

OPTICAL COMMUNICATION SDN BHD

Reference Access Offer

31st July 2017 Version 4.0

**This Document Sets Out the Terms and Conditions
For Eligible CMA Licensees to Apply To Optical Communication
Engineering Sdn Bhd for Access To Access Services**

Introduction

1. This Access Reference Document (“RAO”) is published by OPTICAL COMMUNICATION ENGINEERING SDN BHD (“OCESB”), pursuant to the Commission

- (i) Determination on the Access List (Determination No. 2 of 2015),
- (ii) Determination on the Mandatory Standard on Access (Determination No. 2 of 2005) (Determination No. 2 of 2009) (Determination No 3 of 2016)
- (iii) Determination on the Mandatory Standard on Access Pricing (Determination of No.1 of 2012)

to enable eligible licensees under the Communications and Multimedia Act 1998 to seek access to OCESB network facilities and/or network services.

2. This RAO is divided into the following parts :

Schedule A General Terms & Conditions

- 1. Forecasting Obligations
- 2. Ordering and Provision Obligations
- 3. Network Conditioning Obligations
- 4. Point of Interface Obligations
- 5. Decommissioning Obligations
- 6. Network Change Obligations
- 7. Network Facilities Access and Co-location
- 8. Billing and Settlement
- 9. Set Off
- 10. Operations and Maintenance Obligations
- 11. General Obligations
- 12. Terms of Access
- 13. Termination and Suspension
- 14. Other Terms

Schedule B B.1 - Fault Rectification Response Times

B. 2 - OCESB Confidentiality Agreement

- Appendix**
- A - Information Requirement
 - B - Specifications
 - C - Point of Interface List
 - D - Price List for Access Services
 - E - Dispute Resolution Procedures

3. This Access Reference Document is:

- (a) the basis upon which any person, who holds a license under the Communications and Multimedia Act 1998, and who is entitled to seek, would seek access to OCESB network facilities and/or network services provided that OCESB is able to provide such facilities or services;

- (b) the basis upon which such persons will be granted access to the Access Services set out in Part A Section 2, upon the execution of and registration of an Access Agreement between OCESB and any eligible person under Section 3(a) above, such agreement containing the general terms and conditions and relevant specific terms and conditions as applicable for the specific Access Service.
4. OCESB reserves its right to amend this Access Reference Document from time to time without notice and Access will be considered based on the current RAO published by OCESB.

Access Seekers who are in the process of negotiating access under the RAO with OCESB will be provided with a copy of the amendments within 10 business days of the amendments being made and Access will be provided based on the amended RAO.

Access Seekers who have already signed an Access Agreement with OCESB will not be affected by the amendments to the RAO, unless both Parties agree to incorporate any part of the amendments into their Access Agreement.

5. *OCESB's Address for Correspondence;*

All requests, notices, forms arising out of this RAO, shall be sent to OCESB at the address below:

Optical Communication Engineering Sdn Bhd
Address : No: 19, Jalan Semangat, 46200
Petaling Jaya,
Selangor Darul Ehsan

6. Definitions

The following definitions are used throughout the RAO. The definitions set out in the RAO are hereby incorporated into this RAO by reference. Where a word is not defined in this RAO, unless the context otherwise requires, such word shall have the same meaning as that set out in the MSA.

Access The right of a licensee to seek access to a 3rd party network service or network facility (as listed in the Access List) to provide end-to-end connectivity to customers of both networks

Access List The list of network facilities and network services as Determined by the Commission Determination on Access List (Determination No. 1 of 2005) (Determination No. 2 of 2015) which came into operation on 1 September 2015.

Access Provider	A network facilities provider who owns or provides Facilities and/or a network service provider who provides Services, listed in the Access List. For the purpose of this RAO, the Access Provider is OCESB
Access Seeker	A network facilities provider, a network service provider, an application service provider, or a content applications service provider who makes a written request for access to Facilities or Services, listed in Access Services
Access Services	The network facilities and network services that OCESB may provide access to pursuant to this RAO
'A' Party	In the context of communication between end users, the end user from whom the communication originates
'B' Party	In the context of communication between end users, the end user from whom the communication terminates
Access Agreement	The agreement for Access entered into between the Seeker and OCESB pursuant to this RAO for specific
Access Request	The formal request for access made by the Access Seeker pursuant to Part B Section 3.
Bank Guarantee	A guarantee executed and to be granted to OCESB on behalf of the Access Seeker, by a bank approved by the Access Provider and in a format acceptable to the Access Provider.
Billing Dispute	The dispute of an invoice prepared by an Operator to the Other Operator which is made in good faith
Billing Period	One (1) calendar month period over which the supply to network facilities or network services is measured for the purposes of billing unless otherwise agreed between the Operators.
Business Day	A day on which banks are open for general banking business in Kuala Lumpur, Wilayah Persekutuan, other than a Saturday and Sunday or a public holiday.
Charges	The sum payable by the Access Seeker to OCESB for the provision of Access Services.
CMA	Communications and Multimedia Act 1998 (Act 588)
Commencement Date	The date on which the Operators enter into the Access Agreement or such other date as agreed between the Operators.
Commission or CMC or MCMC	The Malaysian Communications and Multimedia Commission which is the Regulator of the Communications Industry.
Facilities	Network Facilities and/or facilities as listed in the Access Optical Communication Engineering Sdn Bhd

List and specified in this OCESB RAO which facilitate the provision of network services or application services, including content application services

Fixed Network	Network facilities and/or network services comprising the Public Switched Telephone Network and/or networks based on Internet Protocol for the provision of communications by guided electromagnetic energy or by point-to-point unguided electromagnetic energy
Interconnection Service	Facilities or Services including the physical connection between separate networks, to facilitate Any-to-Any Connectivity provided by an Access Provider to an Access Seeker which involves or facilitates the carriage of communications between an End User connected to the network of the Access Provider and a Point of Interconnection.
Internet Protocols	Network-layer (Layer 2) protocol, as defined by the Internet Engineering Task Force, that contains addressing information and some control information that enables packets to be routed
Jitter	The difference between the actual Latency of a packet and a reference Latency for a packet population of interest. The reference Latency of a population of packets is the minimum Latency for the packets within the population of interest. Jitter is a statistical sample, measured over a packet population of interest
Latency	The one-way time interval between the moment the first bit of a IP packet crosses an entry point of a network and the moment the last bit of the same packet crosses an exit point of the network (dimensioned in time)
MSA	Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005) issued by the MCMC
MyIX	Malaysia Internet Exchange
OCESB	Optical Communication Engineering Sdn Bhd
Operator(s)	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 Seeks (as the context requires)
Packet Loss	Ratio of total lost IP packets to total transmitted packets in a population of interest. Total lost packets includes any delivered with errors or Latency greater than 3 seconds
Parties	Means the Access Seeker and OCESB collectively
Point of Interconnect (POI)	Any technically feasible point which demarcates the Network of OCESB and the Network of the Access Seeker (collectively referred to as the interconnecting networks") and is a point at which a Call Communication is transferred between the interconnecting networks.

Quality of Service Class A set of quality of service parameters as defined above as Latency, Jitter and Packet Loss that are associated with Layer 2 connectivity

RAO Reference Access Offer

Services Network services and/or other services which facilitate the provision of network services or application services, including content applications services

CHAPTER 3 PRINCIPLE OF ACCESS

3.1. Access Services

This RAO only applies to those network facilities which are owned by OCESB and, network services which are provided by OCESB as set out in Section 2 below. OCESB may, at its sole discretion, agree to provide Access to an Access Seeker to any other network facilities and/or network services, which are not included in the Access List on terms and conditions to be agreed between OCESB and the Access Seeker. OCESB is not bound by the provisions in the MSA nor the terms and conditions set out in this RAO to provide access to those facilities and services not on the Access List.

3.2. The network facilities and network services offered by OCESB

The following network facilities and/or network services (“Access Services”) may be made available by OCESB subject to availability of capacity at the time of the Access Request.

(1) Network Co-Location Service

(a) The Network Co-Location Service is a Facility and/or Service which comprises:

- (i) physical co-location, which refers to the provision of space at OCESB’s premises to enable the Access Seeker to install and maintain equipment necessary for the provision of the Access Seeker’s services through the Facilities and/or Services of any operator. Physical co-Location includes physical space, power, environmental services (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker;**
- (ii) virtual co-location, which refers to the provision of facilities or services at OCESB’s premises to enable the acquisition by the Access Seeker of Facilities and Services on the Access List, where equipment is owned and maintained by OCESB;**
- (iii) in-span interconnection, which is the provision of a POI at an agreed point on a physical cable linking OCESB’s network facilities to Access Seeker’s network facilities**

(b) Network premises at which co-location is to be provided includes switching sites, submarine cable, landing centers, earth stations, exchange buildings, other Customer Access Modules including roadside cabinets and such other network facilities locations associated with the provision of a Facility or Service in the Access List, and includes co-location provide at any location where main distribution frame is housed.

The Service will be offered subject to the following conditions:

OCESB is beneficial owner of the premises or the Access Seeker has gained

permission from the rightful owner(s) of the premises for physical co-location;
The Access Seeker has obtained license(s) from the related authorities to operate the service;

(2) *Wholesale Local Leased Circuit Service*

- (a) A Wholesale Local Leased Circuit Service is a Facility and/or Service for the carriage of communications by way of a private circuit between a POI at the Access Provider's premises and an End User location or an Access Seeker Point of Presence, available only at one end of a private circuit. The Wholesale Local Leased Circuit Service comprises transmission and switching, whether packet or circuit, at such transmission rates as may be agreed between the Access Provider and the Access Seeker on a permanent or virtual basis.
- (b) The functionalities of the Wholesale Local Leased Circuit Service include:
- (i) Transmission and switching, whether packet or circuit;
 - (ii) The signaling required to support the Interconnect Link Service or onward transmission via a Trunk Transmission Service provided by the same Access Provider; and
 - (iii) A digital protocol including Internet Protocols.

Examples of technologies used in the Wholesale Local Leased Circuit Service would be IP based networks and Ethernet Interfaces.

(3) *Infrastructure Sharing*

- (a) Infrastructure Sharing is a Facility and/or Service which comprises the following:
- (i) Provision of physical access, which refers to the provision of space at specified network facilities to enable an Access Seeker to install and maintain its own equipment; or
 - (ii) Provision of access to in-building Common Antenna Systems and physical access to central equipment room.
- (b) Specified network facilities include towers and Associated Tower Sites.
- (c) Physical access includes power, environmental services (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker.
- (d) Provision of space at Associated Tower Sites includes space where the Access Seeker may place its cabin or outdoor equipment and space required for cable gantry connecting to the tower and generator set.

The Access Seeker shall not be entitled to grant any tenancy, lease, licence or other right of use or occupation save with the prior written consent of OCESB or as specified and to the extent specified in any Instrument.

A request for Infrastructure Sharing Services shall contain to the extent relevant the information in Appendix A and shall be further accompanied by a site preparation work plan and installation work plan and method.

OCESB will only be required to provide the Infrastructure Sharing to the Access Seeker to the extent that the Access Seeker has complied with all the requirements of this RAO, and the requirements of the Access

Agreement for Infrastructure Sharing.

3.3 Eligibility for Access to Access Service(s)

For the purposes of clarification, consistent with Government policy and Determinations by the Commission (and its predecessor), an Access Seeker may only request for access to any or all of the network facilities or network services listed in the Access List which are set out in OCESB' RAO where the Access Seeker has been granted

- (i) a network facilities provider license and/or
 - (ii) a network service provider license and/or
 - (iii) an applications service provider License and/or
 - (iv) a content applications service provider License,
- and such Licenses are not limited or restricted from those detailed in the Act, as amended in any way:
- (a) by reference to the type of network facilities, network services and/or applications services that can be provided; and
 - (b) by geographical limitations to only a specific area and/or areas in Malaysia to which the Access Seeker can provide such network facilities, network services and/or applications services.

3.4 Standard Access Obligations

3.4.1 Access Terms and Conditions

OCESB shall subject to Section 3.2, supply the Access Service(s) to the Access Seeker on reasonable terms and conditions.

3.4.2 Principles of non-discrimination

Section 149 of the Act specifies the terms and conditions upon which OCESB must comply with the Standard Access Obligations. Section 149(2) provides that the access provided by OCESB shall be:

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

3.4.3 Customer Principles

OCESB shall observe and comply with the customer relationship principles set out in section 4.3 of the MSA Determination.

CHAPTER 4 ACCESS REQUEST PROCEDURE

4.1 Application for Access to Services

4.1.1 An Access Seeker shall request OCESB to supply Access Service(s) to it by serving an Access Request on OCESB.

4.1.2 The purpose of such Access Request is to provide OCESB with sufficient information to assess the Access Seeker's request for the supply of the Access Service(s).

4.1.3 The Access Request must provide the following information:

- (a) the name and contact details of the Access Seeker;**
- (b) the Access Service(s) in respect of which access is sought;**
- (c) indicate whether the Access Seeker accepts OCESB' RAO and its Standard Access Obligations or to negotiate an Access Agreement on different terms and conditions**
- (d) the ready for service date(s) for the Access Service(s) that is being sought by the Access Seeker;**
- (e) contain two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the form prescribed by OCESB as per attached schedule B2;**
- (f) the forecasts of the capacity the Access Seeker may reasonably require for an initial 12 month period;;**
- (g) 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 OCESB' Network;**
- (h) type of Licenses held by the Access Seeker and a copy of the License where a copy had not been previously provided;**
- (i) Creditworthiness Information as set out in Section 4.2;**
- (j) Insurance Information as set out in Section 4.4; and**
- (k) such other information as OCESB may reasonably request.**

4.2 Creditworthiness Information

4.2.1 The Creditworthiness Information that is required to accompany an Access Request includes:

- (a) a letter, signed by an executive director of the Access Seeker, stating that the Access Seeker is not insolvent and is not under any external administration or under similar form of administration under any laws applicable to it in any jurisdiction; and**
- (b) a copy of the Access Seeker's most recently audited balance sheet and audited profit and loss statement.**

4.3 Security Sum

4.3.1 OCESB shall ensure that the amount and type of security requirements imposed on the Access Seeker in OCESB' security policy, commensurate with:

- (a) the estimate of the value of access to Access Service(s) to be provided to the Access Seeker by OCESB over a ninety (90) days period ("Minimum Value");**

- (b) the creditworthiness of the Access Seeker (including prior payment records of the Access Seeker); and
 - (c) the security previously reasonably required by OCESB (if any).
- 4.3.2 The Access Seeker must provide the Security Sum to OCESB in the form of a Bank Guarantee.
- 4.3.3 OCESB is not obliged to consider entering into an Access Agreement with the Access Seeker pursuant to OCESB' RAO until the Access Seeker has amongst other things, provided (at the Access Seeker's costs) to OCESB such Security Sum on terms and conditions reasonably acceptable to OCESB.
- 4.3.4 If the Access Seeker fails to fulfill any conditions or commits a breach of its obligations under this RAO or the Access Agreement, OCESB at its sole discretion has the right to call in all or part of the amount pledged as Security Sum.

4.4 Insurance Information

- 4.4.1 Subject to Section 4.4.2, an Access Request shall be accompanied by the following insurances:
 - (a) Worker's Compensation and/or Social Security Insurance and/or Employer's liability Insurance and/or other insurance within statutory limits as required by the laws of Malaysia to provide for payment to its employees employed or in connection with the work covered by the Access Agreement that may be entered into and/or their dependents; and
 - (b) Comprehensive General Liability Insurance or Public Liability Insurance of an amount which is not in excess of Ringgit Malaysia Twenty Million (RM20,000,000) and not less than Ringgit Malaysia Five Million (RM 5,000,000) 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 resulting in bodily injury and/or personal injury including death and property damage of an Operator which shall arise out of or in consequence of any acts of omissions of the Other Operator.
- 4.4.2 For the purpose of clarification, the insurance provided by the Access Seeker pursuant to Section 4.4.1 shall commensurate with the reasonable sum which is to be agreed by OCESB.

4.5 OCESB' Reply to the Access Request

- 4.5.1 OCESB shall within ten (10) Business Days of receipt of the Access Request, inform the Access Seeker in writing that it has received the Access Request and either:-
 - (a) request for additional information from the Access Seeker where there is a need for further information and a joint site survey in the case of Infrastructure Sharing and Network Co-location Service, prior to considering the Access Request. OCESB shall comply with Section 5.4.16 of the MSA Determination when it requests for such additional information; or
 - (b) indicate if it is willing to provide access to the Access Service(s) under Section 4.8 or if it is rejecting the Access

Request in accordance to Section 4.7.

- (c) If OCESB is willing to provide access to the Access Service(s), OCESB shall (together with its notice of acceptance) indicate the Security Sum and any non-refundable processing fee payable by the Access Seeker prior to the execution of the Access Agreement.

4.5.2 If OCESB requests for additional information under Section 4.5.1(a) and the Access Seeker provides the requested information to OCESB's satisfaction and the joint site survey (if any) is successfully completed, OCESB shall within ten (10) Business days of such response, provide the Access Seeker with a response under Section 4.5.1(b).

4.5.3 Non-refundable processing fee

4.5.3.1 Subject to Section 4.5.3.2, OCESB may charge an Access Seeker a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request.

4.5.3.2 The non-refundable processing fee is only applicable to the requested Access Service(s) that are being offered by OCESB.

4.5.3.3 In the event additional and/or non-routine work is required in order to process the Access Request, OCESB may charge a separate fee for undertaking such additional work.

4.5.4 Resource charge

In accordance with Section 5.7.28 of the MSA Determination, OCESB may charge an Access Seeker a one-off resource charge to be determined by reference to the costs incurred by OCESB for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Access Service(s).

4.6 Rejection of an Access Request

4.6.1 Reasons for Refusal

OCESB may refuse to accept an Access Request for supply of the Access Service(s) and accordingly may refuse to supply that Access Service(s) to the Access Seeker for any of the following reasons:

- (a) in OCESB's reasonable opinion, the Access Seeker's Access Request was not made in good faith;
- (b) in OCESB's reasonable opinion, the Access Request does not contain the information reasonably required by OCESB's RAO provided that OCESB has sought the information from the Access Seeker under Section 4.5.1(a) of OCESB's RAO;
- (c) OCESB does not currently supply or provide access to the requested network facilities or network services listed in the Access List to itself or to any third parties;
- (d) it is not technically feasible (as determined in accordance with the criteria set out in Section 5.4.19 of the MSA) to provide access to the network facilities or network services requested by the Access Seeker;
- (e) OCESB has insufficient capacity to provide the requested network services or network facilities.
- (f) there are reasonable grounds in OCESB's opinion to believe that the Access Seeker would fail to make timely payment for the supply of the relevant Access Service(s); or

- (g) there are reasonable grounds in OCESB' opinion to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the regulated Access Service(s).
- (h) **OCESB reasonably believes that the provision of access to the Access Seeker will be contrary to the provisions and objectives of the CMA or the national interest.**

4.6.2 Determination of technical infeasibility

For the purpose of determining technical infeasibility in Section 4.6.1 (d), the Operators shall comply with Section 5.4.17 of the MSA Determination.

4.6.3 Determination of capacity constraints

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

4.6.4 Assessment of the Access Seeker's ability to pay for the supply of Access Service(s) Examples of reasonable grounds for OCESB' belief as mentioned in Section 4.6.1 (f) include evidence that the Access Seeker is not (in the reasonable opinion of OCESB) creditworthy.

4.6.5 Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of Access Service(s)

- (a) Examples of reasonable grounds for OCESB' belief as mentioned in Section 4.6.1(g) include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to the Access Service(s) have been provided (whether or not by OCESB).
- (b) In determining the creditworthiness of the Access Seeker, OCESB may have regard to, but is not limited to the matters referred to in Section 4.2.
- (c) In determining the creditworthiness of the Access Seeker, OCESB shall not take into account amounts outstanding for Access Service(s) previously provided by OCESB to the Access Seeker where, in accordance with the terms and conditions governing the provision of such Access Service(s), the Access Seeker is not required to pay such amounts to OCESB to the extent that there is a bona fide dispute in relation to the amounts outstanding by the Access Seeker to OCESB and the Access Seeker is relying on such terms and conditions as basis for its non- payment.

4.7 Notification of Rejection to the Access Seeker

4.7.1 If OCESB rejects the Access Request, OCESB shall within ten (10) Business Days of receiving the Access Request:

- (a) notify the Access Seeker in writing of OCESB' rejection;
- (b) provide reasons for rejection under Section 4.6 to the Access Seeker;
- (c) provide the basis for OCESB' rejection of the Access Request;
- (d) indicate a date and time, not later seven (7) Business Days from the date of this notice of rejection, at which representatives of OCESB will be

available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request.

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

4.8 Acceptance of an Access Request

4.8.1 Where the Access Seeker has requested under Section 4.1.3 (c) and OCESB agrees to provide access to the Access Service(s) to the Access Seeker in accordance with OCESB' RAO, OCESB shall within ten (10) Business Days of such response under Section 4.5.1(b), provide the Access Seeker with an Access Agreement (based on the Standard Access Obligations) that includes the Charges for execution by the Access Seeker

4.8.2 With respect to Section 4.8.1, the Access Seeker shall within ten (10) Business Days either, execute and return the Access Agreement to MMY or indicate in writing to OCESB that it wishes to negotiate the Access Agreement on different terms and conditions.

4.9 Negotiation on Access Request

4.9.1 OCESB may proceed with negotiation on the Access Request with the Access Seeker if the Access Seeker is not willing to accept OCESB's RAO. OCESB shall set out in such response:

- (a) a date and time not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which OCESB's representatives will be available for the initial meeting with the representatives of the Access Seeker.**
- (b) One copy of the executed Confidentiality Agreement returned by the Access Seeker (in accordance with Section 4.1.3 (e) that has also been properly executed by OCESB.**

Chapter 5 PROVISION OF INFORMATION

- 5.1 The obligations of each Operator to provide information to the Other Operator are subject to the MSA Determination and the requirements of confidentiality in the confidentiality agreement signed by the Operators.**
- 5.2 An Operator must provide the Other Operator on a timely basis with all agreed information reasonably required to determine rates and charges to be billed by each Operator to the Other Operator or by each Operator to its Customers.**
- 5.3 Each Operator will charge and bill its own Customers for Call Communication. The Operators will agree on the communication information which is to be exchanged for the purposes of charging and billing, and which shall be deemed to be included in the Manuals for the purposes of call and billing verification. For the purpose of inter-operator billing reconciliation the Operators will provide CLI to each other subject to:-**
- (a) the ability of the relevant exchange to provide CLI; and**
 - (b) CLI being forwarded to it from another network with which it's Network is interconnected.**
- 5.4 CLI and data relating to CLI will be kept confidential by the Operators. The Operator may use the CLI disclosed to it only for the following purposes:-**
- (a) prevention and investigation of fraud;**
 - (b) display to Customers;**
 - (c) emergency services;**
 - (d) malicious call tracing; and**
 - (e) inter-Operator and/or Customer billing. provided always that such use does not violate the Commission's directive. The Operators will co-operate in the barring of CLI where required under law, Determination, Direction or as otherwise agreed.**
- 5.5 To the extent permitted by Malaysian law and any relevant guidelines or customer service standards in force pursuant to the Operator's respective License conditions, the Operators will exchange information and otherwise cooperate in relation to the prevention and investigation of fraudulent use or misuse of the Operator's respective Communications Services and the theft of the Operator's provided terminal equipment.**
- 5.6 Information provided under OCEsb' RAO may only be used for the purpose for which it was given. Personal information about a Customer's credit worthiness, credit standing, credit history or credit capacity may only be used for the purposes permitted by, and in compliance with, Malaysian law.**
- 5.7 Information required to be provided under OCEsb' RAO need not be provided if the recipient Operator has not established security measures that are adequate to protect the confidentiality of the information. If the recipient Operator does not observe such security measures or any of the information is used by it for any purpose other than the purpose for which it was given, the providing Operator may deny the recipient Operator further access to the information for the period during which the non-observance or non-conforming use continues on notice specifying the non-observance or non-conforming use.**

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The Operators will cooperate to resolve the providing Operator's reasonable concerns so that information exchange can be resumed as soon as possible.

- 5.8** The Operators acknowledge that when information (including for the purposes of this clause any updated information) required to be provided under this Paragraph is held on a database, the Operator entitled to receive the information will not be entitled to obtain direct access to the database. The precise method by which information is to be made available will be determined by the ISG having regard to the reasonable cost, convenience and security concerns of the Operators.
- 5.9** (a) Subject to the Act and any subordinate legislation, nothing in the Access Agreement may be construed as requiring an Operator at any time to disclose to the Other Operator information which is at the date when the Access Agreement comes into force, the subject of a confidentiality obligation owed to a third person unless the third person consents to such disclosure. Where the consent of a third person is required, the Operator holding the information must use its reasonable endeavors to obtain the consent of that third person.
- (b) After the Access Agreement comes into force an Operator must use its best endeavors not to enter into any contract which would revert it from making relevant information available to the Other Operator unless the contract includes a term which permits the contracting Operator to make the information available if directed to do so by the Commission.
- 5.10** All communication information, call and such other relevant information in relation to Call Communication must be kept by both Operators for a period of two (2) years unless otherwise agreed in writing for the purposes of verification and audit.

Chapter 6 Billing and Settlement Obligations

- 6.1** Where relevant, the billing and settlement obligations set out in Section 5.14 of the MSA Determination shall be applicable.
- 6.2** The Access Seeker shall pay OCESB the Charges for the relevant Access Service(s) supplied by OCESB to the Access Seeker, as specified in Access Agreement
- 6.3** The Operators shall bear and pay all taxes as required by Malaysian law that result from the implementation of the Access Agreement.
- 6.4** All payments must:
- (a)** be paid on the Due Date unless otherwise agreed in writing by both Operators;
 - (b)** be paid by electronic transfer to OCESB or exceptionally, by cheque to the nominated account(s) of OCESB if agreed by OCESB; and
 - (c)** must be accompanied by such information as is reasonably required by OCESB to properly allocate payments received.
- 6.5** For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts of any Invoice to OCESB as they become due and payable, nor does it constitute a waiver of OCESB' right to suspend, disconnect, or terminate the relevant network facilities or network services due to non-payment of any sums due or payable to OCESB.
- 6.6** (a) OCESB shall be entitled to revise the Security Sum in any of the following event:-
- (i)** at each subsequent anniversary from the Commencement Date;
 - (ii)** where, in the opinion of OCESB, the Security Sum is less than the actual Minimum Value calculated at the end of the most recent ninety (90) days period;
 - (iii)** upon the provisioning of new or additional network facilities or network services to the Access Seeker; or
 - (iv)** where there is material change in circumstances in relation to the Access Seeker's creditworthiness. For clarification, a material change in circumstances includes, but is not limited to, a failure by the Access Seeker to pay on the Due Dates 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 the amounts in the Invoices are disputed in good faith, this will not constitute a material change in circumstances for purposes of this Section 6.6(a)(iv).
- (b)** Where the Security Sum is revised pursuant to Section 6.6 (a) above, the Access Seeker shall within five (5) Business Days from the written request of OCESB, deposit the new Security Sum with OCESB in the manner specified in Section 4.3.2.
- (c)** Where the Access Seeker deposits monies in lieu of a Bank Guarantee, such monies shall be deposited in a separate interest bearing account

("said accounts") and any interest accrued thereon be held by OCESB in addition to the Security Sum. OCESB shall forward to the Access Seeker a statement of the said accounts annually.

- 6.7 (a) In the event OCESB elects to suspend or terminate the provisioning of relevant Access Service(s) to the Access Seeker, OCESB shall have the right to use the Security Sum (together with any interest thereon) to set off any outstanding sum due and payable to OCESB by the Access Seeker.
- (b) Subject to Section 6.7(a) above, upon termination of the Access Agreement, the Security Sum deposited with OCESB or parts thereof, together with the interest thereon, (if any) shall be returned and/or refunded to the Access Seeker.
- 6.8 Where there is a Billing Dispute, the Operators shall comply with the dispute resolution procedures in Annexure A of the MSA Determination.

Chapter 7 Notices

7.1 Any communications in respect of OCESB' RAO should be made in writing to:

OCESB Asia Sdn. Bhd.

Attention: Chief Executive Officer
Address: No 19 , Jalan Semangat, 46200, Petaling Jaya, Selangor
Email: robin@ocesb.com.my

Chapter 8 Term of the Access Agreement

- 8.1 The Operators shall enter into an Access Agreement for a term of no less than TWO (2) year from the execution date of the said Access Agreement.
- 8.2 Unless otherwise agreed and subject to OCESB not being able to provide access as a result of Force Majeure, OCESB shall only require an Access Seeker to acquire access to specified Access Service(s) under an Access Agreement for a minimum period as follows:

Access Service(s)	Minimum term
Network Co-Location Service	24 months
Internet Interconnection Service	24 months

Chapter 9 Termination and Suspension Obligations

9.1 Termination circumstances:

Subject to Section 9.4, OCESB may terminate an Access Agreement or part thereof if any of the circumstances referred to in Section 9.1(a), 9.1(b) or 9.1(c) below apply and OCESB has notified the Access Seeker of its intention to terminate the Access Agreement:-

- (a) the Access Seeker has materially breached the Access Agreement and OCESB has notified the Access Seeker that it will terminate the said agreement in no less than thirty (30) days if the Access Seeker has not remedied its breach by the end of that period; or**
- (b) the Access Seeker is subject to a winding up Order; or**
- (c) a Force Majeure has continued for a period of more than 90 days.**

OCESB shall forward to the Commission a copy of the notice of termination at the same time as providing the notice of termination to the Access Seeker.

9.2 Change in law:

Where the continued operation of the Access Agreement or access to any Access Service(s) provided by OCESB is or will be unlawful (as a result of a legislative change), the Access Seeker and OCESB shall meet within five (5) Business Days of becoming aware of the relevant change in law to review whether access to the relevant Access Service(s) may be provided by OCESB on different terms and conditions (which are acceptable to the Access Seeker). If the Operators cannot agree to the provision of access on different terms and conditions, OCESB may terminate the provision of access to the relevant Access Service(s).

9.3 Suspension circumstances

Subject to Section 9.4, OCESB may only suspend access to any Access Service(s) in the following circumstances:

- (a) the Access Seeker's Facilities materially adversely affect the normal operation of OCESB's Network or are a material threat to any person's safety;**
- (b) the Access Seeker's Facilities or the supply of Access Service(s) pose an imminent threat to life or property of OCESB, its employees or contractors;**
- (c) the Access Seeker's Facilities cause material physical or technical harm to any Facilities of OCESB or any other person;**
- (d) where the Access Seeker has failed to pay Invoices in accordance with Section 5.14 of the MSA Determination;**
- (e) where Force Majeure applies; or**
- (f) the Access Seeker breaches any laws, regulations, rules or standards which has a material adverse effect on OCESB or the provision by OCESB of Access Service(s) under the Access Agreement.**

For the purposes of this Section 9.3, OCESB must provide the Access Seeker five (5) Business Days' notice in writing, including written reasons, prior to suspending access to any Access Service(s).

9.4 Approval

Prior to terminating or suspending or seeking to materially vary an Access Agreement or access to any Access Service(s) provided under it, OCESB must inform the Commission in writing of the action it proposes to take and the reasons why such action is appropriate. OCESB shall not terminate, suspend or seek to materially vary the Access Agreement or access to any Access Service(s) until such time and on such conditions, as the Commission may specify.

9.5 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 Act, the parties must notify the Commission within five (5) Business Days of such adoption. In such circumstances, the terms and conditions of the Access Agreement will continue to be 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.

9.6 Post-termination fees

OCESB shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any Access Service(s) 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 section 8.2 above).

9.7 Upfront charges refund

On termination of an Access Agreement or access to any Access Service(s) provided under it, OCESB 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.

9.10 Deposits and guarantees

Notwithstanding the obligation in Section 9.7, OCESB shall:

- (a) within sixty (60) days of termination of the Access Agreement refund to the Access Seeker any deposit paid (without interest) provided all other amounts payable by the Access Seeker to OCESB have been paid; and
- (b) immediately upon termination of the Access Agreement unconditionally waive any rights under any guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to OCESB as at the date of termination.

Schedule A General Terms and Conditions

The following are the general terms and conditions that will be reduced into an Access Agreement to be entered into between OCESB and the Access Seeker with respect to the Access Services offered by OCESB. For these terms to become binding on the Parties, a definitive Access Agreement must be drawn up and executed by both parties and subsequently registered with the Commission.

1. Forecasting Obligations

1.1 *General*

- 1.1.1 The Access Seeker shall, for the duration of the Term of the Access Agreement:
- (a) provide OCESB with a 12 month forecast of its requirements of Access within thirty (30) days from the date of this Access Agreement; and
 - (b) periodically not less than thirty (30) days before the anniversary of the Commencement Date of this Access Agreement, furnish to OCESB, reasonably accurate 12 month forecasts of its requirements for Access Services.
- 1.1.2 Duration of Forecast. All forecast provided by the Access Seeker shall, unless the context otherwise requires, be for a twelve (12) month period.

1.2 *Forecast Request*

- 1.2.1 OCESB may at any time, request in writing ("Forecast Request") that the Access Seeker provide to OCESB the following information ("Forecast Information") in sufficient detail to enable OCESB to carry out its network and provision planning for the Access Services for which access is required:
- a) Network area or operational area where access is required ;
 - b) Specific time table when each of the Access Services are required ;
 - c) The required capacity;
 - d) Such other information as may be reasonably necessary for OCESB to carry out network planning.
- 1.2.2 Time to Provide Forecast Information. The Access Seeker shall provide the Forecast Information to OCESB within five (5) weeks from the date of receipt of the Forecast Request, unless OCESB agrees in writing to an extension of the time limited for the provision of the Forecast Information.
- 1.2.3 Confidentiality of Forecast Information. OCESB shall treat all Forecast Information provided by the Access Seeker to OCESB as confidential and shall only be used by the following personnel: (a) those personnel who are in OCESB's wholesale or interconnection group or (b) those personnel of OCESB who are part of OCESB's Network engineering group with responsibility for interconnection, for the purpose of responding to and planning for the forecast.

- 1.2.4 Distribution of Forecast Information.** OCESB may only distribute Forecast Information of an Access Seeker outside the group of people referred to in Section 1.2.3 above if: (a) the Forecast Information of the Access Seeker is aggregated with forecasts provided by other operators and OCESB's own requirements; and (b) the Forecast Information or its use does not otherwise specifically identify the Access Seeker in any manner.

1.3 Updating & Confirming Forecasts

- 1.3.1 Updating Forecasts.** Regardless of whether OCESB makes a Forecast Requests, the Access Seeker shall update its forecast quarterly and shall inform OCESB in writing of the updated forecast in writing, so as to enable OCESB to carry out efficient network planning and management to meet its current and future requirements and the performance of its obligations under this Access Agreement.
- 1.3.2 Forecast Confirmation.** If OCESB requires the Access Seeker to confirm its forecasts, then the Access Seeker shall within 5 Business Days submit a statement confirming its forecasts. Upon such confirmation, the forecasts shall be deemed to be a confirmed Access Order for the purposes of Section 2 of this Agreement, to enable OCESB to undertake provisioning of the Access Services, subject always to the availability of spare capacity for such services or facilities.

1.4 Constrained Capacity

If OCESB reasonably believes that the aggregate of the total capacity of Access Services required by the Access Seeker under its relevant forecasts, OCESB's own requirements, and other 3rd party access seekers' forecast, would exceed the capacity which OCESB can provide, then OCESB will notify the Access Seeker of such constrained capacity, whereupon OCESB will endeavor to allocate the available capacity to all access seekers in accordance with Capacity Allocation Policy maintained by OCESB.

1.5 Forecast Rejection or Acceptance

- 1.5.1 Insufficiency of Forecast Information.** If OCESB considers that the Forecast Information supplied by the Access Seeker pursuant to Section 1.2.1 (above) is insufficient, then OCESB will notify the Access Seeker within five (5) Business Days of receipt of the Forecast Information, of the insufficiency of the Forecast Information and specifying what additional information OCESB requires.
- 1.5.2 Acceptance.** OCESB will notify the Access Seeker within fifteen (15) Business Days of receiving the Forecast Information if the Forecast Information is accepted by OCESB.
- 1.5.3 Effect of Acceptance.** If the Forecast Information is accepted, then the Access Seeker may not cancel, vary or alter the Forecast Information, unless OCESB so agrees in writing.
- 1.5.4 Rejection.** OCESB may send a rejection notice to the Access Seeker within fifteen (15) Business Days of receipt of the Forecast Information, if it rejects the Access Seeker's forecast. The rejection notice will specify the reasons for

rejection together with an offer by OCESB to meet with the Access Seeker within five (5) Business Days of the rejection notice, to discuss the rejection and alternative methods by which the Access Seeker may comply with the Forecast Request.

1.6 *Review of Forecasts Upon Rejection*

- 1.6.1 By Access Seeker, Upon the rejection of the Forecast Information by OCESB pursuant to Section 1.5.4 above, the Access Seeker may within twenty-one (21) Business Days from the receipt of the rejection notice by the Access Seeker, review it's Forecast Information and re-submit an amended forecast for OCESB' consideration.
- 1.6.2 By OCESB, If an Access Seeker submits an amended forecast, OCESB shall reconsider the same and the provisions set out in this Section 1 shall apply as if such amended forecast were a fresh forecast.

1.7 *Over-forecasting*

- 1.7.1 The Access Seeker shall refrain from over-forecasting its requirements for the Access Services.
- 1.7.2 OCESB shall determine whether or not the Access Seeker has over-forecasted its requirements on an annual basis by comparing the forecast amount and the previous Access Orders made for that year.
- 1.7.3 Should the Access Seeker's forecasted requirements exceed the Access Orders for that year, then there shall be deemed to be an over-forecast, and Section 1.8 shall apply in such cases.

1.8 *Effect of Over-Forecasting*

- 1.8.1 If there has been an over-forecast by the Access Seeker, and
 - (a) OCESB incurs costs and expenses in meeting such forecast, which were reasonably and necessarily incurred by OCESB, and
 - (b) OCESB has reasonably sought to mitigate its loss over a six (6) month period;then OCESB shall be entitled to recover from the Access Seeker an amount not exceeding seventy-five (75%) percent of such costs and expenses which could not have been mitigated by OCESB during the aforementioned six (6) month period.
- 1.8.2 The amount ascertained by OCESB in accordance with Section 1.8.1 above, shall be deemed to be a debt due from the Access Seeker to OCESB and OCESB shall include the said amount in the Invoice to the Access Seeker for the relevant Billing Period.
- 1.8.3 The Access Seeker shall pay the amount invoiced in accordance with Section 8 of this Access Agreement.

1.9 Failure to provide Forecasts

- 1.9.1 Any failure, neglect or refusal by the Access Seeker to comply with its obligations set out in this Section 1, shall entitle OCESB to continue to provide access to the Access Seeker but such provision of access may be at the level based on previous year's usage or level but such provision (if any) shall be without prejudice to OCESB's right to reduce such provision as dictated by the needs of OCESB and 3rd party access seekers. In either case, OCESB shall not be responsible for any loss, damages, costs or expenses arising to the Access Seeker.

2. Ordering and Provisioning Obligations

2.1 Access Order Information by Access Seeker

- 2.1.1 The Access Seeker shall provide OCESB with an Access Order, which shall set out the following information ("Access Order Information" or "AOI"):
- (a) The information specified in Schedule [state Schedule number in Access Agreement] – General Information [details of which are set out in Part F.5 to this RAO];
 - (b) the Access Services for which access is required;
 - (c) the proposed time for delivery of access by OCESB;
 - (d) the locations of delivery in accordance with OCESB's published Points of Interface (POI);
 - (e) the specifications, technical data, functionality and interoperability of the Equipment which the Access Seeker will be using in connection with the Access Order; and
 - (f) such other information as the Access Seeker may reasonably believe that OCESB may require in order to fulfil the requirements of Access Seeker.
- 2.1.2 The Access Seeker shall provide the AOI in sufficient detail and in sufficient time to enable OCESB to evaluate and plan the provisioning of the Access Services.
- 2.1.3 Confidentiality of AOI. OCESB shall treat all AOI provided by the Access Seeker to OCESB pursuant to this Access Agreement as confidential and such AOI shall only be used by the following OCESB personnel: (a) those personnel of OCESB who are in OCESB's wholesale or interconnection group; or (b) those personnel of OCESB who are part of OCESB's Network engineering group with responsibility for interconnection for the purpose of responding to and provisioning the Order.

2.2 Acknowledgement of Receipt of Access Order by OCESB

- 2.2.1 OCESB will issue to the Access Seeker an acknowledgement of receipt of the Access Order within two (2) Business Days. The following information will be provided in the receipt :
- a) the time and date of receipt;

- b) the available capacity in OCESB's relevant network facilities or network services;
- c) time frame for the fulfilment of the Access Order;
- d) a statement that the Access Order has been placed in the queue based on OCESB's queuing policy; and
- e) such additional information as may be required by OCESB to clarify the Access Order.

2.3 Additional Information

The Access Seeker shall revert to OCESB within ten (10) Business Days, with the additional information requested by OCESB in section 2.2.1 (e). Insufficient or incomplete information provided by the Access Seeker will entitle OCESB to reject the Access Order.

2.4 Service Qualifications

- 2.4.1 OCESB shall be entitled to conduct Service Qualifications on the relevant portion of its network as deemed necessary, pursuant to any request for access by an Access Seeker. OCESB will give a written notice to the Access Seeker within five (5) Business Days of receipt of the Access Order that it intends to conduct such Service Qualification.
- 2.4.2 The Access Seeker, may with the written consent of OCESB and upon terms to be agreed, conduct its own Service Qualification.
- 2.4.3 OCESB shall use all reasonable efforts to complete the Service Qualification with respect to an Access Order within fifteen (15) Business Days of the commencement of the Service Qualification.
- 2.4.4 OCESB will inform the Access Seeker of the result of the Service Qualification within two (2) Business Days of the completion of such Service Qualification.
- 2.4.5 The Access Seeker may withdraw its Access Order, without penalty, within ten (10) Business Days after receiving the results of the Service Qualification. OCESB reserves the right to charge an administrative fee of RM 500 if the Access Seeker withdraws its Access Order after the prescribed 10 day period.

2.5 Acceptance or Rejection of an Access Order

- 2.5.1 OCESB will notify the Access Seeker, within either fourteen (14) Business Days or if OCESB intends to carry out a Service Qualification, thirty five (35) days, (as the case may be), from the date of receipt of the Access Order by OCESB as set out in the acknowledgement issued under Section 2.2 above, whether such Access Order is accepted or rejected.
- 2.5.2 Rejection. OCESB may reject an Access Order on any of the following grounds:
 - a) It is not technically feasible to provide the requested Access Services;

- b) **OCESB has insufficient capacity to provide the requested network services of facilities at the time requested by the Access Seeker;**
- c) **The Access Order exceeds the forecast levels provided by the Access Seeker pursuant to Section 1 of this Access Agreement;**
- d) **the Access Order or variation requested duplicates another Access Order waiting for fulfillment;**
- e) **Access Seeker has not obtained the necessary related agreements from OCESB;**
- f) **OCESB has reasonable grounds to believe that the Access Seeker would materially fail to comply with the terms of Access Agreement,**
- g) **OCESB has reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Access Services, to protect the integrity of OCESB's Network and/or safety of individuals working on or using services supplied by OCESB's Network.**

2.5.3 If the Access Order is rejected, then OCESB shall issue a notice of rejection which shall contain, inter alia, the following information :

- a) **the ground(s) of rejection as stated in section 2.5.2;**
- b) **the time period by which OCESB will accept a modified Access Order;**
- c) **the nature of such acceptable modifications to the Access Order.**

2.5.4 The Access Seeker may within five (5) Business Days of receipt of the Notice of Rejection, request in writing to meet OCESB to discuss the reasons for rejection and alternative methods of compliance.

2.5.5 If OCESB refuses to meet with the Access Seeker then the Access Seeker may if it disagrees with the grounds for rejection, initiate the dispute resolution process specified in Schedule [insert Schedule number in Access Agreement] – Dispute Resolution Procedure.

2.5.6 Acceptance. If the Access Order is accepted, then OCESB shall issue a notice of acceptance which shall contain, inter alia, the following information :

- a) **The specific delivery date for the Access Services, which shall be: (i) in the case of Access Order for new facilities or services, no later than eight (8) months from the date of the Access Order, or (ii) in the case of augmentation of the current capacity on existing facilities or infrastructure, no later than sixty (60) days from the date of the Access Order.**
- b) **The actual or an estimate of the charges payable to OCESB by the Access Seeker, for the fulfillment of the Access Order. OCESB may initially provide an estimate of the charges, which may be subsequently varied. If a variation of charges occurs, then the Access Seeker may withdraw the Access Order if the variation of the charges exceeds the original estimate by ten per centum (10%).**
- c) **That the Access Seeker must within ninety (90) days from the date of the notice of acceptance confirm in writing to OCESB of its intention to proceed with the Access Order. The charges set out shall remain valid for the period of ninety (90) days.**

2.6 Confirmation & Charges

- 2.6.1 **Access Seeker's Confirmation.** If OCESB accepts an Access Order, the Access Seeker shall within the ninety (90) day period from the date of notice of acceptance, confirm in writing its agreement to proceed with such Access Order.
- 2.6.2 **Estimate Charges.** If OCESB had provided an estimate of the charges to the Access Seeker, OCESB will not exceed the estimate unless OCESB provides the Access Seeker with written notice by prior to OCESB exceeding the estimate, stating that:
- (a) the estimate will likely to be exceeded;
 - (b) the reasons for exceeding the estimate; and
 - (c) a further estimate of the charges for the work necessary to fulfill the Order.
- 2.6.3 If the revised estimate exceeds the original estimate by more than 10% of the original estimate, then the Access Seeker may within five (5) Business Days from the date of the notice specified in Section 2.6.2 above, withdraw the Access Order, and such withdrawal shall not expose the Access Seeker to any penalty, and OCESB shall also be released from fulfilling the Access Order, without being in breach of any of its obligations under the Access Agreement.
- 2.6.4 If the Access Seeker does not withdraw the Access Order after being notified by OCESB in accordance with Section 2.6.2 above, then the Access Seeker shall be deemed to have agreed to the revised charges from OCESB, and OCESB shall continue with the work and the Access Seeker shall be liable to pay to OCESB the revised charges.

2.7 Fulfilment of an Access Order

Upon receipt of the confirmation specified in Section 2.6.1 above, OCESB will use all reasonable efforts to fulfil the Access Orders for the Access Services which complies to the forecast supplied by such Access Seeker, on the terms and conditions contained in the Access Agreement

2.8 Required Extra Capacity

- 2.8.1 OCESB may, by written notice, require the Access Seeker to purchase additional capacity on the Access Seeker's side of the Network, as OCESB reasonably estimates, may be required by the Access Seeker to meet the demand on its Network.
- 2.8.2 Should the Access Seeker fail, neglect or refuse to procure such additional capacity within seven (7) Business Days of OCESB's notice, and the actual demand exceeds the capacity on the Access Seeker's Network, OCESB will notify the Access Seeker in writing of such overload on OCESB's Network. Thereafter, the parties shall meet within five (5) Business Days of the notice, to identify alternative sources of the required capacity for the Access Seeker.
- 2.8.3 If the access capacity issue on the Access Seekers Network cannot be resolved within ten (10) Business Days of the last meeting between the parties, OCESB

shall be entitled, without further notice to the Access Seeker, to bar or block services (including calls) to the Access Seeker's Network to the extent necessary to minimize congestion within OCESB's Network.

2.9 Delivery Date for Access

2.9.1 OCESB will deliver the ordered access to the Access Services on or before the date specified in the notice of acceptance sent by OCESB.

2.9.2 Should OCESB be able to deliver the ordered access to the Access Seeker earlier than the agreed delivery date, OCESB will advise the Access Seeker of such early delivery and if agreed to by the Access Seeker, deliver such ordered access at such earlier date.

2.10 Delay to Delivery Dates

2.10.1 In the event there is a delay in the delivery date, OCESB will as soon as reasonably practicable, notify the Access Seeker of the delay and the reasons for the delay and also advise the Access Seeker of the revised date of delivery. If the delay is longer than fourteen (14) days, the Access Seeker may cancel the Access Order without any penalty.

2.10.2 OCESB will give the Access Seeker a rebate for any delay in the delivery date, such rebate shall be of an amount equivalent to the recurring charges payable by the Access Seeker to OCESB for access to the network services or facilities over a period equal to the period of the delay solely due to OCESB. Notwithstanding the foregoing, OCESB shall not be liable for any delay caused by or attributable to the Access Seeker. The rebate will be reflected in the Invoice issued for the next Billing Cycle.

2.11 Cancellation of Access Orders

2.11.1 An Access Seeker may cancel or vary an Access Order in writing provided to OCESB at any time prior to provisioning of the Access Services by OCESB. OCESB shall be entitled to charge the Access Seeker for all costs and expenses incurred by OCESB in relation to the cancelled or varied Access Order.

2.11.2 For the purposes of this Section a variation of an Access Order shall be an addition, modification, substitution or omission made to an Access Order.

1 Testing and Provisioning by Access Seeker

OCESB will offer all reasonable assistance and cooperation to the Access Seeker in relation to the testing and provisioning of ordered Access Services. OCESB shall be

entitled to charge the Access Seeker a reasonable one-off fee for such assistance and cooperation.

2.13 Queuing Policy for Access

OCEsb maintains a Queuing Policy for all Access Seekers on a non-discriminatory basis that maximizes the efficiency of its ordering and provisioning process. OCEsb will place an Access Seeker in OCEsb's queuing system at the time of providing an acknowledgement of receipt of the Access Order pursuant to Section 2.2 above.

3. Network Conditioning Obligations

3.1 *Commencement of Network Conditioning*

OCEsb will only commence network conditioning upon the receipt of an Access Order and there is full agreement between OCEsb and the Access Seeker on the following matters:

- a) geographical coverage of the Access Services (where applicable);
- b) numbering information (where applicable);
- c) point of origin and destination to which access is required ;
- d) network routes (including provisioning of the interconnection links) ;
- e) handover arrangements at Points of Interface.

3.2 *Number Range Activation*

OCEsb will use its best endeavors, where applicable, to activate a short code or number range within thirty (30) days of being requested to do so by the Access Seeker.

3.3 *Costs of Network Conditioning*

The parties agree that the costs incurred by OCEsb in network conditioning shall be apportioned between OCEsb and the Access Seeker in the following manner:

- a) if the work has been carried out in accordance with a government or Commission requirement, each operator shall bear its own costs of such network conditioning.
- b) If the work has been carried out to fulfill an Access Order, the costs will be apportioned in an equitable manner as determined by OCEsb between the various operators who have access agreements with OCEsb, having regard to the costs incurred by OCEsb and the other operators.

4. Point Of Interface Obligations

4.1 Available Locations

4.1.1 The list of OCESB's available points of interface locations:

- (a) at which physical co-location is available ;**
- (b) in respect of which virtual co-location is available and technically feasible; and**
- (c) in respect of which in-span interconnection is available and technically feasible;**

is set out on its website, and may be amended by OCESB from time to time, but notwithstanding the said publication, the Access Seeker shall confirm with OCESB the availability of the Point of Interface locations (Appendix C), at the time of making a Forecast or an Access Order.

4.2 Deemed Access Providers

4.2.1 If the Access Seeker obtains physical co-location at a POI from OCESB, the Access Seeker shall, for the purposes of the MSA, be *deemed an access provider* with respect to other access seekers requiring co-location at the same POI, and OCESB shall be considered as the principal access provider.

4.2.2 In such a case, the Access Seeker shall notify OCESB of the identity of all other operators with whom it has reached co-location agreements within two (2) Business Days of reaching such agreements, and shall ensure that such other access seekers comply with the relevant co-location obligations contained in subsection 5.13 of the MSA, and Section 7 of this Access Agreement.

4.2.3 For the purposes of Section 4.2.2 above, the Access Seeker may disclose to such other operators the provisions of Section 7 of the Access Agreement without breaching its confidentiality obligations under the Access Agreement.

4.3 Change of POI by Access Seeker

OCESB may consider a request in writing by the Access Seeker to interconnect at a point other than the POI published by OCESB on its website. OCESB may at its absolute discretion provide access at such selected POI to the Access Seeker and any additional costs incurred by OCESB shall be paid by the Access Seeker. For the avoidance of doubt, this Section 4.3 does not impose an obligation on OCESB to interconnect at a non-specified POI Location.

4.4 Third party POI

4.4.1 Should the Access Seeker nominate a third party POI for the purposes of interconnection between the Access Seeker and OCESB, it shall first notify OCESB of such nomination giving sufficient details to OCESB to enable OCESB to decide if it accepts or rejects such nomination.

4.4.2 If OCESB accepts such nomination, the Access Seeker shall remain responsible at all times for all costs of interconnection and access at such third party's POI.

4.4.3 If OCESB rejects such nomination, OCESB shall notify the Access Seeker of its decision and shall provide reasons for its rejection.

- 4.4.4 Notwithstanding the agreement of OCESB to interconnect at such third party POI, the Access Seeker shall indemnify and keep OCESB indemnified for the duration of the Term of the Access Agreement, against all and any claims, demands, expenses, losses and expenses which OCESB may incur or be exposed to, arising from such interconnection at the third party's point of interconnect.

5. Decommissioning Obligations

5.1 Decommissioning Notice

In the event OCESB is desirous of decommissioning a Point of Interface, either (a) as a result of a third party landlord's notice to vacate under a tenancy or lease agreement, or

(b) for any other commercial reason, OCESB shall give a Decommissioning Notice to the Access Seekers if the Access Seeker is so affected, at least:

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

(as the case may be).

OCESB may give a shorter notice in circumstances where it is unable to meet the notice requirements set out in this section 5.1, but in any event shall give as much notice as possible.

5.2 Co-operation by OCESB

OCESB will offer reasonable co-operation to all relevant Access Seekers to work out a timetable for the decommissioning of a relevant Point of Interface, network facilities or network services.

5.3 Alternative Arrangements

- 5.3.1 Where OCESB gives a Decommissioning Notice, OCESB will use all reasonable efforts to provide the affected Access Seeker, a functionally equivalent interconnection at an alternative Point of Interface, on terms and conditions that are similar to that applicable to the Point of Interface that has been decommissioned, for a period of three (3) years from the date the alternative Point of Interface was commissioned. In the event OCESB is unable to agree or provide an alternative Point of Interface to the Access Seeker, the parties will discuss and agree on a reasonable compensation as stated below upon the decommissioning. The Access Seeker shall use its best efforts to obtain interconnection from another Operator.

- 5.3.2 Where OCESB gives a Decommissioning Notice to the Access Seeker that it will decommission a network facility or network service, OCESB will use all reasonable efforts to provide the affected Access Seeker access to an alternative network facility or network service on terms and conditions that are similar to that applicable to the network facilities or network services that has been decommissioned, for a period of three (3) years from the date the alternative network facilities or network services are commissioned. In the event OCESB is

unable to agree or provide an alternative network facilities or network services to the Access Seeker, the parties will discuss and agree on a reasonable

compensation as stated below upon the decommissioning. The Access Seeker shall use its best efforts to obtain access to network facilities or network services from another Operator.

5.4 Compensation for Decommissioning Point of Interface

- 5.4.1 OCESB shall pay to the Access Seeker, the Access Seeker's reasonable costs, necessarily incurred in: (a) decommissioning any of the Access Seeker's links to the Point of Interface that is proposed to be decommissioned and that are or will be rendered redundant by the proposed decommissioning; (b) installing or otherwise procuring links between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to Section 5.3.1 above; 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 Section 5.3.1 above for a period of three (3) years from the date of decommissioning.

5.5 Compensation for Decommissioning Network Facilities or Network Services

- 5.5.1 OCESB shall pay to the Access Seeker, 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 Section 5.3.2 above; or (b) re-arranging Equipment to connect to the alternative network services offered in accordance with Section 5.3.2 above, unless such decommissioning is caused by an event of Force Majeure.

5.6 Determining Compensation.

The parties agree to the following process to determine the compensation payable by reason of Sections 5.4 and 5.5 above:

- 5.6.1 The Access Seeker must within thirty (30) days of the completion of the decommissioning and re-installation at the substitute Point of Interface, submit to OCESB details of the Access Seeker's reasonable costs identified in Sections 5.4.1 and 5.5.1 above.
- 5.6.2 If OCESB considers that the submission is insufficient for OCESB to verify the costs, OCESB may request the Access Seeker to provide further information, whereupon the Access Seeker shall within thirty (30) days submit the further information required or provide an explanation as to its unavailability.
- 5.6.3 Upon receipt of all requisite information from the Access Seeker, OCESB shall within thirty (30) days, evaluate and determine if the costs incurred is reasonable and necessary, and if OCESB agrees with quantum of costs incurred, OCESB shall notify the Access Seeker in writing of its decision and the Parties shall agree on a mechanism for payment of the compensation.
- 5.6.4 If after the period set out in Section 5.6.3, OCESB disagrees with the computation provided by the Access Seeker, then OCESB shall notify the Access Seeker stating its reasons for its disagreement. Upon such notification, the Parties shall meet at a mutually agreed venue and time to resolve the disagreement failing which, a dispute is deemed to have arisen, which shall be

resolved in accordance with the Dispute Resolution Procedure in Schedule [As Stated in Access Agreement].

6. Network Change Obligations

6.1 Scope of Network Change

This section deals with the obligations between OCESB and the Access Seeker (including all other operators, whether or not they are Access Seekers or Access providers), with respect to the implementation of a Network Change (as set out in Section 6.2 below) which necessitates a change in the hardware or software of the other party's Network in order to ensure the continued proper operation and compatibility of the parties respective Networks. The obligations in this Section are reciprocal in nature and apply both to OCESB and the Access Seeker.

6.2 Types of Network Changes

For the purposes of this Agreement, the following changes would be considered as a network change:

- a) Interface change
- b) Facilities and/or Service change
- c) Network change
- d) Operational Support Systems (OSS) change (includes billing, Ordering and provisioning, and Customer Churn process)
- e) Functionality change

(Collectively referred to as the "Relevant Changes")

6.3 Notification of Change

6.3.1 If either OCESB or the Access Seeker (as "the notifying party") proposes to make a Relevant Change to its Network, services and procedures, the notifying party will issue a Change Notice to the other party (the "recipient party") stating the nature, effect, technical details and potential impact on the recipient party's Network. Upon receipt of the Change Notice, the recipient party shall immediately identify and begin planning the necessary consequential changes that it has to implement to make its Network, services or procedures compatible with the notifying party's Network.

6.3.2 The notifying party will, no later than ten (10) Business Days from the Change Notice, make its technical representatives available to the recipient party to discuss the Relevant Changes, and the necessary consequential changes that the recipient party has to implement to make the recipient party's Network, services or procedures compatible with the notifying party's Network. All Relevant Changes initiated by the notifying party shall only be carried out after the expiry of three (3) months from the date of the Change Notice.

Relevant change:	Notice Period:
Interface Change	Three (3) month
Network change	Three (3) month
Facilities and/or Service change	Three (3) month
OSS Change	Three (3) month
Functionally Change	3 month

6.4 *Post notification Procedure and Testing*

- 6.4.1** The notifying party will co-operate and meet with the recipient party within the time frame set out in section 6.2 above, and provide additional information reasonably requested by the recipient party so as to minimize any adverse impact of the Relevant Changes.
- 6.4.2** The notifying party will co-operate with the 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. The notifying party will jointly with the recipient party carry out such tests as developed above at least twenty (20) days prior to the notifying party implementing the Relevant Changes.
- 6.4.3** The cost of the tests shall be borne by the parties' rate ably taking into account the number of operators that may be affected by the Relevant Change.

6.5 *Testing Failures*

- 6.5.1** Subject to the recipient party having fully co-operated with the notifying party in relation to the development and execution of the tests above, and having regard to the notifying party's requirement for the Relevant Changes:
- a) if the recipient party does not accept the tests or the results of such tests within ten (10) days prior to the date when the notifying party proposes to effect the Relevant Changes; or
 - b) such tests do not provide reasonable assurance of the continued operation and compatibility of the parties' respective Networks, services or procedures,
- then the notifying party will postpone implementation of the Relevant Changes for such period as may be necessary to allow the parties to repeat the testing procedures set out above. In the event of continuous failure of the tests, then the Relevant Change shall be abandoned.

7. Network Facilities Access and Co-Location

7.1 *Applicability*

If any co-location or access is to be provided by OCESB under this Access Agreement, then the provisions set out in this section shall be applicable.

7.2 Inspection

OCESB will allow a selected number of employees of the Access Seeker to physically inspect the network facilities of OCESB, provided that the Access Seeker gives OCESB five (5) days prior notice of such inspection and furnishes a list of the Access Seeker's nominated employees who will attend the inspection. OCESB shall have the right to limit the number of persons allowed in any of its facilities, and may refuse entry to any unauthorized employees of the Access Seeker from gaining entry into such facilities.

7.3 Physical Access to OCESB's Facilities

OCESB shall subject to the terms set out below, allow the Access Seeker's employees physical access to OCESB's specified facilities, and also physical control over the Access Seeker's Equipment located at such network facilities at any time the Access Seeker needs such access, subject always to the Access Seeker providing the names of its personnel who will have access to OCESB's facilities prior to such access.

7.4 Escorts during Access and Site Register

7.4.1 OCESB may at its discretion and at its costs, for security purposes, assign escorts (who may either be its own employees or third parties) to be present when the authorized employees of the Access Seeker wish to enter onto OCESB's facilities.

7.4.2 The Access Seeker shall at all times establish and maintain a site register to record the names of all employees who visit OCESB's facility. OCESB shall be entitled to inspect such site register upon request. OCESB may on its own volition maintain a site register to record the names of all employees of the Access Seeker who visit OCESB's facility.

7.4.3 OCESB shall be entitled to refuse entry to any person purporting to be the Access Seeker's employee if a proper site register is not maintained by the Access Seeker.

7.5 Space Requirements

7.5.1 OCESB will allocate space at each location where OCESB has available space and wishes to allow co-location to an Access Seeker at such location. Such allocation shall be made on a non-discriminatory manner.

7.5.2 Provision of Information. The Access Seeker shall at least thirty (30) days before the anniversary of the Commencement Date provide such information about its physical space requirements for a twelve (12) month period over the duration of the Term of the Access Agreement. This will enable OCESB to satisfy the provisions of Section 5.13.11 of the MSA which requires Access Providers to submit information regarding its physical space availability, usage and space reservation. OCESB may request the Access Seeker to provide such

further information and the Access Seeker shall provide such further information within five (5) Business Days of the request.

7.6 *Preparatory Work by the Access Seeker*

OCESB will permit an Access Seeker's employees or its authorized contractor to carry out preparatory work at OCESB's network facilities if such work is required for the purposes of allowing the Access Seeker to obtain access to or to co-locate at OCESB's network facilities. OCESB shall only allow such preparatory work to be carried out if it is satisfied that such employees or authorized contractors of the Access seeker have the necessary qualifications and skills to carry the intended work.

7.7 *Preparatory Work by OCESB*

7.7.1 If the parties agree that OCESB shall carry out the preparatory work on behalf of the Access Seeker, then OCESB shall undertake the preparatory work and the Access Seeker shall furnish all necessary co-operation to OCESB to enable OCESB to complete the preparatory work and OCESB shall be entitled to the costs reasonable incurred in carrying out the preparatory work based on an estimate given to the Access seeker.

7.7.2 **Right to Withdraw.** If OCESB undertakes preparatory work for the Access Seeker based on a previous estimate, and if OCESB is of the opinion that the estimated charges may be exceeded, OCESB will give a written notice to the Access Seeker providing a revision of the estimated charges. The Access Seeker may within five (5) Business Days from receipt of the revised estimate, withdraw the request that OCESB carry out the preparatory work without penalty if the revised estimate exceeds the previous estimate by more than ten percent (10 %). The Access Seeker will be liable to compensate the OCESB if it withdraws the access request in all other circumstances.

7.7.3 If the Access Seeker does not respond within the time limited for withdrawing the request for preparatory work, then the revised estimate shall be deemed to be agreed by the Access Seeker and OCESB shall continue with the preparatory work based on the revised estimates.

7.8 *Delays in Preparatory Work*

If there is likely to be a delay on the part of OCESB in carrying out the preparatory work within the agreed time frame, OCESB will promptly notify the Access Seeker of such delay and the reasons thereof. If the delay exceeds fourteen (14) days, the Access Seeker shall have a right to cancel the preparatory work being undertaken by OCESB without penalty. In addition OCESB may be liable to compensate the Access Seeker for reasonable costs incurred as a result of the delay, provided the delay was not caused or contributed by the Access seeker and subject to reasonable efforts by the Access Seeker to mitigate those costs.

Utilities and Ancillary Services

If OCESB has permitted access or physical co-location at a OCESB location or network facilities, OCESB will, subject to the parties reaching a prior agreement as to applicable cost, make available the under mentioned utilities and ancillary services where such utilities and ancillary services are within the control of OCESB and OCESB has capacity to provide:

- (a) access to roads
- (b) access to land
- (c) power
- (d) backup power
- (e) environmental services such as ventilation, air conditioning, fire protection
- (f) security services
- (g) site maintenance.

7.10 Marking of Access Seekers Equipment

The Access Seeker shall mark or label its Equipment which is co-located with OCESB's Equipment in such a manner that the Equipment is easily identified as belonging to the Access Seeker.

7.11 Access for Maintenance

OCESB will allow reasonable access to the Access Seeker's personnel for the purposes of maintaining the Access Seeker's Equipment PROVIDED THAT the Access Seeker first notifies OCESB of the names of its personnel who will require access to carry out such maintenance, and OCESB's has approved that those Access Seeker's personnel may access those facilities or location.

7.12 Extensions of Network Facilities

7.12.1 OCESB may, subject to technical feasibility and at the Access Seeker's own costs, reasonably permit the Access Seeker to extend OCESB's network facilities as may be reasonably required to meet the Access Seekers requirements.

7.12.2 If the Access Seeker intends to extend OCESB's network facilities, the Access Seeker must first submit a proposal to OCESB setting out the purpose of such extension, the design of such extension and the impact such extensions may have on OCESB's network.

7.12.3 Within thirty (30) days from receipt of the proposal by OCESB, OCESB will evaluate and determine whether to agree to such extension or not. The decision of OCESB is final and the Access Seeker agrees that such decision shall be binding on the Access Seeker.

7.12.4 If OCESB agrees with the proposal, then OCESB shall advise the Access Seeker of its decision. The Access Seeker shall be responsible for obtaining all permits and approvals required by law if it is to undertake the extension work,

and indemnify and keep OCESB indemnified against all losses, costs, fines, damages, expenses and claims which may arise by virtue of the Access Seeker undertaking the extension work.

8. Billing and Settlement Obligations

8.1 Deposit & Charges

- 8.1.1 **Charges.** The Access Seeker shall pay OCESB the agreed charges for the Access Services. The charges may either be commercially set prices or regulated prices set out in the Mandatory Standard on Access Pricing, Commission Determination No. 1 of 2005. (“MCMC 2005 Price Determination”) or any other Price Determinations issued by the MCMC from time to time.
- 8.1.2 If OCESB incurs additional costs outside those envisaged by the parties in the Access Agreement, then the Access Seeker shall pay such additional costs to OCESB, in accordance with the terms set out herein.
- 8.1.3 **Deposits.** Within thirty (30) days of the execution of this Access Agreement, the Access Seeker shall provide to OCESB a bank guarantee from a Bank in Malaysia for an amount equal to [*amount to be specified – note: the amount would be approximately two(2) months charges of the relevant Access Services provided to the Access Seeker*]

8.2 Invoices

- 8.2.1 OCESB will issue Invoices to the Access Seeker in writing and/or in electronic form, in within thirty (30) calendar days of the end of the Billing Period. The invoices shall be for all amounts due to OCESB in respect of the supply of Access Services during such Billing Period, including such amounts as referred to in Section 8.1.2 above, less any rebates payable by OCESB to the Access Seeker under the Access Agreement.
- 8.2.2 **Billing Cycle.** OCESB will issue invoices in monthly billing cycles, unless otherwise agreed between OCESB and the Access Seeker, and each Invoice will be supported by such information reasonably necessary to allow the Access seeker to verify the Invoice.
- 8.2.3 In the event OCESB is unable for any reason to issue an invoice, OCESB may issue a provisional Invoice based on the previous months invoice.
- 8.2.4 Unless otherwise agreed by OCESB and Access Seeker in an Access Agreement, all invoices are in Ringgit Malaysia (RM) and payment shall be made by the Access Seeker in Ringgit Malaysia.

8.3 Billing Errors

The Access Seeker must notify OCESB, within ten (10) days from the date of the Invoice, if there are errors in the Invoice. Upon verification and confirmation of such errors, OCESB will make the necessary adjustments in the next Invoice to the Access seeker.

8.4 Payment

- 8.4.1 The Access Seeker shall make full payment of all Invoices (including any provisional Invoice) issued to it by OCESB within thirty (30) days from the date of each Invoice. The payments may be made either by cheque or electronic fund transfer directly to an account nominated by OCESB.
- 8.4.2 Notwithstanding anything to the contrary, the Access Seeker may withhold payment of amounts disputed in good faith, provided that the Access Seeker notifies OCESB within the timelines as set out in Section 8.6.1 below.
- 8.4.3 After resolution of the Billing Dispute, if OCESB is obliged to refund an amount to the Access Seeker, OCESB will pay interest on the refunded amount in accordance with Section 8.8 below. Interest will be payable from the date the Access Seeker paid the disputed amount to the date of the refund by OCESB.
- 8.4.4 If the dispute is resolved against the Access Seeker, the Access Seeker shall, in addition to paying the amount disputed, pay interest at the rate specified in Section 8.8.

8.5 Billing Dispute Notification

- 8.5.1 **Right to Dispute.** If the Access Seeker disputes any of the Invoices (within the time periods specified in section 8.6 below), the Access Seeker shall provide sufficient and complete information to OCESB relating to such dispute including:
 - a) the nature of the dispute, supported with necessary documents;
 - b) the amount disputed;
 - c) detail of the Invoice stating the Access Seekers account number with OCESB, the invoice reference number, the invoice date, the invoice amount and the billing verification information
 - d) such other information as the Access Seeker deems necessary to facilitate the expeditious resolution of the dispute.
- 8.5.2 **Grounds for Disputing Invoice.** An Invoice may be disputed by the Access Seeker if the Access Seeker has reasonable grounds to believe that an error has arisen from one of the following circumstances:
 - (a) OCESB'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 Access Seeker's Billing System;
 - (c) OCESB has made some other error in respect of the recording of the calls or calculation of the Charges.

8.6 Billing Disputes Timeline

- 8.6.1 If the Access Seeker intends to dispute an Invoice, the Access Seeker must do so within the following time lines:
 - a) in the case of domestic calls, the Access Seeker will notify OCESB within thirty (30) days of receipt of the disputed invoice from OCESB;

- b) in the case of international calls, the Access Seeker will notify OCESB within six (6) months of receipt of the disputed invoice from OCESB.
- c) in the case of any other Facilities and/or Services, the Access Seeker will notify OCESB within thirty (30) Business Days of receipt of the disputed invoice from OCESB

8.6.2 If the Access Seeker does not dispute the Invoice within the above specified time lines, then the Access Seeker shall be deemed to have accepted the Invoices and shall pay the disputed amount to OCESB within five (5) Business Days without any deductions or set-off.

8.7 *Billing Dispute Resolution*

The parties agree to use their reasonable endeavors to promptly resolve any Billing Dispute notified under this section 8. If the parties are unable to resolve a Billing Dispute, then such Billing Dispute will be resolved in accordance with the Dispute Resolution Procedure in Annexure A of the MSA Determination.

8.8 *Late Payment Interest*

8.8.1 OCESB shall be entitled to charge the Access Seeker late payment interest on all amounts outstanding with respect to any overdue Invoice, at the rate of two percent (2%) per annum above bank base rate calculated daily from the due date of the Invoice until the date of full payment or eight percent (8%) per annum from the due date until full payment (whichever is the lower).

8.8.2 If any invoice is overdue by sixty (60) days or more, such invoice shall be subject to further interest at the rate of three percent (3%) per annum above the bank base rate calculated daily from the sixtieth day following the due date until the date of full payment, or eight percent (8%) per annum from the due date until full payment (whichever is the lower).

8.9 *Backbilling*

8.9.1 If OCESB discovers that there are any errors or omissions, or miscalculations in an Invoice ("the affected Invoice"), OCESB shall include the difference between the revised value (taking into account the errors, omissions and miscalculations) and the value of the affected invoice (with such errors, omissions and miscalculations), and such difference shall be included into a later Invoice. This differential amount shall be identified in sufficient detail to enable the Access Seeker to undertake a reconciliation of the Invoices and payments made, PROVIDED THAT the amendment is made within two (2) months from the date of issuance of the affected invoice, or three (3) months from the latest date when the calls were made or service provided by OCESB.

8.9.2 Upon receipt of the Invoice containing such differential amounts, the Access Seeker may either request for further information within ten (10) Business Days or pay the said Invoice.

9. Set-Off

- 9.1** The Access Seeker shall not deduct, withhold or set-off any amounts stated in the Invoices against any amounts which OCESB may owe the Access Seeker or which may be due from OCESB to the Access Seeker.
- 9.2** If the Access Seeker in contravention of this section 9 withholds, sets-off or deducts any amounts from the Invoice (except if a Billing dispute has been initiated under Sections 8.5 to 8.7 above), then OCESB may suspend the provision of the Access Services, until the Access Seeker pays the amount withheld.
- 9.3** The amount withheld shall be subject to interest as computed in accordance with Section 8.8 above.
- 9.4** OCESB may set-off any amount owing to it by the access seeker if the access seeker is in default of payment for 2 billing cycles, from any monies held by the access provider to the account of the access seeker including calling on any security guarantees or security deposits.

10. Operations and Maintenance Obligations

10.1 Operations & Maintenance Responsibility

OCESB will be responsible for the operations and maintenance of its own network facilities and network services. The Access Seeker shall be responsible for the operations and maintenance of its own network facilities and network services. The party in whose Network a fault occurs is responsible for rectifying and restoring services in accordance with the response times stated in this section 10.3 below.

10.2 Fault Management

- 10.2.1** Establishing Fault Reporting Service. Both the Access Seekers and OCESB will establish and maintain, at their own costs, a fault reporting service that allows its Customers who are connected to their respective Networks, to report such faults directly to their fault management systems.
- 10.2.2** Fault Reporting. Both OCESB and the Access Seeker will ensure that it advises its directly connected customers to report all faults to the fault reporting service set up by the relevant operator, and will manage its fault reporting and identification on a non-discriminatory basis.
- 10.2.3** Major inter-working faults. If a major fault occurs in the interconnected Network, which affects communications that crosses both OCESB;s and the Access Seekers Networks, initial identification of fault will rest with the Operator who first becomes aware of the fault. Once it is determined accurately where the fault lies, the affected Operator in whose Network the fault has occurred will promptly repair the said fault.
- 10.2.4** Faults affecting other Networks or Equipment. If an Operator identifies a fault occurring in its Network which may have an adverse effect on the other Operators Network or Equipment, the first-mentioned Operator must promptly inform the other operator of
 - (a)** the existence of the fault

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

10.2.5 Fault Priority and Response Times. In the event of interruption or failure of any of the facilities and/or services, the affected party will restore those services as soon as is reasonably practicable. Both OCESB and the Access Seeker will assign priority levels for each of the defect that it experiences in its Network, and will give the highest priority and service to faults that will affect a large number of customers, and to recurring faults affecting any part of the network in the following order :

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

10.3 *Fault Rectification Response Time*

Each party to this Access Agreement, agrees to respond and rectify faults in its Network in accordance with the agreed response and rectification time frames set out in the Fault Rectification Response Times Schedule [*Schedule B.1*]

10.4 *Planned Maintenance*

10.4.1 Subject to 10.6 below, the operator (“the Maintenance Operator”) who intends to carry out planned maintenance on any part of its network, which may affect the Access Seekers network or OCESB’ network, then the Maintenance Operator is required to:

- a) provide a minimum of 10 Business days’ notice of the planned maintenance;
- b) use reasonable endeavors to minimize any disruption to the interconnect and access communications between OCESB and the Access Seeker ; and
- c) where reasonably practicable, and if agreed between OCESB and the Access Seeker, OCESB will provide an alternative route or carriage on terms to be agreed.

10.5 *Emergency Maintenance*

10.5.1 If the Maintenance Operator needs to undertake emergency maintenance on any part of its Network, which may affect the provision of Access Services, then the Maintenance Operator will, if it is able to :

- a) provide at least 1 Day notice of the planned maintenance, where reasonably practical;
- b) use reasonable endeavors to minimize any disruption to the carriage of communications that crosses or would cross both OCESB and Access Seeker network, and which are caused by the maintenance or re-routing ; and

- c) where reasonably practicable, and if agreed between OCESB and the Access Seeker, OCESB will provide an alternative route or carriage of the Access Seekers communication at no additional cost or on terms to be agreed.

10.6 Technical Obligations

10.6.1 Compliance to Commission Technical Guidelines and Standards

Subject to the technical obligations set out in the RAO, OCESB and the Access Seeker will adhere to the relevant guidelines and all applicable technical standards adopted or issued by the Commission from time to time.

10.6.2 Technical and Implementation Manual

The parties shall agree to a Technical and Implementation manual (“T&I Manual”) in respect of the enablement of the access to the required Access Services as specified in the T & I Manual in Schedule [set out Schedule No.]. Such manual shall be agreed to within 30 days from the date of execution of the Access Agreement, or such longer period as may be mutually agreed.

10.7 Network Protection and Safety

The parties agree that each of them is responsible for the safe operation of its side of the network boundary, and shall take all reasonable steps to ensure that its side of the network, its network operations, and the implementation of this Access Agreement:

- a) will not endanger the safety or health of any person, both its own personnel and those of the other party ;
- b) will not cause physical or technical harm to the other party’s Network, including causing damage, interfering with or causing deterioration in the operation of the other party’s Network.

10.1 Interference to the Network

Both OCESB and the Access Seeker shall take all necessary precautions against interference, and shall not knowingly, do anything or permit any third party to do anything in relation to their respective network and/or equipment which will:

- a) cause radio interference to the other party’s network ;
- b) Materially obstruct, interrupt or impede the continuous use or operation of the network facilities, network services or equipment.

10.9 Notice of Interference

If either OCESB or the Access Seeker (“the Notifying Operator”) notifies the other party (“the Recipient Operator”) that the Recipient 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 as soon as possible, and in any case, within twenty-four (24) hours of receiving notice form the Notifying Operator, so that no interference is caused; or
- (b) If the other Operator is not able to locate the source of the interference within twenty-four (24) hours under paragraph above, the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet as soon as possible , and in any case, within twenty-four (24) hours

of such notice and jointly examine each other's Network, network facilities, network services, or Equipment to locate the source of the interference.

10.2 Quality of Service

Subject to technical capacity, the access provided by OCESB to the Access Seeker shall be at the quality of service level set out in the Quality of Service Schedule (state schedule No.).

11. General Obligations of the parties

11.1 OCESB's obligation to supply

11.1.1 OCESB shall supply to the Access Seeker the Access Services as set out in Schedule G.1 for the duration of the Term of the Access Agreement.

11.2 Additional Access Requirements

11.2.1 If the Access Seeker requires access to additional network facilities or network services not set out in Schedule G.1 to this Access Agreement, then the Access Seeker may obtain Access to such additional Access shall by submitting an Access Request in accordance with Part B of the OCESB RAO.

11.2.2 If OCESB accepts such Access Request, then the parties agree that OCESB may elect to either amend this Access Agreement by preparing a supplemental agreement, which adds such additional Access Services, or enter into a new Access Agreement for such additional Access Services.

12. Term of Access Agreement

12.1 Term

12.1.1 This Access Agreement shall be for a term of 3 years commencing from the Commencement Date until the Expiry Date ("Term").

12.1.2 If the Access Seeker wishes to renew the Term of this Access Agreement, then the Access Seeker must give to OCESB a notice at least one-hundred and eighty (180) days' notice before expiry of the Term requesting that the Access Agreement be renewed further a further term of three (3) years on the same terms and conditions as set out in this Access Agreement ("the Renewal Notice"), save that OCESB shall have the liberty to review the access charges on commercially negotiated Access Services.

12.1.3 If OCESB agrees to such the Renewal Notice, then the parties shall execute a new Access Agreement on the new terms.

.1.2 Term of Supply

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

	Facilities and/or Services	Minimum Period
1.	Transmission services	Twelve (12) months
2.	Network facilities Access	Three (3) years

13. Suspension and Termination Obligations

13.1 Termination by OCESB

Without prejudice to any other rights or remedy which OCESB may have against the Access Seeker, but subject to Section 13.4 below, OCESB may, terminate the Access Agreement:

- (a) if any one of the following events have occurred:
- (i) where the Access Seeker has committed a material breach of the Access Agreement, and OCESB has given the Access Seeker thirty (30) days to remedy the breach and the Access Seeker has failed, neglected and/or refused to do so; or
 - (ii) where the Access Seeker has become subject to a winding up order; or
 - (iii) a Force Majeure event has continued for a period of more than 90 days.

13.2 Change in law

13.2.1 Where the continued operation of the Access Agreement or access to any network facilities or network services provided thereunder is or will become unlawful as a result of legislative amendment(s), the Access Seeker and OCESB shall meet within five (5) Business Days of OCESB becoming aware of the legislative change, to review whether access to the relevant network facilities or network services may be provided by OCESB on terms and conditions acceptable to the Access Seeker and which would prevent such access from being unlawful under the legislative change ("*Alternative Terms and Conditions*").

13.2.2 If the parties cannot agree on the Alternative Terms and Conditions within ten (10) Business Days or such further period as may be mutually agreed, OCESB may terminate this Access Agreement if OCESB obtains the approval of the Commission as set out in Section 13.4 below.

13.3 Suspension

13.3.1 Subject to Section 13.3.2, OCESB may only suspend access to any network facilities or network services in the following circumstances:

- a) the Access Seeker's network facilities materially and adversely affect the normal operation of OCESB's Network or are a material threat to the safety of any individual;**
- b) the Access Seeker's network facilities or the supply of a network service poses an imminent threat to the life or the property of OCESB, its employees or contractors;**
- c) the Access Seeker's network facilities cause material physical or technical harm to any network facilities of OCESB or any other person;**
- d) where the Access Seeker has failed to pay Invoices in accordance with its obligations under Section 8 of this Access Agreement;**
- e) where the Access Seeker has failed to provide additional security in accordance with section 18.3 of this Access Agreement ; or**
- f) where a Force Majeure event occurs.**
- g) the Access Seeker breaches any laws, regulations, rules or standards which has a material and adverse effect on OCESB or the provision by OCESB 's Facilities and/or Services under this Access Agreement.**

13.3.2 Subject to Section 13.4 below, OCESB shall give an Access Seeker five (5) Business Days prior written notice of its intention to suspend the Access Seeker's access to any of OCESB's network facilities or network services. Such notice shall also contain written reasons for the intended suspension.

13.4 Prior Approval of Commission for Termination, Suspension, Variation

13.4.1 OCESB shall give the Commission prior written notice of its intention to terminate, suspend or materially vary an Access Agreement. Such notice shall also state the reasons for OCESB's action and its appropriateness.

13.4.2 The right of OCESB to terminate or suspend or seek to materially vary the Access Agreement or access to any Access Services provided under it, may be exercised only when the Commission has agreed to such a course of action and has so notified OCESB. Such notification may contain such conditions as the Commission may specify.

13.4.3 Upon receipt of such notification, OCESB shall comply with the conditions and timeframes set out by the Commission, notwithstanding any provision in this Access Agreement to the contrary.

13.5 Effect of termination

13.5.1 Any termination under this Access Agreement shall be without prejudice to any accrued rights and obligations of the parties at the date of termination.

13.5.2 OCESB shall not be entitled to any additional charges, costs or expenses on termination 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 the minimum contractual period as set out in Section 11.3 above.

13.5.3 Upon the termination of an Access Agreement or access to any Access Services provided thereunder, OCESB shall refund to the Access Seeker all amounts paid in advance to the extent that the amount (or part thereof calculated on a pro-rata basis), relate to the period after the date of termination.

13.5.4 Notwithstanding the obligation in Section 13.5.3, OCESB shall:

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

13.6 *Effect of Suspension*

13.6.1 If OCESB elects to suspend the Access Agreement, then for the duration of the suspension, OCESB shall not be required to provide any access to the Access Seeker, and the rights, responsibilities and obligations of the parties pursuant to this Access Agreement will be held in abeyance until the Access Agreement is reactivated, and the Access Seeker may not exercise any such rights.

13.6.2 If the Access Agreement is suspended, the period of suspension shall not affect the expiry date of the Access Agreement.

13.6.3 OCESB shall not be held responsible to the Access Seeker for anything occurring, arising or manifesting itself during the period of suspension, nor liable for any loss, costs, damages, expenses (including consequential losses) which the Access Seeker may suffer due to the suspension.

14. Assignment

14.1 Neither party shall assign the Access Agreement to any other person, unless the prior written consent of the other party to this Access Agreement is obtained (which consent shall not be unreasonably withheld).

15. Force Majeure

15.1 Neither party will be deemed to be in default under this Access Agreement, or will be liable to the other, for failure to perform any of its non-monetary obligations under this Agreement for any period and to the extent that such failure results from any event or circumstance beyond that party's reasonable control, including acts or omissions of the other party or third parties, natural disasters, riots, war, civil disorder, court orders, acts or regulations of governmental bodies, labour disputes or failures or fluctuations in telecommunications equipment or lines, or other equipment failure, and which it could not have prevented by reasonable

precautions or could not have remedied by the exercise of reasonable efforts, provided that the exercise of such reasonable precautions or reasonable efforts will not require the incurrence of any additional cost or expense (each, a “Force Majeure Event”).

16. Intellectual Property Rights

- 16.1** Each party shall license to the other party for the Term of the Access Agreement and on a royalty-free basis, all Intellectual Property rights necessary for the proper operation of the Access Agreement and the inter-operability of each party’s networks, subject to any relevant third party licenses.
- 16.2** If either party fails to comply with its obligations under section 16.1, the party in default shall indemnify the other party from all loss suffered and liability incurred by the other party as a result of any infringement of any third party intellectual property rights used in the other party’s network. This indemnification will be the only remedy and form of compensation available to the party invoking it relation to intellectual property licensed or disclosed under the Access Agreement.
- 16.3** Except as otherwise expressly provided in the Access Agreement, all intellectual property rights, including trade secrets if any, shall remain in the ownership of the person creating or commissioning the same and nothing in the Access Agreement shall confer or be deemed to confer on either party any rights or licenses in the intellectual property of the other party or of any third party.
- 16.4** Without prejudice to section 16.3, neither party shall be entitled to use any trademarks or service marks (whether registered or not) of the other party in any document or other medium, without the prior written consent of the other party.
- 16.5** The parties will negotiate arrangements (including in respect of title) concerning intellectual property jointly developed in the course of the performance of the Access Agreement or otherwise in connection with the Access Agreement.

17. Confidentiality

- 17.1 Scope of Obligation.** Except as otherwise expressly provided in this Agreement, OCESB and the Access Seeker each agree that :
- (i)** all information communicated to it by the other and identified as confidential, (or which the other party ought reasonably have known is confidential by nature) whether before or after the Commencement Date including without limitation information relating to the business affairs of the parties, information relating to the parties’ customers or employees, and service offerings,
 - (ii)** all information identified as confidential to which it has access in connection with the access, on or after the Commencement Date, and
 - (iii)** this Agreement and the parties’ rights and obligations under this Agreement, will be and will be deemed to have been received in confidence and will be used only for purposes of this Agreement, and each of the parties, agree to use the same means as it uses to protect its own confidential information, but in no event less than reasonable

means, to prevent the disclosure and to protect the confidentiality of the information.

No such information will be disclosed by the recipient party without the prior written consent of the other party as such information shall only be disseminated on a need-to-know basis; provided however, that each party may disclose this Agreement and the other party's confidential information to those of the recipient party's legal advisers, auditors, insurers (if applicable), such parties appointed by the Commission, the Commission, and the full time employees who have a need to have access to such information in connection with their employment (or engagement, if applicable) by the recipient party, so long as the recipient party requires, in the case of its legal advisers, auditors and insurers, that each of them execute a confidentiality agreement containing terms and conditions no less restrictive than those set out in this Section 17.

17.2 Exceptions to Disclosure. The obligations of non-disclosure will not prevent either party from disclosing information that belongs to the other party if :

- (i) it is already known by the recipient party without an obligation of confidentiality other than under this Agreement,**
- (ii) is publicly known or becomes publicly known through no act of the recipient party,**
- (iii) is rightfully received from a third party,**
- (iv) is independently developed without use of the other party's confidential information**
- (v) is disclosed without similar restrictions to a third party by the party owning the confidential information or**
- (vi) is required to be disclosed pursuant to Law or a court order or governmental authority. If confidential information is required to be disclosed in connection with the conduct of any mediation or dispute resolution proceeding carried out pursuant to Section 17, such confidential information may be disclosed pursuant to and in accordance with the approval and at the direction of the mediator or other third party, as the case may be, conducting such proceeding.**

17.3 Return or Destruction. Upon written request at the expiration or termination of this Agreement for any reason, all such documented confidential information (and all copies) owned by the requesting party will be returned to the requesting party or will be destroyed, with written certification being given to the requesting party. The provisions of this Section 19 will survive the expiration or termination of this Agreement for any reason.

18. Review and Amendments

18.1 *Review of Access Agreement*

The parties agree that the Access Agreement shall be reviewed:

- a) if the Minister issues a direction or determination relating to Access and related matters;
- b) if the Commission issues a direction or determination relating to Access and related matters;
- c) if the CMA or the Standard is amended in relation to its subject matter;
- d) by agreement between the parties;
- e) if a condition of either party's license is amended or deleted or a new condition is imposed that affects the other party's right to provide or receive Access.

[collectively referred to as a "Review Events"].

18.2 Review Process

- 18.2.1 If a Review Event occurs, then OCESB may notify the Access Seeker that the Access Agreement will be reviewed as soon as possible but in any event no later than thirty (30) days from the date when OCESB notifies the Access Seeker.
- 18.2.2 Upon completion of the review, OCESB shall submit to the Access Seeker a copy of the Access Agreement duly marked up with the amendments or modifications or variations clearly identified.
- 18.2.3 The Access Seeker shall revert with its comments and suggested changes (if any) within fourteen (14) days from the date of receipt of the amended Access Agreement.
- 18.2.4 Once the parties have agreed to the amendments to the Access Agreement, then the parties shall execute the amended Access Agreement and OCESB shall submit the same for registration with the Commission.

18.3 Review of Security for Payment

- 18.3.1 OCESB may review the security provided by the Access Seeker if there has been a material change in circumstance in relation to the Access Seeker's creditworthiness.
- 18.3.2 For the purposes of this Section 18.3, a material change in circumstances includes, but is not limited to, failure to pay on the due date at least three (3) Invoices rendered in the preceding six (6) months as long as those amounts have not been disputed in good faith.
- 18.3.3 Additional Security. If a material change has manifested, OCESB may request additional security from the Access Seeker to cover any risks associated with the continuous provision of Access to the Access Seeker. Failure to provide the additional security may entitle OCESB to suspend the Access Services in accordance with section 13.3 above.

19. Insurance

- 19.1 The Access Seeker must take out and maintain the following insurances with a reputable insurer in Malaysia Prior to the Commencement Date, and will deliver to OCESB evidence satisfactory to OCESB of the currency of the policies of insurance :

- (a) **General Liability Insurance** for an amount of not less than RM2 million, for any one occurrence in respect of any liability for bodily injury (including death) of any person, personal injury, or property damage arising out of or in connection with the performance of the this Access Agreement. The insurance policy must contain a “cross liabilities” clause so that each of the insured parties will be considered as a separate and distinct unit and the term “Insured” in the policy will apply to each party as if a separate policy had been issued to each of the parties in its name alone;
- (b) **Workers’ Compensation Insurance or Social Security Insurance** in accordance with applicable awards or legislation and insurance against common law liability to any person employed by the Access Seeker;
- (c) **Such other insurance** as may be specified by OCESB prior to the Commencement Date of this Access Agreement, to cover the risks that may arise in the course of providing the Access Services.

19.2 Period of insurance. The Access Seeker must effect the insurance required under Section 21.1 prior to the Commencement Date and must maintain such insurance until the expiry or termination of this Agreement.

19.3 Notification of claims The Access Seeker must notify OCESB in writing of any claim and any event associated with this Access Agreement which is likely to give rise to a claim against the insurance effected by the Access Seeker, within five (5) days after the Access Seeker becomes aware of such claim or event and provide such further information to OCESB in relation to the claim or event as OCESB may reasonably require.

20. Costs and Expenses

20.1 Each party shall bear its own costs and expenses for negotiating, preparing and executing the Access Agreement and all documents contemplated by it, except where the Access Agreement expressly provides otherwise. Stamp duty payable in respect of the Access Agreement shall be borne by the Access Seeker.

21. Reciprocity in Obtaining Access

21.1 If OCESB requires Access from the Access Seeker, then OCESB may acquire such Access to the network facilities or network services of the Access Seeker on similar terms as OCESB provides to the Access Seeker under this Agreement.

22. Governing Law

22.1 The interpretation, validity and performance of the Access Agreement shall be interpreted in accordance with the laws of Malaysia.

23. Compliance with laws

23.1 The parties shall comply with all applicable laws, regulations, directions, determinations and all subsidiary instruments issued from time to time by the Commission or the Ministry pursuant to the CMA.

24. Conditions Precedent

24.1 It shall be a condition precedent to the effectiveness and validity of the Access Agreement:

- (a) that it be registered with the Commission pursuant to the CMA; and**
- (b) that the Access Seeker has provided the appropriate security to OCESB.**

24.2 It shall be the obligation of the Access Seeker to satisfy the conditions precedent within 30 days, or such further period as may be agreed by the parties, after the execution of the Access Agreement, but in any event not later than 90 days from the date of execution of the Access Agreement.

24.3 If the conditions precedent are not satisfied by the expiry of 90 days from the date of execution of the Access Agreement, then this Access Agreement shall be deemed to be null and void and of no effect, and both parties shall have no claim against the other save and except that if OCESB has undertaken any network provisioning prior thereto, such costs shall be payable by the Access Seeker within 30 days from the date of invoice.

25. Notices

25.1 All notices, demands or other communication required to be given under this Access Agreement shall be in writing and shall be sufficiently given or made if:

- a) delivered by hand, at the time of delivery; or**
- b) sent by pre-paid registered post, on the third Business Day after posting; or**
- c) sent by legible facsimile transmission, when receipt of such facsimile transmission is confirmed by the printing of a transmission report; or**
- d) sent by electronic mail, at the time of dispatch unless a delivery failure message is returned to the sender;**

addressed to the intended recipient at its address, facsimile number or electronic mail set out below. Either party may from time to time notify the other party of its change of address or facsimile number in accordance with this clause.

If to OCESB:

**Optical Communication Engineering Sdn Bhd
No 19, Jalan Semangat,
46200 Petaling Jaya,
Selangor.**

Fax No: 03-76808008

Attention: Finance Department)

e-mail address : collection@ocesb.com.my

If to the Access Seeker:

[To insert Address]

Fax No: [To insert]

Attention: [To insert]

E-Mail Address: [To insert]

26. Dispute Resolution

All disputes arising out of or relating to the Access Agreement will be decided and resolved in accordance with the process set out in the Dispute Resolution Procedures in Schedule [insert Schedule as per Access Agreement].

27. Entire Agreement

27.1 The Access Agreement will represent the entire understanding between the parties in respect of the provision of network facilities and/or network services dealt with thereunder.

27.2 The following schedules are incorporated into and forms part of the Access Agreement, in the format set out in Part B of this RAO :

- (a) Schedule B.1 – Fault Rectification Response Times**
- (b) Schedule B.2 – Confidentiality Agreement**
- (c) Appendix A – Technical Requirements**
- (d) Appendix B – Specifications**
- (e) Appendix C – Point of Interface List**
- (f) Appendix D – Price List from OCESB**
- (g) Appendix E - Dispute Resolution Procedures**

[The relevant Schedules which are to be incorporated as part of the Access Agreement will be specified at the time OCESB delivers the definitive document.]

27.3 The Access Agreement, supersedes all previous understandings, commitments, agreements or representations whatsoever, whether oral or written, in relation to the subject matter of the Access Agreement.

27.4 This Access Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which taken together will constitute one instrument.

28. Good Faith and Non-Exclusivity

28.1 Each party will act in good faith in relation to the other with regard to all matters relating to or contemplated by the Access Agreement. The parties acknowledge that nothing in the Access Agreement will prevent, limit or restrict in any way whatsoever either party from supplying any facilities and/or service to any other person by means of such party's Network.

29. Partial Invalidity

- 29.1 If any term or condition of the Access Agreement is found to be illegal, invalid or unenforceable in any respect under any applicable law, then the remainder of the Access Agreement or the application of such term or condition to other situations or circumstances shall not be affected, and the parties agree to amend the Access Agreement to reflect the correct intention of the parties and/or the directions of the Commission (where applicable) to the extent permissible by such applicable law.**

Schedule B – The Schedules

Index to Schedule B

This part sets out the various Schedules which will be attached to the Access Agreement:

Schedule B.1 - Fault Rectification Response Times

Schedule B.2 - OCESB Confidentiality Agreement

Schedule B.1 - Fault Rectification Response Times

FAULT RECTIFICATION RESPONSE TIMES (Section 5.15.13 MSA)

The following Fault Rectification Response Times apply to both parties to the Access Agreement, where applicable to the Access Services provided by OCESB under this Access Agreement.

Priority Level	Fault Types (examples)	Response Timeframe	Progress Update Frequency	Rectification Timeframe
Level 1	1. Major switch outage 2. Transmission bearer total outage 3. Route blocking > 50% 4. Major signaling problem 5. Major routing issues 6. Fraudulent calls	Within 1 hour	Every 1 hour	4 hours
Level 2	1. Minor switch outage 2. Minor routing issue 3. Minor signaling problems 4. Route blocking 10%-30% 5. Cross line & silent calls	Within 4 hours	Every 4 hours	24 hours
Level 3	1. Faults affecting single or small number of Customers 2. Route blocking <10%	Within 24 hours	Every 24 Hours	72 hours
Level 4	1. Remote Congestion 2. External Technical Irregularities (ETI) 3. Other performance related issues	Within 48 hours	Every 48 hours	10 Business Days

For the purposes of this Schedule, the following are the explanatory
Optical Communication Engineering Sdn Bhd

notes to the above table:

- (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 OCESB and the Access Seeker shall cooperate fully with one another to achieve the given time targets based on the severity of the fault reported.

- (b) The “Fault Types” listed in the table above are only examples of possible types of faults. OCESB and Access Seeker are required to categorize all faults by reference to the specified “Priority Levels”, ‘Response Timeframe’s and ‘Rectification Timeframe’s

- (c) “Response Timeframe” refers to the time for either OCESB or the Access Seeker takes 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 other party to the Faulty party or from the time when the Faulty party first becomes aware of the fault, whichever is the earlier.

- (d) ‘Progress Update Frequency’ refers to the frequency to update the Access Seeker until the fault is rectified.

- (e) “Rectification Timeframe” refers to the time taken by OCESB to rectify a faulty Network, Facility and/or Service and is determined by the period between the reporting of a fault to the relevant fault reporting service of OCESB and the rectification of the fault on a permanent or temporary basis (provided that if rectified on a temporary basis, OCESB will continue attempting to achieve a permanent rectification without delay)

Schedule B.2 - Confidentiality Agreement

Mutual Non-Disclosure Agreement

between

xxxx Sdn Bhd

Add 1

Add 2

Malaysia.

(Hereinafter referred to as “XXX”)

and

Optical Communication Engineering Sdn Bhd

Optical Communication Engineering Sdn Bhd

No 19, Jalan Semangat,

42600, Petaling Jaya,

Selangor.

(Hereinafter referred to as "OCESB").

(together referred to as "Parties").

Preamble

OCESB as the Access Provider and XXX as the Access Seeker, desire to enter into an Access arrangement, and in the course of doing so, desire to have each party disclose ("Disclosing Party") to the other party ("Receiving Party") confidential information related to the OCESB and "XXX" respectively.

For the purpose of this Agreement, information shall mean all business, financial, technical, scientific or other information, including without limitation specifications, designs, plans, drawings, software, data, prototypes, process techniques, etc. Information includes all copies, embodiments and derivatives containing such information. Information may be in any form or medium, tangible or intangible, and may be communicated in writing, orally, or through visual observation. Information shall be deemed as being confidential if it bears the mark "Confidential" or a similar one or if the confidentiality is unequivocally inferred from the circumstances of the actual relation. Such confidential information shall hereinafter be referred to as "INFORMATION".

Both parties shall keep INFORMATION confidential as follows:

1. The Receiving Party shall hold all INFORMATION in confidence and use all reasonable measures to safeguard such INFORMATION from unauthorized disclosure, reproduction or use. INFORMATION shall be treated by the Receiving Party with the same degree of care as is it normally exercises to protect its own proprietary information of similar nature, but in no case with less than reasonable and adequate care.
2. The Receiving Party shall use INFORMATION only for purposes of furthering of the provision and receipt of Access under the Access Agreement. Use of the INFORMATION for any other purposes – internal or external - is prohibited.
3. Neither party shall reverse engineer, disassemble or de-compile any prototypes, software or other tangible objects which embody the Disclosing Party's INFORMATION and which are provided to the Receiving Party. Each party agrees to notify the Disclosing Party in writing of any misuse or misappropriation of the INFORMATION provided by the Disclosing Party which may come to its attention
4. The Receiving Party shall restrict disclosure of such INFORMATION to its employees with a need to know to the extent they are directly involved in the provision of Access and shall cause these employees to comply with the provisions of this Agreement. The Receiving Party shall not disclose such INFORMATION to any third party without prior written approval of the Disclosing Party.
5. INFORMATION shall not be copied or reproduced without prior written approval by the Disclosing Party except to the extent reasonably necessary for the Access Agreement. All copies must be marked as being confidential.
6. These restrictions on the use or disclosure of INFORMATION shall **NOT** apply to any INFORMATION for which the Receiving Party can prove that:
 - it has become generally available to the public without breach of this Agreement; or
 - at the time of disclosure was known to the Receiving Party free of restriction as evidenced by documentation in the Receiving Parties' possession or which was lawfully received free of restriction from another party; or
 - it is required to be disclosed in order to comply with a judicial order, decree or law; or
 - it has been independently developed by the Receiving Party as evidenced by documentation; or the Disclosing Party has agreed in writing that it is free of such restrictions.
7. After termination of the Access Agreement, all INFORMATION shall be either returned upon first written request to the Disclosing Party or shall be destroyed by the Receiving Party, which must be certified in written form.

8. This Agreement shall be effective as of the signature of both Parties. Its confidentiality provisions shall remain in force for the duration of the Access Agreement between OCSB and XXX . This Agreement shall also be valid for any INFORMATION made available in context with the Access Agreement by the Parties prior to its coming into force.
9. All INFORMATION shall remain the property of the Disclosing Party. By disclosing INFORMATION or executing this Agreement, the Disclosing Party does not, explicitly or implicitly, grant any license or right to use under any trademark, patent, copyright or any other intellectual property right to use the INFORMATION hereunder disclosed for any purpose other than the purpose of evaluation as herein described.
10. The invalidity of any provision of this Agreement does not lead to the invalidity of the overall Agreement. The Parties agree to replace any such invalid provision by a clause approximating as closely as possible the commercial intentions of the parties.
11. This Agreement constitutes the entire understanding between the Parties hereto as to the INFORMATION and merges all prior discussions between them relating thereto.
12. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed on behalf of each of the Parties by their respective duly authorized officers or representatives.
13. This Agreement shall be construed under and governed by the laws of Malaysia. Any claims or disagreements arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the competent court of Malaysia.

XXX Sdn Bhd

Optical Communication Engineering Sdn Bhd

By By

Name Name

Title Title

Date Date

Optical Communication Engineering Sdn Bhd

Appendix A – Requirements

The following are specific terms and conditions applicable to specific facilities or services on the Access List that are made available by OCESB to any Access Seeker.

Part A.1 Network Co-Location Service

1. General

OCESB shall provide on request both (a) physical co-location and (b) virtual co-location to the Access Seeker at the locations agreed by the Parties. These locations are subject to annual review.

2. Requirements & Specifications

In applying for co-location the Access Seeker shall provide the following information to OCESB:

- (a) details of the Access Seeker's equipment that will be co-located, including its physical dimensions and weight;
- (b) power requirements;
- (c) level of radio and electro-magnetic emissions from co-located equipment;
- (d) heat output from co-located equipment and other air conditioning load information;
- (e) the dimensions of the space required for co-location, allowing for air flow and access corridors ;
- (f) installation period ; and

such other information as may be specified by OCESB to enable assessment of the application and provision of the co-location service.

3. Preparatory work by OCESB:

3.1 If OCESB agrees to perform preparatory work in order to the co-location request and does so on the basis of an estimated charge (e.g. based on a time and materials basis) which is agreed by the Access Seeker prior to the commencement of the preparatory work by the OCESB then:

- (a) OCESB shall not exceed the estimate charge without providing the Access Seeker prior written notice that:
 - (i) the estimate will likely be exceeded; and
 - (ii) a revised estimate of the charges for the work necessary to complete the preparatory work;
- (b) OCESB 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. If the Access Seeker withdraws the request for the preparatory work, then the parties shall meet to negotiate a fair amount to compensate the OCESB for the work already undertaken and completed prior to the withdrawal.

4. Space Reservation

- 4.1 OCESB will allocate space at each location where physical co-location is permitted and/or available in a non-discriminatory manner and will treat the Access Seeker in the same manner as it treats itself and in accordance with its space reservation policy.**

5. Assessing Costs of Co-Location

- 5.1 OCESB will identify and document relevant operating and maintenance costs caused by and attributed to the provision of infrastructure sharing and co-location services to the Access Seeker. Relevant operating and maintenance costs include but are not necessarily limited to premise security services, cleaning and janitorial services, air conditioning, insurance and indemnification of damages. The Access Provider shall recover the relevant operating and maintenance costs from the Access Seeker.**
-

Part A.2 Infrastructure Sharing Service

1. General

- 1.1 This part sets out the Specific Terms and Conditions under which OCESB agrees to provide, at the request of an Access Seeker, access to “Infrastructure Sharing Service” under the Access List.**
- 1.2 OCESB will only be required to provide the Infrastructure Sharing Service to the Access Seeker to the extent that the Access Seeker has complied with all the requirements of this RAO and the requirements of the Access Agreement for Internet Interconnect Service.**

2. Scope

- 2.1 The Infrastructure Sharing Service is provision of Facility and/or Service for physical/space common access including environmental services/utilities, common antenna system/tower, associated tower.**

3. Information Required

- (a) Earth Map with coordinate (Longitude and Latitude) of the location for the Infrastructure Licensed Site**
- (b) The brand, model, part number and technical specification (kindly attach product catalogue or technical brochure) of the Equipment to be installed include the physical dimension, weight and wind load.**
- (c) Schematic diagram to clearly indicate the mounting positions of the Equipment including of height, angle and radius.**
- (d) Cable specifications for type of cable to be installed i.e. fiber optic, CAT5e/6 etc.**
- (e) Detail work scope and work plans attached with shop drawing/schematic diagram**

Appendix B – Specifications

Following to be provided to the Access Seeker during negotiations of the Access Agreement:

- 1. Network Specifications**
- 2. Implementation Process Flow**

Appendix C – Point of Interface

Locations

1. AIMS Kuala Lumpur
2. Menara AMFirst
3. Menara Suntech
4. Subang Hi-Tech
5. Subang Square

Appendix D – Price List for the Access Services

PART D.1 : Network Co-Location Service

The prices below for Network Co-Location Service shall be applied for physical co-location for space, environmental services (heat, light, ventilation and air-conditioning), security, and maintenance at switching sites, submarine cable landing centers, earth stations and exchange buildings.

A) Network Co-Location Services

Physical Co-Location	One-Time Charge (RM)	Ringgit Malaysia per square meter per year (RM)
Space	1,000.00	233.00
Features: - 24 x 7 x 365 First Level Technical Support - Racks are provided by Access Seeker - PDU shall be metered and charged at RM0.68 per kWh - Structured Cabling infrastructure (Cable trunking and tray) - High Sensitivity Smoke Detection System - Dual AC power source at rack level - Power density at 80W per square feet - Unlimited Access to rack - 24 x 7 CCTV monitoring		

B) Internet Interconnection Service

Internal Cabling Within OCESB Data Center (rates are applicable per cable per floor)

Description	One-Time Charge (RM)
CAT 5e	600.00
CAT 6	1,000.00
Coaxial	1,300.00
Fibre 1 pair	1,500.00

PART D.2 : Wholesale Local Leased Circuit Service

For Malaysia	Peninsular	Ringgit Malaysia per year per circuit		
		2013	2014	2015
2 Mbps				
Installation	(non-recurring charge)	385.04	349.58	318.69
Port (per year)		3,934.15	3,655.52	3,512.82
Tail segment (per km)		1,587.65	1,616.14	1,647.78

For Malaysia	Peninsular	Ringgit Malaysia per year per circuit		
		2013	2014	2015
34 Mbps				
Installation	(non-recurring charge)	1,949.27	1,769.77	1,613.35
Port (per year)		19,916.63	18,506.05	17,783.64
Tail segment (per km)		8,037.48	8,181.70	8,341.91

For Malaysia	Peninsular	Ringgit Malaysia per year per circuit		
		2013	2014	2015
155 Mbps				
Installation	(non-recurring charge)	4,345.65	3,945.48	3,596.74
Port (per year)		44,401.49	41,256.79	39,646.26
Tail segment (per km)		17,918.49	18,240.03	18,597.18

PART D3 : Infrastructure Sharing Service

1. This Part sets out the Charges which are applicable to the Infrastructure Sharing service.
2. Charges And Charging Principles
 - 2.1 The applicable Charges for Infrastructure Sharing shall commercially being negotiated and agreed between the Access Seeker and the Access Provider in accordance to the Access Agreement.
 - 2.2 The availability of the Service is subject always to the availability of space in the Associated Tower Site and the loading of the structure.
 - 2.3 An Access Seeker may upon agreement by the Access Provider be allowed to install up to three (3) RF antennas and one (1) microwave antenna/dish with a maximum diameter of 0.6 meter or 1.2 meters per site.
 - 2.4 The following charges applied :

Type Of Service	Infrastructure Sharing
Tower for Microwave Space Rental - Rate of Microwave Disc Space	RM 600/sq.ft/month*
Billing Period	Monthly/Quarterly/Yearly

APPENDIX E DISPUTE RESOLUTION PROCEDURES.

1. Definitions

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

2. Introduction

- 2.1 Subject to subsection 2.2(c) of this Appendix, an Access Provider and an Access Seeker shall adopt and comply with these Dispute Resolution Procedures in relation to any dispute which may arise between an Access Seeker and an Access Provider in relation to or in connection with the supply of Facilities and/or Services to which this Standard applies (“Dispute”).
- 2.2 The following dispute resolution mechanisms are discussed in this section:
- (a) inter-party working groups;
 - (b) interconnect steering group; and
 - (c) subject to specific resolution of disputes, being:
 - i. technical disputes (which must follow the procedure set out in section 6 of this Appendix if they cannot be resolved through the application of the general dispute resolution provisions in Sections 3, 4 and 5 of this Appendix);
 - i. Billing Disputes (as defined in subsection 1.1 of this Appendix), which must follow the procedures set out in section 7 of this Appendix; or

- iii. any other types of disputes, which, if cannot be resolved through the application of the general dispute resolution provisions in sections 3, 4 and 5 of this Appendix, must be referred to the Commission for resolution.
- 2.3 A Dispute shall first be attempted to be resolved by negotiation between the Parties. If the Parties to the Dispute cannot or otherwise fail to reach an agreement, the Parties shall always be entitled to seek resolution of the Dispute by the Commission in accordance with section 151 of the Act, and the Commission will decide the dispute if it is satisfied that:
- (a) the Parties will not reach agreement, or will not reach agreement in a reasonable time;
 - (b) the notification of the Dispute is not trivial, frivolous or vexatious; and
 - (c) the resolution of the Dispute would promote the objects in the Act. An Access Provider shall not prevent the Access Seeker from notifying a Dispute to the Commission in accordance with the Act.
- 2.4 For clarification, unless stated otherwise, all references to sections subsections and paragraphs in this Appendix are references to sections subsections and paragraphs of this Appendix.

3. General

- 3.1 An Operator may not commence court proceedings relating to a Dispute which is the subject of these Dispute Resolution Procedures until it has complied with each applicable process in these Dispute Resolution Procedures, other than an application for urgent interlocutory relief. Nothing in this subsection shall be construed as ousting the jurisdiction of any court.
- 3.2 Both Parties to a Dispute shall ensure that their representatives acting in relation to a Dispute are of sufficient seniority and have authority to settle a Dispute on their behalf. At the commencement of the Dispute Resolution Procedures, each party must notify the other party of the scope of the authority of each of their representatives. If, in the course of the Dispute Resolution Procedures, it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to the representative, a party may require that those matters be referred to more senior officers of that party who have authority to settle those matters.
- 3.3 During a Dispute and any dispute resolution process invoked in accordance with this Appendix, an Access Provider and Access Seeker must continue to fulfil their obligations under the Access Agreement between them.
- 3.4 Subject to subsection 3.5 of this Appendix, the Parties to a Dispute shall exchange information of a type described in this Standard during the course of, and to facilitate, resolution of the Dispute.

- 3.5 Confidential Information of a party which is disclosed, and any other oral or written submissions made by a party or a party's representatives during the course of any dispute resolution process will be subject to the confidentiality restrictions in relevant confidentiality provisions contained in the Confidentiality Agreement prepared in accordance with subsection 5.3.8 of this Standard.**
- 3.6 A party must not use information obtained under subsection 3.4 of this Appendix or described in subsection 3.5 above for any purpose other than to resolve the Dispute.**
- 3.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a Dispute (including a Technical Expert or the Commission, in accordance with this Appendix) may decide not to determine the Dispute if the arbitrator considers that the Dispute is trivial, frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the Dispute.**
- 3.8 The costs of the arbitration are to be shared equally between the parties, unless the arbitrator of the Dispute has decided not to determine the Dispute in accordance with subsection 3.7 above. If an arbitrator decides not to determine the Dispute, the party that initiated the Dispute must pay the other party's costs.**
- 4. Inter-party working group**
- 4.1 In the first instance the Access Seeker and the Access Provider should attempt to resolve the Dispute between themselves.**
- 4.2 The Access Provider and the Access Seeker shall establish a working group, or working groups, to fulfil the requirements of subsection 4.1 above. The working group shall comprise of representatives of the Parties, and be headed by a person who holds a position that is at least equivalent to the head of the Access Provider's Wholesale or Interconnection Group.**
- 4.3 The Access Provider shall provide for:**
- (a) subject areas to be dealt with by each working group;**
 - (b) equal representation by the Access Seeker and the Access Provider;**
 - (c) chairmanship and administrative functions of the working group to be shared equally; and**
 - (d) formal notification procedures to the working group.**
- 4.4 The Access Provider and the Access Seeker shall use reasonable endeavors to attempt to settle the Dispute in the working group for a period of no longer than thirty (30) Business Days unless otherwise agreed by the Parties, subject always to a party's right to seek urgent interlocutory relief.**
- 5. Interconnect steering group**
- 5.1 In the event that the Parties cannot resolve the Dispute between themselves within the time specified in subsection 4.4 of this Appendix, or after any agreed time extension has expired, either party may give ten (10) Business Days' written notice ("Notice") to the other party stating its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice, then either**

party may notify the other party (“Receiving Party”) that it wishes to refer the issue to the Interconnect Steering Group (“ISG”).

- 5.2 In the event that a Dispute is referred to an ISG under subsection 5.1 above, the Parties shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each party.
- 5.3 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Party of the Notice under subsection 5.1 of this Appendix. If the ISG fails to meet or has not been formed within ten (10) Business Days of the receipt by the Receiving Party of the Notice, either Party may refer the Dispute:
 - (a) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with section 6 of this Appendix); or
 - (b) to the Commission for arbitration.
- 5.4 If the ISG has not resolved the Dispute within twenty (20) Business Days after it first meets to review that Dispute under subsection 5.3 above, either party may refer the Dispute:
 - (a) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with section 6 of this Appendix); or
 - (b) to the Commission for final arbitration.

6. Use of a Technical Expert

- 6.1 A Dispute will only be referred to a Technical Expert if the provisions of section 5 of this Appendix have been complied with.
- 6.2 Once a Dispute is referred to a Technical Expert, it may not be referred back to a working group or ISG.
- 6.3 The person to whom a technical dispute may be referred under this section 6:
 - (a) will be an expert appointed by agreement of the Parties or, if the Parties cannot agree, by the Commission;
 - (b) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communications industry;
 - (c) need not be a Malaysian citizen or resident; and
 - (d) will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest, (“Technical Expert”).
- 6.4 If the Parties fail to appoint a Technical Expert within ten (10) Business Days of the need to refer a Dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.
- 6.5 When relying on the services of a Technical Expert, the following dispute resolution procedures will apply to the Technical Expert:

- (a) the Parties will present written submissions to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
- (b) Each party may respond to the other party's submission in writing within fifteen (15) Business Days from the date of the other party's submission.

- 6.6 At the request of either party and subject to the parties agreeing, or the Technical Expert deciding within five (5) Business Days of the last written submission, that the arbitration by the Technical Expert should be by documents only, a Technical Expert hearing will be held within fifteen (15) Business Days of the last written submission.
- 6.7 Should a Technical Expert hearing be held, each party will have the opportunity of making an oral submission. This process will be conducted in private.
- 6.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Parties) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.
- 6.9 The Technical Expert will not have the power to appoint any other experts.
- 6.10 The Technical Expert will deliver his or her award within fifteen (15) Business Days of the hearing or of the last written submission where the arbitration is ' by documents only.
- 6.11 Every Dispute referred to a Technical Expert will be considered separately so that time limits for each Dispute are complied with.
- 6.12 The Technical Expert's decision will be binding on the Parties (in the absence of manifest error of fact or law).

7. Billing Dispute resolution

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

specifies the information in accordance with subsection 7.4 of this Appendix.

- 7.3 A Billing Dispute may only arise where the Invoiced Party has reasonable grounds to believe that an error has arisen from one of the following circumstances:**
- (a) the Invoicing Party's Billing System is, or has been, defective or inaccurate in respect of the regarding of the calls which are the subject of the Dispute;**
 - (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Party's Billing System;**
 - (c) there is, or has been, a fraud perpetrated by the Invoicing Party; or**
 - (d) the Invoicing Party has made some other error in respect of the recording of the calls or calculation of the charges which are the subject of the Billing Dispute.**
- 7.4 A Billing Dispute Notice given under this section 7 must specify:**
- (a) the reasons for which the Invoice is disputed;**
 - (b) the amount in dispute;**
 - (c) details required to identify the relevant Invoice and charges in dispute including:**
 - i. the account number;**
 - ii. the Invoice reference number;**
 - iii. the Invoice date;**
 - iv. the Invoice amount; and**
 - v. billing verification information; and**
 - (d) evidence in the form of a report, indicating the relevant traffic data which is in dispute.**
- 7.5 The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with subsection 5.11.11 of this Standard. If the Billing Dispute is resolved against the invoiced Party, that Invoiced Party shall be required to pay interest at the rate specified in subsection 5.11.15 of this Standard on the amount payable.**
- 7.6 Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. Once the Billing Dispute is resolved, if the Invoicing Party is obliged to refund an amount to the Invoiced Party, interest will be payable on the refunded amount at the rate specified in subsection 5.11.15 of this Standard. In such circumstances, interest will be payable from the date the Invoiced Party paid the disputed amount to the date of the refund by the invoicing Party.**

- 7.7** The parties agree to use their reasonable endeavors to promptly resolve any Billing Dispute notified under this section 7. H
- 7.8** If the parties are unable to resolve any Billing Dispute within one (1) month (or such other period as the parties may agree) from the date on which the Billing Dispute Notice is received, either party may seek the consent of the other party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other party is, however, under no obligation to agree to such extension.
- 7.9** To the extent that a Billing Dispute notified under this section involves a Billing Dispute with an international correspondent of the invoicing Party, the Dispute Resolution Procedures shall be suspended for a reasonable period of time pending resolution of the Billing Dispute with that international correspondent. As a general rule, the period of suspension will not exceed four (4) months. However, the parties shall recognize that some Billing Disputes with international correspondents may take longer to resolve, in which case the Invoicing Party must promptly inform the invoiced Party of the likely period required for resolution.
- 7.10** Once the negotiation period under subsection 7.8 of this Appendix (including any extension agreed) and any suspension period under subsection 7.9 of this Appendix have expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection 7.11 of this Appendix (“Billing Dispute Escalation Procedure”).
- 7.11** The invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection 7.11 by notifying the Invoicing Party’s Billing Representative. Both parties shall then appoint a designated representative who has authority to settle the Billing Dispute, and who is at a higher level of management than the persons with direct responsibility for administration of this Standard. The designated representatives shall meet as often as they reasonably deem necessary to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one party to the other party shall be honored.
- 7.12** Once any Billing Dispute has been resolved to the parties’ satisfaction, any sum to be paid or repaid shall be paid by the relevant party within ten (10) Business Days from the date of resolution of the Billing Dispute.
- 7.13** Although it shall be the good faith intention of the parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try to solve Billing Disputes, nothing in this Appendix shall prevent either party from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- 7.14** A party may request a joint investigation of Invoice discrepancies after that party has conducted a comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the parties must agree on the terms of the joint investigation, including:

- (a) the scope of the joint investigation;**
- (b) how the joint investigation will be conducted; and**
- (c) the date by which the joint investigation must be concluded. The joint investigation may include the generation of test calls to the other party's Network.**

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

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

7.17 If the Billing Dispute Escalation Procedure has been exhausted, either party may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act.