



COMMUNICATIONS AND MULTIMEDIA ACT 1998
COMMISSION DETERMINATION ON THE
MANDATORY STANDARD ON ACCESS
DETERMINATION No. 2 of 2003

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

Citation and commencement

1. This Determination may be cited as the **Commission Determination on the Mandatory Standard on Access, Determination No. 2 of 2003.**
2. This Determination shall come into operation on 14 August 2003.

Interpretation

3. Any term used in this Determination shall, unless the context otherwise requires, have the same meaning as in the Act or the regulations made under it.

“Access Agreement” means an agreement entered into between Operators whereby the Access Provider provides access to an Access Seeker in accordance with the terms contained in such agreement and which shall be registered with the Commission in accordance with the CMA;

“Access List” means the list of Facilities and Services determined by the Commission under Chapter 3 of Part VI of the CMA.

“Access Provider” means:

- (a) a network facilities provider who owns or operates network facilities listed in the Access List; or

- (b) a network service provider who provides network services listed in the Access List; and
- (c) who is a licensee is as defined in the CMA.

“Access Reference Document” or “ARD” means a document of terms and conditions, as described in subsection 5.3.2 of the Standard;

“Access Request” means a request for access made by an Access Seeker under subsection 5.4 of the Standard and containing the information contained in subsection 5.4.6 of the Standard;

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

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

“Billing Period” means the period over which the supply of access to network services or Network facilities is measured for the purposes of billing as contemplated in subsection 5.14.3, which shall be no more than thirty (31) days and in accordance with the relevant calendar month, unless otherwise agreed between the parties;

“Business Day” means a day other than a Saturday and Sunday or in states where Friday is observed as the weekly holiday, Thursday and Friday or a day which is lawfully observed as a national public holiday on the same day around Malaysia;

“CLI” means calling line identification;

“CMA” means the Communications and Multimedia Act 1998 [Act 588];

“Capacity Allocation Policy” has the meaning in the subsection 5.7.32 of the Standard;

“Carrier Selection Code” or “CSC” means the short code which enables a Customer to choose the Operator whose service will be used by that Customer for an effective national or international call;

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

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

“Closed Number Area” means a set of digit(s) beginning with the trunk prefix “0” which forms the first part of a national number, and which indicates the defined geographical area within Malaysia where the Customer’s fixed number is located provided always that “082” to “086” in the state of Sarawak will be treated as one Closed Number Area and “087” to “089” in the state of Sabah will be treated as one Closed Number Area;

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

- (a) information which is or becomes part of the public domain (other than through any breach of an Access Agreement); or
- (b) information rightfully received by another person from a third person without a duty of confidentiality being owed by the other person to the third person, except where the other person has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first mentioned person; or
- (c) information which has been independently developed by another person;
- (d) information required by law or the business rules of any stock exchange to be disclosed, provided that:
 - i. the receiving Party, gives twenty-four (24) hours notice to the disclosing Party of the particulars of the required disclosure; and
 - ii. the receiving Party provides the disclosing Party with all assistance reasonably required by the disclosing Operator (at the disclosing

Party's cost) to enable the disclosing Party to take any steps available to it to prevent that disclosure or to ensure that it occurs subject to a reasonable obligation of confidence;

"Content obligations" means those obligations set out in subsection 5.5.1 of the Standard;

"Customer" means, in relation to an Operator, a person having a contractual relationship with that Operator for the provision of Services by means of that Operator's network facilities or network services or both. For avoidance of doubt Customer does not include any Operator;

"Disclosure obligations" means those obligations set out in subsection 5.3 of the Standard;

"Dispute Resolution" or "Dispute Resolution Procedures" means the procedures outlined in Annexure A of the Standard;

"Effective Date" means the date on which the Standard comes into effect as specified in Paragraph 2 of this Determination;

"Equal Access (Fixed Network) Service" has the meaning described in subsection 5.12.1 of the Standard;

"Equal Access Service" means a service which enables a Customer to choose on a call-by-call or pre-selection basis the Operator whose service will be used by that Customer for an effective national or international call;

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

"Facilities" means network facilities and/or other facilities which facilitate the provision of network services or application services, including content application services';

"Far End Handover" means the delivery of calls to a POI within the same Closed Number Area where the call is to be terminated, and in the case of a Mobile Network, the delivery of calls to a POI nearest to the location of the called number as requested by the Access Seeker or as mutually agreed between the Access Provider and the Access Seeker;

“Fixed Access Lines” means the lines permitting the Customer to connect to the Access Provider’s network facilities for the purposes of Equal Access;

“Fixed Network” means network facilities and/or network services comprising the public switched telephone network for the provision of communications;

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

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

“Forecast Request” means a request by the Access Provider for Forecast information from the Access Seeker, as described in subsection 5.6.5 of the Standard;

“Gaining Service Provider” means an Operator to whom another Operator’s Customer requests a transfer;

“Interconnection Link” means a physical link connecting the networks of two Operators;

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

“Invoice” means the invoice for amounts due in respect of the supply of network services or network facilities during a Billing Period as contemplated in subsection 5.14.1 of the Standard;

“Line Activation” means the network capability necessary to permit the Customer of one Operator to utilise the Equal Access (Fixed Network) Service of another Operator;

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

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

“Near End Handover” means the delivery of calls to a POI within the same Closed Number Area where the calling number is registered, and in the case of a Mobile Network, the delivery of calls to a POI nearest to the location of the calling number as requested by the Access Seeker or as mutually agreed between the Access Provider and the Access Seeker;

“Negotiation obligations” means those obligations set out in subsection 5.4. of the Standard;

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

“Network Change” means a change to an Operator’s Network which requires a change to be made to the other Party’s Network to allow the continuance of the end-to-end conveyance of calls across a Point of Interface;

“Network Conditioning” means the conditioning, equipping and installation of Equipment in the Access Provider’s Network to enable the provision of Services;

“New Fixed Access Lines” means the additional lines permitting Customers to connect to the Access Provider’s network facilities, as may be added from time to time;

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

“O&T Service” means an originating or terminating service in the Access List, which at the date of the Determination includes:

- (a) a Fixed Network origination service;
- (b) a Fixed Network termination service;
- (c) a Mobile Network origination service; and
- (d) a Mobile Network termination service;

“Operator” means a network facilities provider, a network services provider, an applications service provider or a content application service provider (as the context requires) who is an Access Provider or an Access Seeker (as the context requires);

“Order” means the Order which an Access Seeker must give to an Access Provider to obtain access to network services or network facilities, as described in subsection 5.7.2 of the Standard;

“Party” means the Access Seeker or Access Provider, as the context requires;

“Point of Interconnection” or “POI” means a point at or between tandem switch(es) which demarcates the Network of a network operator and the Network of an interconnecting operator (collectively referred to as the ‘interconnecting networks’) and is a point at which communication is transferred between the interconnecting networks;

“Point of Presence” or “POP” means a point at which an Access Seeker has established itself for the purpose of obtaining access to network facilities or network services and is the point at which communication is transferred between the Access Provider and the Access Seeker;

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

“Rejection Notice” means the notice of rejection made by an Access Provider in response to an Access Seeker’s Forecast as described in subsection 5.6.11 of the Standard;

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

“Relevant Change” means the proposed Network Changes referred to in subsection 5.11.2 of the Standard;

“RPI March 2001” means the Report on a Public Inquiry on Access List Determination under section 55 of the CMA;

“Services” means network services and/or other services which facilitate the provision of network services or applications services, including content applications services;

“Service Qualifications” mean a desk and field study that may be conducted under subsection 5.7 of the Standard, and includes the testing of a line to ascertain whether it could be used in response to an Access Request;

“Standard” means this Mandatory Standard on Access;

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

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

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

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

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

Mandatory Standard on Access

6. The Mandatory Standard on Access is as follows:

SECTION 1: PRELIMINARY

1.1 Structure

This Standard is divided into:

- 1.1.1 Major sections of the Standard, described as Sections (e.g. Section 1: Preliminary);
- 1.1.2 Parts within each section, described as Subsections (i.e. subsection 1.2 and subsection 1.2.1);
- 1.1.3 Paragraphs within subsections, described as Paragraphs (i.e. paragraph 1.2.3(a)).

1.2 Outline of contents of the Standard

The Sections of the Standard deal with the following issues:

- 1.2.1 Section 1 (**Preliminary**) sets out the structure and outline of the Mandatory Standard on Access.
- 1.2.2 Section 2 (**Background**) provides an introduction and background to the Standard.
- 1.2.3 Section 3 (**Scope**) sets out the scope of the Standard in terms of the Services to be covered and the persons who are subject to the Standard.
- 1.2.4 Section 4 (**General principles**) sets out the general principles applicable to access regulation in Malaysia, including principles implementing the SAO (**SAO**) contained in section 149 of the CMA.
- 1.2.5 Section 5 (**Operator access obligations**) sets out the obligations that apply to all Operators concerning various access issues. These obligations build upon the basic obligations or SAO set out in the CMA. The obligations will cover areas which include:
 - (a) Negotiation Obligations;
 - (b) Disclosure Obligations; and

- (c) Content Obligations including but not limited to:
 - i. General Obligations;
 - ii. Forecasting Obligations;
 - iii. Ordering and Provisioning Obligations;
 - iv. Network Conditioning Obligations;
 - v. Point of Interface Procedures;
 - vi. Decommissioning Obligations;
 - vii. Network Changes Obligations;
 - viii. Equal Access Obligations;
 - ix. Network Facilities Access and Co-location Obligations;
 - x. Billing and Settlement Obligations;
 - xi. Operations and Maintenance Obligations;
 - xii. Technical Obligations;
 - xiii. Term, Suspension and Termination Obligations;
 - xiv. Churn Procedures; and
 - xv. Legal Boilerplate Obligations.

- (d) Section 6 (**Standard administration and compliance**) sets out the administrative and compliance matters that are applicable to this Standard, including:
 - i. Enforcement of the Standard;
 - ii. Implementation of the Standard;
 - iii. Transitional measures; and

iv. Review of the Standard.

SECTION 2: BACKGROUND

2.1 Legislative basis for the Standard

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

2.2 **Rate Methodologies**

- 2.2.1 The Commission and predecessor regulatory bodies, have undertaken considerable work in determining rate methodologies and prices for a range of access arrangements.
- 2.2.2 The RPI March 2001 expressed that charging arrangements for relevant interconnection or access should be oriented towards cost.
- 2.2.3 Pursuant to the Ministerial Direction to Determine a Mandatory Standard on Access Pricing, Direction No.1 of 2003, the Commission issued the Commission Determination on Mandatory Standard on Access Pricing, Determination No. 1 of 2003 on 30 June 2003.

2.3 **Terms and conditions**

- 2.3.1 This Standard sets out indicative model terms and conditions concerning access. In doing so, the Commission's objective is to identify key interconnection and access issues in sufficient detail to provide meaningful guidance to parties in expeditiously and efficiently negotiating access arrangements.
- 2.3.2 This Standard does not include a precedent Access Agreement for Access Providers and Access Seekers to execute. The Commission has been concerned to avoid adopting an overly-prescriptive approach which might result in undesirable inflexibility.

SECTION 3: SCOPE

3.1 Types of Facilities and Services covered by the Standard

3.1.1 The Standard deals with access to network facilities and network services included in the Access List. The Standard aims to be sufficiently flexible to deal with change as it occurs, and includes review provisions and transitional provisions (See subsection 6.4 and subsection 6.5).

3.2 Application of the Standard

3.2.1 Any person who is a licensee as defined in the CMA and who acts in one or more of the following capacities is subject to the Standard, and in accordance with subsection 6.1.3 of this Standard, may be directed to comply with subsection 105(3) of the CMA by the Commission:

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

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

3.2.3 The Standard shall only apply in respect of the wholesale relationship between Operators in relation to access to network facilities and network services. The Commission encourages all Operators to treat the provisions of the Standard, where relevant, as guideline for any other wholesale access arrangements that may be entered into.

SECTION 4: GENERAL PRINCIPLES

4.1 Principles of Access to Network Services and Network Facilities on the Access List

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

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

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

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

- (a) supply of the relevant listed network facilities or network services would not be reasonable (see subsection 4.1.3); or
- (b) supply of the relevant listed network facilities or network services would be reasonable, but the terms and conditions requested by the Access Seeker are not reasonable (see subsection 4.1.4).

4.1.3 **Unreasonable request:** Although not prescribed by the CMA, a request for access to a listed network facilities or network services may not be reasonable if one or more of the criteria in subsection 5.4.11 of the Standard are satisfied.

For clarification, the Standard does not intend or attempt to narrow the grounds of refusal upon which a Party may rely under the CMA.

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

4.1.5 **Non-discrimination:** As required by subsection 149(2) of the CMA, an Access Provider must provide access to those network facilities or network services specified in the Access List, and such access must be:

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

4.1.6 **Meaning of non-discriminatory:** For the purposes of this Standard, the term "non-discriminatory" requires comparison of:

- (a) the basis on which a thing is provided by the Access Provider to an Access Seeker; with
- (b) the basis on which that thing is provided by the Access Provider to itself and to other Access Seekers who are similarly situated.

4.2 APPLICATION OF NON-DISCRIMINATION PRINCIPLE

4.2.1 **Examples:** The non-discrimination principle contained in subsection 149(2) of the CMA applies to, amongst other things:

- (a) processing of applications for access;
- (b) acceptance or refusal of Access Requests;
- (c) provisioning of network services or network facilities;
- (d) allocation of constrained capacity;
- (e) fault reporting and fault rectification;
- (f) network conditioning;
- (g) allocation of space at exchanges; and
- (h) the purpose or use for which access is provided.

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

4.3 **CUSTOMER PRINCIPLES**

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

4.3.2 **Customer relationship principles:**

- (a) A Customer will be regarded as a Customer of an Operator when the Customer utilises a Service provided to that Customer by the Operator.
- (b) The same person may be a Customer of more than one Operator:
 - i. in respect of the same or different Services provided by different Operators; or
 - ii. because the Customer is directly connected to one Operator's network facilities but utilises Services provided by another Operator.
- (c) The supply by an Operator to another Operator, which the latter Operator then utilises in providing Services to its Customers, does not mean that those Customers are also Customers of the first-mentioned Operator.
- (d) For the avoidance of doubt, the Operators acknowledge that each Operator will be responsible for billing its own Customers, unless express agreement to the contrary is made by the Access Provider and the Access Seeker. An agreement to the contrary may include, without limitation:
 - i. the Access Provider billing on behalf of the Access Seeker; or
 - ii. the Access Provider in its own right billing the Customer of the Access Seeker and making a separate payment to the Access Seeker.

SECTION 5: DISCLOSURE, NEGOTIATION AND CONTENT OBLIGATIONS

5.1 SCOPE

5.1.1 This section 5 imposes obligations on all network facilities providers and/or network service providers who are required to provide network facilities and/or network services on the Access List under section 149 of the CMA.

5.2 APPLICABLE OBLIGATIONS

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

- (a) Disclosure Obligations (outlined in subsection 5.3), comprising obligations to:
 - i. prepare and maintain an Access Reference Document;
 - ii. make the Access Reference Document available;
 - iii. follow prescribed procedures after acceptance of the Access Reference Document; and
 - iv. follow prescribed procedures for amendment of the Access Reference Document.
- (b) Negotiation Obligations (outlined in subsection 5.4), comprising obligations to:
 - i. negotiate in good faith;
 - ii. observe a duty of confidentiality;
 - iii. observe relevant Intellectual Property rights; and
 - iv. conform to applicable timetabling obligations.
- (c) Content Obligations (outlined in subsections 5.5 to 5.19), which include:

- i. Forecasting obligations;
- ii. Ordering and provisioning obligations;
- iii. Network conditioning obligations;
- iv. Point of Interface procedures;
- v. Decommissioning obligations;
- vi. Network Changes obligations;
- vii. Equal access obligations;
- viii. Network facilities access and co-location obligations;
- ix. Billing and settlement obligations
- x. Operations and maintenance obligations;
- xi. Technical obligations;
- xii. Term, suspension and termination obligations;
- xiii. Churn obligations; and
- xiv. Legal boilerplate obligations.

5.3 DISCLOSURE OBLIGATIONS

5.3.1 **General duty:** All Operators shall, subject to the provisions of this Standard and the terms and conditions of any confidentiality agreement entered into pursuant to subsection 5.3.7, provide, in response to a request in good faith from any other Operator, any information which is reasonably necessary for the negotiation, conclusion and implementation of the provision of access as contemplated in this Standard and in the CMA. No Operator may enter into any contract which would prevent it from making information available to other Operators unless such contract permits the Operator to do so if directed by the Commission.

5.3.2 **ARD:** No later than **30 November 2003**, each Access Provider shall prepare and maintain an ARD in relation to network facilities or network services on the Access List which that Access Provider 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 Standard; and
- (b) does not include terms and conditions which are inconsistent with the rights and obligations set out in the Standard.

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

- (a) refuse to negotiate an agreement with an Access Seeker, whether the access sought is based on an Access Reference Document or otherwise; or
- (b) refuse to provide information required under this subsection 5.3 on the basis that the Access Seeker wishes to negotiate an agreement, whether the access sought is based on an ARD or otherwise.

5.3.4 **Availability:** Each Access Provider shall ensure that an ARD prepared by it shall:

- (a) be in writing (which includes legible electronic format);
- (b) contain all information required to be included under this subsection 5.3;

- (c) be accurate;
- (d) be modular, so that details about the terms and conditions of access to individual network services and network facilities is available separately from the terms and conditions of access to other network services and network facilities under an ARD;
- (e) be consistent with:
 - i. the CMA;
 - ii. this Standard; and
 - iii. any applicable decision or Determination of the Commission; and
- (f) be made available to an Access Seeker on request in paper form at the Operator's principal place of business in Malaysia and on a publicly accessible website.

For clarification, prior to provision of an ARD to an Access Seeker, the Access Provider may request the Access Seeker to enter into a confidentiality agreement in accordance with subsection 5.3.7.

5.3.5 Amendment: If an Access Provider amends an ARD, that Access Provider must, within ten (10) Business Days of those amendments being made, provide a copy of the amendments, or an amended copy of the relevant ARD, to:

- (a) all Access Seekers who are being provided with access to network facilities and network services under the Access Provider's ARD; and
- (b) all Access Seekers who have requested an ARD within the period ninety (90) days prior to the making of such amendments, unless an Access Seeker has already indicated that it does not wish to proceed with an Access Request.

For clarification:

- i. nothing in this subsection 5.3.5 prevents an Access Seeker from initiating a dispute in relation to an amendment to an ARD made by an Access Provider under this subsection.
- ii. where the terms and conditions of an Access Agreement are not based on an ARD, an amendment to an ARD will not alter the terms of that Access Agreement;
- iii. without prejudice to an Access Seeker's right to dispute a change to an ARD, where an Access Agreement is based on an ARD, an amendment to an ARD will be deemed to alter the relevant terms and conditions of that Access Agreement. However, if the Access Seeker disputes the change to the ARD, no amendments to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favour of the Access Provider.

5.3.6 Information Disclosure: An Access Provider must provide the following information to an Access Seeker within ten (10) Business Days of receipt of a written request from that Access Seeker, to the extent that it is not provided in the Access Provider's ARD:

- (a) the Access Provider's description of each of the network services and network facilities that may be supplied by the Access Provider, such description to be consistent with the description (if applicable) of the network services and network facilities on the register of network services and network facilities included in the Access List (as maintained by the Commission pursuant to section 148 of the CMA);
- (b) the application forms required to be completed by the Access Seeker to apply for access to network facilities and network services;
- (c) subject to subsection 5.3.7, a confidentiality agreement required to be executed by the Access Seeker;
- (d) the Access Provider's current access charges for access to network facilities and network services, including individual and wholesale offerings;
- (e) details of the basis on which the Access Provider's current access charges are determined;

- (f) all relevant technical information relating to the network services or network facilities which may be the subject of the Access Request, including but not limited to any physical and logical interfaces of its Network necessary to allow the development and deployment of communications services, value-added services and communications equipment that can interconnect to, and interoperate with, that Access Provider's Network;
- (g) details of the Access Provider's provisioning cycles and any impact such cycles may have upon an Access Request by the Access Seeker (e.g. capacity constraints);
- (h) details of the Access Provider's quality of service targets and achievements in respect of the network facilities and/or network services which may be the subject of the Access Request;
- (i) any security requirements, insurance requirements and creditworthiness information required by the Access Provider under subsections 5.3.8, 5.3.9 and 5.3.10;
- (j) the Access Provider's reasons for failing to supply any of the information referred to in paragraphs (a) to (i) of this subsection 5.3.6.

Prior to the provision of information under this subsection 5.3.6, the Access Provider may request the Access Seeker to enter into a confidentiality agreement in accordance with subsection 5.3.7.

5.3.7 Confidentiality Agreement: An Access Provider's confidentiality agreement to be provided to an Access Seeker on request under subsection 5.3.4 or subsection 5.3.6, or both:

- (a) shall be reciprocal;
- (b) shall be no broader than necessary to protect the legitimate commercial interests of the Party disclosing the Confidential Information (**the disclosing Party**);
- (c) shall include provisions prohibiting the Party receiving the Confidential Information (**the receiving Party**) from disclosing information to third parties or using information other than as necessary for the purposes of assessing a request for access;

- (d) shall not prevent the disclosure of Confidential Information or other information to the Commission by the receiving Party.

5.3.8 **Security requirements:** An Access Provider shall ensure that the amount and type of any security requirements to be imposed on an Access Seeker in the Access Provider's security policy is commensurate with:

- (a) an estimate of the value of the access to network services and network facilities to be provided to the Access Seeker by the Access Provider over a ninety (90) day period;
- (b) the creditworthiness of the Access Seeker (including prior record of payment by the Access Seeker); and
- (c) security previously reasonably required by the Access Provider.

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

- (a) insurance beyond that necessary for worker's compensation, social security, employer's liability insurance and insurance within statutory limits as required by the laws of Malaysia in respect of its employees employed in connection with the work covered by the Access Agreement that may be entered into;
- (b) comprehensive general liability insurance in excess of Ringgit Malaysia 20 million for any one claim or series of claims arising out of an accident or occurrence in connection with the Access Agreement that may be entered into.

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

- (a) if the Access Provider reasonably believes that the Access Seeker may not be able to meet any liabilities that may arise under an Access Agreement with the Access Seeker;
- (b) if the creditworthiness information sought is limited to information which is publicly available (on the basis the Access Provider may

request the Access Seeker to warrant that such information is accurate); and

- (c) to the extent commensurate with an estimate of the value of the access to the network facilities and network services to be provided to the Access Seeker by the Access Provider over a ninety (90) day period.

5.4 NEGOTIATION OBLIGATIONS

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

- (a) both parties shall use their best endeavours to conclude the Access Agreement within a hundred and twenty (120) days of a written request to commence negotiations; and
- (b) if negotiations are not completed within the hundred and twenty (120) days:
 - i. the parties may jointly apply to the Commission for an extension of time to negotiate and if the extension of time is not granted by the Commission, there shall be deemed to be a dispute between the parties and the Dispute Resolution Procedures shall take effect; or
 - ii. either Party may initiate the Dispute Resolution Procedures.

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

5.4.3 **Confidentiality:** An Operator must protect from disclosure any Confidential Information provided by another Operator in the course of negotiating an Access Agreement and during the term of an Access Agreement in accordance with a confidentiality agreement prepared under subsection 5.3.7.

5.4.4 **Intellectual Property:** An Operator shall only use such Intellectual Property and information provided by another Operator for the purposes of providing access to the requested network services or network facilities. An Operator must not use such Intellectual Property or information for the development or marketing of other communication services or equipment by that Operator, its affiliates or third parties.

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

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

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

- (a) the name and contact details of the Access Seeker;
- (b) the network services or network facilities in respect of which access is sought;
- (c) whether the Access Seeker wishes to accept the ARD or to negotiate an Access Agreement;
- (d) the ready for service date(s) the Access Seeker reasonably requires;
- (e) the names of personnel the Access Seeker nominates to represent the Access Seeker in the negotiations and, in respect of each 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;
- (f) the identity of the negotiating team leader, and the Access Seeker shall ensure that the negotiating team leader shall have authority to make binding representations on behalf of the Access Seeker in relation to matters arising from the negotiations (subject to final approval from the Access Seeker's Chief Executive Officer or Board of Directors, if required by the Access Seeker);

- (g) the information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of the negotiations. The type of information which may be requested by the Access Seeker is described in, but not limited to, subsection 5.3.6;
- (h) two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the form prescribed by the Access Provider in accordance with subsection 5.3.7;
- (i) Forecasts of the capacity the Access Seeker will reasonably require, having regard to the Access Provider's disclosed provisioning cycle (as described in paragraph 5.3.6(g)), and the Forecasting procedures (as described in subsection 5.6);
- (j) the quality of service the Access Seeker requires;
- (k) relevant technical information relating to the interface Standards of the Access Seeker;
- (l) relevant information relating to the Access Seeker's Network and the functionality of its Services, to the extent that the Access Seeker is aware that such information may affect the Access Provider's Network;
- (m) creditworthiness information in accordance with the Access Provider's requirements, as set out in subsection 5.3.10;
- (n) security in accordance with the Access Provider's security requirements, as set out in subsection 5.3.8;
- (o) insurance information in accordance with the Access Provider's insurance requirements, as set out in subsection 5.3.9; and
- (p) such other information as the Access Provider may reasonably request.

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

- (a) if the Access Seeker is willing to accept an ARD from the Access Provider, the Access Provider is willing to provide access in accordance with an ARD; or
- (b) if paragraph 5.4.7(a) above does not apply, the Access Provider is willing to proceed to negotiate the Access Request; or
- (c) the Access Provider rejects the Access Request in accordance with subsection 5.4.10; or
- (d) the Access Provider requires specified additional information to make a decision on the Access Request in accordance with paragraph 5.4.7(a) or paragraph 5.4.7(b), and once that information is received from the Access Seeker, the Access Provider shall reconsider the Access Request in accordance with this subsection.

5.4.8 **ARD Response:** If the Access Provider responds that access will be provided in accordance with an ARD (as described in paragraph 5.4.7(a)), the Access Provider must, within ten (10) Business Days of such response, provide an ARD executed by the Access Provider to the Access Seeker.

5.4.9 **Negotiation response:** If the Access Provider is willing to proceed with negotiation of the Access Request (as described in paragraph 5.4.7(b)), the Access Provider must set out in such response:

- (a) the names of personnel the Access Provider nominates to represent the Access Provider in the negotiations and, in respect of each 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 the Access Provider shall ensure that the negotiating team leader shall have authority to make binding representations on behalf of the Access Provider in relation to matters arising from the negotiations (subject to final approval from the Access Provider's Chief Executive Officer, if required);

- (c) the information the Access Provider reasonably requires for the purposes of the negotiations;
- (d) a date and time, not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which the Access Provider's nominated representatives will be available for the initial meeting with representatives of the Access Seeker; and
- (e) one copy of the executed confidentiality agreement returned by the Access Seeker (in accordance with paragraph 5.4.6(h)) that has also been properly executed by the Access Provider.

5.4.10 Refusal response: If the Access Provider decides to refuse the Access Request, the Access Provider must provide the Access Seeker with a written response, setting out:

- (a) the grounds in subsection 5.4.11 on which the Access Provider is relying; and
- (b) the basis of the Access Provider's decision with sufficient particulars to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of rejection; and
- (c) a date and time, not later than seven (7) Business Days from the date of the Rejection Notice, at which representatives of the Access Provider will be available to meet with representatives of the Access Seeker for the purpose of discussing the rejection of the Access Request. At this meeting, the Access Seeker may request the Access Provider to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in 5.14.11(d), the Access Provider must identify when additional capacity is likely to be available.

5.4.11 Grounds for refusal: Without limiting any other grounds that may be relied upon under the CMA, an Access Provider shall not refuse an Access Request, except on the grounds that:

- (a) the Access Provider does not currently supply or provide access to the relevant network services or network facilities to itself or to any third parties, except where the Access Seeker compensates the Access Provider for the original supply of access to network facilities or network services to the Access Seeker;

- (b) the Access Seeker has not provided all of the information required to be provided in accordance with subsection 5.4.6 of this Standard;
- (c) it is not technically feasible to provide access to the network services or network facilities requested by the Access Seeker;
- (d) subject to this Standard, the Access Provider has insufficient capacity to provide the requested network services or network facilities;
- (e) the Access Provider has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested network services or network facilities; or
- (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 network facilities or network services.

5.4.12 **Dispute resolution:** If following the meeting between the parties required to be held pursuant to paragraph 5.4.10(c), the parties have been unable to resolve their differences about the validity of the Access Request and the Access Seeker continues to disagree with the Access Provider's rejection of the Access Request, either Party may request resolution of the dispute in accordance with the Dispute Resolution Procedures.

5.4.13 **Prior to initial meeting:** An Operator (**objecting party**) may only object to a person or persons nominated for meetings by the other Operator:

- (a) on the ground that the participation of such nominee would adversely affect the legitimate business activities of the objecting party; and
- (b) any such objection must be made as soon as reasonably practicable after receipt of the particulars of the nominee in question and, in any event, not less than five (5) Business Days prior to the agreed date of the initial meeting (pursuant to paragraph 5.4.9(d)). A written explanation of the basis of the objection must be provided by the objecting party when notifying the objection.

5.4.14 **Objection notice:** If an Operator receives notification from the other Operator of an objection under subsection 5.4.13, that receiving Operator shall ensure that the person described in subsection 5.4.13 (**the rejected representative**) does not attend the initial meeting. Each Operator shall use

its reasonable endeavours at that initial meeting to resolve the dispute over the rejected representative if the nominating Party still wishes to have that person included in its negotiating team.

5.4.15 **Initial meeting:** Unless otherwise agreed between the Operators, each Operator shall ensure that its designated representatives meet on the date notified pursuant to paragraph 5.4.9(d) and that such representatives:

- (a) agree on the target ready for service date(s);
- (b) agree a timetable for the negotiations, including milestones and dates for subsequent meetings, required to meet the agreed target ready for service date;
- (c) agree on negotiating procedures, including:
 - i. calling and chairing meetings;
 - ii. responsibility for keeping minutes of meetings;
 - iii. clearly defined pathways and timetables for escalation within each Party of matters not agreed in meetings;
 - iv. procedures for consulting and including in the negotiating process relevant experts from the staff of each of the Operators; and
 - v. procedures for preparing and exchanging position papers;
- (d) review the information requested and provided to date and identify information yet to be provided by each Operator;
- (e) identify what technical investigations, if any, need to be made and by whom such investigations should be made.

5.4.16 **Additional matters:** If an Access Seeker wishes to apply for access to network facilities or network services that are not covered by an existing Access Agreement, then the application and negotiation provisions set out above may apply to any application for such additional network facilities or network services.

5.4.17 **Good faith:** An Access Provider shall not:

- (a) refuse to negotiate terms of access not related to price for the reason that the price of access has not been agreed;
- (b) refuse to negotiate access to network services or network facilities because the Access Seeker has not agreed to acquire access to other network services or network facilities;
- (c) require an Access Seeker to enter into a confidentiality agreement the terms of which would preclude the disclosure of information requested by the Commission or required to be disclosed for the purposes of dispute resolution;
- (d) require an Access Seeker to warrant that an Access Agreement complies with all applicable laws;
- (e) refuse to include in any Access Agreement a provision permitting variation of the Access Agreement in the event of any change in rules, applicable laws or applicable regulations (including Commission decisions and Determinations);
- (f) make any negotiation conditional on the Access Seeker first obtaining any regulatory approval or consent;
- (g) intentionally mislead or coerce an Access Seeker into reaching an agreement it would not otherwise have reached;
- (h) intentionally obstruct or delay negotiations or any dispute resolution process;
- (i) fail to nominate representatives who have sufficient authority and sufficient availability to progress negotiations in a timely and efficient manner; or
- (j) fail to provide information that is necessary to conclude an Access Agreement including, without limitation:
 - i. information about the Access Provider's Network that the Access Seeker reasonably requires to identify the Network elements to which it requires access; and

- ii. information about the basis of the Determination of charges.

5.4.18 **Non-permitted Information:** Notwithstanding anything else in this Standard, an Access Provider shall not oblige an Access Seeker to provide any of the following information to the Access Provider (whether as a condition of the provision of further information or as a condition of assessing the Access Seeker's application, or at any other time):

- (a) the Access Seeker's proposed service launch date;
- (b) details of the functionality of the Access Seeker's proposed service, except to the extent that such functionality may affect the Access Provider's Network;
- (c) details of the Access Seeker's Network rollout plans, except to the extent that such rollout plans relate to ready-for-service dates requested by the Access Seeker in respect of particular Points of Interface;
- (d) details of the Access Seeker's current or proposed retail charges;
- (e) details of the Access Seeker's marketing strategy or proposed client base;
- (f) financial information relating to the Access Seeker's business, except to the extent that such information may be required pursuant to the creditworthiness requirements in subsection 5.3.10; or
- (g) details of any other supply arrangements or Access Agreements to which the Access Seeker is or may be a Party, except to the extent that such details are directly relevant to technical characteristics of the requested Access.

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

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

5.4.20 **Capacity constraints:** An Access Provider may only refuse an Access Request on the ground set out in paragraph 5.4.11(d) where the Access Provider notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is:

- (a) already carrying traffic to capacity or near full capacity; or
- (b) already reserved for future use by the Access Provider or another Access Seeker, where such future use shall commence not later than six (6) months from the date of the Access Request. If the reserved capacity is not subsequently used by the reserving Party within seven (7) months from the date of the Access Request, the Access Provider must promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access Request in accordance with this subsection 5.4; and
- (c) in the case of both paragraphs 5.4.20(a) and 5.4.20(b), the Access Provider is unable to expand capacity within the period Forecast by the Access Seeker on the Access Seeker's Access Request.

5.5 **CONTENT OBLIGATIONS: GENERAL**

5.5.1 **Content Obligations:** The Content Obligations covered in this subsection and following subsections are as follows:

- (a) General Obligations;
- (b) Forecasting Obligations;
- (c) Ordering and Provisioning Obligations;
- (d) Network Conditioning Obligations;
- (e) Point of Interface Procedures;
- (f) Decommissioning Obligations;
- (g) Network Changes Obligations;
- (h) Equal Access Obligations;
- (i) Network Facilities Access and Co-location Obligations;
- (j) Billing and Settlement Obligations;
- (k) Operations and Maintenance Obligations;
- (l) Technical Obligations;
- (m) Term, Suspension and Termination Obligations;
- (n) Churn Obligations; and
- (o) the Legal Boilerplate Obligations.

5.5.2 **General:** All Access Providers must:

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

5.5.3 **Compliance with Content Obligations:** In addition to incorporating obligations into its ARD, each Operator shall comply with the obligations set out in this subsection 5.5 and the following subsections 5.6 to 5.19.

5.6 FORECASTING OBLIGATIONS

- 5.6.1 **General:** Subject to subsections 5.6.2 and 5.6.3, an Access Provider may require, as a condition of providing access to a network facilities or network services (requested by the Access Seeker), that the Access Seeker provide Forecasts in good faith over a certain period of supply of access to network facilities or network services (as the case may be) in accordance with this subsection 5.6.
- 5.6.2 **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, the Access Provider may request the Access Seeker to confirm the relevant Forecast. Once confirmed, the Forecast is deemed to be an Order for the purposes of this Standard, and subsection 5.7 will apply.
- 5.6.3 **Alternative procedure:** An Access Provider and an Access Seeker may agree to an alternative Forecasting and Ordering procedure other than that set out in this subsection 5.6. If agreement is reached about such matters, the Access Provider and Access Seeker will be bound by the terms of that alternative procedure and not this subsection 5.6.
- 5.6.4 **Non-binding:** Subject to subsection 5.6.2, an Access Provider shall not require an Access Seeker:
- (a) to provide Forecasts that are legally binding on the Access Seeker, subject to subsection 5.6.14; or
 - (b) to provide information in its Forecast that identifies or would allow identification of Customers.
- 5.6.5 **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, the following information (**forecast information**):
- (a) the network facilities or network services or both 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 network facilities or network services; and

- ii. shall be no longer than one year, unless reasonably justified on grounds of the special Network management requirements of the relevant network facilities or network services;
- (c) the intervals or units of time to be used in making the Forecast, which shall be no longer than three (3) months unless reasonably justified on grounds of the special Network management requirements of the relevant network facilities or network services;
- (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;
- (e) the frequency with which a Forecast must be updated or further Forecast made, which shall not be more frequently than every three (3) months unless reasonably justified on grounds of the special Network management requirements of the relevant network facilities or network services; and
- (f) such other information that the Access Provider reasonably requires in order to provide access to network facilities or network services requested by the Access Seeker.

5.6.6 Forecast Provision: An Access Provider may only require an Access Seeker to provide Forecasts in accordance with a Forecast Request:

- (a) no sooner than four (4) weeks after receipt of a Forecast Request; and
- (b) until such time as the Access Provider notifies the Access Seeker in writing that it withdraws the relevant Forecast Request.

5.6.7 Use of Forecast Information: Forecast Information provided by the Access Seeker shall be treated by an Access Provider as the Confidential Information of the Access Seeker and shall only be used by the Access Provider whose role is within either:

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

- (b) that part of the Network engineering group of the Access Provider responsible for interconnection

for the purpose of responding to and planning for the Forecast. The Access Provider must maintain records that indicate which persons are provided with access to Forecast information.

5.6.8 Distribution of Forecast Information: An Access Provider may only distribute Forecast Information of an Access Seeker outside the groups of people referred to in subsection 5.6.7 if:

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

5.6.9 Time for acceptance: The Access Provider must notify the Access Seeker:

- (a) within five (5) Business Days of receiving the Forecast if the Access Provider considers that the Forecast does not comply with a Forecast Request, specifying in that notice the additional information which the Access Seeker is to provide; and
- (b) within fifteen (15) Business Days of receiving a Forecast which complies with the Forecast Request, that the Forecast is accepted.

5.6.10 Reasons for rejection: An Access Provider may only reject a Forecast where the Access Provider reasonably believes that the Forecast is inaccurate, having regard to:

- (a) total current usage of the network services or network facilities;
- (b) the current rate of growth of the Access Seeker's usage of the network services or network facilities;
- (c) the current rate of growth of total usage of the network services or network Facilities; and

- (d) subject to subsection 5.4.20, the amount of capacity in the network services or network facilities that the Access Provider currently has available and can reasonably provision over the Forecast period, which must be at least equivalent than that which the Access Provider can reasonably provision for itself.

5.6.11 **Time for rejection:** The Access Provider must give notice of any rejection to the Access Seeker:

- (a) within fifteen (15) Business Days of receipt of the relevant Forecast; and
- (b) Such notice of rejection must specify:
 - i. the grounds on which the Access Provider rejects the Forecast in accordance with subsection 5.6.10, 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 notice of rejection of the Forecast to discuss the reasons for rejection and alternative methods of compliance. The meeting shall take place between the Access Provider and Access Seeker if the offer is accepted by the Access Seeker (**Rejection Notice**).

5.6.12 **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 regards the Forecast as being reasonable; or
- (b) to submit a new Forecast which the Access Seeker regards as meeting the Access Provider's concerns.

5.6.13 **Reconsideration by Access Provider:** The Access Provider shall reconsider any amended Forecast provided pursuant to subsection 5.6.10 and subsections 5.6.9 to 5.6.11 shall re-apply.

5.6.14 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 over a six month period (including through its own usage); and
- (c) the Access Provider only recovers from the Access Seeker 75% of such costs and expenses which could not be mitigated under paragraph 5.6.14(b) above.

5.6.15 Meeting Forecasts: Subject to subsections 5.6.9 to 5.6.11, an Access Provider must meet the Forecast Requested.

5.7 ORDERING AND PROVISIONING OBLIGATIONS

5.7.1 **Contact Point:** The Access Provider shall designate a person to whom Orders for access to network services and network facilities are to be delivered and shall notify the Access Seeker of the designated person from time to time.

5.7.2 **Order content:** Prior to access being provided, an Access Provider may require an Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. An Access Provider may request an Access Seeker to provide, at a level of detail (sufficient for planning provisioning), the following information in an Order for access to network services and network facilities:

- (a) the network facilities or network services or both to which access is requested;
- (b) a requested time for delivery;
- (c) the location of the points of delivery;
- (d) Equipment of the Access Seeker to be used in connection with the Order; and
- (e) such other information that the Access Provider reasonably requires in Order for it to plan for the provision of access to the network services or network facilities as requested by the Access Seeker.

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

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

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

5.7.4 **Treatment of Orders and Service Qualifications:** An Access Provider shall give the same priority to the handling of Orders from the Access Seeker and any Service Qualifications that may be required for that Access Seeker as it gives to its own Orders and Service Qualifications and any Orders and Service Qualifications that may be required for Customers who are similarly situated to the Access Seeker in all relevant respects.

5.7.5 **Acknowledgment of receipt:** An Access Provider shall acknowledge receipt of the Order, in writing (or any other material or electronic form agreed by the parties), within two (2) Business Days of receipt of an Order from the Access Seeker.

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

- (a) the time and date of receipt;
- (b) a list of any additional information reasonably required by the Access Provider from the Access Seeker to clarify the Order; and
- (c) if the relevant network facilities or network services are below the capacity required to provide the relevant network facilities or network services, the Access Provider shall inform the Access Seeker of the available capacity and timeframe for the fulfilment of the Order.

5.7.7 **Further information:** The Access Provider shall allow the Access Seeker a period of up to fourteen (14) Business Days after a request for additional information to provide the Access Provider with such additional reasonable information that is reasonably necessary to clarify an Order.

5.7.8 **Service Qualifications:** The Access Provider shall only conduct Service Qualifications if:

- (a) the Access Provider reasonably requires information from such Service Qualifications which is not readily available; and
- (b) the Access Provider notifies the Access Seeker that such Service Qualifications are necessary within five (5) Business Days of receiving the Access Seeker's Order, or, if further information has been requested under subsection 5.7.7, within five (5) Business Days of the

expiry of the period in subsection 5.7.7, together with the reasons for such Service Qualifications.

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

5.7.9 Completion of Service Qualifications: The Access Provider shall:

- (a) complete any Service Qualification in respect of an Order within twenty-one (21) Business Days of the commencement of the Service Qualification;
- (b) inform the Access Seeker of the result of any Service Qualification within two (2) Business Days of the completion of such Service Qualification.

5.7.10 Withdrawal of Order following Service Qualifications: An Access Provider shall permit an Access Seeker to withdraw its Order without penalty within fourteen (14) days after receiving the result of a Service Qualification under subsection 5.7.9.

5.7.11 Acceptance obligation: An Access Provider must use its reasonable efforts to accept and fulfil Orders from the Access Seeker for network services and network facilities which comply with a Forecast accepted by the Access Provider pursuant to subsection 5.6.

5.7.12 Time for acceptance/rejection: The Access Provider must notify the Access Seeker within fourteen (14) days of receiving an Order that the Order is accepted or rejected, save where the Access Provider undertakes a Service Qualification as contemplated in subsection 5.7.8, in which case the time periods in subsection 5.7.9 are to be added to this fourteen (14) days period. If the Access Provider notifies the Access Seeker that an Order is rejected, the Access Provider must advise the Access Seeker if it would be able to accept the Order in a modified form.

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

- (a) the delivery date, which must be the date that is requested by the Access Seeker, or if that date cannot be met by the Access Provider,

must be no later than the indicative delivery timeframes set out in subsection 5.7.14;

- (b) the charges applicable to the fulfilment of the Order;
- (c) such information as is reasonably necessary for the Access Seeker to benefit from access to the network services or network facilities;
- (d) the validity period of the acceptance of the Order which shall be no less than ninety (90) days from the date of acceptance.

5.7.14 Indicative delivery times: For the purposes of paragraph 5.7.13(a), the following are the indicative delivery timeframes for the following aspects of a network services or network facilities:

Order type	Indicative delivery timeframes
All Orders involving the provision of new Facilities and infrastructure relevant to the Services that are the subject of the Order	8 Months
All Orders involving augmentation of capacity on existing Facilities and infrastructure relevant to the Services that are the subject of the Order	60 days

5.7.15 Access Seeker confirmation: An Access Provider shall permit an Access Seeker to confirm its agreement to proceed with the Order within the validity period of the Access Provider's acceptance of such Order (as described in paragraph 5.7.13(d)). Upon such confirmation, the Access Provider shall fulfil the Order in accordance with the notice of acceptance provided under subsection 5.7.13.

5.7.16 Estimated charges: If the notice of acceptance provided by the Access Provider under subsection 5.7.13 contains estimates of charges (e.g. based on time and materials):

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

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

- (a) subject to subsection 5.4.19, it is not technically feasible to provide access to the network services or network facilities requested by the Access Seeker;
- (b) subject to subsection 5.4.20, the Access Provider has insufficient capacity to provide the requested network services or network facilities;
- (c) subject to subsection 5.7.19, the Order is in excess of agreed Forecast levels;
- (d) the Order or variation request duplicates an Order awaiting fulfilment;
- (e) the Access Seeker has not obtained necessary related agreements from the Access Provider (e.g. Facilities access for a new Point of Interface);
- (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions of the Access Agreement; or
- (g) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the network facilities or network

services to protect the integrity of a Network; or the safety of individuals working on, or using services supplied by means of, a Network or Equipment.

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

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

5.7.19 Order in excess of Forecast: Notwithstanding paragraph 5.7.17(b), an Access Provider must use its reasonable efforts to provide sufficient capacity to enable the Access Provider to accept and fulfil Orders from an Access Seeker for network services or network facilities or both which are in excess of the relevant Forecast. The Access Provider is only required to do so if, after meeting the Forecast requirements of other Operators and of its own business units, there is available capacity or the Access Provider could readily upgrade existing capacity. The Access Provider shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirements of the Access Seeker, other Operators and its own business units. An Access Provider is not required to supply network services or network facilities or both in excess of Forecast if, despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of Forecast Services provided to other Operators or its own business – or both. For clarification when carrying out its obligations under this subsection 5.7.19, the Access Provider may have regard to its obligations under 5.4.20.

5.7.20 Required extra capacity: An Access Provider may require an Access Seeker to procure such additional capacity on the Access Seeker's side of the Network as the Access Provider, in good faith and reasonably estimates, may be required by the Access Seeker to meet demand. Where the Access Seeker fails to so procure additional capacity and the demand exceeds the capacity on the Access Seeker's Network, the Access Provider must notify

the Access Seeker in writing, and the Access Seeker and the Access Provider must meet (no later than 5 Business Days after receipt of the notice from the Access Provider) to attempt to identify alternative sources of capacity. If the matter cannot be resolved within 10 Business Days of the date of that meeting, the Access Provider may bar or block calls to the Access Seeker's Network to the extent necessary to minimise congestion within the Access Provider's Network.

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

5.7.22 **Delivery dates:** The Access Provider shall deliver the ordered access to network facilities or network services by the date specified in the notice of acceptance (as provided under subsection 5.7.13).

5.7.23 **Early Delivery Dates:** If the Access Provider, in the normal course of business, is able to offer a delivery date earlier than the delivery date that would otherwise apply, it must advise the Access Seeker and, if requested by the Access Seeker, deliver access to the relevant network services or network facilities or both at the earlier delivery date.

5.7.24 **Delayed Delivery Dates:** An Access Provider shall:

- (a) notify an Access Seeker of the delay to a delivery date 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 notified under paragraph 5.7.24(a) above to cancel the Order without penalty if the delay is longer than fourteen (14) days; and
- (c) provide the Access Seeker with a remedy in accordance with subsection 5.7.33.

5.7.25 **Cancellation and Variation of Orders:** An Access Provider shall allow an Access Seeker to cancel or vary an Order at any time.

5.7.26 **Cancellation penalty:** Except where this Standard provides that cancellation is to be at no penalty, an Access Provider shall only charge an Access Seeker which has cancelled or varied an Order no more than the costs necessarily incurred by the Access Provider in relation to the cancelled or varied Order, reduced by the level at which those costs have been or would have been (had the Access Provider used its best endeavours to do so), mitigated over a six (6) month period after the date of cancellation or variation.

5.7.27 **Testing and Provisioning:** An Access Provider shall:

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

5.7.28 **Resource Charge:** 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 a new network facilities or network services for purposes of interconnection.

5.7.29 **Queuing Policy:** An Access Provider shall establish and demonstrate and maintain a queuing policy system which:

- (a) shall be non-discriminatory;
- (b) shall treat the Orders of Access Seeker s on an equivalent basis to that which the Access Provider treats its own Orders for similar Services; and
- (c) shall seek to maximise the efficiency of its Ordering and provisioning process.

5.7.30 **Acceptance on Queue:** An Access Provider shall promptly notify an Access Seeker, at the time of providing an acknowledgment of receipt of the Order under subsection 5.7.5, of their acceptance on the Access Provider's queue.

5.7.31 **Constrained Capacity:** If an Access Provider reasonably believes that the capacity in any network services or network facilities required by:

- (a) the Access Seeker pursuant to the relevant Forecast;
- (b) other Access Seekers, pursuant to their relevant Forecasts; and
- (c) the Access Provider, for its own purposes

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

- i. notify the Access Seeker and other persons to whom relevant capacity is supplied; and
- ii. allocate the available capacity between itself, the Access Seeker and other Access Seekers in accordance with the Access Provider's Capacity Allocation Policy.

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

- (a) shall be disclosed, free of charge, to any other Operator on request;
- (b) shall set out the principles in accordance with which the Access Provider shall determine how to allocate capacity between itself (including its related bodies corporate) and other Operator or Operators, in circumstances where the amount of capacity available is less than the aggregate of capacity required by the Access Provider, its related bodies corporate and other Operator or Operators;
- (c) shall:
 - i. be fair and reasonable;

- ii. be consistent, so far as practicable, with the Access Provider's general duty of non-discrimination in accordance with subsection 149(2) of the CMA;
- iii. treat the requirements of the Access Seeker and third parties on an equivalent basis to the Access Provider's own requirements; and
- iv. allocate the available capacity in the relevant network services or network facilities or both in proportion to each Operator's Forecast requirements.

5.7.33 Late delivery: If an Access Provider fails to meet any timeframe in subsection 5.7.14 with respect to the delivery of access to network services or network facilities pursuant to an Order made in accordance with subsection 5.7, except where such failure has been caused solely by the Access Seeker's delay, that Access Provider shall, without limitation to any other rights the Access Seeker may have under subsection 5.7 or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for access to the network services or network facilities over a period equal to the period of the Access Provider's delay.

5.8 NETWORK CONDITIONING OBLIGATIONS

5.8.1 **Non-discrimination:** An Access Provider shall perform Network Conditioning on an equivalent basis to that which the Access Provider performs for itself for the same or similar Services.

5.8.2 **Impact of retail commercial arrangements:** An Access Provider must not refuse to commence or complete Network Conditioning on the basis that the commercial arrangements (other than matters required under subsection 5.8.3 of this Standard to perform Network Conditioning) are not agreed between the parties in relation to the retail service for which the Network Conditioning is to be provided.

5.8.3 **Commencement:** An Access Provider must commence Network Conditioning immediately following receipt of an Order from an Access Seeker and agreement by the Access Provider and the Access Seeker in relation to:

- (a) geographical coverage;
- (b) number information (i.e. length and code allocation);
- (c) origins from or destinations to which access is required;
- (d) Network routes (including which Operator is responsible for the provisioning of the Interconnection Links); and
- (e) handover arrangements and relevant Points of Interface.

5.8.4 **Number range activation:** Subject to subsection 5.8.5, the Access Provider shall:

- (a) use its best endeavours to activate a code or number range in its Network within ten (10) Business Days of being requested to do so by the Access Seeker; and
- (b) in all cases, activate a code or number range within thirty (30) days of being requested to do so by the Access Seeker to whom the code or number range has been allocated.

5.8.5 **Intra-Network codes and numbers:** Subsection 5.8.4 does not apply to codes or number ranges not intended for use across interconnected Networks.

5.8.6 The costs incurred in Network Conditioning shall be apportioned between the Operators as follows:

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

5.9 POINT OF INTERFACE PROCEDURES

- 5.9.1 **Interconnection:** Each Operator shall interconnect and keep its Network interconnected with the Network of another Operator in accordance with the terms of an Access Agreement with that Operator.
- 5.9.2 **Point of Interface locations:** Subject to subsection 5.9.3, each Access Provider shall publish on its website and keep updated a list of the general locations:
- (a) at which physical co-location is available;
 - (b) in respect of which virtual co-location is available; and
 - (c) in respect of which in-span interconnection is available on and from the date of publication for the following 12 months.
- 5.9.3 **Virtual and in-span interconnection:** Each Operator shall offer virtual co-location or in-span interconnection at all technically feasible points.
- 5.9.4 **Deemed Access Providers:** If an Access Seeker (referred to in this subsection 5.9.4 as the deemed Access Provider) obtains physical co-location at a Point of Interface from an Access Provider (referred to in this subsection 5.9.4 as the principal Access Provider) it shall be deemed to be an Access Provider to permit other Access Seekers to co-locate at the same place and such deemed Access Provider shall follow the same procedures in respect of permitting access as those required to be followed by the principal Access Provider in providing access. The deemed Access Provider must notify the principal Access Provider of the identity of all persons with whom it has reached co-location agreements within two (2) Business Days of reaching such agreements and must ensure that such persons comply with the relevant co-location obligations contained in subsection 5.13 of this Standard.
- 5.9.5 **Lack of space:** If there are space constraints at a particular location, an Access Provider shall take reasonable steps to optimise its usage of the space, including through the upgrading of Facilities. If the Access Provider has used its best efforts to accommodate all Access Providers and it is not physically possible for any further Access Seekers to be accommodated, the Access Provider shall be excused from providing physical interconnection at such location.

- 5.9.6 **Access Seeker requested Point of Interface:** An Access Provider shall reasonably consider a request by an Access Seeker to interconnect at a point other than that specified under subsection 5.9.2. The Access Provider shall promptly accept or reject a request by an Access Seeker under this subsection, and provide the Access Seeker with reasons if it rejects the Access Seeker's request.
- 5.9.7 **Network responsibility:** Each Operator is responsible for the provisioning and maintenance of network facilities (including those network facilities which form part of the Interconnect Links and the transmission equipment) on its side of the Point of Interface.
- 5.9.8 **Third Party Point of Interface:** An Access Provider shall permit an Access Seeker to nominate a Point of Interface of a third Party for the purposes of interconnection and access between the Access Provider and the Access Seeker provided that the Access Seeker remains responsible for the costs of such interconnection and access and for the third Party's act and omissions at the Point of Interface.
- 5.9.9 **Point of Interface factors:** When determining which locations are to be listed under subsection 5.9.2, or when determining a request under subsection 5.9.6, each Access Provider must have regard to the following:
- (a) the Access Provider shall offer (but shall not require) POI and co-location for every Closed Number Area throughout Malaysia;
 - (b) in addition to paragraph 5.9.9(a) above, the Access Provider shall offer interconnection and co-location at any other technically feasible point;
 - (c) the Access Provider may offer more than one form of interconnection in relation to a particular location (e.g. physical interconnection and virtual interconnection);
 - (d) the Access Provider shall not reserve space other than for its own current needs, its future needs (calculated by use of a reasonably projected rate of growth over two (2) years) and the needs of other Access Seekers who are currently occupying or have Ordered additional space from that Access Provider; and

- (e) any possible re-arrangement of its Equipment configuration to eliminate space inefficiencies;

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

5.10 DECOMMISSIONING OBLIGATIONS

5.10.1 **Decommissioning notice:** Except where an Access Provider is required to vacate the site where a Point of Interface is located (as a result of a third Party landlord's notice under an arm's length tenancy agreement), an Access Provider must provide no less than:

- (a) one (1) year's notice in writing to all relevant Access Seekers prior to the decommissioning of a Point of Interface; or
- (b) six (6) month's notice in writing to all relevant Access Seekers prior to the decommissioning of any other network facilities or network services.

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

5.10.2 **Co-operation:** An Access Provider must co-operate and negotiate with all relevant Access Seekers in relation to the timetable for decommissioning of the relevant Point of Interface, network facilities or network services.

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

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

proposed to be decommissioned, for a period not less than three (3) years from the date of decommissioning.

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

- (a) decommissioning any links to the Point of Interface that is proposed to be decommissioned that are rendered or will be redundant by the proposed decommissioning;
- (b) installing or otherwise procuring links between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to paragraph 5.10.3 (a); and
- (c) the carriage of traffic between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to paragraph 5.10.3 (a) for a period not less than three (3) years from the date of decommissioning.

5.10.5 Decommissioned Network Facilities/Network Service compensation: Except where decommissioning is caused by Force Majeure, an Access Provider shall pay the Access Seeker's reasonable costs, necessarily incurred in:

- (a) moving the Access Seeker's Equipment from the decommissioned network facilities to the alternative network facilities offered in accordance with subsection 5.10.3; or
- (b) re-arranging Equipment to connect to the alternative network services offered in accordance with subsection 5.10.3.

5.11 NETWORK CHANGE OBLIGATIONS

5.11.1 **Scope:** This subsection 5.11 applies where an Operator proposes to implement a Network Change of a type referred to in subsection 5.11.2 which necessitates a change in the hardware or software (including interface software) of the other Party's Network in Order to ensure the continued proper operation and compatibility of the Parties' respective Networks, services and procedures.

5.11.2 **Types of Changes:** The following kinds of proposed Network Changes may be within the scope of subsection 5.11.1:

- (a) any change by the Party proposing to make the change (**Notifying Party**) to any technical specification of the interconnection interface between their respective Networks (**Interface Change**);
- (b) any change by the Notifying Party to any technical specification or characteristic of the network services or network facilities to which the other Party (**Recipient Party**) has access which will or might affect:
 - i. the Recipient Party's Network;
 - ii. the Recipient Party's use of the network services or network facilities provided by the Notifying Party (**Service Change**);
- (c) any change by the Notifying Party to any technical specification or characteristic of that Notifying Party's Network which will or might affect the Recipient Party's Network (**Network Change**);
- (d) any change by the Notifying Party to any of the operational support systems used in intercarrier processes, including without limitation:
 - i. the billing system;
 - ii. the Ordering and provisioning systems; or
 - iii. the Customer Churn process, (**OSS Change**); and
- (e) any enhancement by the Notifying Party of the features, functions or capabilities of the network services or network facilities to which the

Recipient Party has access, which enhancement the Notifying Party proposes to make available either:

- i. to itself; or
- ii. to any other Operator (**Functionality Change**),

(collectively, **Relevant Changes**).

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

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

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

Relevant Change:	Notice period:
Interface Change	3 months
Network Change	3 months
Service Change	3 months
OSS Change	3 months
Functionality Change	3 months

5.11.4 Post-notification procedures: The Notifying Party shall:

- (a) meet with representatives of the Recipient Party on the date set out in the Change Notice or as soon as practicable thereafter (but no later than the notice period set out in the table in subsection 5.11.3), for the purpose of discussing the Relevant Change and any changes that may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Changes;
- (b) provide any additional information reasonably requested by the Recipient Party no later than ten (10) Business Days after the Recipient Party's request for such additional information; and
- (c) take reasonable account of concerns raised and proposals made by the Recipient Party to minimise any adverse impact of the Relevant Changes on the Recipient Party and revise the Change Notice accordingly.

5.11.5 Testing: A Notifying Party shall, bearing its own costs in doing so:

- (a) co-operate with a Recipient Party in relation to the development of procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Parties' respective Networks;
- (b) jointly carry out testing with the Recipient Party no less than twenty (20) Business Days before the Notifying Party proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under paragraph 5.11.5(a).

5.11.6 Testing failure: Subject to the Recipient Party having co-operated with the Notifying Party in relation to the conduct of tests under subsection 5.11.5, if such tests:

- (a) are not accepted by ten (10) Business Days prior to the date when the Notifying Party proposes to effect the Relevant Changes; or
- (b) do not provide reasonable assurance of the continued proper operation and compatibility of the Parties' respective Networks, services and procedures the Notifying Party must postpone implementation of the Relevant Changes. The period of

postponement will be the period necessary to allow the Parties to repeat the steps in subsections 5.11.3 to 5.11.5 above.

5.12 EQUAL ACCESS OBLIGATIONS

5.12.1 Scope of legislative obligation:

- (a) Equal Access (Fixed Network) Service is an interconnection service provided by means of a Fixed Network for the carriage of call communications over the voice bandwidth from Customer Equipment to a POI which allows Customer to select and use the services of a Network Operator other than the Network Operator of the Network to which the Customer is directly connected.

5.12.2 Line Activation: To enable Equal Access Services, an Access Provider shall comply with the following procedures in relation to Line Activation:

- (a) The Access Provider shall ensure that all Fixed Access Lines connected to that Access Provider's Network are Line Activated on and from the date of this Standard;
- (b) An Access Provider shall ensure that all New Fixed Access Lines connected or to be connected to that Access Provider's Network are Line Activated on and from the date the Access Provider's Services are activated over that Line;
- (c) An Access Provider shall not remove the Line Activation from a Fixed Access Line unless:
 - i. the Access Provider is also disconnecting all services over the Fixed Access Line; or
 - ii. a Customer requests, at the sole initiation of the Customer, the Line Activation to be removed.
- (d) Unless otherwise agreed, an Access Provider may not bar access to another Operator's CSC on a Fixed Access Line connected to the Access Provider's Network unless:
 - i. the Customer requests, at the sole initiation of the Customer, such barring and the Access Provider also bars access to all Equal Access Services (including access to its own Equal Access Services) over the Fixed Access Line; or

- ii. that other Operator's Network is not interconnected with the Access Provider's Network; or
- iii. in accordance with subsection 5.7.20.

If the Customer wishes to selectively bar access to another Operator's CSC, the Access Provider shall direct the Customer to that other Operator.

5.12.3 Customer Registration and Billing: An Access Provider is not obliged to, and may not (unless otherwise agreed with the other Operator):

- (a) capture calls made by persons to another Operator's Equal Access Services using the Operator's CSC for the purposes of registering that person to that Service; or
- (b) collect information necessary to bill Customers for access to another Operator's Equal Access Services; or
- (c) bar access to another Operator's Equal Access Service for whatever reason.

5.12.4 Cost: The cost of an Operator's Network upgrading for the sole purpose of permitting Equal Access shall be borne by that Operator.

5.13 NETWORK FACILITIES ACCESS AND CO-LOCATION

5.13.1 **Scope:** This subsection 5.13 applies where co-location or access is to be provided to or at Network facilities under this Standard.

5.13.2 **Inspection:** An Access Provider shall allow nominated employees or contractors of a potential Access Seeker to physically inspect a network facilities of the Access Provider during normal business hours provided that:

- (a) the Access Seeker has provided no less than five (5) Business Days notice of its request to perform a physical inspection and details of its nominees; and
- (b) the nominations made by the Access Seeker are reasonable, having regard to the position of each person and the number of persons nominated.

5.13.3 **Physical access:** An Access Provider shall allow an Access Seeker, its employees and contractors to physically access the Access Provider's network facilities and have physical control over the Access Seeker's Equipment located at such network facilities, twenty-four (24) hours a day, seven (7) days a week.

5.13.4 **Escorts:** If an Access Provider determines that it is necessary to have an escort present when employees or contractors wish to enter onto the Access Provider's property, the Access Provider shall:

- (a) make such escort service available at all times during ordinary business hours;
- (b) have such escort service on call (with no longer than a thirty (30) minute response time to attend at the Access Provider's property) outside ordinary business hours; and
- (c) bear the costs of such escort service.

5.13.5 **Absence of escort:** For the purposes of subsection 5.13.4, if an escort does not arrive at the Access Seeker's property within 30 minutes of the scheduled commencement of the visit by the Access Seeker, the Access Seeker's staff may proceed to enter the Access Provider's property without an escort.

- 5.13.6 **Site register:** The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property, which must be made available for inspection by the Access Provider, upon request.
- 5.13.7 **Reservation of space:** An Access Provider shall not reserve space other than for its own current needs, its future needs, (calculated by use of a reasonably projected rate of growth over 2 years) and the needs of other Access Seekers who are currently occupying or have ordered space from that Access Provider.
- 5.13.8 **Allocation of space:** An Access Provider shall allocate space at each location where co-location is to be permitted in a non-discriminatory way and will treat other Access Seekers as it treats itself.
- 5.13.9 **No minimum space requirements:** An Access Provider shall not impose minimum space requirements on an Access Seeker.
- 5.13.10 **Re-configuration:** If there are space constraints at a particular location, an Access Provider shall take reasonable steps to optimise its usage of the space, including through the upgrading of Facilities or endeavouring to transfer the Equipment to an alternative location.
- 5.13.11 **Advice to the Commission:** An Access Provider shall notify the Commission every twelve (12) months of its space requirements over a three (3) year period from the date of notification, together with a reconciliation of its reservation over the previous twelve (12) months with its actual space needs.
- 5.13.12 **Preparatory work by the Access Seeker:** If preparatory work is necessary for the purposes of allowing the Access Seeker to obtain access to or co-locate at or on an Access Provider's network facilities, such Access Provider shall permit the Access Seeker's employees or contractors to perform such preparatory work if the Access Seeker satisfies the Access Provider (acting reasonably and in accordance with the guidelines referred to below) that such employees or contractors have the necessary qualifications. Each Access Provider shall publish and make available a policy about the necessary qualifications of employees and contractors who will be permitted to perform preparatory work under this subsection 5.13.12, such policy to be non-discriminatory in its application to the Access Provider and the Access Seeker personnel who perform similar functions.

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

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

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

- (a) notify the relevant Access Seeker of the delay to a delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;
- (b) permit the Access Seeker notified under paragraph 5.13.14(a) to cancel the preparatory work without penalty if the delay is longer than fourteen (14) days; and
- (c) compensate the Access Seeker for the costs it has incurred as a result of delay, subject to the Access Seeker using reasonable endeavours to mitigate those costs.

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

- (a) access to roads;

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

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

5.13.17 Equipment allowance: An Access Provider shall permit an Access Seeker to locate Equipment on or at the Access Provider's network facilities which is necessary for the purposes of obtaining the benefit of access to the network services and network facilities provided in accordance with this Standard, including but not limited to multi-functional Equipment which may also be used for purposes other than those specified in this subsection 5.13.17.

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

5.13.19 Maintenance: An Access Provider shall permit, and do all things reasonably necessary to allow an Access Seeker to maintain its Equipment at or on the network facilities to which access has been granted. This may include, for example, the provision of physical access. For the purposes of this subsection 5.13.19, an Access Seeker shall be permitted to maintain its Equipment at or on the network facilities if the Access Provider allows external contractors or other third parties to maintain similar Equipment on the network facilities.

5.13.20 Extensions: The Access Provider shall reasonably permit the Access Seeker, at the Access Seeker's cost, to extend network facilities of the Access Provider as may reasonably be required to meet the Access Seeker's requirements in the circumstances and to the extent technically feasible.

5.13.21**Cost:** The utility costs in respect of the network facilities as contemplated in this section 5.13.21 shall be apportioned (in accordance with fair and equitable principles) against the utility and ancillary costs charged to other Access Seekers at the relevant location.

5.13.22**Conditional supply:** An Access Provider shall not require an Access Seeker to acquire other services or Facilities from the Access Provider as a condition of providing access to a network facilities or network services under this Standard. For example, an Access Provider shall not make access to network facilities conditional on the acquisition of network services (such as transmission services) or any other service (e.g. a maintenance service).

5.14 BILLING AND SETTLEMENT OBLIGATIONS

- 5.14.1 **Invoices:** An Access Provider shall use its best endeavours to issue to the Access Seeker an Invoice in writing or in electronic form (as requested by the Access Seeker) within thirty (30) calendar days of the end of the Billing Period for amounts due in respect of the supply of network services or network facilities during such Billing Period .
- 5.14.2 **Currency:** Unless otherwise agreed, an Access Provider shall state all Invoices in Ringgit Malaysia and payment shall be made by the Access Seeker in Ringgit Malaysia.
- 5.14.3 **Billing Cycle:** An Access Provider shall issue Invoices in monthly Billing Cycles, unless otherwise agreed with the Access Seeker.
- 5.14.4 **Billing Verification Information:** An Access Provider shall provide, with each Invoice, such information as may be reasonably necessary for the Access Seeker to verify rates and charges contained in an Invoice.
- 5.14.5 **Other Billing Information:** An Operator must provide to any Operator with which it interconnects, information within its possession that is reasonably necessary to allow the other Operator to provide accurate and timely billing services to itself, its affiliates or other Operators.
- 5.14.6 **Summarised Invoice and billing information:** An Access Provider shall provide the Access Seeker at the latter's request, Access Seeker Access Seeker with an aggregated summary of billings for access to the network services and network facilities provided to the Access Seeker, in monthly tranches.
- 5.14.7 **Billing Error:** If an Operator discovers an error in an Invoice, it must notify the Other Operator. The Operator which made the error must make necessary adjustments to correct that error in the next Invoice.
- 5.14.8 **Time for Payment:** Subject to subsection 5.14.11, an Access Provider shall allow an Access Seeker no less than thirty (31) days from the date of receipt of an Invoice for the Access Seeker to make the payment. This subsection 5.14.8 should not be construed as preventing an Access Provider from granting a discount to an Access Seeker as an incentive to make early payments.

5.14.9 **Method of Payment:** An Access Provider shall allow an Access Seeker to pay an Invoice by bank cheque or electronic funds transfer directly to an account nominated by the Access Provider.

5.14.10 **No set-off:** Unless otherwise agreed, an Access Provider may not set-off Invoices, except where the Access Seeker is in liquidation.

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

- (a) the Access Seeker notifies the Access Provider within twenty one (21) days from the date of receipt of the Invoice of such dispute; and
- (b) the Access Seeker's notification specifies the information referred to in subsection 5.14.13.

5.14.12 **Billing Disputes:** An Access Provider shall allow an Access Seeker to dispute an Invoice if:

- (a) in the case of domestic calls, the Access Seeker notifies the Access Provider within forty-five (45) days after the date of receipt of such Invoice; and
- (b) in the case of international calls, the Access Seeker notifies the Access Provider within six (6) months after the date of receipt of such Invoice

and in either case, the Access Seeker's notification specifies the information referred to in subsection 5.14.13.

5.14.13 **Billing dispute notification:** An Access Provider may require an Access Seeker to provide the following information when disputing an Invoice:

- (a) the reasons for which the Invoiced Party disputes the Invoice;
- (b) the amount in dispute; and
- (c) details required to identify the relevant Invoice and charges in dispute including:

- i. the account number;
- ii. the Invoice reference number;
- iii. the Invoice date;
- iv. the Invoice amount; and
- v. billing verification information.

5.14.14 Billing Dispute Resolution: An Access Provider and an Access Seeker must comply with the Dispute Resolution Procedures applicable to billing disputes.

5.14.15 Interest: Subject to an Invoice being disputed by an Access Seeker in good faith in accordance with subsection 5.14.12, an Access Provider may charge interest on any amount outstanding from an Access Seeker from time to time, in respect of that overdue sum for the period beginning on its due date and ending on the date of the receipt of the overdue sum by the Access Provider. The interest that may be charged by the Access Provider shall be at the rate of 1% per annum above Malaysian Banking Berhad Base Lending Rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than 60 days will bear interest at the rate of 2% per annum above Malaysian Banking Berhad Base Lending Rate calculated from the due date until the date of receipt by the Access Provider of full payment. For clarification, an Access Provider shall not charge interest on an amount which is disputed by an Access Seeker in good faith.

5.14.16 Backbilling: An Access Provider may include omitted or miscalculated charges from an Invoice in a later Invoice, provided that the Access Provider is able to substantiate the charges to the Access Seeker and the inclusion or amendment is made within two (2) months of the issuing of the original Invoice in which the omitted or miscalculated charges should have been included, or within three (3) months from the month in which the calls were made or other service provided, if there was no relevant original Invoice issued.

5.14.17 Provisional billing: Where an Access Provider 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, an Access Provider 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 network services or network facilities, the Access Provider may issue a provisional Invoice up to the full value of the amount based on the most recent Invoice.

5.15 OPERATIONS AND MAINTENANCE OBLIGATIONS

- 5.15.1 **Operations & Maintenance Responsibility:** Each Operator shall be responsible for the operations and maintenance of its own network facilities and network services.
- 5.15.2 **Fault reporting systems:** Each Operator shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of that Operator and to whom that Operator supplies services (inter alia), to report faults relating to any Network or support system.
- 5.13.3 **Customer notification:** Each Operator will advise all of its directly connected Customers to report all faults to the fault reporting service described in subsection 5.15.2.
- 5.15.4 **Non-discriminatory fault reporting and identification:** An Operator shall perform fault reporting and identification on a non-discriminatory basis.
- 5.15.5 **Cross-referrals:** If a Customer reports a fault to an Operator:
- (a) when the Customer is directly connected to another Operator; or
 - (b) which clearly relates to a Network or support system of another Operator that Operator must promptly inform the other Operator of the reported fault, or refer that Customer to the other Operator's fault reporting service.
- 5.15.6 **Network fault responsibility:** The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services.
- 5.15.7 **Transmission service faults:** The Operator that supplies transmission services is responsible for maintaining and repairing that transmission service, notwithstanding that the transmission service may be used in another Operator's Network.
- 5.15.8 **Major inter-working faults:** If a major fault occurs which affects a communication that crosses or is to cross both Operator's Networks, initial responsibility for identifying the fault rests with the Operator who first becomes aware of the fault.

5.15.9 Faults affecting other Networks or Equipment: If an Operator identifies a fault occurring in its Network or with its network facilities which may have an adverse effect on the other Operator's Network, network facilities, network services or Equipment, the first-mentioned Operator must promptly inform the other Operator of:

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

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

5.15.11 Fault priority: Each Operator shall give priority to faults which have:

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

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

5.15.13 Target times: Each Operator shall respond to and rectify faults of a type listed in the following table in accordance with the relevant response and rectification time frames:

Priority Level	Fault Types (examples)	Response Time	Restoration Time
Level 1	<ol style="list-style-type: none"> 1. Major switch outage 2. Transmission bearer total outage 3. Route blocking > 50% 4. Major signalling problem 5. Major routing issues 6. Fraudulent calls 	Every 1 hr	4 hrs
Level 2	<ol style="list-style-type: none"> 1. Minor switch outage 2. Minor routing issue 3. Minor signalling problems 4. Route blocking 10%-50% 5. Cross line & silent calls 	Every 4 hrs	24 hrs
Level 3	<ol style="list-style-type: none"> 1. Faults affecting single or small number of Customers 2. Route blocking <10% 	Every 24 hrs	72 hrs
Level 4	<ol style="list-style-type: none"> 1. Remote Congestion 2. External Technical Irregularities (ETI) 3. Other performance related issues 	Every 48 hrs	14 days

Explanatory Notes to subsection 5.15.13:

- (a) All faults reported shall be ascribed with a “Priority Level” as set out in the above table for response, reporting frequency and restoration purposes and the Operators involved shall cooperate with one another to achieve the given time targets based on the severity of the fault reported.
- (b) Some of the common “Fault Types” are listed as examples in the above table.
- (c) “Response Time” refers to the time for the Operator whose Network or service is faulty to respond to and appropriately attend to the fault. Response Times are to be measured from either the time the fault is notified by the Access Seeker or from the time when the Access Provider first becomes aware of the Fault, whichever is the earlier.
- (d) “Restoration Time” refers to the time taken by the Operator to restore a faulty service and is determined by the period between the reporting of a fault to the respective IFRC/NMC of the Operator and the restoration of the faulty service.

5.15.14Planned maintenance: If an Operator (**Maintenance Operator**) intends to undertake planned maintenance which may affect an Access Seeker's Network, the Maintenance Operator must:

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

5.15.15Planned maintenance windows: An Operator shall undertake planned maintenance within windows of time agreed with other Operators, and where the windows of time for such planned maintenance have the least effect on end-users.

5.15.16Emergency maintenance: If an Operator (Maintenance Operator) needs to undertake emergency maintenance which may affect the other Operator's Network, the Maintenance Operator must, if it is able to:

- (a) provide at least one (1) Business Day notice of the planned maintenance;
- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications which cross or are to cross both Operator's Networks, and which are caused by the maintenance or re-routing; and
- (c) where practicable and agreed by the Operators, provide alternative routing or carriage at no additional cost to the other Operator.

5.15.17Hours of fault reporting and rectification: An Access Provider shall maintain a twenty-four (24) hours a day, seven (7) days a week fault reporting and rectification service.

5.16 TECHNICAL OBLIGATIONS

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

5.16.2 **Prevention of technical harm:** An Operator must take reasonable measures to ensure that the interconnection does not cause physical or technical harm to the other Operator's Network.

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

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

- (a) causes interference; or
- (b) materially obstructs, interrupts or impedes the continuous use or operation of, the network facilities, network services or Equipment of another Operator.

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

- (a) the other Operator shall rectify the situation so that no interference is caused within twenty four (24) hours of receiving notice from the Notifying Operator; or
- (b) if the other Operator is not able to locate the source of the interference within twenty four (24) hours under paragraph 5.16.5(a), the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet within twenty four (24) hours of such notice and jointly examine each other's network facilities, network services or Equipment to locate the source of the interference.

5.16.6 **Handover principles:** Where access is provided to an O&T Service, an Operator shall handover interconnected calls to the other Operator on the basis requested by the Access Seeker, unless otherwise agreed. For clarification, for originating Services provided by an Access Provider, the terminating Operator (as Access Seeker) may elect whether handover will be on a Near End Handover basis or on a Far End Handover basis. For terminating Services provided by an Access Provider, the originating Operator (as Access Seeker) may elect whether handover will be on a Near End Handover or on a Far End Handover basis.

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

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

5.16.9 **Quality of service:** An Access Provider shall provide access as follows:

Network Quality %	Threshold	Remarks
<p>1.0 Successful Call</p> <p>1.1 Answered Call</p> <p>1.2 Busy Call</p> <p>1.3 No Answer Call</p> <p>1.4. Call Abandon</p>	94%	<p>Number of calls that successfully seized a trunk group and are answered.</p> <p>Number of calls that successfully seized a trunk group and are terminated after connection due to “terminating subscriber is busy”.</p> <p>Number of calls that successfully seized a trunk group and are rejected because either the called device did not answer or the calling Party went on-hook during ringing.</p> <p>Indicate the unallocated numbers and incomplete dialling from calling Party.</p>
<p>Call Establishment Rate</p> <p>(1.1 + 1.2 + 1.3)</p>	85%	Expressed as the sum of Answered, Busy and No Answer Call that indicate the calls are successfully seize the circuits to the total of call attempt.
<p>2.0 Unsuccessful Call</p> <p>2.1 Network Congestion</p> <p>Internal Congestion (ICONG)</p> <p>External Congestion (OCONG)</p> <p>2.2 Network Fault</p> <p>External Technical Irregularities/Error (ETI)</p>	<p>6%</p> <p>3%</p> <p>1%</p> <p>2%</p> <p>3%</p> <p>2%</p>	<p>Number of calls offered to a trunk group that successfully overflowed or are rejected in the own switch. (Internal congestion of originating POI and interconnect route congestion that is due to insufficient capacity to support the current traffic).</p> <p>Number of calls that, after a trunk group is seized, are rejected upon receiving a backward signal indicating far end congestion occurred within the terminating POI and the subsequent terminating Network.</p> <p>Calls that being successfully connected through the Network are rejected upon detection of technical irregularities or faults in the far end radio subsystem in the other</p>

Internal Technical Irregularities/Error (ITI)	1%	Network Element. Calls that being successfully connected through the Network are rejected upon detection of technical irregularities in the originating Network
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5.17 TERM, SUSPENSION AND TERMINATION OBLIGATIONS

5.17.1 **Term:** An Operator shall enter into Access Agreements with a term of no less than three (3) years from the date of execution of the Access Agreement.

5.17.2 **Term of supply:** Unless otherwise agreed, and subject to the Access Provider not being able to provide access as a result of Force Majeure, an Access Provider shall only require an Access Seeker to acquire access to individual network services and network facilities under an Access Agreement for a minimum period as follows:

Network services / Network facilities	Minimum term
Access Services (e.g. originating and terminating access)	No minimum term
Transmission services	12 months
Network facilities Access	3 years

5.17.3 **Termination circumstances:** An Access Provider may only terminate an Access Agreement if any of the circumstances referred to in paragraphs 5.17.3(a) or 5.17.3(b) apply and the Access Provider has notified the Access Seeker that it will terminate in no less than thirty (30) days:

- (a) where the Access Seeker has materially breached the agreement and the Access Provider has notified the Access Seeker that it will terminate in no less than thirty (30) days if the Access Seeker has not remedied its breach by the end of that period; or
- (b) where the Access Seeker has become subject to a winding up Order.

5.17.4 **Change in law:** Where continued operation of the Access Agreement or access to any network facilities or network services provided under 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 or network 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 or network services.

5.17.5 **Suspension:** An Access Provider may only suspend access to any network facilities or network services in the following circumstances:

- (a) the Access Seeker's network facilities materially 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 network facilities or the supply of a network services pose an imminent threat to life or property of the Access Provider, its employees or contractors;
- (c) the Access Seeker's network facilities cause material physical or technical harm to any network facilities of the Access Provider or any other person;
- (d) where the Access Seeker has failed to pay Invoices in accordance with subsection 5.14; or
- (e) where Force Majeure applies.

For the purposes of this subsection 5.17.5, an Access Provider must provide the Access Seeker five (5) Business Days Notice in writing, including written reasons, prior to suspending access to any network facilities or network services.

5.17.6 **Approval:** Prior to terminating or suspending or seeking to materially vary an Access Agreement or access to any network facilities or network services provided under it, an Access Provider must inform the Commission in writing of the action the Access Provider proposes to take and the reasons why such action is appropriate. The Access Provider shall not terminate or suspend or seek to materially vary the Access Agreement or access to any network facilities or network services provided under it until such time, and on such conditions, as the Commission may specify.

5.17.7 **Undertakings:** If the parties to an Access Agreement adopt the terms and conditions specified in an undertaking that has been registered with the Commission in accordance with the CMA, the parties must notify the Commission within five (5) Business Days of such adoption. In such circumstances, the terms and conditions of the Access Agreement will continue in force for the remainder of the term of that Access Agreement,

even if the access undertaking is withdrawn or expires prior to the expiry of that term.

5.17.8 Post-termination fees: An Access Provider shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any network facilities or network services provided under it except:

- (a) charges invoiced in arrears and not yet paid; or
- (b) charges arising during an applicable minimum contractual period (as described in subsection 5.17.2).

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

5.17.10 Deposits and guarantees: Notwithstanding the obligation in subsection 5.17.9, the Access Provider shall:

- (a) within sixty (60) days of termination of the Access Agreement refund to the Access Seeker any deposit paid; and
- (b) immediately upon termination of the Access Agreement unconditionally waive any rights under any guarantees provided by the Access Seeker.

5.18 CHURN OBLIGATIONS

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

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

5.18.3 **Notification of Invalid Churns:** Within two (2) Business Days of the receipt by the Releasing Service Provider of the notice from the Gaining Service Provider under subsection 5.18.2, the Releasing Service Provider must advise the Gaining Service Provider if it believes, on reasonable grounds, that the Transfer Request is invalid because:

- (a) the Transfer Request resulted from a processing error; or
- (b) the Transfer Request was incomplete (for reasons including that the Customer or their agent did not execute the Transfer Form).

For clarification, if no notice is provided under this subsection, the Gaining Service Provider may forward the Transfer Request to the Access Service Provider.

5.18.4 **Response to Invalid Churn Notification:** If a notification is made under subsection 5.18.3, the Releasing Service Provider must provide the Gaining Service Provider with evidence upon which the notification is based. In such circumstances, the Releasing Service Provider and the Gaining Service Provider must take immediate action to rectify the invalid Churn in accordance with the Customer's wishes. If the Customer wishes to proceed with the transfer to the Gaining Service Provider, and the Gaining Service Provider provides the Releasing Service Provider with a Transfer Form, the Transfer Request may be provided to the Access Service Provider immediately.

5.18.5 **Implementation of Churn:** Within two (2) Business Days after the receipt of a Transfer Request, the Access Service Provider must implement the Churn

and advise each of the Gaining Service Provider and the Releasing Service Provider that the transfer has been completed.

- 5.18.6 **Facilitation of Churn:** An Access Service Provider must facilitate and implement Churns between Operators in accordance with the obligations specified in subsection 5.18.5, even if the Access Service Provider is not the Releasing Service Provider or the Gaining Service Provider.
- 5.18.7 **Confidentiality:** The Access Service Provider and the Releasing Service Provider must not use information disclosed for the purposes of a Churn (including information contained in a Transfer Request or a Transfer Form) for other purposes. In particular, the Access Service Provider and the Releasing Service Provider must handle information disclosed for the purposes of a Churn as confidential, and must not use such information in connection with offering services to a Customer.
- 5.18.8 **Availability:** If a Service is subject to a Churn, a Releasing Service Provider or an Access Service Provider (acting as an Access Provider for the purposes of the Standard) must not refuse an Access Request (under subsection 5.4.10 of the Standard) on the ground that the Releasing Service Provider is currently using the Service specified in the Access Request.

5.19 LEGAL BOILERPLATE OBLIGATIONS

- 5.19.1 **Obligation to supply:** Each Operator shall have an absolute obligation to supply access to the network facilities or network services in accordance with this Standard. Such obligation shall not be conditional upon the use of that Operator's reasonable or best endeavours.
- 5.19.2 **Mutual Compensation:** An Operator must establish mutually acceptable compensation arrangements with the other Operator (including bill-and-keep arrangements).
- 5.19.3 **Interconnect Steering Group:** Each Operator must appoint a representative to an Interconnect Steering Group (and such other working groups as may be agreed upon) to manage the smooth and timely implementation of the terms and conditions of Access Agreements.
- 5.19.4 **Dispute Resolution:** An Operator must comply with the Dispute Resolution Procedures.
- 5.19.5 **Complete Charges:** Each Operator shall specify all charges in an Access Agreement and shall not attempt to recover any other costs, expenses or charges which are not specified in the Access Agreement except where such work is to be done on a time and materials basis in which case the Access Provider shall do such work in accordance with a quotation agreed with the Access Seeker as set out in the Standard.
- 5.19.6 **Intellectual Property:** Each Operator shall licence to the other Operator under an Access Agreement on a royalty-free basis, all Intellectual Property rights necessary for the ongoing operation of the Access Agreement and the inter-operability of the Operators' Networks, subject to any relevant third party licences. The term of the licence must be consistent with the term of the relevant Access Agreement.
- 5.19.7 **Security Review:** An Operator may only review the security provided to it by another Operator in accordance with subsection 5.3.8 during the term of an Access Agreement if there has been a material change in circumstances in relation to the other Operator's creditworthiness. For clarification, a material change in circumstances includes, but is not limited to, failure to pay on the due date specified in at least three (3) Invoices rendered in the preceding six (6) months, so long as those amounts have not been disputed in good faith. If amounts contained in Invoices are disputed in good faith, this will not

constitute a material change in circumstances for the purposes of this subsection 5.19.7.

5.19.8 Additional Security: If subsection 5.19.7 applies, an Operator may only request additional or substitute security from another Operator in a manner consistent with that which would apply if the other Operator was making a new Access Request under subsection 5.3.

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

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

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

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

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

5.19.13 Reciprocity: An Access Provider must offer to acquire access to network services and network facilities on the same terms that it provides access to those network services and network facilities.

SECTION 6: STANDARD COMPLIANCE AND ADMINISTRATION

6.1 ENFORCEMENT OF THE STANDARD

6.1.1 **Legislative Background:** The CMA governs:

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

6.1.2 **Mandatory Standard:** Compliance with this Standard is mandatory.

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

6.1.4 **Content obligations and Commission directions:** In respect of Content obligations contained in subsections 5.4 to 5.17 of this Standard, the Commission may make a direction with the effect of:

- (a) requiring a person to incorporate particular content into their Access Reference Document; or
- (b) requiring a person to comply with the obligation itself, irrespective of whether it is contained in the Access Reference Document or not; or
- (c) both.

6.1.5 **Failure to comply with direction:** Failure to comply with a direction of the Commission which requires compliance with the Standard exposes the person who received the direction to a penalty under section 109 of the CMA.

6.1.6 **Effect of compliance:** Compliance with this Standard shall be a defence against any prosecution, action or proceeding of any nature, whether in a court or otherwise, taken against a person who is subject to the Standard with respect to a matter dealt with by this Standard.

6.2 IMPLEMENTATION OF THE STANDARD

- 6.2.1 **Negotiating benchmark:** An Operator must comply with the Standard when entering into Access Agreements.
- 6.2.2 **Undertakings:** An Operator must comply with this Standard when lodging an undertaking with the Commission under section 110 of the CMA.
- 6.2.3 **Dispute Resolution Procedures:** Operators may rely upon the Standard when making submissions during dispute resolution under the Dispute Resolution Procedures or under section 151 or subsection 229(1) of the CMA.
- 6.2.4 **Existing agreements:** Parties to existing agreements executed prior to the Effective Date must review such agreements to ensure compliance with this Standard. Such agreements should be amended according to the requirements of the Standard no later than **31 March 2004**, or by any other date as stipulated by the Commission.

If the Parties are unable to affect such amendments, the Parties shall first attempt to resolve the dispute in accordance with the Dispute Resolution Procedures. If the Parties to the disputes cannot or otherwise fail to reach an agreement, either Party may notify a dispute in accordance with Chapter 7 of Part V of the CMA.

- 6.2.5 **Registration of new Access Agreements:** When considering an application for registration of an Access Agreement or an undertaking, the Commission will evaluate the agreement and undertaking (as the case may be) for compliance with:

- (a) the CMA; and
- (b) this Standard;

without limitation.

- 6.2.6 **Timeline for Implementation:** Each Access Provider shall prepare and maintain an ARD in relation to network facilities or network services on the Access List no later than **30 November 2003**.

Parties to existing agreements executed prior to the Effective Date must review such agreements to ensure compliance with this Standard no later than **31 March 2004**, or by any other date as stipulated by the Commission.

6.3 COMPLIANCE REVIEW

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

- (a) by formally requesting information from a relevant Operator (for example, under Chapter 5 of Part V of the CMA); or
- (b) by auditing Operators for compliance from time to time (for example, under Chapter 4 of Part V of the CMA);

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

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

6.4 TRANSITIONAL MEASURES

6.4.1 **Notice procedures for removal / replacement:** If the Commission removes, varies or replaces a network facilities or network services on the Access List under section 146 or section 147 of the CMA, and an Access Provider wishes to terminate or change the terms of the supply of that facility or service, the Access Provider may only do so in a manner that is consistent with the supply of that facility or service to itself, and must provide notice of its intention to terminate or vary to all Access Seeker s to whom it is supplying that facility or service.

6.4.2 **Notice period:** The notice period referred to in subsection 6.4.1 must be no shorter than:

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

6.4.3 **Contents of notice of variation or replacement:** The notice to be provided by the Access Provider under subsection 6.4.1 when the Commission varies, removes or replaces the network facilities or network services on the Access List, must state:

- (a) when the variation or replacement will come into effect;
- (b) how the variation or replacement is likely to affect the Access Seeker; and
- (c) any alternative network facilities or network services that may be available to be provided by the Access Provider to the Access Seeker and the terms and conditions of such alternative arrangements.

6.5 REVIEW OF THE STANDARD

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

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

- (a) at least once every three (3) years; or
- (b) as and when the Minister so directs under section 7 of the CMA; or
- (c) as and when the Commission considers it necessary in Order to pursue or preserve the goals of the Standard and the CMA.

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

- (a) where the Minister exercises his power to modify, vary or revoke directions (under section 8, Chapter 1 of Part II of the CMA) Determinations (under section 11, Chapter 2 of Part II of the CMA) and declarations (under section 14, Part II of the CMA);
- (b) where the Commission exercises its power to modify, vary or revoke a direction (under section 52 of the CMA) or Determination (under section 56 of the CMA);
- (c) where the Commission exercises its power (under section 101 of the CMA) to revoke a voluntary industry code, on the basis that it is satisfied that the voluntary industry code is no longer consistent with the objects of the CMA, any relevant instrument made under the CMA, or any relevant provisions of the CMA;
- (d) where the Commission exercises its power to add or remove network services or network facilities or other specified Facilities or Services to or from the Access List (under section 146 of the CMA);
- (e) where the Commission exercises its power (under section 106 of the CMA) to determine the modification, variation or revocation of a mandatory Standard on the basis that it is satisfied that the mandatory Standard is no longer consistent with the objects of the CMA, any relevant instrument made under the CMA, or any relevant provisions of the CMA;
- (f) where an industry forum submits a new voluntary industry code to replace an existing one for that industry (under section 102 of the CMA);
- (g) where any event occurs which may alter the general principles of access (For example, this may occur in the course of dispute resolution, if it becomes apparent that a matter in the Standard should be revised or when a new issue arises); or
- (h) where an exogenous development occurs which warrants a review by the Commission of the Standard (For example, this may occur due to technological change).

6.5.4 **Request for Review:** Any person may request the Commission to modify any provision of the Standard by submitting a notice to the Commission specifying.

- (a) the provisions of the Standard that it seeks to have eliminated, modified or added;
- (b) a clear statement of the reasons why the person believes that such action is justified; and
- (c) alternative approaches that, if adopted, would achieve the Commission's stated goals in a more efficient and effective manner.

6.5.5 **Assessment of request for review:** In assessing a petition under subsection 6.5.4, the Commission will take account of all relevant factors, including:

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

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

- (a) **Public notice:** the Commission will issue a public notice to announce that a review of the Standard is to take place. This notice will detail the scope of the review, the matters to be considered in the review, the stages in the review process and the time-line for the review (including the period in which public comment will be accepted by the Commission).
- (b) **Public comment:** after a public notice of the review has been issued, the Commission shall (for a specified period) accept public comment and submissions regarding the review of the Standard.
- (c) **Internal review:** upon the completion of a period of public comment, the Commission will commence an internal review of the Standard.

This will include assessing the public or external comment received during the review process and will aim to publish a list of issues and a draft of proposed changes to the Standard.

- (d) **Draft changes to the Standard:** once the Commission completes its internal review of the Standard, it may publish its draft proposed changes to the Standard in Order to receive final public comment regarding the review.
- (e) **Finalisation:** once the draft changes to the Standard have been publicly issued and a period for final public comment and review has lapsed, the Commission may finalise the proposed changes to the Standard.

6.5.7 **Outcome of a review:** Following a review, the Commission may or may not choose to modify, vary or revoke the Standard in accordance with sections 56(2) and 106 of the CMA.

ANNEXURE A: DISPUTE RESOLUTION PROCEDURES

1. Introduction

- 1.1 Subject to subsection 1.2.3, an Access Provider and an Access Seeker shall adopt and comply with this Dispute Resolution Procedure in relation to any dispute which may arise between an Access Seeker and Access Provider in relation to or in connection with the supply of network services, network facilities and any other Facilities or Services to which the Standard applies (**Access Dispute**).
- 1.2 The following Dispute Resolution mechanisms are discussed in this section:
 - 1.2.1 inter-Party working groups;
 - 1.2.2 interconnect steering group; and
 - 1.2.3 subject to specific resolution of disputes, being:
 - (a) technical disputes (which must follow the procedure set out in section 5 of this Annexure if they cannot be resolved through the application of the general dispute resolution provisions in sections 3 and 4 of this Annexure);
 - (b) Billing Disputes (as defined in subsection 6.18), which must follow the procedures set out in section 6 of this Annexure; or
 - (c) any other types of disputes, which, if cannot be resolved through the application of the general dispute resolution provisions in sections 2, 3 and 4 of this Annexure, must be referred to the Commission for resolution.
- 1.3 A dispute between Parties regarding any matter dealt with under this Standard shall first be attempted to be resolved by negotiation between the Parties. If the Parties to the disputes cannot or otherwise fail to reach an agreement, the Parties shall always be entitled to seek resolution of the dispute by the Commission in accordance with section 151 of the CMA, 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 CMA.

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

- 1.4 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.

2. General

- 2.1 Until expiry of these Dispute Resolution Procedures, an Operator may not commence court proceedings relating to that dispute, other than an application for urgent interlocutory relief. Nothing in this subsection shall be construed as ousting the jurisdiction of any court.
- 2.2 An Operator shall ensure that its representatives acting in relation to a dispute are of sufficient seniority and have authority to settle an access dispute on behalf of the Operator. At the commencement of the Dispute Resolution Procedure, each Operator must notify the other Operator of the scope of the authority of each of their representatives. If in the course of the Dispute Resolution Procedure it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to a representative, an Operator may require that those matters be referred to more senior officers of that Operator who have authority to settle those matters.
- 2.3 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.
- 2.4 Subject to subsection 2.5, the parties to a dispute shall exchange information of a type described in this Standard during the course of, and to facilitate, resolution of such a dispute.
- 2.5 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 5.3.7 of the Mandatory Standard on Access (**the Standard**).

- 2.6 A Party must not use information obtained under subsection 2.4 or described in subsection 2.5 above for any purpose other than to resolve the dispute.
- 2.7 Subject to Chapter 7 of Part V of the CMA, 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.
- 2.8 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 2.7. If an arbitrator decides not to determine the dispute, the Party that initiated the dispute must pay the other Party's costs.

3. Inter-Party working group

- 3.1 In the first instance the Access Seeker and Access Provider should attempt to resolve the Access Dispute between themselves.
- 3.2 An Access Provider and Access Seeker shall establish a working group, or working groups, to fulfil the requirements of subsection 3.1. The working group shall be comprised of representatives of the Parties, and be headed by a person who holds a position at least equivalent to the head of the Access Provider's Wholesale or Interconnection Group.
- 3.3 The Access Provider shall provide for:
 - (a) subject areas 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.

3.4 The Access Provider and the Access Seeker shall use reasonable endeavours to attempt to settle an access dispute in the working group context for a period of no longer than forty five (45) days, subject always to a Party's right to seek urgent interlocutory relief.

4. Interconnect steering group

4.1 In the event that the parties cannot resolve the dispute between themselves within the time specified in subsection 3.4, or after any time extension has expired, either Party may give ten (10) Business Days written notice (**Notice Period**) to the other Party stating its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice Period, then either Party may notify the other Party (**Receiving Party**) that it wishes to refer the issue to the Interconnect Steering Group (**ISG**).

4.2 In the event that a dispute is referred to an ISG under clause 4.1, the Parties shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each Party.

4.3 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Party of a notice under clause 4.1. If the ISG fails to meet or has not been formed within 10 Business Days of the receipt by the Reviewing Party of a notice of a dispute, either Party may refer the dispute to a Technical Expert (in accordance with clause 5) or to the Commission for arbitration.

4.4 If the ISG has not resolved a dispute within twenty (20) Business Days after it first meets to review that dispute under clause 4.3, either Party may:

- (a) refer any technical dispute to a Technical Expert in accordance with section 5 of this Annexure; or
- (b) refer the dispute to the Commission for final arbitration.

5. Use of a Technical Expert

5.1 A dispute will only be referred to a Technical Expert if the provisions of section 4 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 Technical Expert:
- (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.
- 5.4 If the Parties fail to appoint a Technical Expert within ten (10) Business Days of notice of the need to refer a dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.
- 5.5 When relying on the services of a Technical Expert, the following procedure will apply to the dispute resolution procedure of 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 use of the Technical Expert be by documents only, a Technical Expert hearing will be held within fifteen (15) Business Days of the last written submission.
- 5.7 Should a Technical Expert dispute resolution procedure 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 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 the Standard at subsection 5.14, a Party (**the Invoicing Party**) shall provide to the other Party (**the 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 services during such Billing Period .
- 6.2 An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:
- (a) in the case of domestic calls, the Invoiced Party notifies the Invoicing Party within forty-five (45) days after the date of receipt of such Invoice; and
 - (b) in the case of international calls, the Invoiced Party notifies the Invoicing Party within six (6) months after the date of receipt of such Invoice.
- 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 calls which are the subject of the dispute;
- (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Party's Billing System;
- (c) there is, or has been, a fraud perpetrated by the Invoicing Party; or
- (d) the Invoicing Party has made some other error in respect of the recording of the calls or calculation of the Charges which are the subject of the Billing Dispute.

6.4 A Billing Dispute Notice given under this section 6 must specify:

- (a) the reasons for which the Invoiced Party disputes the Invoice;
- (b) the amount in dispute;
- (c) details required to identify the relevant Invoice and charges in dispute including:
 - (i) the account number;
 - (ii) the Invoice reference number;
 - (iii) the Invoice date;
 - (iv) the Invoice amount; and
 - (v) billing verification information.
- (d) evidence in the form of the Invoiced Party's outgoing 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 5.14.12 of the Standard. If the dispute is resolved against the Invoiced Party, that Party shall be required to pay interest at the rate specified in subsection 5.14.14 of the Standard on the amount payable.

- 6.6 Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the Invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. Once the Billing Dispute is resolved, if the Invoicing Party is obliged to refund an amount to the Invoiced Party, interest will be payable on the refunded amount in accordance with clause 5.14.15. 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 thirty (30) calendar days (or such other period as the Parties may agree) from the date on which the Billing Dispute Notice is received, either Party may seek the consent of the other Party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other Party is, however, under no obligation to agree to such extension.
- 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 dispute with that international correspondent. As a general rule, the period of suspension will not exceed one-hundred and twenty days (120). However, the Parties 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 and any extension granted under subsection 6.9 has expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection 6.11 (**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. Each of the Parties shall then appoint a designated representative that has authority to settle the Billing Dispute, and that is at a higher level of management than the persons with direct responsibility for administration of this Standard. The designated

representatives shall meet as often as they reasonably deem necessary in Order to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honoured.

- 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 14 days from the date of resolution of the Billing Dispute.
- 6.13 Although it is the good faith intention of the Parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try to solve Billing Disputes, nothing in this Annexure shall prevent either Party from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- 6.14 A Party may request a joint investigation of Invoice discrepancies after that Party has conducted comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the Parties must agree the terms of the joint investigation, including:
- (a) the scope of the joint investigation;
 - (b) how the joint investigation will be conducted; and
 - (c) the date by which the joint investigation must be concluded.

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

- 6.15 Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operation issues may be directed to the Billing Representatives nominated by each Party.
- 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 Parties are unable to resolve any Billing Dispute within thirty (30) Calendar Days from any extended date as might be agreed upon under subsection 6.8, or if they are unable to agree any such extension, either Party may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the CMA.

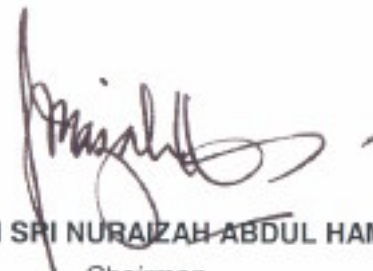
6.18 In this section 6:

- (a) **“Billing Dispute”** means the dispute of an Invoice prepared by a Party to the other Party which is made in good faith;
- (b) **“Billing Dispute Notice”** means the written notification made by a Party to the other Party in relation to a Billing Dispute in accordance with subsection 6.2;
- (c) **“Billing Dispute Notification Period”** means the period after the date of an Invoice described in subsection 6.2;
- (d) **“Billing Representative”** means a representative of the Party appointed in accordance with the billing procedures set out in subsection 6.15; and
- (f) **“Billing System”** means a system to issue Invoices relating to charges payable by each Party under the relevant Access Agreement.

Revocation

7. The following documents are hereby revoked:
- (a) General Framework for Interconnection and Access of 17 May 1996 issued by the Director General of the then Jabatan Telekomunikasi Malaysia;
 - (b) Telecommunications Regulatory Determination - Customer Access Arrangement (TRD001/98) of 24 May 1998 issued by the Director General of the then Jabatan Telekomunikasi Malaysia;
 - (c) The following parts of the Determination of Cost Based Interconnect Prices and the Cost of Universal Service Obligations (TRD006/98) of 15 July 1998 issued by the Director General of the then Jabatan Telekomunikasi Malaysia:
 - (i) The sections under the heading Equal Access in paragraph 1.4;
 - (ii) Paragraph 1.5; and
 - (iii) Paragraph 1.6.

Made: 14 August 2003



TAN SRI NURAIZAH ABDUL HAMID
Chairman

Malaysian Communications and Multimedia
Commission