

**Technology Park Malaysia Corporation Sdn. Bhd.**

**(Company No. 377141-T)**

## **REFERENCE ACCESS OFFER**

## **TPM's Reference Access Offer ("RAO")**

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## Reference Access Offer (“RAO”)

### CHAPTER 1 – Introduction, Background and Scope

#### 1.1 Preliminary

- 1.1.1 This Access Reference is made by Technology Park Malaysia Corporation Sdn Bhd (Company No: 377141-T) (“TPM”), a company incorporated under the laws of Malaysia and having its business address office at L5-E-4, Enterprise 4, Technology Park Malaysia, Lebuhraya Puchong – Sg Besi, Bukit Jalil, 57000 Kuala Lumpur on **31 July 2017** pursuant to **section 5.3.3** of the Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016, which came into effect on 1<sup>st</sup> January 2017 (“MSA Determinations”)
- 1.1.2 Pursuant to Commission Determination on the Access List, Determination No.2 of 2015 which came into effect 1<sup>st</sup> September 2015 and pursuant to section 5.3.3 of the MSA Determination, TPM is pleased to prepare and maintain an Reference Access Offer (“RAO”) in relation to network facilities or network services on the Access List Determination which TPM provides to itself or third parties and which: (a) contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and (b) does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.
- 1.1.3 This RAO is set out as follows:
- (a) Main Text which consist of 5 Chapters; and
  - (b) Schedules, Annexure and relevant Appendices

#### 1.2 Legislative Background

- 1.2.1 Following the issuance of the Ministerial Direction to Determine a Mandatory Standard on Access, Direction No. 2 of 2003 and Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016 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 Malaysian Communications and Multimedia Commission (“Commission”) issued the MSA Determination.
- 1.2.2 MSA Determination Obligations
- 1.2.2.1 The MSA Determination deals with access to network facilities and network services listed in the Access List Determination and sets out obligations that apply to Operators concerning various access issues which include:
- (a) Disclosure obligation (Section 5.3 of the MSA Determination);
  - (b) Negotiation obligations (Section 5.4 of the MSA Determination);
  - (c) Content obligation (Sections 5.5 to 5.16 of the MSA Determination); and
  - (d) Service Specific obligation (Section 6 of the MSA Determination).

### 1.2.3 Disclosure Obligations

1.2.3.1 Pursuant to the Disclosure Obligations in Section 5.3 of the MSA Determination, TPM is required to:

- (a) prepare and maintain an RAO;
- (b) make the RAO available;
- (c) follow prescribed procedures after acceptance of the RAO; and
- (d) follow prescribed procedures for any amendment of the RAO

### 1.2.4 The role of Standard Access Obligations

1.2.4.1 Pursuant to sections 55 and 145 of the Act, the Commission may determine the list of network facilities and network services, which may be listed in the access list. Accordingly, the Commission has issued the Access List Determination. Pursuant to section 149 of the Act, an Access Provider is required to comply with the standard access obligations in providing the network facilities and network services that are listed in the Access List Determination.

1.2.4.2 The standard access obligations facilitate the provision of access to the network facilities and network services listed in the Access List Determination by Access Seekers in order that Access Providers can provide network facilities, network services, and other facilities and/or services which facilitate the provision of network services or applications services, including content applications services.

1.2.4.3 Section 149 of the Act specifies the terms and conditions upon which the Access Provider must comply with the standard access obligations. Section 149(2) provides that the access provided by the Access Provider shall be:

- (a) of at least the same or more favourable technical standard and quality as the technical standard and quality on the Access Provider's network facilities or network services; and
- (b) on an equitable and non-discriminatory basis.

1.2.4.4 The paraphrasing of any statutory provisions in this TPM's RAO does not amount to any party agreeing to waive any of their rights under the paraphrased provisions and those statutory provisions continue to apply in full.

## 1.3 **Scope of TPM's RAO**

1.3.1 TPM is a licensed individual network facilities and network services provider under the Act.

- 1.3.2 Pursuant to Section 5.3.3 of the MSA Determination, TPM is obliged to prepare and maintain an RAO in relation to network facilities or network services on the Access List Determination which TPM provides to itself or third parties.
- 1.3.3 TPM's RAO:
- (a) contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and
  - (b) does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.
- 1.3.4 Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to TPM's RAO.
- 1.3.5 TPM considers TPM's RAO to be consistent with:
- (a) the standard access obligations stipulated under Section 5 of the MSA Determination and section 149 of the Act;
  - (b) the principles of non-discrimination stipulated under Sections 4.1.5 and 4.1.6 of the MSA Determination.
- 1.3.6 For the purposes of clarification, the terms and conditions of TPM's RAO is applicable to the Facilities or Services and which is relevant to the provisioning of facilities and services within TPM's licenses only. If the Access Seeker requests network facilities or network services outside TPM's RAO, the terms and conditions for the provision of such network facilities or network services shall remain outside the scope of TPM's RAO.
- 1.3.7 If an Access Seeker requests TPM to provide it with Facilities or Services other than on the terms and conditions contained in TPM's RAO, TPM and the Access Seeker will:
- (a) negotiate in good faith in relation to such terms and conditions; and
  - (b) enter into and conduct negotiations in a timely manner.
- 1.3.8 TPM's RAO contains terms and conditions for the following facilities and services:-
- (a) Duct and Manhole Services.
- 1.4 Additional Services**
- 1.4.1 In addition, the Operators are free to consider TPM's RAO when negotiating the terms and conditions for the supply of other network facilities or network services that are not listed in the Access List Determination.

## **1.5 Effective Date of TPM's RAO**

### **1.5.1 Commencement and Duration of TPM's RAO**

1.5.1.1 TPM's RAO comes into force and takes effect immediately from the date referred to in **Section 1.1** and continues until the earlier to occur of:

- (a) a Review; or
- (b) the withdrawal of TPM's RAO in accordance with the terms of TPM's RAO.

1.5.1.2 TPM's RAO has no effect on contractual arrangements for the supply of Facilities and Services by TPM to an Access Seeker prior to the Commencement Date unless such contractual arrangement is subsequently renegotiated and agreed between the Operators.

### **1.5.2 Amendment to TPM's RAO**

1.5.2.1 TPM shall, no less than twenty (20) Business Days of making any amendment to TPM's RAO, provide a copy of the amendments, or an amended copy of TPM's RAO to:

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

### **1.5.3 Notice of Withdrawal, Replacement and Variation of TPM's RAO**

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

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

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

6.5 of the MSA Determination and which shall include a review by the Commission on the Mandatory Standard Access Pricing

1.5.3.3 Notwithstanding Sections 1.5.3.1 and 1.5.3.2 TPM may, subject to Section 1.5.2 above, replace TPM's RAO at any time.

#### 1.5.4 Availability

1.5.4.1 Subject to Section 1.5.4.2, TPM's RAO shall be made available to an Access Seeker:

- (a) on written request, at TPM's principal place of business; and
- (b) on a publicly assessable website.

1.5.4.2 Prior to the provision of TPM's RAO to the Access Seeker, the Access Seeker shall be required to enter into a confidentiality agreement with the TPM.

## CHAPTER 2 – Interpretation

2.1 The following words have these meanings in this TPM RAO unless the contrary intention appears: -

“**Act**” means the Communications and Multimedia Act 1998.

“**Access Agreement**” or “**AA**” means an Access Agreement executed between Access Seeker and TPM for TPM to provide requested Facilities and/or Services subject upon commercially negotiated terms and conditions and in accordance with the terms therein contained and registered with the Commission in accordance with Section 150 of the Act.; or

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

“**RAO Term**” means the period of three (3) years commencing from the date set out in Section 1.1.1 or such other period as may be specified by TPM from time to time.

“**Access Provider**” shall take on the meaning as provided in the MSA Determinations, and is interchangeably used with “TPM”.

“**Access Request**” means a request made by the Access Seeker to TPM for access to Facilities or Services and containing the information in Section 4.1.3.

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

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

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

**“Bank Guarantee”** means a guarantee, executed in favour of TPM by a licensed bank in Malaysia approved by the TPM pursuant to Section 4.3 on behalf of the Access Seeker.

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

**“Billing Period”** means one (1) calendar month period over which the supply of Facilities and/or Services is measured for the purposes of billing unless otherwise agreed between the Operators.

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

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

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

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

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

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

**“Confidentiality Agreement”** means a Confidentiality agreement entered into between TPM and the Access Seeker in accordance with Section 5.3.8 of the MSA Determination.

**“Creditworthiness Information”** means the information required by TPM to assess the creditworthiness of the Access Seeker which are more particularly described in Section 4.2 of TPM’s RAO and such other information as may be required from time to time.

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

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

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

**“Due Date”** means the thirtieth (30<sup>th</sup>) day from the date of invoice.

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

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

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

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

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

**“Insurance Information”** means the insurance information required by TPM pursuant to Section 4.4.

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

**“Legislative Event”** means:

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

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

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

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

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

**“Operators”** means TPM and the Access Seeker collectively.

**“Other Operator”** means either:

- (a) TPM; or
- (b) the Access Seeker,

as the context requires.

**“Regulatory Event”** means:

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

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

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

**“Security Sum”** means the security:

- (a) in the form of a Bank Guarantee, deposited with TPM in accordance with Section 4.3 for the supply of Facilities or Services; and
- (b) which is equivalent to the Minimum Value.

**“Services”** means the services provided by TPM as particularly described in section 1.3.8, which are listed in the Access List Determination and offered in TPM's RAO.

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

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

- 2.2 In TPM's RAO except where the contrary intention appears;
- (a) the singular includes the plural and vice versa; and
  - (b) a document includes all amendments or supplements to that document, or replacements or novations of it; and
  - (c) a reference to a statute, ordinance, regulations, code or other law and other instruments under it, shall include any statute, ordinance, regulation, code and other law consolidating, amending, re-enacting or replacing of any of them from time to time relating thereto or in connection therewith; and
  - (d) a reference to a person includes a firm, body corporate, unincorporated association or an authority; and
  - (e) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and
  - (f) if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day and any reference to acts that have to be done or to be done by or on or before a particular day or Business day means by or on or before the close of business at 5.00pm on that particular day or Business Day; and
  - (g) a reference to a related body corporate of an Operator has the same meaning as in the Companies Act 2016; and
  - (h) a reference to a third party is a reference to a person who is not a party to TPM's RAO; and
  - (i) no rule of construction and/or interpretation applies to the disadvantage and/or detriment of the Operator having control and/or responsibility for the preparation of TPM's RAO; and
  - (j) headings are included for convenience and do not affect the interpretation of TPM's RAO.

## **CHAPTER 3 – Principles of Access**

### **3.1 Services**

- 3.1.1 TPM's RAO sets out the terms and conditions upon which Access Seekers may access TPM's Facilities and/or Services.
- 3.1.2 Subject to Section 1.3.6, TPM's RAO applies only to the Facilities and/or Services.
- 3.1.3 The general terms for access to TPM's Facilities and Services listed in the Access List Determination are set out in the **General Terms and Conditions of the Access Agreement Template**.

- 3.1.4 The obligations on forecast, ordering and provisioning for TPMs' Facilities and Services listed in the Access List Determination are set out in **Schedule A of the Access Agreement Template**.
- 3.1.5 The obligations on technical and network operational matters for TPM's Facilities and Services listed in the Access List Determination are set out in **Schedule C of the Access Agreement Template**.
- 3.1.6 The **Annexures to the RAO** are set out as follows:
- (a) ANNEXURE I – List & Description of Facilities and Services
  - (b) ANNEXURE II – Charges
  - (c) ANNEXURE III – Service Order Form Template
  - (d) ANNEXURE IV – Dispute Resolution Procedures (DRP)

## **3.2 Eligibility for Access of Services**

- 3.2.1 TPM may at its discretion and in a manner consistent with the Licence(s) granted (and the licence rights accorded therein) by the Minister to the Access Seeker, determine on a case by case basis whether to provide the Access Seeker with access to Facilities and/or Services.
- 3.2.2 Consistent with Government policy and Determinations by the Commission (and its predecessor), an Access Seeker may only request for access to any or all of the Facilities and/or Services where the Access Seeker has been granted (i) an individual network facilities provider licence and (ii) an individual network services provider licence and (iii) an individual content applications services provider licence, and such individual licences are not limited or restricted from those detailed in the *Communications and Multimedia (Licensing) Regulations 2000*, as amended in any way:
- (a) by reference to the type of network facilities, network services and/or content applications services that can be provided; and
  - (b) by geographical limitations to only a specific area and/or areas in Malaysia to which the Access Seeker can provide such network facilities, network services and/or content applications services.
- 3.2.3 An Access Seeker may not request for access to the Facilities and/or Services where the requested Facilities or Services are to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.
- 3.2.4 Consistent with Government policy and Determinations by the Commissions (and its predecessor), where TPM provides the Access Seeker with access to the Facilities or Services pursuant to **Section 3.2.1**, the charges for the requested Facilities or Services shall be negotiated between the Access Seeker and TPM subject to any mandatory standard on access pricing determined by the Commission.

### **3.3 Principles of Access**

#### 3.3.1 Access Terms and Conditions

3.3.1.1 Where TPM provides access to an Access Seeker to a Facility and/or Services, TPM shall do so on non-discriminatory basis subject to the reasonably and commercially negotiated terms and conditions.

#### 3.3.2 Reasonableness

3.3.2.1 An Access Provider may refuse a request if:

- (a) supply of the relevant listed Facilities and/or Services would not be reasonable (see subsection 3.3.3 of this RAO); or
- (b) supply of the relevant listed Facilities and/or Services would be reasonable, but the terms and conditions requested by the Access Seeker are not reasonable (see subsection 3.3.4 of this RAO).

#### 3.3.3 Unreasonable request

3.3.3.1 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 4.6.1 of this RAO 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.

#### 3.3.4 Unreasonable terms

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

#### 3.3.5 Non-discrimination

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

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

#### 3.3.6 Meaning of non-discrimination

3.3.6.1 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.

### **3.4 Dispute Resolution**

- 3.4.1 Each party shall use all reasonable endeavours to resolve any disputes arising from or in connection with TPM's RAO.
- 3.4.2 If any disputes or difference of any kind shall arise between the parties in connection with or arising out of TPM's RAO, the Dispute Resolution Procedure in Annexure A of the MSA Determination shall be adhered to.

### **3.5 Confidentiality**

- 3.5.1 An Operator must protect from disclosure any confidentiality information provided by another Operator given in the course of negotiating an Access Agreement or during the term of TPM's RAO in accordance with the Confidentiality Agreement signed between the parties.
- 3.5.2 The 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 accessing a request for access; and
  - (e) shall not prevent the disclosure of Confidential Information or information to the Commission by the receiving party.

## **CHAPTER 4 – Access Request Procedures**

### **4.1 Application for Access to Services**

- 4.1.1 Where an Access Seeker makes a request to TPM to supply Facilities or Services, the Access Seeker shall submit an Access Request to TPM.
- 4.1.2 The purpose of such Access Request is to provide TPM with sufficient information to assess the Access Seeker's request for the supply of Facilities or Services under TPM's RAO.

4.1.3 The Access Request must:

- (a) contain the name and contact details of the Access Seeker,
- (b) specify the Facilities or Services in respect of which access is sought;
- (c) indicate whether the Access Seeker wishes to accept TPM's RAO; to negotiate amendment to the RAO; or negotiate an Access Agreement on alternative terms;
- (d) contain the information (if any) as set out in Section 5.3.7 of the MSA Determination that the Access Seeker reasonably requires TPM to provide for the purposes of the access negotiations;
- (e) contain two (2) sets of confidentiality agreement properly executed by the Access Seeker in the form prescribed by TPM;
- (f) contain information about the capacity of the Facilities and/or Services which the Access Seeker expects to obtain from TPM;
- (g) provide the relevant information relating to the Access Seeker's Network and the functionality of its services, to the extent that the Access Seeker is aware that such information may affect TPM's Network;
- (h) contain Creditworthiness Information as set out in **Section 4.2**;
- (i) if required by TPM, be accompanied by a Security Sum as set out in **Section 4.3**;
- (j) contain Insurance Information as set out in **Section 4.4**;
- (k) contain relevant technical information relating to the interface standards of the Equipment of the Access Seeker; and
- (l) such other information that TPM may reasonably request.

**4.2 Creditworthiness Information**

4.2.1 TPM may request creditworthiness information from an Access Seeker:

- (a) if TPM 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; and

- (b) if the creditworthiness information sought is limited to information which is publicly available (on this basis, TPM may request the Access Seeker to warrant that such information is accurate).
- (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 ninety (90) day's access to Facilities and/or Services in an Access Agreement.

4.2.2 The Creditworthiness Information that is required to accompany an Access Request include but shall not be limited to:

- (a) a letter, signed by the executive director of the Access Seeker, stating that the Access Seeker is not insolvent and is not under any external administration or under similar form of administration under any laws applicable to it in any jurisdiction;
- (b) a copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement; and
- (c) such other information as may be reasonably requested by TPM provided that such information are information which are publicly available.

4.2.3 The Creditworthiness information shall commensurate with an estimated value of the access to the Facilities or Services to be provided by TPM to the Access Seeker over a ninety (90) day period.

### **4.3 Security Sum**

4.3.1 An Access Request shall, if required by TPM, be accompanied by a Security Sum. The security that may be given by the Access Seeker shall be in the form of a Bank Guarantee.

4.3.2 The security required by TPM is subject to the following:-

- (a) TPM 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) TPM shall ensure that the amount and type of any security requirements to be imposed on an Access Seeker is only imposed in TPM'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 ninety (90) day's 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 TPM.
- (c) TPM 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 TPM to the Access Seeker; or
  - ii. is designed to, or has the effect of, denying or delaying the Access Seeker's access to Facilities and/or services.

#### **4.4 Insurance Information**

4.4.1 Subject to Section 4.4.2, an Access Request shall, if required by TPM, be accompanied by the following insurances:

- (a) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its employees or in connection with the work covered by the Access Agreement that may be entered and/or their dependants; and
- (b) Comprehensive general Liability Insurance of an amount not greater than Ringgit Malaysia Twenty Million (RM20,000,000) for any one claim or series of claims arising out of an accident for occurrence in connection with the Access Agreement that may be entered into resulting in bodily injury and/or personal injury including death and property damage of an Operator which shall arise out of or in consequence of any acts of omissions of the Other Operator. Such policy shall include contractual liability.

4.4.2 For the purpose of clarification, the insurance provided by the Access Seeker pursuant to section 4.4.1 shall commensurate with the reasonable sum, which is to be agreed by TPM.

#### **4.5 Processing of Access Request**

##### **4.5.1 Acknowledgement of Receipt of Access Request**

TPM shall within ten (10) Business Day of receipt of the Access Request inform the Access Seeker in writing that it has received the Access Request and:

- (a) Subject to Section 4.5.3, request additional information from the Access Seeker where there is a need for further information, prior to considering

- the Access Request; or
- (b) Indicate whether it is willing to provide access to Facilities or Services in accordance with TPM's RAO; or
- (c) Indicate whether it is willing to proceed to negotiate amendments to the RAO or an Access Agreement on alternative terms; or
- (d) Refuses the request in accordance to Section 4.6 herein below.

Subject to the additional information being received by TPM within twenty (20) Business days from the date of request, TPM shall reconsider the Access Request in accordance with this Section 4.5.1 upon receipt of such additional information.

#### 4.5.2 Information Disclosure

If TPM is not refusing the request and where the Access Request has complied with Section 4.1.3(d) above, TPM shall, within the written information under Section 4.5.1, also provide the Access Seeker with the following information –

- (a) any supplementary details of a Facility and/or Service offered by the Access Provider not included in this 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 communication services, value added services and communication equipment that can interconnect to, and interoperate with, TPM's network;
- (d) supplementary details of TPM's operational processes and procedures not included in this RAO (e.g. regarding escorted access at sites deemed to be critical national information infrastructure or other secure sites);
- (e) supplementary details of TPM's provisioning cycles not included in this RAO and any impact such cycles may have upon an Access Request by the Access Seeker (e.g. capacity constraints);
- (f) details of TPM's alternative quality of service targets not included in this 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 creditworthiness information (including a credit assessment form, if available), security requirements and insurance requirements required by TPM under subsections 4.2, 4.3 and 4.4 of this RAO; and
- (h) TPM's reasons for failing to supply any of the information referred to in paragraphs 4.5.2(a) to 4.5.2(g) of this RAO.

Prior to the provision of information under subsection 4.5.2 of this RAO, TPM may request the Access Seeker to enter into a Confidentiality Agreement in accordance with subsection 3.5.2 of this RAO.

## 4.6 Assessment of Access Request

### 4.6.1 Reason for Refusal

Without limiting any other grounds that may be relied upon under the Act, TPM may refuse to accept an Access Request for the supply of a Facility or Service and accordingly may refuse to supply that Facility or Service to the Access Seeker for any of the following reasons:

- (a) in TPM's reasonable opinion, the Access Seeker's Access Request was not made in good faith and TPM shall set out the basis on which the Access Request was not made in good faith;
- (b) in TPM's reasonable opinion, the Access Request does not contain the information reasonably required by TPM's RAO provided that TPM has sought the information from the Access Seeker under Section 4.5.1 of TPM's RAO and has not received that information within twenty (20) Business Days of making such a request;
- (c) TPM does not currently supply or provide access to the requested Facilities or Services to itself or to any third parties, except where the Access Seeker compensates TPM for the supply of access to such Facilities or Services;
- (d) It is not technically feasible to provide access to the requested Facilities or Services;
- (e) TPM has insufficient capacity to provide the requested Facilities or Services;
- (f) there are reasonable grounds in TPM's opinion to believe that the Access Seeker would fail, to make timely payment for the supply of the relevant Facility or Service; or
- (g) there are reasonable grounds in TPM's opinion to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities or Services; or
- (h) there are reasonable grounds for TPM to refuse access in the national interest; or
- (i) the access is being sought to facilities and/or services which are not in the Access List Determination.

### 4.6.2 Determination of lack of technical feasibility

For the purpose of determining the lack of technical feasibility in Section 4.6.1(d), TPM shall establish 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 TPM 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 TPM 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 TPM 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) TPM 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 TPM to meet the Access Request (in whole or in part, and including for an interim period, until any primary difficulties can be resolved).

#### 4.6.3 Determination of capacity constraints

For the purpose of determining capacity constraints in Section 4.6.1(e), the Operators shall comply with Section 5.4.18 of the MSA Determination.

#### 4.6.4 Assessment of the Access Seeker's ability to pay for supply of relevant Facilities or Services listed in the Access List Determination

Example of reasonable grounds for TPM's belief as mentioned in Section 4.6.1 (f) includes evidence that the Access Seeker is not in the reasonable opinion of TPM creditworthy.

#### 4.6.5 Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of relevant Facilities or Services listed in the Access List Determination.

- 4.6.5.1 Example of reasonable grounds for TPM's belief as mentioned in Section 4.6.1 (g) include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Facilities or Services have been provided (whether or not by TPM).

#### 4.6.6 Assessment of Creditworthiness

- 4.6.6.1 In determining the creditworthiness of the Access Seeker, TPM may have regard for the requirements stipulated by this RAO which include, but is not limited to the matters referred to in **Section 4.2**.

- 4.6.6.2 In determining the creditworthiness of the Access Seeker, TPM shall not take into account amounts outstanding for Facilities or Services previously provided by TPM to the Access Seeker where, in accordance with the terms and conditions governing the provision of such Facility or Service, the Access Seeker is not required to pay such amounts to TPM to the extent that there is a bona fide dispute in relation to the amounts outstanding by the Access Seeker to TPM and the Access Seeker is relying on such terms and conditions as basis for its non-payment.

### 4.7 **Notification of Rejection to the Access Seeker**

- 4.7.1 Where TPM rejects the Access Request, TPM shall:

- (a) promptly notify the Access Seeker in writing within ten (10) Business Days

from receipt of the Access Request or additional information requested pursuant to **Section 4.5.1**, as the case may be;

- (b) provide reasons for rejection under Section 4.6.1 above to the Access Seeker;
- (c) provide the basis for TPM's rejection of the Access Request; and
- (d) indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of TPM will be available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request. At this meeting, the Access Seeker may request TPM to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in **Section 4.6.1(e)**, TPM must identify when additional capacity is likely to be available.

4.7.2 Where the Operators are unable to resolve their differences following the meeting held pursuant to Section 4.7.1 (d), either Operator may request resolution of the dispute in accordance with dispute resolution procedures in Annexure A of the MSA Determination.

#### **4.8 Acceptance of Access Request**

4.8.1 Where TPM agrees to provide access to Facilities or Services to the Access Seeker in accordance with TPM's RAO, TPM shall within ten (10) Business Days of such response under Section 4.5.1(b), provide the Access Seeker with two copies of the executed Access Agreement, for execution by the Access Seeker and one (1) copy of the executed confidentiality agreement returned by Access Seeker.

4.8.2 Where the Access Seeker wish to negotiate an Access Agreement, the Operators shall comply with the requirements in Sections 5.4.1, 5.4.2, 5.4.3, and 5.4.4 of the MSA Determination in negotiating and concluding an Access Agreement.

4.8.3 Under section 5.4.4 of the MSA Determination, 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.

4.8.4 TPM will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to gain access to the requested Facility or Service until:

- (a) a Security Sum, if required by TPM, has been provided in accordance with Section 4.1 and 4.3; and
- (b) an Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with section 150 of the Act.

## 4.9 Negotiations on Access Request

- 4.9.1 Pursuant to Section 4.8.2, where the Access Seeker wish to negotiate an Access Agreement, TPM will set out in its response to the Access Seeker:
- (a) the names of personnel of TPM's representatives in the negotiations and in respect of those personnel:
    - i. his or her contact details;
    - ii. his or her job title; and
    - iii. details of his or her availability for the access negotiations;
  - (b) the identity of the negotiating team leader, and TPM shall ensure that the negotiating team leader shall have authority to make binding representations on behalf of TPM in relation to matters arising from the negotiations;
  - (c) the information which is reasonably required from the Access Seeker for the purposes of negotiations;
  - (d) a date and time not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which TPM's representatives will be available for the initial meeting with the representatives of the Access Seeker.
  - (e) One copy of the executed Confidentiality Agreement (in accordance with Section 4.1.3 (h)) that has also been properly executed by the Operators.

## CHAPTER 5 - ACCESS AGREEMENT

5.1 **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.

5.2 **Termination circumstances:** Subject to subsection 5.5 of this RAO an Access Provider may only terminate an Access Agreement if any of the circumstances referred to in paragraphs 5.2(a), 5.2(b) or 5.2(c) of this RAO apply, and the Access Provider has notified the Access Seeker that it will terminate where:

- (a) the Access Seeker has materially breached the Access Agreement and not remedied the breach within one (1) month of receiving a notice from the Access Provider to that effect;
- (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 5.2 is in addition to the notice required under subsection 5.5 of this RAO.

5.3 **Change in law:** Where continued operation of an Access Agreement or access to any Network, Facilities and/or services provided under it is or will be unlawful (as 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.

5.4 **Suspension:** Subject to subsection 5.5 of this RAO, an Access Provider may only suspend access to any Facilities and/or Services in the following circumstances:

- (a) the Access Seeker's facilities materially and adversely affect the normal operation of the Access Provider's Network, or are a material threat to any person's safety;
- (b) the Access Seeker's facilities or the supply of services pose an imminent threat to life or property of the Access Provider, its employees or contractors;
- (c) the Access Seekers 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 Schedule B of this RAO (and subject to any right that the Access Seeker has under Schedule B of this RAO to dispute any amount in an invoice);
- (e) where the Access Seeker has failed to provide the new security amount as required under subsections 5.3.9 of the MSA Determination;
- (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 5.4, 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 5.4 is in addition to the notice required under subsection 5.5 of this RAO.

5.5 **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.

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

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

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

5.9 **Deposits and guarantees:** Notwithstanding the obligations in subsection 5.8 of this RAO, the Access Provider shall:

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

## **CHAPTER 6 – Notices**

6.1 Any communications in respect of TPM’s RAO should be made in writing to:

Attention : TPM IT Sdn Bhd  
Address : Level 2, Enterprise 4  
Technology Park Malaysia  
Lebuhraya Sg Besi – Puchong  
Bukit Jalil  
57000 Kuala Lumpur, Malaysia

Telephone : 03-8996 8166  
Facsimile : 03-8998 1964

## SCHEDULE A

### FORECASTING, ORDERING AND PROVISIONING DECOMMISSIONING OF OBLIGATIONS

#### 1. FORECASTING OBLIGATIONS

- 1.1 **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.
- 1.2 **Confirmation of Forecast:** If an Access Provider, acting reasonably will incur significant costs to ensure that access can be provided in accordance with a Forecast (for example, because it will need to proactively augment its Network to provide access within the requested timeframes), the Access Provider may request the Access Seeker to confirm the relevant Forecast. Once confirmed, the Forecast is deemed to be an Order for the purposes of this RAO, and subsection 2.0 of this RAO will apply.
- 1.3 **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 1.0 of this RAO as part of an Access Provider and Access Seeker will be bound by the terms of that alternative procedure and not subsection 1.0 of this RAO.
- 1.4 **Non-binding:** Subject to subsection 1.2 of this RAO, 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 1.15 of this RAO.
- 1.5 **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 RAO, which shall be the shorter of the period set out in the relevant Service Specific Obligations and the length of time after which the Access Provider provides itself 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).
- 1.6 **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 the RAO; or
  - b) any information that identifies or would enable the identification of Customers or particular services of the Access Seeker.
- 1.7 **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.
- 1.8 **Use of Forecast Information:** Forecast Information provided by 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, and
  - b) that part of the network engineering group of the Access Provider responsible for interconnection or access;
- for the purposes 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.
- 1.9 **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 1.8 of this RAO if;

- a) the Forecast Information of the Access Seeker is aggregated with Forecast provided by other Operators and the Access Provider's own requirements (so as to protect the confidentiality of the Forecast Information); and
  - b) the Forecast Information or its use does not otherwise identify the Access Seeker, its services or its Customers in any manner.
- 1.10 **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 1.11 (a) to 1.11 (d) of this RAO.
- 1.11 **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 2.6.4 and 2.6.5 of Schedule A of this RAO, the amount of capacity in the Facilities and/or Services that the Access Provider currently has available and can reasonably provision for the Access Seeker over the Forecast period, which must be at least equivalent to that which the Access Provider can reasonably provision for itself.
- 1.12 **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 1.11 of this RAO, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Forecast; and

- ii. an offer to meet within five (5) Business Days of the Rejection Notice of the Forecast to discuss the reason 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.
- 1.13 **Reconsideration by Access Seeker:** The Access Provider must allow an Access Seeker to reconsider its Forecast following a Rejection Notice and allow the Access Seeker, within twenty-one (21) Business Days of receipt of a Rejection Notice, either:
- a) to confirm its rejected Forecast, and explain why the Access Seeker considers that the Access Provider is obliged to accept the Forecast under this RAO; or
  - b) to submit a new Forecast which the Access Seeker regards as meeting the Access Provider's concerns.
- 1.14 **Reconsideration by Access Provider:** The Access Provider shall reconsider any re-submitted or amended Forecast provided pursuant to subsection 5.6.14 of this RAO and subsection 1.10 to 1.12 of this RAO shall re-apply.
- 1.15 **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 1.15 (b) above.
- 1.16 **Meeting Forecasts:** Subject to subsections 1.10 to 1.12 of this RAO, 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 1.2 of this RAO, it will be binding on the Access Seeker.

## 2. ORDERING AND PROVISIONING OBLIGATIONS

### 2.1 Ordering Contact and Information

#### 2.1.1 The Access Seeker must submit all Orders to TPM at the following address:

Attention : TPM IT Sdn Bhd  
Address : Level 2, Enterprise 4  
Technology Park Malaysia  
Lebuhraya Sg Besi – Puchong  
Bukit Jalil

57000 Kuala Lumpur, Malaysia

Telephone : 03-8996 8166

Facsimile : 03-8998 1964

2.1.2 The Order must be in the form specified by TPM and must contain the following information:

- (a) Facilities or Services to which access is requested;
- (b) The location of the points of delivery of the Facilities or Service requested (**“Delivery Points”**);
- (c) A requested time for fulfilment of the Order (**“Requested Delivery Date”**);
- (d) Information on the Access Seeker’s Equipment to be used in connection with the Order; and
- (e) Such other information that TPM reasonably requires to provision the Order.

2.1.3 Access Seeker may use the Service Order Form in the format shown in Annexure III for the purposes of ordering Services.

## 2.2 Acknowledgement of Receipt

2.2.1 Within 2 Business Days of receipt of an Order, TPM must issue a Notice of Receipt which contains the following information:-

- (a) the time and date of receipt of the Order;
- (b) a list of any additional information reasonably required by TPM 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, TPM 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; and
- (d) the position of the Order in the Access Provider’s queue.

## 2.3 Use of Ordering Information

2.3.1 Ordering Information provided by the Access Seeker is Confidentiality Information belonging to the Access Seeker and may be used only by those persons within TPM whose role is:

- (a) within TPM’s group for the purpose of provisioning an Order; and
- (b) for network planning and engineering purposes.

## 2.4 Further Information

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

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

## 2.5 Respond to an Order

2.5.1 TPM shall indicate whether it accepts or rejects an Order within:

- (a) ten (10) Business Days of the Order Date; or
- (b) if a Service Qualification as described in sub-clause 1.7 below is performed in respect of that Order - fourteen (14) Business Days of the Order Date plus the period for completing the Service Qualification.

2.5.2 TPM may reject an Order where:

- (a) it is not technically feasible to provide access to the Services requested by the Access Seeker;
- (b) TPM has insufficient capacity to provide the requested Services;
- (c) the Order duplicated an Order awaiting fulfilment;
- (d) the Access Seeker has not obtained from TPM the necessary related agreements;
- (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 this Access Agreement, including;
- (g) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Services, to protect:
  - (i) the integrity of a Network; or
  - (ii) the safety of the individuals working on, or using Facilities or Services supplied by means of a network or Equipment.

2.5.3 If the Order is accepted, TPM must specify in its Notice of Acceptance:

- (a) an indicative date when the Services requested in the Order will be ready to be provided ("Indicative Fulfillment Date"), subject to the Order being confirmed by the Access Seeker and any Indicative Fulfillment Date as

confirmed by the Access Seeker shall be the Agreed Ready For Service Date;

- (b) the date when civil works (if any) are intended to commence;
- (c) an estimate of the Charges for fulfilling the Order;
- (d) such information as is reasonably necessary for the Access Seeker to benefit from access to the Service; and
- (e) a validity period of 90 days after acceptance for the Access Seeker to confirm the Order.

2.5.4 The Indicative Fulfilment Date must be:

- (a) the Requested Delivery Date; or
- (b) if that date cannot be met, a date that is within 10 Business Days from the date of Access Seeker confirmed the Order.

2.5.5 Access Seeker's Confirmation:

- (a) The Access Seeker's confirmation of an Order is not required if TPM accepts the Order without change. A change may include circumstances where delivery dates are delayed, estimated charges are exceeded, or any other matter that requires further information from the Access Seeker before TPM can proceed with the Order.
- (b) where the Access Seeker's confirmation is required for TPM to proceed with fulfilling an Order as provided for 2.5.5 (a) above, TPM shall permit the Access Seeker to provide its confirmation within three (3) months from the Notice of Acceptance and shall not provision the Order until the confirmation is received. Upon receipt of such confirmation, the Access Provider shall fulfil the Order in accordance with the Notice of Acceptance.

2.5.6 If the Order is rejected, TPM will notify the Access Seeker in writing:

- (a) specifying the grounds on which the Order is rejected at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection; and to make its own reassessment of the Order; and
- (b) offer to meet the Access Seeker within 5 Business Days of notice of the rejection to discuss the reasons for the rejection and alternatives available to the Access Seeker.

2.5.7 **Estimated charges:** If the Notice of Acceptance provided by TPM contains estimates of charges (e.g. based on time and materials):

- (a) TPM 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) TPM shall permit the Access Seeker to withdraw the Order without penalty within ten (10) Business Days of the notice given by TPM under paragraph 2.5.7(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 TPM exceeds an estimate or revised estimate for a specific scope of work provided by TPM 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 TPM for the actual cost incurred (but in no other circumstances); and
- (d) TPM 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 2.5.3(e) or the Access Seeker withdraws the Order according to para 2.5.7(b) of this RAO, as applicable.

## 2.6 Accept and Fulfilling Orders

2.6.1 TPM will use reasonable efforts to accept and fulfill Orders that are in excess of agreed Forecast levels where:

- (a) there is available capacity after meeting the Forecast requirements of other Operators or TPM's own Forecast requirements; or
- (b) TPM can readily increase or upgrade existing capacity.

2.6.2 If there is available capacity or capacity can be increased or upgraded readily, TPM will allocate that capacity on a non-discriminatory basis to meet:

- (a) its own requirements; and
- (b) requirements of Access Seeker including those of other Operators.

2.6.3 Having regard to its obligations under Assessment of Access Request in Chapter 4 of TPM's RAO, TPM is not required to fulfil Orders that are in excess of contractual requirements where this would materially degrade the quality of Services provided by TPM to other Operators and to itself.

2.6.4 **Constrained capacity:** If TPM reasonably believes that the capacity in any Facilities and/or Services required by:

- (a) the Access Seeker pursuant to the relevant Forecast and/or Orders;

- (b) other Access Seekers, pursuant to their relevant Forecast 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 TPM will be in a position to be able to provide, TPM must give notice of such belief to all Access Seekers to whom relevant capacity is supplied, and allocate the available capacity between itself, the Access Seeker and other Access Seekers in accordance with TPM's Capacity Allocation Policy.

**2.6.5 Capacity Allocation Policy:** If TPM claims or is likely to claim that it has insufficient capacity to meet an Access Seeker's Forecasts or Orders, TPM 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 TPM 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 TPM 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 TPM'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 TPM's general duty of non-discrimination in accordance with subsection 149(2) of the Act;
  - iii. treat the requirement of all Access Seekers on an equivalent basis to the requirements of TPM'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 TPM's plans to expand their capacity over time (if any), where such information must be provided to Access Seekers on a non-discriminatory basis in terms of its content and frequency of updates.

**2.6.6 Capacity Allocation Policy:** In addition to subsection 2.6.5 of this RAO, 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 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.

## 2.7 Cancellation and Variation of Orders

- 2.7.1 If an Order is cancelled or varied by Access Seeker at any time, TPM may ask the Access Seeker to pay any costs reasonably incurred by TPM in respect of the Order, and the cost which the Access Seeker is required to pay shall not exceed the lesser of the following amounts:
- (a) the sum of costs necessarily incurred by the Access Provider which is directly attributable to the cancellation or variation; or
  - (b) an amount equal to the sum of charges that would have been payable by the Access Seeker in the six (6) months immediately following the cancellation or variation had the Order not been cancelled or varied.

## 2.8 Delivery of Service

- 2.8.1 The Access Provider shall deliver the ordered Service to Access Seeker by the Agreed Ready For Service Date (as provided under subsection 2.5.3).
- 2.8.2 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 shall advise the Access Seeker and, if requested by the Access Seeker, deliver access to the relevant Facilities or Services or both at the earlier delivery date. Rental charges shall commence on the earlier delivery date.

- 2.8.3 If Access Seeker defers an Agreed Ready For Service Date, Access Seeker shall be liable to any cost incurred by Access Provider in relation thereto.
- 2.8.4 If Access Seeker is not able to use the Facilities or Services on the Agreed Ready For Service Date not due to Access Provider's fault, the Facilities or Services are deemed provided and Access Seeker shall be subject to the rental charges commencing from the Agreed Ready For Service Date.
- 2.8.5 If there occurs a delay to the delivery date caused by the Access Provider, the Access Provider shall:
- (a) notify the Access Seeker of the delay and the revised 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 to cancel the Order without penalty if the delay is longer than fourteen (14) days; and
  - (c) extend the delivery date for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date; or
  - (d) provide the Access Seeker with a remedy in accordance with subsection 2.11.
- 2.8.6 If there occurs a delay to the delivery date caused by the Access Seeker:
- (a) the Access Provider shall notify the Access Seeker of the delay to the delivery date as soon as practicable after the Access Provider becomes aware of it;
  - (b) the Access Provider and Access Seeker must work together to minimise the delay; and
  - (c) the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date.
- 2.9 Testing and Commissioning
- An Access Provider shall:
- (a) co-operate with the Access Seeker in relation to the testing and provisioning of ordered Facilities or Services or both; and
  - (b) treat an Access Seeker's testing and provisioning on an equivalent basis to that which the Access Provider treats itself.
- 2.10 Resource Charge
- 2.10.1 An Access Provider 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 Seeker to test and provide

new Facilities or Services for purpose of interconnection.

2.10.2 The Access Provider must specify the methodology and unit cost for calculating any fees under subsection 2.10.1 above.

## 2.11 Late Delivery

2.11.1 Subject to subsection 2.11.2 below, if an Access Provider fails to meet any timeframe in subsection 2.8.1 with respect to the delivery of access to Facilities or Services pursuant to an Order made in accordance with the Access Agreement except when such failure caused solely by the Access Seeker's delay Access Provider shall, without limitation to any other rights the Access Seeker may have in the Access Agreement or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring rental charges payable for the Facilities or Services prorated daily for the number of days delayed subject to a maximum sum of 1 month's rental.

2.11.2 Access Provider shall not be liable for failures or delays in meeting the Agreed Ready For Service Date or any timeframe of delivery for Services due to any of the following reasons:

- a. the Service being modified or altered in any way at Access Seeker's request;
- b. an act of God, an act of any government, an act of any third party which is beyond the Access Provider's control or any other circumstance commonly known as "force majeure";
- c. incomplete order information provided by the Access Seeker to Access Provider; or
- d. any act or omission of Access Seeker which causes or contributes to the delay or failure to meet the delivery date.

## 3.0 DECOMMISSIONING OBLIGATIONS

3.1 Decommissioning Notice: Except where TPM is required to vacate a site where a Point of Interface is located, or any other Facility and/or Service which relies on the TPM 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, TPM must provide no less than: 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 TPM use of that site.

3.2 Co-operation: TPM 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.

- 3.3 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.
- 3.4 Decommissioned Facilities and/or Services compensation: Except where decommissioning is caused by Force Majeure, TPM 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 RAO; or
  - (b) re-arranging Equipment to connect to alternative Services offered in accordance with paragraph 5.9.3 (b) of this RAO.

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## SCHEDULE B

### BILLING AND SETTLEMENT OBLIGATIONS

#### BILLING AND SETTLEMENT OBLIGATIONS

##### 1. BILLING

###### 1.1 General Principle

Unless otherwise agreed, TPM will invoice the Access Seeker in writing or in electronic form the Charges incurred in each preceding Billing Period before 15<sup>th</sup> day of the current calendar month and Access Seeker shall pay the Charges to TPM within thirty (30 days) upon receipt of such an invoice.

###### 1.2 Billing Information

Each invoice will state the charges for the Billing Period and will be accompanied by information as may be reasonably necessary for the Access Seeker to verify rates and Charges contained in the bill.

###### 1.3 Billing Error

If an operator discovers an error in an invoice, it must notify the other operator. The operator who made the error must make necessary adjustment to correct that error in the next invoice.

###### 1.4 Back Billing

Any omitted or miscalculated Charges from an invoice within one (1) month after end of the billing cycle may be included in a later invoice, provided the Charges are substantiated and the inclusion or amendment shall be made within three (3) months from the issuing of the original invoice in which the omitted or miscalculated Charges should have been included.

###### 1.5 Provisional Billing

(a) Where TPM is unable to issue an Invoice, it may issue an Invoice to an Access Seeker for a provisional amount, based on the last Invoice (**provisional invoice**). In such circumstances, TPM may invoice an Access Seeker for a provisional amount for a period of not more than three successive Billing Periods, provided the amount of the provisional Invoice is no more than the average of the most recent three Invoices. Where there have not been three (3) past Invoices for access to the relevant Services or Facilities, TPM may issue a provisional Invoice up to the full value of the amount based on the most recent Invoice. The Access Seeker shall pay the Provisional Amount by the Due Date.

The Provisional Amount will be adjusted in the next invoice or as soon as practicable but not later than sixty (60) days after the month in which the charges were incurred or such other time period as may be agreed in writing (“**Adjustment Period**”). If an adjustment is not made within the Adjustment Period, the Access Seeker shall treat the Provisional Amount as the actual invoice.

For the avoidance of doubt, “Due Date” in this subsection means the thirtieth (30<sup>th</sup>) day from the issuance of the relevant invoice.

- (b) Adjustment Period is within two (2) months from the issuance of the Professional Invoice by the Access Provider or such other time period as may be agreed in the Access Agreement where 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.

## 1.6 Currency

The Invoices shall state all Charges in Ringgit Malaysia and the Access Seeker shall make payment in Ringgit Malaysia unless otherwise agreed by the Parties.

## 2. SETTLEMENT

### 2.1 Time for Payment

The Access Seeker shall make payment for the Charges within thirty (30) days from the date of the invoice without set-off counter claims or deduction.

### 2.2 Method of Payment

The Access Seeker must pay an invoice by bank cheque or electronic funds transfer directly to the bank account of TPM.

### 2.3 Billing Disputes

In the event the Access Seeker wishes to dispute an invoice, the Access Seeker shall notify TPM in writing within thirty (30) Business Days after the date of receipt of such invoice.

The dispute notification shall provide the following information: -

- (a) the reasons for which the Access Seeker disputes the Invoice;
- (b) the amount in dispute; and
- (c) details required to identify the relevant invoice and Charges in dispute including the account number, the invoice reference number, the invoice date, the invoice amount; and the billing verification information.

#### 2.4 Withholding of Disputed Amounts

Subject to Section 2.3 Billing Disputes above, TPM will allow the Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker.

#### 2.5 Billing Dispute Resolution

Where relevant the Parties must comply with the Dispute Resolution Procedures applicable to the billing disputes in Annexure A of the Commission Determination on the Mandatory Standard on Access ("MSA") (Determination No 3 of 2016), which is reproduced below and annexed as Annexure IV.

#### 2.6 Interest

Subject to withholding of amounts being disputed in good faith in accordance to section 2.4, TPM may charge interest in any amount outstanding from the Access Seeker from time to time, in respect of that overdue sum at the rate of one percent (1%) per annum above Maybank Berhad's Base Lending Rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than sixty (60) days will bear interest at the rate of two percent (2%) per annum above Maybank Berhad's Base Lending Rate calculated from the due date until the date of receipt of the full payment by TPM.

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## SCHEDULE C

### OPERATIONS AND MAINTENANCE PERMIT OBLIGATIONS

1. Subject to availability of space, the Access Provider may permit the Access Seeker to lay cables within the premises of the Access Provider.
2. The Access Seeker shall not lay any cables for its operations, or enter the duct and manhole within the Access Provider's premises for maintenance purposes without first submitting a work permit form as prescribed by the Access Provider, including the drawing or other plans for the Access Provider's consideration and approval. The cost and expense incurred from such submission shall be borne by the Access Seeker.
3. The Access Seeker shall give the Access Provider fourteen (14) business days prior written notice of its intention to commence any work, maintenance or services at any of the manholes, risers or other areas within the premises of the Access Provider.
4. **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 - Duct & Manhole Access	No minimum term

5. The Access Provider shall, subject to there being no cause to the contrary, issue a work permit to the Access Seeker within seven (7) days from –
  - a. receipt of the notice specified in paragraph 3 above; and
  - b. receipt of an indemnity letter executed by the Access Seeker in favour of the Access Provider,whichever is the later.
6. The Access Seeker shall only commence any works, maintenance or services related to the manholes, risers and/or cabling upon receipt of the work permit, to be carried out within the periods as follows:

Week days :

Mondays – Fridays : from 6.30 pm to 6.30 am

Week ends :

Saturdays : 2.00 pm onwards

Sundays and Public Holidays : full day until 6.30 am the following Monday or the next day

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## ANNEXURE I

### LIST AND DESCRIPTION OF FACILITIES AND SERVICES

#### A. LIST OF FACILITIES AND SERVICES

##### 1. General

1.1 Section A of Annexure I sets out the list of Facilities and Services which may be provided by TPM to the Access Seeker.

1.2 The following tabulates the Facilities and Services provided by TPM.

##### **“Ducting and Manhole Services”**

1.3 TPM reserves the right to amend the Facilities/Services listed herein by adding, removing or altering the Facilities/Service.

#### B. SERVICE DESCRIPTION

##### B.1 DUCT AND MANHOLE ACCESS SERVICES

##### 1. General

1.1 Section **B.1 of Annexure I** sets out the terms and conditions which are applicable to Duct and Manhole Access Service.

1.2 Duct and Manhole Access is a Facility and/or Service which comprises the provision of physical access to:

- (a) Lead-In Ducts and associated manholes
- (b) Mainline Ducts and associated manholes in areas in which TPM has exclusive rights to develop or maintain duct and manhole infrastructure, whether or not in combination with other Facilities and Services.
- (c) Sub-ducts where there is no room for the Access Seeker to install its own sub-ducts.

## 2. Provision of Duct and Manhole Services

- 2.1 Subject to the Access Seeker complying with the Ordering and Provisioning Obligations in **Schedule A**, TPM will provide in accordance with the terms and conditions of this Access Agreement and the applicable Schedules and Annexure herein, Duct and Manhole Services requested by the Access Seeker.
- 2.2 Provision of physical access includes the provision of
- (a) Space at specified network facilities to enable an Access Seeker to install and maintain its own lines, equipment and sub-ducts;
  - (b) Access for the nominated personnel of the Access Seeker;
  - (c) immediate physical access to Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
  - (d) 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.
- 2.3 **Forecasts:** In accordance with subsection 5.6.6 of the MSA Determination 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.
- 2.4 **Billing Cycle:** For the purposes of subsection 5.11.3 of the MSA Determination 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.
- 2.5 The Access Seeker shall provide TPM reasonable access to its premises when TPM reasonably requires it for the purpose of installing, maintaining, modifying or removing Equipment related to the provision of Duct and Manhole Services by TPM.
- 2.6 TPM shall ensure that the Duct and Manhole Access conform to the QOS Standards and Technical Specifications, subject to the Access Seeker's use of those Duct and Manhole Access in accordance with the Technical Specifications and other agreed requirements.

- 2.7 The Access Seeker will pay to TPM for Duct and Manhole Access stated in **Section B.1 of Annexure I** provided by TPM, Charges in accordance with the applicable provisions set out in **Annexure II**.
- 2.8 **Nominated Personnel:** The employees and/or contractors nominated by the Access Seeker under subsection 2.2(b) of this **Annexure I** will be reasonable having regard to:
- (a) the position of each person and the number of persons nominated; and
  - (b) the positions of each 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.
- 2.9 **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.
- 2.10 **Joint survey:** For the purposes of subsection 5.7.8 of the MSA Determination subject to the timeframe specified under subsection 5.7.9 of the MSA Determination 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.
- 2.11 **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.
- 2.12 The Access Provider's processes and procedures for Duct and Manhole Access shall:
- (a) not be intentionally designed to deny or have the effect of denying or the Access Seeker's access to Ducts and Manholes;

- (b) 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
  - (c) 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.
- 2.13 Ground for refusal: In addition to the grounds for refusal in subsection 5.4.11 of the MSA Determination and subsection 4.6.1 of this RAO, 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 the MSA Determination.
- 2.14 For clarification of section 2.13 above, if Access Provider refuses an Access Request, it must notify the Commission within 5 Business Days of that refusal together with an explanation of its reasons for refusal which may include any or a combination of the following:
- (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 compensated the Access Provider for the original supply of access to Facilities and/or Service 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 the 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.

### **3. Pre-Requisites for applying Duct and Manhole Access**

- 3.1 TPM shall not be obliged to provide to the Access Seeker the Duct and Manhole Access unless:
- (a) TPM:
    - (i) is the owner of the Duct and Manhole; or
    - (ii) has exclusive rights of use of the Duct and Manhole pursuant to a lease or tenancy agreement with the owner of the Duct and Manhole and TPM has been granted the requisite approval by the owner of the said Duct and Manhole to permit the Access Seeker to use the Duct and Manhole;
  - (b) the Access Seeker has the appropriate license under the Act and its subsidiary legislation to operate the service and other approvals from relevant authorities, where required;
  - (c) there is sufficient space; and
  - (d) the Technical Proposal from the Access Seeker has been accepted by TPM.

### **4. Duration of Duct and Manhole Access**

- 4.1 Duct and Manhole Access agreed between the Operators, shall be for a fixed period of three (3) years unless a lesser period is stipulated by TPM (where TPM's right to use the Duct and Manhole is less than three (3) years) and may be further renewed subject to the mutual agreement of the Operators. The Access Seeker shall within six (6) months prior to the expiry of the term of Duct and Manhole notify TPM in writing as to whether or not it wishes to renew the term of the Duct and Manhole Access.
- 4.2 The term of the Duct and Manhole Access shall commence on the date ("Start Date"):
- (a) TPM makes available for physical possession the Duct and Manhole space in accordance with the agreed specifications in the Technical Proposal and the TPM has notified the Access Seeker in writing of the same; or
  - (b) the Access Seeker takes physical possession of the Duct and Manhole, whichever is the earlier.

### **5. Use of Duct and Manhole**

- 5.1 The Access Seeker shall only use the Duct and Manhole for the sole purpose of providing Communication Services and shall not do or permit to be done any act or thing which is illegal or may become a nuisance or give reasonable cause for complaint from TPM, or owner or any of the other access seekers.
- 5.2 The Access Seeker shall not sub-let the Duct and Manhole without the prior written approval of TPM.

- 5.3 TPM shall not be responsible for any damage to the Access Seeker's equipment, system and/or devices in the Duct and Manhole caused by fire, water leakage, air-conditioning/mechanical ventilation failure, power fluctuation/interruption and/or by any other causes or reasons.

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## ANNEXURE II

### CHARGES

#### CHARGES FOR DUCT AND MANHOLE ACCESS

##### 1. General

- 1.1 These Sections in Annexure II sets out the type of Charges for the Facilities and Services provided by TPM to the Access Seeker.

##### 2. Type Of Charges

- 2.1 In consideration of the TPM's obligations in the provision of the Facilities and Services in the Access Agreement Access Seeker shall pay to TPM the following Charges:

- (a) a monthly charge of RM1,000.00 based on per cable (point-to-point) basis regardless of length, for the existing cables of the Access Seeker; and
- (b) a monthly charge of RM1,000.00 based on per cable (point-to-point) basis regardless of length, for each and every cable to be installed by Access Seeker.

(Hereinafter items (a) and (b) above shall be collectively referred to as "the Charges").

- 2.2 TPM shall issue its invoice for the Charges incurred for the preceding month before 15<sup>th</sup> day of the current calendar month and Access Seeker hereby agrees to pay the Charges to TPM within thirty (30 days) upon receipt of such an invoice.

- 2.3 In the event Access seeker fails to pay the Charges within thirty (30) days upon receipt of the invoice as stipulated under clause 2 above (whether the same shall have been formally demanded or not) Access Seeker shall pay the penalty at the rate of one percent (1%) per annum above Maybank Berhad's Base Lending Rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than sixty (60) days will bear interest at the rate of two percent (2%) per annum above Maybank Berhad's Base Lending Rate calculated from the due date until the date of receipt of the full payment by TPM.

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**ANNEXURE III**  
**SERVICE ORDER FORM**

## ANNEXURE IV

### DISPUTE RESOLUTION PROCEDURE AS PROVIDED UNDER ANNEXURE "A" OF THE M.S.A. DETERMINATIONS

#### 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) 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 section 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. Use of Technical Expert

- 5.1 A Dispute will only be referred to a Technical Expert if the provisions of section 5 of this Annexure have been complied with.
- 5.2 Once a Dispute is referred to a Technical Expert, it may not be referred back to a working group or ISG.
- 5.3 The person to whom a technical dispute may be referred under this section 5:
- (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").**

- 5.4 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.
- 5.5 When replying 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.
- 5.6 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 within fifteen (15) Business Days of the last written submission.

- 5.7 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.
- 5.8 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.
- 5.9 The Technical Expert will not have the power to appoint any other experts.
- 5.10 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.
- 5.11 Every Dispute referred to a Technical Expert will be considered separately so that time limits for each Dispute are complied with.
- 5.12 The Technical Expert's decision will be binding on the Parties (in the absence of manifest error of fact or law).

## 6. Billing Dispute resolution

- 6.1 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.
- 6.2 An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if: 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 Notices specifies the information in accordance with subsection 6.4 of this Annexure.

- 6.3 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 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 other error in respect of the recording of the calls or calculation of the charges which are the subject of the Billing Dispute.
- 6.4 A Billing Dispute Notice given under this section 6 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 chargers 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.
- 6.5 The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with subsection 5.11.11 of the Standard. If the Billing Dispute is resolved against the Invoiced Party, that the Invoiced Party shall be required to pay interest at the rate specified in subsection 5.11.15 of the Standard on the amount payable.
- 6.6 Where the Invoiced Party has paid an amount and subsequently notified 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 the 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.
- 6.7 The parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this section 6.
- 6.8 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 the 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.

- 6.9 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.
- 6.10 Once the negotiation period under subsection 6.8 of this Annexure (including any extension agreed) and any suspension period under subsection 6.9 of this Annexure have expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection 6.11 of this Annexure ("**Billing Dispute Escalation Procedure**").
- 6.11 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection 6.11 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 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.
- 6.12 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.
- 6.13 Although it shall be the good faith intention of the parties to use the above Billing Disputes 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.
- 6.14 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 investigations, 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 conducted.

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

- 6.15 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.
- 6.16 Either party may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 6.17 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.