Operators as locations are withdrawn, introduced and changed; and
- (c) provide all such information to the Commission.

6.11 DUCT AND MANHOLE ACCESS

- 6.11.1 **Application:** This subsection 6.11 applies where Duct and Manhole Access has been requested or is to be provided.
- 6.11.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding Duct and Manhole Access is one (1) year;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding Duct and Manhole Access is one (1) year; and
 - (c) the maximum frequency to update or to make further Forecasts regarding Duct and Manhole Access is once a year.
- 6.11.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for Duct and Manhole Access within two (2) Business Days.
- 6.11.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for Duct and Manhole Access is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.
- 6.11.5 **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)i of this Standard, the indicative delivery timeframe for Duct and Manhole Access is ten (10) Business Days. For clarification, the indicative delivery timeframe in this subsection 6.11.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

6.11.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Duct and Manhole Access will be one (1) year in advance for the first year and quarterly in advance for subsequent years.

6.11.7 **Reporting:** As required under paragraph 5.3.12(l) of this Standard, an Access Provider shall notify the Commission in writing details of:

- (a) each area in which the Access Provider has built or assumed maintenance obligations in respect of lead-in ducts and associated manhole infrastructure;
- (b) each area in which the Access Provider has been granted exclusive rights to develop or maintain mainline ducts and associated manhole infrastructure;
- (c) each area in which an Access Seeker has requested the supply of Duct and Manhole Access in respect of mainline ducts and associated manholes but in which the Access Provider has not been granted exclusive rights to develop or maintain the duct and manhole infrastructure;
- (d) each location in which an Access Seeker has requested the supply of Duct and Manhole Access, in which there is no room for the Access Seeker to install its own sub-ducts and in which the Access Provider has therefore offered to supply access to its own sub-ducts; and
- (e) each location in which an Access Seeker has requested the supply of Duct and Manhole Access, in which there is no room for the Access Seeker to install its own sub-ducts and in which there is also no room in the Access Provider's own sub-ducts.

6.11.8 **Physical access:** Where required to fulfil an Order for Duct and Manhole Access 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. The Access Provider shall provide:

- (a) immediate physical access to Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
- (b) 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.

6.11.9 **Nominated personnel:** The employees and/or contractors nominated by the Access Seeker under subsection 6.11.8 of this Standard will be reasonable, having regard to:

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

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

6.11.11 **Joint survey:** For the purposes of subsection 5.7.8 of this Standard and subject to the timeframe specified under subsection 5.7.9 of this Standard, a joint survey may be conducted by the Access Provider and the Access Seeker, along with surveyors, where necessary, to determine the availability of requested ducts and manholes at a particular area, provided that the scope of the survey be jointly decided, and any costs are necessarily incurred, itemised and agreed between the parties.

6.11.12 **Capacity Allocation Policy:** In addition to subsection 5.7.32 of this Standard, the Access Provider's Capacity Allocation Policy for Duct and Manhole Access shall set out the principles to be applied on an equivalent basis between itself and other Access Seekers, where:

- (a) the Access Provider has already taken steps to optimise space by using the current available technology, including removing any unused cables;
- (b) the Access Provider shall determine the available space only after considering:
 - i. the requirements for ducts and space in manholes for the Access Provider's then existing maintenance purposes; and
 - ii. the reservation of the ducts or sub-ducts for future use by the Access Provider or another Access Seeker, applicable on an equivalent basis for six (6) months, upon receipt of an Order; and
- (c) the allocation of available space shall be:
 - i. on a first-come, first-served basis;
 - ii. applicable to reserved capacity that is not used by either the Access Provider or an Access Seeker within the seven (7) months from the date of the Order; and
 - iii. to the extent possible, based on efficient allocation principles to minimise space wastage.

6.11.13 Operational manuals: An Access Provider shall establish operations and maintenance manuals which are made available to Access Seekers, containing reasonable processes and procedures relating to Duct and Manhole Access including but not limited to:

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

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

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

6.11.14 Ground for refusal: In addition to the grounds for refusal in subsection 5.4.11 of this Standard, an Access Provider may refuse an Access Request to Duct and Manhole Access to the extent (and only to the extent that) the Access Provider has entered into an exclusive arrangement for access to duct and manhole infrastructure in Putrajaya with the Government of Malaysia and such arrangement has been entered into (without extension or amendment) prior to the Effective Date of this Determination. For clarification, subsection 5.4.19 of this Standard applies to any refusal under this subsection.

6.12 DIGITAL TERRESTRIAL BROADCASTING MULTIPLEXING SERVICE

- 6.12.1 **Application:** This subsection 6.12 applies where access to the Digital Terrestrial Broadcasting Multiplexing Service has been requested or is to be provided.
- 6.12.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding Digital Terrestrial Broadcasting Multiplexing Service is eighteen (18) months;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding Digital Terrestrial Broadcasting Multiplexing Service is six (6) months; and
 - (c) the maximum frequency to update or to make further Forecasts regarding Digital Terrestrial Broadcasting Multiplexing Service is once every six (6) months.
- 6.12.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for Digital Terrestrial Multiplexing Service within two (2) Business Days.
- 6.12.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for Digital Terrestrial Multiplexing Service is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.
- 6.12.5 **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)i of this Standard, the indicative delivery timeframe for Digital Terrestrial Broadcasting Multiplexing Service is twenty (20) Business Days. For

clarification, the indicative delivery timeframe in this subsection 6.12.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

- 6.12.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Digital Terrestrial Broadcasting Multiplexing Services will be monthly.
- 6.12.7 **Bit rate allocation:** An Access Provider shall specify a bit rate allocation suitable for television broadcasting services, such as video, audio, and any other ancillary data supporting the basic services. The bit rate allocation will be based on current and accepted technology. An Access Seeker may request a bit rate allocation which is different to the ones specified by the Access Provider and the Access Provider must reasonably provide such bit rate unless it is technically infeasible for the Access Provider to do so.
- 6.12.8 **Encryption:** An Access Provider shall only apply conditional access to an Access Seeker's transport stream if specifically requested to do so by the Access Seeker.
- 6.12.9 **Redundancy:** An Access Provider shall provide redundancy in respect of the Digital Terrestrial Broadcasting Multiplexing Service to ensure availability of the Access Seeker's service at all times.
- 6.12.10 **Compression:** An Access Provider must provide access to its multiplexer in the form of SDI, SAI (including multiple PIDs) or any other standard protocol, at a bit rate specified by the Access Seeker. The Access Seeker may specify digital compression and decompression technology reasonably required by it to deliver its services and the Access Provider will comply with the Access Seeker's request to the extent possible.
- 6.12.11 **Technical standards:** An Operator must comply with the Commission Determination on the Mandatory Standard for Free to Air Transmission of Digital Terrestrial Television Service, Determination No. 1 of 2011 including such modification or variation and any other mandatory standards as may be determined by the Commission from time to time.
- 6.12.12 **Reporting:** As required under paragraph 5.3.12(l) of this Standard, an Access Provider shall notify the Commission in writing of:

- (a) the standard bit rate allocation for each television broadcasting service as specified under subsection 6.12.7 of this Standard; and
- (b) each transport stream subject to conditional access and details of such conditions as applicable under subsection 6.12.8 of this Standard.

6.13 MVNO ACCESS

6.13.1 Application:

- (a) This subsection 6.13 applies where MVNO Access has been requested or is to be provided.
- (b) The Content Obligations do not apply in respect of MVNO Access, with the exception of the following:
 - i. subsection 5.6 of this Standard (Forecasting Obligations);
 - ii. subsection 5.7 of this Standard (Ordering and Provisioning Obligations);
 - iii. subsection 5.11 of this Standard (Billing and Settlement Obligations);
 - iv. subsection 5.14 of this Standard (Term, Suspension and Termination Obligations); and
 - v. subsection 5.16 of this Standard (Legal Boilerplate Obligations).
- (c) For clarification, the Disclosure Obligations and Negotiation Obligations under this Standard apply to MVNO Access in addition to the obligations set out under paragraph 6.13.1(b) above.

6.13.2 Forecasts: For the purposes of subsection 5.6.6 of this Standard, an Access Provider may determine the Forecasts which it requires from an Access Seeker to provide MVNO Access including with regard to:

- (a) the network components, Facilities and/or Services to be supplied as part of MVNO Access;
- (b) the maximum periods covered by the Forecasts;
- (c) the minimum intervals or units of time used in Forecasts; and
- (d) the maximum frequency of the Forecasts or updates to the Forecasts.

- 6.13.3 **Limitation of Forecasts:** An Access Provider must ensure that Forecasts under subsections 5.6.6 and 6.13.2 of this Standard are no more onerous than either of:
- (a) what is necessary for the Access Provider to supply MVNO Access without adversely affecting the Access Provider's Network; and
 - (b) the forecasting which the Access Provider provides to itself for network planning and provisioning equivalent services.
- 6.13.4 **Acknowledgement of receipt:** Subject to any shorter timeframe required under subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for MVNO Access within two (2) Business Days.
- 6.13.5 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for MVNO Access is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.
- 6.13.6 **Indicative delivery timeframe:** For the purpose of paragraph 5.7.13(a)i of this Standard, the indicative delivery timeframe for MVNO Access is forty (40) Business Days. For clarification, the indicative delivery timeframe in this subsection 6.13.6 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.
- 6.13.7 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for MVNO Access will be monthly.

6.13.8 **Reporting:** The Access Provider must report to the Commission information and details relating to MVNO Access which may be requested by the Commission.

6.13.9 **Prohibited use of Customer information:** The Access Provider is expressly prohibited from using any Access Seeker's Customer information to market or offer to supply its goods or services to that or any other Customer, except where:

- (a) the Customer information is publicly available; or
- (b) the Customer information has been received or developed by the Access Provider from sources other than the Access Seeker,

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

6.13.10 **Support:** An Access Provider must provide an Access Seeker with any support reasonably requested by the Access Seeker to permit the Access Seeker to comply with the Commission Determination on the Mandatory Standard for the Provision of Services through a Mobile Virtual Network, Determination No. 3 of 2015 including such modification or variation and any other mandatory standards as may be determined by the Commission from time to time.

6.13.11 **Modularity:** An Access Provider must provide MVNO Access on a modular and unbundled basis so that the Access Seeker does not have to acquire network components, Facilities or Services that are not required for MVNO Access to be provided.

SECTION 7: STANDARD ADMINISTRATION AND COMPLIANCE

7.1 ENFORCEMENT OF THIS STANDARD

7.1.1 **Legislative background:** The Act governs:

- (a) the manner in which the Commission may develop and apply this Standard; and
- (b) the operation of this Standard.

7.1.2 **Mandatory compliance:** Compliance with this Standard is mandatory.

7.1.3 **Compliance directions from the Commission:** For the purposes of section 51 of the Act, the Commission may direct persons or a class of persons to comply with the Act. A person who is subject to this Standard under subsection 3.2.1 is required to comply with this Standard under subsection 105(3) of the Act. Under section 51, the Commission may direct a person specified in subsection 3.2.1 to comply with subsection 105(3) of the Act.

7.1.4 **Content Obligations, Service Specific Obligations and Commission directions:** In respect of the Content Obligations contained in subsection 5.5 to 5.16 of this Standard and the Service Specific Obligations contained in section 6 of this Standard, the Commission may make a direction with the effect of:

- (a) requiring persons to incorporate a particular content into their RAO or an Access Agreement;
- (b) requiring persons to comply with the obligation, irrespective of whether it is contained in their RAO, or any Access Agreement, or not; or
- (c) both paragraphs 7.1.4(a) and 7.1.4(b) above.

7.1.5 **Failure to comply with direction:** Failure to comply with a direction of the Commission which requires compliance with this Standard, exposes the person receiving the direction to a penalty under section 109 of the Act.

7.1.6 **Effect of compliance:** Pursuant to section 108 of the Act, compliance with this Standard shall be a defence against any prosecution, action or proceeding

of any nature, whether in a court or otherwise, taken against a person who is subject to this Standard with respect to a matter dealt with by this Standard.

7.2 IMPLEMENTATION OF THIS STANDARD

- 7.2.1 **Negotiating benchmark:** The persons identified in subsection 3.2.1 of this Standard must comply with this Standard when preparing any RAO and when entering into any Access Agreement.
- 7.2.2 **Undertakings:** The persons identified in subsection 3.2.1 of this Standard must comply with this Standard when lodging an undertaking with the Commission under section 110 of the Act.
- 7.2.3 **Dispute Resolution Procedures:** The persons identified in subsection 3.2.1 of this Standard may rely upon this Standard when making submissions during dispute resolution under the Dispute Resolution Procedures or under section 151 of the Act.
- 7.2.4 **Existing Access Agreements:** Parties to existing Access Agreements executed prior to the Effective Date must review such Access Agreements to ensure compliance with this Standard. Such Access Agreements should be amended according to the requirements of this Standard no later than nine (9) months after the Effective Date or by any other date as stipulated by the Commission. If the parties are unable to effect such amendments, the parties shall first attempt to resolve the dispute in accordance with the Dispute Resolution Procedures. If the parties to the disputes cannot or otherwise fail to reach an agreement, either party may notify a dispute in accordance with Chapter 7 of Part V of the Act.
- 7.2.5 **Timeline for implementation:** Each Access Provider shall prepare, maintain and/or modify a RAO in relation to Facilities and/or Services specified in the Access List Determination no later than six (6) months after the Effective Date or by any other date as stipulated by the Commission.

7.3 COMPLIANCE REVIEW

- 7.3.1 **General compliance review:** Assessment by the Commission for compliance with this Standard may occur at any time:

- (a) by formally requesting information from persons identified in subsection 3.2.1 of this Standard (for example, under Chapter 5 of Part V of the Act); or
- (b) by auditing persons identified in subsection 3.2.1 of this Standard for compliance from time to time (for example, under Chapter 4 of Part V of the Act).

7.3.2 **Specific compliance:** The Commission may check for compliance with this Standard in the following circumstances, without limitation:

- (a) at the time the Commission is reviewing a RAO, the Commission may check the RAO for compliance with this Standard;
- (b) at the time the Commission is considering an Access Agreement for registration, the Commission may check the Access Agreement for compliance with this Standard;
- (c) upon the notification of a dispute, the Commission may check for compliance with this Standard in such a way that may allow the Commission to resolve the dispute in accordance with this Standard; and
- (d) the Commission may check an undertaking for compliance with this Standard when assessing an undertaking lodged by persons identified in subsection 3.2.1 of this Standard.

7.4 TRANSITIONAL MEASURES

7.4.1 **Notice procedures for removal or replacement:** If the Commission removes, varies or replaces Facilities and/or Services in the access list under section 146 or section 147 of the Act, and an Access Provider wishes to terminate or change the terms of the supply of that Facility and/or Service, the Access Provider may only do so in a manner that is consistent with the supply of that Facility and/or Service to itself, and must provide notice of its intention to terminate or vary, to all Access Seekers to whom it is supplying that Facility and/or Service.

7.4.2 **Notice period:** The notice period referred to in subsection 7.4.1 of this Standard must be no shorter than:

- (a) the period of time between the time of giving the notice and the time at which the Access Provider is proposing to no longer provide the Facilities and/or Services to itself; or
- (b) twelve (12) months.

7.4.3 **Contents of notice of variation or replacement:** The notice to be provided by the Access Provider under subsection 7.4.1 of this Standard when the Commission varies, removes or replaces the Facilities and/or Services in the access list, must state:

- (a) when the variation or replacement will come into effect;
- (b) how the variation or replacement is likely to affect the Access Seeker; and
- (c) any alternative Facilities and/or Services that may be available to be provided by the Access Provider to the Access Seeker and the terms and conditions on which such alternative arrangements are made available.

7.5 REVIEW OF THIS STANDARD

7.5.1 **Purpose:** The purpose of this subsection of this Standard is to outline some of the circumstances under which this Standard may be reviewed by the Commission. It is not an exhaustive list of the Commission's powers of review.

7.5.2 **General review:** The Commission will review this Standard:

- (a) as and when the Minister so directs under section 7 of the Act; or
- (b) as and when the Commission considers it necessary in order to pursue or preserve the goals of this Standard and the Act.

7.5.3 **Specific review:** The Commission may review the operation of this Standard on the occurrence of one or more of the following events:

- (a) where the Minister exercises his or her power to modify, vary or revoke directions (under section 8, Chapter 1 of Part II of the Act) determinations (under section 11, Chapter 2 of Part II of the Act) and declarations (under section 14, Chapter 3 of Part II of the Act);

- (b) where the Commission exercises its power to modify, vary or revoke a direction (under section 52 of the Act) or determination (under section 56 of the Act);
- (c) where the Commission exercises its power (under section 101 of the Act) to revoke a voluntary industry code, on the basis that it is satisfied that the voluntary industry code is no longer consistent with the objects of the Act, any relevant instrument made under the Act, or any relevant provisions of the Act;
- (d) where the Commission exercises its power to add or remove Facilities and/or Services to or from the Access List (under section 146 of the Act);
- (e) where the Commission exercises its power (under section 106 of the Act) to determine the modification, variation or revocation of a mandatory standard on the basis that it is satisfied that the mandatory standard is no longer consistent with the objects of the Act, any relevant instrument made under the Act, or any relevant provisions of the Act;
- (f) where an industry forum submits a new voluntary industry code to replace an existing one for that industry (under section 102 of the Act);
- (g) where any event occurs which may alter the general principles of access (for example, this may occur in the course of dispute resolution, if it becomes apparent that a matter in this Standard should be revised or when a new issue arises);
- (h) where an exogenous development occurs which warrants a review by the Commission of this Standard (for example, this may occur due to technological change); or
- (i) when the Act is or has been revised, resulting in amendments being made to the Act that affects the subject matter of this Standard or requirements relating to mandatory standards in general.

7.5.4 Request for review: Any person may request the Commission to modify any provision of this Standard by submitting a notice to the Commission specifying:

- (a) the provisions of this Standard that it seeks to have removed, modified or added;

- (b) a clear statement of the reasons why the person believes that such action is justified; and
- (c) alternative approaches that, if adopted, would achieve the Commission's stated goals in a more efficient and effective manner.

7.5.5 **Assessment of request for review:** In assessing a request under subsection 7.5.4 of this Standard, the Commission will take account of all relevant factors, including:

- (a) whether a review is justified on the basis submitted by the person;
- (b) the period of time since the last review of this Standard;
- (c) the objects of the Act; and
- (d) any other factor(s) that the Commission considers relevant.

7.5.6 **Review process:** In accordance with the Act, a review of this Standard by the Commission will involve the following key stages:

- (a) **Public notice:** The Commission will issue a public notice to announce that a review of this Standard is to take place. This notice will detail the scope of the review, the matters to be considered in the review and the time-line for the review (including the period in which public comment will be accepted by the Commission).
- (b) **Public comment:** After a public notice of the review has been issued, the Commission shall (for a specified period) accept public comment and submissions regarding the review of this Standard.
- (c) **Internal review:** Upon the completion of a period of public comment, the Commission will commence an internal review of this Standard. This will include assessing the public or external comment received during the review process and will aim to publish a list of issues.
- (d) **Finalisation:** Once the internal review is completed, the Commission may finalise the proposed changes to this Standard.

7.5.7 **Outcome of a review:** Following a review, the Commission may or may not choose to modify, vary or revoke this Standard in accordance with sections 55, 56 and 106 of the Act.

ANNEXURE A: DISPUTE RESOLUTION PROCEDURES

1. Definitions

1.1 In the Dispute Resolution Procedures set out in this Annexure A:

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

2. Introduction

2.1 Subject to subsection 2.2(c) of this Annexure, an Access Provider and an Access Seeker shall adopt and comply with these Dispute Resolution Procedures in relation to any dispute which may arise between an Access Seeker and an Access Provider in relation to or in connection with the supply of Facilities and/or Services to which this Standard applies ("**Dispute**").

- 2.2 The following dispute resolution mechanisms are discussed in this section:
- (a) inter-party working groups;
 - (b) interconnect steering group; and
 - (c) subject to specific resolution of disputes, being:
 - i. technical disputes (which must follow the procedure set out in section 6 of this Annexure if they cannot be resolved through the application of the general dispute resolution provisions in sections 3, 4 and 5 of this Annexure);
 - ii. Billing Disputes (as defined in subsection 1.1 of this Annexure), which must follow the procedures set out in section 7 of this Annexure; or
 - iii. any other types of disputes, which, if cannot be resolved through the application of the general dispute resolution provisions in sections 3, 4 and 5 of this Annexure, must be referred to the Commission for resolution.

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

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

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

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

3. General

- 3.1 An Operator may not commence court proceedings relating to a Dispute which is the subject of these Dispute Resolution Procedures until it has complied with each applicable process in these Dispute Resolution Procedures, other than an application for urgent interlocutory relief. Nothing in this subsection shall be construed as ousting the jurisdiction of any court.
- 3.2 Both Parties to a Dispute shall ensure that their representatives acting in relation to a Dispute are of sufficient seniority and have authority to settle a Dispute on their behalf. At the commencement of the Dispute Resolution Procedures, each party must notify the other party of the scope of the authority of each of their representatives. If, in the course of the Dispute Resolution Procedures, it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to the representative, a party may require that those matters be referred to more senior officers of that party who have authority to settle those matters.
- 3.3 During a Dispute and any dispute resolution process invoked in accordance with this Annexure, an Access Provider and Access Seeker must continue to fulfil their obligations under the Access Agreement between them.
- 3.4 Subject to subsection 3.5 of this Annexure, the Parties to a Dispute shall exchange information of a type described in this Standard during the course of, and to facilitate, resolution of the Dispute.
- 3.5 Confidential Information of a party which is disclosed, and any other oral or written submissions made by a party or a party's representatives during the course of any dispute resolution process will be subject to the confidentiality restrictions in relevant confidentiality provisions contained in the Confidentiality Agreement prepared in accordance with subsection 5.3.8 of this Standard.
- 3.6 A party must not use information obtained under subsection 3.4 of this Annexure or described in subsection 3.5 above for any purpose other than to resolve the Dispute.
- 3.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a Dispute (including a Technical Expert or the Commission, in accordance with this Annexure) may decide not to determine the Dispute if the arbitrator considers that the Dispute

is trivial, frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the Dispute.

- 3.8 The costs of the arbitration are to be shared equally between the parties, unless the arbitrator of the Dispute has decided not to determine the Dispute in accordance with subsection 3.7 above. If an arbitrator decides not to determine the Dispute, the party that initiated the Dispute must pay the other party's costs.

4. Inter-party working group

- 4.1 In the first instance the Access Seeker and the Access Provider should attempt to resolve the Dispute between themselves.

- 4.2 The Access Provider and the Access Seeker shall establish a working group, or working groups, to fulfil the requirements of subsection 4.1 above. The working group shall comprise of representatives of the Parties, and be headed by a person who holds a position that is at least equivalent to the head of the Access Provider's Wholesale or Interconnection Group.

- 4.3 The Access Provider shall provide for:

- (a) subject areas to be dealt with by each working group;
- (b) equal representation by the Access Seeker and the Access Provider;
- (c) chairmanship and administrative functions of the working group to be shared equally; and
- (d) formal notification procedures to the working group.

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

5. Interconnect steering group

- 5.1 In the event that the Parties cannot resolve the Dispute between themselves within the time specified in subsection 4.4 of this Annexure, or after any agreed time extension has expired, either party may give ten (10) Business Days'

written notice ("**Notice**") to the other party stating its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice, then either party may notify the other party ("**Receiving Party**") that it wishes to refer the issue to the Interconnect Steering Group ("**ISG**").

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

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

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

(b) to the Commission for arbitration.

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

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

(b) to the Commission for final arbitration.

6. Use of a Technical Expert

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

6.2 Once a Dispute is referred to a Technical Expert, it may not be referred back to a working group or ISG.

6.3 The person to whom a technical dispute may be referred under this section 6:

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

("Technical Expert").

- 6.4 If the Parties fail to appoint a Technical Expert within ten (10) Business Days of the need to refer a Dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.
- 6.5 When relying on the services of a Technical Expert, the following dispute resolution procedures will apply to the Technical Expert:
 - (a) the Parties will present written submissions to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
 - (b) each party may respond to the other party's submission in writing within fifteen (15) Business Days from the date of the other party's submission.
- 6.6 At the request of either party and subject to the parties agreeing, or the Technical Expert deciding within five (5) Business Days of the last written submission, that the arbitration by the Technical Expert should be by documents only, a Technical Expert hearing will be held within fifteen (15) Business Days of the last written submission.
- 6.7 Should a Technical Expert hearing be held, each party will have the opportunity of making an oral submission. This process will be conducted in private.
- 6.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Parties) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.

- 6.9 The Technical Expert will not have the power to appoint any other experts.
- 6.10 The Technical Expert will deliver his or her award within fifteen (15) Business Days of the hearing or of the last written submission where the arbitration is by documents only.
- 6.11 Every Dispute referred to a Technical Expert will be considered separately so that time limits for each Dispute are complied with.
- 6.12 The Technical Expert's decision will be binding on the Parties (in the absence of manifest error of fact or law).

7. **Billing Dispute resolution**

- 7.1 As outlined in the billing provisions of this Standard at subsection 5.11, a party ("**Invoicing Party**") shall provide to the other party ("**Invoiced Party**") an Invoice in writing, or in such electronic form as may be agreed from time to time, for amounts due in respect of the supply of Facilities and/or Services during such Billing Cycle.
- 7.2 An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:
- (a) in the case of domestic calls and interconnection, the Invoiced Party notifies the Invoicing Party within thirty (30) Business Days after the date of receipt of such Invoice;
 - (b) in the case of outgoing and incoming international calls and interconnection, the Invoiced Party notifies the Invoicing Party within six (6) months after the date of receipt of such Invoice; or
 - (c) in case of any other Facilities and/or Services, the Invoiced Party notifies the Invoicing Party within thirty Business Days after the date of receipt of such Invoice,

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

7.3 A Billing Dispute may only arise where the Invoiced Party has reasonable grounds to believe that an error has arisen from one of the following circumstances:

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

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

- (a) the reasons for which the Invoice is disputed;
- (b) the amount in dispute;
- (c) details required to identify the relevant Invoice and charges in dispute including:
 - i. the account number;
 - ii. the Invoice reference number;
 - iii. the Invoice date;
 - iv. the Invoice amount; and
 - v. billing verification information; and
- (d) evidence in the form of a report, indicating the relevant traffic data which is in dispute.

7.5 The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with subsection 5.11.11 of this Standard. If the Billing Dispute

is resolved against the Invoiced Party, that Invoiced Party shall be required to pay interest at the rate specified in subsection 5.11.15 of this Standard on the amount payable.

- 7.6 Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the Invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. Once the Billing Dispute is resolved, if the Invoicing Party is obliged to refund an amount to the Invoiced Party, interest will be payable on the refunded amount at the rate specified in subsection 5.11.15 of this Standard. In such circumstances, interest will be payable from the date the Invoiced Party paid the disputed amount to the date of the refund by the Invoicing Party.
- 7.7 The parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this section 7.
- 7.8 If the parties are unable to resolve any Billing Dispute within one (1) month (or such other period as the parties may agree) from the date on which the Billing Dispute Notice is received, either party may seek the consent of the other party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other party is, however, under no obligation to agree to such extension.
- 7.9 To the extent that a Billing Dispute notified under this section involves a Billing Dispute with an international correspondent of the Invoicing Party, the Dispute Resolution Procedures shall be suspended for a reasonable period of time pending resolution of the Billing Dispute with that international correspondent. As a general rule, the period of suspension will not exceed four (4) months. However, the parties shall recognise that some Billing Disputes with international correspondents may take longer to resolve, in which case the Invoicing Party must promptly inform the Invoiced Party of the likely period required for resolution.
- 7.10 Once the negotiation period under subsection 7.8 of this Annexure (including any extension agreed) and any suspension period under subsection 7.9 of this Annexure have expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection 7.11 of this Annexure ("**Billing Dispute Escalation Procedure**").

- 7.11 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection 7.11 by notifying the Invoicing Party's Billing Representative. Both parties shall then appoint a designated representative who has authority to settle the Billing Dispute, and who is at a higher level of management than the persons with direct responsibility for administration of this Standard. The designated representatives shall meet as often as they reasonably deem necessary to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one party to the other party shall be honoured.
- 7.12 Once any Billing Dispute has been resolved to the parties' satisfaction, any sum to be paid or repaid shall be paid by the relevant party within ten (10) Business Days from the date of resolution of the Billing Dispute.
- 7.13 Although it shall be the good faith intention of the parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try to solve Billing Disputes, nothing in this Annexure shall prevent either party from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- 7.14 A party may request a joint investigation of Invoice discrepancies after that party has conducted a comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the parties must agree on the terms of the joint investigation, including:
- (a) the scope of the joint investigation;
 - (b) how the joint investigation will be conducted; and
 - (c) the date by which the joint investigation must be concluded.

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

- 7.15 Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operational issues may be directed to the Billing Representatives nominated by each party.


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

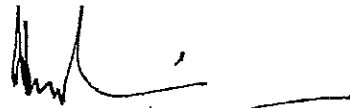
Revocation

7. The Commission Determination on the Mandatory Standard on Access, Determination No. 2 of 2005 as varied by the Variation to Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005), Determination No. 2 of 2009, shall be revoked with effect from 1 January 2017.

Transitional and Savings

8. The Commission Determination on the Mandatory Standard on Access, Determination No. 2 of 2005 as varied by the Variation to Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005), Determination No. 2 of 2009, shall remain in force for the purpose of and application to Access Agreements registered with the Commission before 1 January 2017.

Made:  December 2016



DATO' SRI DR. HALIM SHAFIE
Chairman

Malaysian Communications and Multimedia Commission