

# **OPTICAL COMMUNICATION ENGINEERING SDN.BHD. ACCESS REFERENCE DOCUMENTS**

## **AVAILABILITY OF OPTICAL COMMUNICATION ENGINEERING SDN. BHD'S ARD**

An Access Seeker who is interested in entering into an access agreement with OCE pursuant to OCE's ARD may request a full copy of OCE ARD

For further information , please contact

Chief Commercial Officer  
NO 19, Jalan Semangat,  
46200 Petaling Jaya, Selangor  
Fax Number : 03-79570669



# OCE's Access Reference Documents

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## Interpretation

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

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

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

“Access List Determination” means the Commission Determination on Access List Determination No. 1 of 2005.

“Access Reference Document or “ARD” means a document of terms and conditions,

“Access Provider” means:

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

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

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

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

“Access to Network Elements” or “ANE” means Full Access Service, Line Sharing Service, Bit streaming Services and Sub-loop Service;

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

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

“CLI” means calling line identification;

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

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

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

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

“Dispute Resolution” or “Dispute Resolution Procedures” means the procedures outlined in Annexure A

“Customer Order Form” shall be described in detail in Annexure B for Access Seeker for filing.

“General Term & Condition” is defined in Annexure C to be completed by Access Seeker.

“Service Level Agreement” is described in Annexure D to be completed by Access Seeker

“Supplementary Service Agreement” shall refer to Fault Reporting Procedure listed in Annexure E

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

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

“Facilities” means network facilities and/or other facilities which facilitate the provision of network services or applications services or applications services including content applications services as

listed in the Access List Determination;

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

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

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

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

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

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

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

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

“MCMCA” means the Malaysian Communication and Multimedia Commission Act 1998, 2. [Act 589];

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

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

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

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

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

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

- (a) A Fixed Network Origination Service;
- (b) A Fixed Network Termination Service;

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

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

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

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

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

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

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

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

“Services” means network services and/or other services which facilitate the provision of network services or applications services as listed in the Access List Determination;

“Standard” means this Mandatory Standard on Access;

4. In this ARD, unless the context otherwise requires -

- a. The singular includes the plural and vice versa; and
- b. A reference to an agreement, this Determination or other instrument includes any variation or replacement of any of them; and
- c. A reference to an annexure or schedule is a reference to an annexure or schedule to the Standard and a reference to the Standard includes an annexure or schedule; and
- d. A reference to a section or clause is a reference to a section or clause of the Standard and a reference to a paragraph is a reference to a paragraph of the Standard; and
- e. a reference to a statute, ordinance, code or other law includes regulation and other instruments under it and consolidations, amendments, reenactments or replacements of

- any of them; and
  - f. The word person includes a firm, body corporate unincorporated association or an authority; and
  - g. A reference to a person includes the person's executors, administrators, successors, substitutes (including, without lamination, person taking by notation), and assigns; and
  - h. All monetary amounts are expressed in Ringgit Malaysia; and
  - i. if the day on which the payment of money or the performance of an obligation falls due is not a Business Day, the due date or performance date shall be deemed to be the next Business Day; and
  - j. A reference to a third person is a reference to a person who is not the Access Provider or the Access Seeker; and
  - k. A term or expression starting with a capital letter:
    - i. which is defined in Paragraph 3 has the meaning given to it in Paragraph 3;
      - 1. Which is defined in the body of the Standard, has the meaning so given to it in body of the Standard unless the context indicates otherwise; and
    - ii. Which is defined in the Act, the Access List Determination or subsidiary legislation made under it but is not defined in paragraph 3, has the same meaning as in the Act, the Access List Determination or the subsidiary legislation, as the case may be.
5. A definition in the Act shall prevail over a definition in this Determination to the extent of any inconsistency.

## SECTION 1: PRELIMINARY

### 1.1 Structure

This document is divided into:

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

### 1.2 Outline of contents of the ARD

The Sections of the Standard deal with the following issues:

- 1.2.1 1.2.1. Section 1 (**Preliminary**) sets out the structure and outline of the mandatory Standard on access
- 1.2.2 Section 2 (**Background**) provides an introduction and background to the Standard.
- 1.2.3 Section 3 (**Scope**) sets out the scope of the Standard in terms of the Services to be covered and the persons who are subject to the Standard.
- 1.2.4 Section 4 (**General principles**) sets out the general principles applicable to access regulation in Malaysia, including principles implementing the SAO (**SAO**) contained in section 149 of the Act.
- 1.2.5 Section 5 (**Operator access obligations**) sets out the obligations that apply to all operators concerning various access issues. These obligations build upon the basic obligations or SAO set out in the Act. The obligations will cover areas which include :
  - (a) Negotiation Obligations
  - (b) Disclosure Obligations; and
  - (c) Content Obligations including but not limited to:
    - i. General Obligations;
    - ii. Forecasting Obligations;
    - iii. Ordering and Provisioning Obligations
    - iv. Network Conditioning Obligations
    - v. Point of Interface Procedures;
    - vi. Decommissioning Obligations;
    - vii. Network Changes Obligations;
    - viii. Equal Access (PSTN) Obligation;
    - ix. Network Facilities Access and Co-location Obligations;
    - x. Billing and Settlement Obligations;
    - xi. Operations and Maintenance Obligations;
    - xii. Technical Obligations;
    - xiii. Term, Suspension and Termination Obligations;
    - xiv. Service Specific Obligations.

d) Section 6 (Exclusion)



## **2 SECTION 2: BACKGROUND**

### **2.1 Legislative basis for the standard**

- 2.1.1 This ARD is pursuant to the Malaysian Communication and Multimedia Commission, established under the MCMCA.
- 2.1.2 This ARD is created following the issuance of the Ministerial Direction to Determine a Mandatory Standard on Access, Direction No 2 of 2003 (**Direction**).
- 2.1.3 Subsection 55(6) of the Act provides that any ARD issued shall be consistent with the objects of, and any requirements provided in the Act which are relevant to the particular matter or activity.

### **2.2 Terms and condition**

- 2.2.1 This ARD sets out indicative model terms and conditions concerning access. In undoing so, the OCE's objective is to identify key interconnection and access issues in sufficient detail to provide meaning full guidance to parties in expeditiously and efficiently negotiating access arrangements.

## **3 SECTION 3: SCOPE**

### **3.1 Types of Facilities and Services covered by the Standard**

- 3.1.1 The ARD deals with access to Facilities and Services included in the Access List Determination. The ARD aims to be sufficiently flexible to deal with change as it occurs, and includes review provisions and transitional provisions (See subsection 6.4 and subsection 6.5).

### **3.2 Scope of the Access Reference Document**

- 3.2.1 OCE is licensed individual network facilities, network services and applications services provider under the Act. Pursuant to these licenses, OCE may offer network facilities, network services and applications services within and outside Malaysia.
- 3.2.2 Pursuant to Section 5.3.2 of the MSA Determination, OCE is obliged to prepare and maintain an Access Reference Document in relation to network facilities or network services on the Access List which OCE provides to itself or third parties.
- 3.2.3 OCE's ARD :
  - a) contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and
  - b) Does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.
- 3.2.4 Where relevant, the rights and obligations set out in the MSA Determinatio0n shall be applicable to OCE's ARD.

3.2.5 OCE considers OCE's ARD to be consistent with:

- a) the standard access obligations stipulated under Section 4.1.1 of the MSA Determination and section 149 of the Act; and
- b) The principles of non-discrimination stipulated under Section 4.15.5 and 4.1.6 of the MSA Determination.

3.2.6 For the purposes of clarification, the terms and conditions of OCE's ARD is only applicable to the network facilities or network services on the Access List. If the Access Seeker requests services outside OCE's ARD, the terms and conditions for the provision of such services shall remain outside the scope of OCE's ARD.

3.2.7 If an Access Seeker requests OCE to provide it with network facilities or network services other than on the terms and conditions contained in OCE's ARD, OCE and the Access Seeker will:

- a) negotiate in good faith in relation to such terms and conditions; and
- b) Enter into and conduct negotiations in a timely manner.

### **3.3 Additional Services**

3.3.1 In addition, the Operators are free to consider OCE's ARD when negotiating the terms and conditions for the supply of other network facilities or network services that are not listed in the Access List.

### **3.4 Making the Access Reference Document**

#### **3.4.1 Commencement and Duration of the Access Reference Document**

3.4.2 OCE's ARD comes into force and takes effect immediately from the date referred to in Section 1.1.1 and continues until the earlier occurrence of:

- a) the Expiry of the ARD Term; or
- b) a Review; or
- c) Withdrawal in accordance with this OCE's ARD.

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

#### **3.4.4 Amendment to OCE's ARD**

3.4.4.1 OCE shall, with ten (10) Business Days of making any amendment to the OCE's ARD, provide a copy of the amendments, or an amended copy of OCE's ARD to:

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

### 3.4.5 Notice of Withdrawal, Replacement and Variation of OCE's ARD

3.4.5.1 If the Commission revokes, varies or replaces the Access List Determination relating to the network facilities or network services listed on the Access List under section 56 of the Act, OCE may, by giving written notice to all Access Seekers to whom it is supplying network facilities or network services under OCE's ARD, withdraw or replace OCE's ARD with effect from the date no earlier than the effective date of the Commission's revocation.

3.4.5.2 OCE shall comply with **Section 6.4.2** and **6.4.3** of the MSA Determination where it withdraws or varies OCE's ARD pursuant to **Section 1.5.3.1**.

3.4.5.3 In addition to Section 3.4.5.2 above, OCE may give the Access Seekers to whom it is supplying network facilities and network services under OCE's ARD a notice of a variation or replacement of OCE's ARD to effect such variation that are necessary or appropriate in the event of:

- a) the occurrence of Legislative Event that materially affects the rights or obligation of OCE under OCE's ARD; or
- b) the occurrence of Regulatory Event that relates to OCE ; or
- c) A review by the Commission of the MSA Determination pursuant to Section 6.5 of the MSA Determination.

3.4.5.4 Notwithstanding **Section 3.4.3.1, 3.4.3.2** and **3.4.3.3** above, OCE may subject to **Section 3.4.4** above, replace OCE's ARD at any time.

### 3.4.6 Availability

3.4.6.1 Subject to **Section 3.4.6.2** OCE's ARD shall be made available to an Access Seeker:

- a) on written request, at OCE 's principal place of business; and
- b) On a publicly accessible website.

3.4.6.2 Prior to the provision of OCE's ARD to the Access Seeker, the Access Seeker shall be required to enter into a Confidentially Agreement.

## 4 SECTION 4: GENERAL PRONCIPLES

### 4.1 Principle of Access to Facilities and Services on the Access List

4.1.1 OCE: in accordance with the Act and subject to exemptions determined by the Minister, shall provide access on reasonable terms and conditions to the Facilities and Services listed in the Access List to any other:

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

Who makes a written request to OCE for access.

4.1.2 Reasonableness: OCE may refuse a request if:

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

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

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

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

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

- a) of at least the same or equally favorable technical Standard and quality as the technical standard and quality provided on the OCE's Facilities or Services ; and
- b) On an equitable and a non-discriminatory basis.

4.1.7 **Meaning of non-discriminatory:** For the purposes of this ARD, the term “non-discriminatory” requires comparison of:

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

## 4.2 APPLICATION OF NON-DISCRIMINATION PRINCIPLE

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

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

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

## 4.3 CUSTOMER PRINCIPLES

4.3.1 OCE shall subject to Section 4.1, if requested to do so by an Access Seeker, supply a Facility or Service listed in the Access List Determination to the Access Seeker on reasonable terms and conditions.

4.3.2 In supplying a Facility or Service listed in the Access List Determination, OCE must treat an Access Seeker on a non-discriminatory basis as required by the standard Access Obligations in relation to the supply of a Service.

### 4.3.3 Principle of non-discrimination

4.3.3.1 The access provided by OCE to the Access Seeker shall be consistent with :

- a) section 149(2) of the Act; and
- b) The principle set out in the section 4.1.5 and 4.1.6 of the MSA Determination.

### 4.3.4 Customer Principles

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

## **5 SECTION 5: DISCLOSURE, NEGOTIATION AND CONTENT OBLIGATIONS**

### **5.1 Negotiation Obligation: Application for Access to Services**

5.1.1 OCE shall observe and comply with disclosure, negotiation and obligation principles set out in section 5.1 of the MSA Determination.

5.1.2 An Access Seeker shall request OCE to supply Facilities or Services listed in the Access List Determination to it by serving an Access Request on OCE.

5.1.3 The purpose of such Access Request is to provide OCE with sufficient information to assess the Access Seeker's request for the supply of Facilities or Services listed in the Access List Determination under OCE's ARD.

5.1.4 The Access Request:

- (a) contain the name and contact details of the Access Seeker;
- (b) specify the Facilities or Services listed in the Access List Determination in respect of which access is sought;
- (c) indicate whether the Access Seeker wishes to accept OCE's ARD or negotiate an Access Agreement;
- (d) contain the information (if any) as set out in Section 5.3.6 of the MSA Determination that the Access Seeker reasonably requires OCE to provide for the purpose of the access negotiations;
- (e) contain two (2) copies of non-disclosure agreement properly executed by the Access Seeker in the form prescribed by OCE; Please refer to Annexure F
- (f) specify forecasts of the capacity which the Access Seeker reasonably requires,
- (g) provide the relevant information relating to the Access Seeker's Network and functionality of its Services, to the extent that the Access Seeker is aware that such information may affect OCE's Network;
- (h) contain confirmation that the Access is not currently being supplied with the requested Facility or Service listed in the Access List Determination or if so, the reasons for the additional request for the said Facility or Service;
- (i) specify the type of communications licenses held by the Access Seeker and a copy of the copy had not been previously provided;
- (j) contain Creditworthiness Information as set out in Section 5.2.4;
- (k) Accompanied by a Security Sum as set out in Section 5.2.2;
- (l) contain Insurance Information as set out in Section 5.2.3;

(m) contain relevant technical information relating to the interface standards of the Access Seeker; and contain such other information that OCE may reasonably request.

## 5.2 DISCLOSURE OBLIGATION

5.2.1 **Confidentially Agreement:** OCE confidentially agreement to be provided to an Access Seeker on request

- a) shall be reciprocal;
- b) shall be no broader than necessary to protect the legitimate commercial interests of the Party disclosing the Confidential Information (**the disclosing Party**);
- c) shall include provisions prohibiting the Party receiving the Confidential Information (**the receiving Party**) from disclosing information to third parties or using information other than as necessary for the purposes of assessing a request for access;
- d) Shall not prevent the disclosure of Confidential Information or other information to the Commission by the receiving Party.

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

- a) an estimate of the value of the access to Facilities and Services to be provided to the Access Seeker by OCE over a ninety (90) day period;
- b) the creditworthiness of the Access Seeker (including prior record of payment by the Access Seeker); and
- c) Security previously reasonably required by OCE.

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

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

5.2.4 **Creditworthiness information:** OCE may only request creditworthiness information from an

Access Seeker:

- a) if OCE reasonably believes that the Access Seeker may not be able to meet any liabilities that may arise under an Access Agreement with the Access Seeker;
- b) if the creditworthiness information sought is limited to information which is publicly available (on the basis OCE may request the Access Seeker to warrant that such information is accurate); and
- c) to the extent commensurate with an estimate of the value of the access to the Facilities and Services to be provided to the Access Seeker by OCE over a ninety (90) day period.

### **5.3 Processing of Access Request**

#### **5.3.1 Acknowledgement of Receipt of Access Request**

5.3.1.1 OCE 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:

- a) Any request for additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request; or
- b) Indicate whether it is willing to provide access to Facilities or Services listed in the Access List Determination in accordance with OCE's ARD.

Subject to the additional information being received by OCE within twenty (20) Business days from the date of request, OCE shall reconsider the Access Request in accordance with this Section 5.3.1.1 upon receipt of such additional information.

#### **5.3.2 Non –refundable processing fee**

5.3.3 Subject to **Section 5.3.2.2**, OCE may charge an Access Seeker a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request.

5.3.4 The non-refundable processing fee is only applicable to requested Facilities and Services listed in the Access List Determination that can be offered and made available by OCE.

5.3.5 In the event that additionally and non-routine work is required in order to process the Access Request, OCE may charge a separate fee for undertaking such additional work. If the Access Seeker does not proceed with the Access Request accepted by OCE, the processing fee will not be refunded to the Access Seeker.

5.3.6 The processing fee will be set-off against the Charges for the requested Facilities and **Services** upon acceptance of the Access Request by OCE pursuant to **Section 5.6**.

#### **5.3.7 Resources charge**

In accordance with Section 5.7.28 of the MSA Determination where it requests additional information from the Access Seeker pursuant to Section 5.3.1(a).

### **5.3 Assessment of Access Request**

#### **5.4.1 Reason for Refusal**



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

- a) in OCE's reasonable opinion, the Access Seeker's Access Request was not made in good faith and OCE shall set out the basis on which the Access Request was not made good faith;
- b) in OCE's reasonable opinion, the Access Request does not contain the information reasonably required by OCE's ARD provided that OCE has sought the information from the Access Seeker under **Section 5.3.1** of OCE 'S ARD and has not received that information within twenty (20) Business Days of making such request;
- c) OCE does not currently supply or provide access to the requested Facilities or Services listed in the Access List Determination;
- d) It is not technically feasible to provide access to the requested Facilities or Services listed in the Access List Determination;
- e) OCE does not currently supply or provide access to the requested Facilities or Services listed in the Access List Determination;
- f) There are reasonable grounds in OCE's opinion to believe that the Access Seeker would fail to make timely payment for the supply of the relevant Facility or Service listed in the Access List Determination;
- g) There are reasonable grounds in OCE's opinion to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities or Services listed in the Access List Determination; or
- h) There are reasonable grounds for OCE to refuse access in the national interest.

#### 5.4.2 Determination of technical infeasibility

5.4.3 For the purpose of determining technical infeasibility in Section 5.4.1(d), the Operators shall comply with 5.4.17 of the MSA Determination.

#### 5.4.4 Determination of capacity constraints

For the purpose of determining capacity constraints in **Section 5.4.1(e)**, the Operators shall comply with Section 5.4.18 of the MSA Determination.

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

Examples of reasonable grounds for OCE's belief as mentioned in Section 5.4.1(f) include evidence that the Access Seeker is not in the reasonable opinion of OCE creditworthy.

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

Examples of reasonable grounds for OCE's belief as mentioned in Section 5.4.1 (g) include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Facilities or Services have been provided (whether or not by OCE).

5.4.7 Assessment of Creditworthiness

In determining the creditworthiness of the Access Seeker, OCE may have regard to, but is not limited to the matters referred to in **Section 5.2.4**.

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

**5.5 Notification of Rejection to the Access Seeker**

5.5.1 Where OCE rejects the Access Request, OCE shall:

- a) notify the Access Seeker in writing within ten (10) Business Days from receipt of the Access Request or additional information requested pursuant to **Section 5.3.1**, as the case may be;
- b) provide reasons for rejection under **Section 5.4.1** to the Access Seeker;
- c) provide the basis for OCE's rejection of the Access Request; and
- d) Indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of the Access Seeker to discuss the rejection of the Access Request. At this meeting, the Access Seeker may request OCE to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in **Section 5.3.1(e)**, OCE must identify when additional capacity is likely to be available.
- e) 5.6.2 Where the Operators are unable to resolve their differences following the meeting held

pursuant to **Section 5.5.1(d)**, either Operator may request resolution of the dispute in accordance **Annexure A**

## **5.6 Acceptance of Access Request**

- 5.6.1 Where OCE agrees to provide access to Facilities or Services listed in the Access List Determination to the Access Seeker in accordance with OCE's ARD, OCE shall within ten (10) Business Days of such respond under Section 5.3.1(b), provide the Access Seeker with two copies of the executed Model Access Agreement, for execution by the Access Seeker.
- 5.6.2 Where the Access Seeker wish to negotiate an Access Agreement, the Operator shall comply with the requirements in Section 5.4.2, 5.4.9 and 5.4.15 of the MSA Determination in negotiating and concluding an Access Agreement.
- 5.6.3 OCE will not be taken to have agreed to provide, and the Access Seeker will not be taken to agreed to acquire the requested Facility or Service listed in the Access List Determination until:
- a) Security Sum has been provided in accordance with **Section 5.2.2**; and
  - b) An Access Seeker Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with section 150 of the Act.

## **5.7 Fast Track Application Process**

- 5.7.1 The fast track application process set out in this Section 5.2 shall be applicable to the Facilities and Services only:
- (i) Fixed Network Termination Service;
  - (ii) Mobile Network Termination Service;
  - (iii) Domestic Network Transmission Service;
  - (iv) Private Circuit Completion Service; and
  - (v) Interconnect Link Service.

For the purpose of clarification, where an Access Seeker requests for a Facility or Service that is not listed in Section 5.7.1 above in addition to a Fast Track Application Service, the fast track application process shall not be applicable and the Access Seeker shall be required to put in an Access Request for the requested Facilities and Services in accordance with **Section 5.1 to 5.8**.

- 5.7.2 An Access Seeker is only eligible for the fast track application process if it fulfils the following criteria:
- a) the Access Seeker is duly licensed to provide the Facilities or Services listed in the Access List Determination for which access is sought;
  - b) the access requirements of the Access Seeker do not in OCE's opinion, have a material impact

on OCE's current level of network resources; and

- c) The Access Seeker is willing to accept the terms and conditions for the requested Facilities or Services as stipulated in the Model Access Agreement without negotiation.

5.7.3 Subject to Section 5.7.1, where an Access Seeker who eligible for the fast track application process wishes to utilize the fast track application process, the Access Seeker shall:

- a) forward to OCE duly completed fast track application form which shall contain the following information: Please refer to Annexure G
  - (i) the name and contact detail of the Access Seeker; and
  - (ii) the Facilities and Services listed in the Access List Determination in respect of which access is sought;
- b) deposit the Fast Track Security Sum;
- c) pay a non-refundable processing fees to OCE for undertaking the necessary administrative work to process the fast track application; and
- d) Lodge with OCE two copies of the signed Model Access Agreement with suggested amendments to the technical matters (if any).

5.7.4 OCE may reject the Access Seeker's fast track application for the reasons set out in **Section 5.4.1**.

5.7.5 Where OCE accepts the Access Seeker's fast track application, OCE:

- a) may impose a one-off resource charge for allocation of manpower and other resources in accordance with Section 5.3.7 and
- b) Shall within ten (10) Business Days of receipt of the fast track application, execute the Model Access Agreement.

5.7.6 OCE will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Facility or Service until:

- a) Fast Track Security Sum has been provided in accordance with **Section 5.7.3**; and
- b) Model Access Agreement has been executed between the Operators and The Model Access Agreement is registered with the Commission in accordance with section 150of the Act.

5.7.7 For the purpose of clarification, if the Access Seeker wishes to obtain the Fast Track Application Services but is not agreeable to the terms and conditions of the Model Access Agreement, OCE is not obliged to process the fast track application further and the Access

Seeker shall be required to put in new Access Request in accordance with **Section 5.4-5.8**.

## **5.8 CONTENT OBLIGATIONS: GENERAL**

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

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

5.8.2 **General:** OCE must:

- a) Include in ARD obligations which are consistent with these Content Obligation; and
- b) Not include in ARD obligations which are inconsistent with these Content Obligations.

5.8.3 Compliance with Content Obligations: In addition to incorporating obligations into its ARD, each Operator shall comply with the obligations set out in this subsection 5.5 and the following subsection 5.9 to 5.24.

## 5.9 FORECASTING OBLIGATIONS

5.9.1 General: Subject to subsections 5.9.2 and 5.9.3 OCE may require, as a condition of providing access to a Facilities or Services (requested by the Access Seeker), that the Access Seeker provide Forecasts in good faith over a certain period of supply of access to Facilities or Services (as the case may be) in accordance with this Subsection 5.6.

5.9.2 Confirmation of Forecast: If OCE, acting reasonably will incur significant costs to ensure that access can be provided in accordance with a Forecast, OCE may request the Access Seeker to confirm the relevant Forecast. Once confirmed, the Forecast is deemed to be an Order for the purposes of this Standard, and subsection 5.10 will apply.

5.9.3 Alternative procedure: OCE and an Access Seeker may agree to an alternative Forecasting and Ordering procedure other than that set out in this subsection 5.9. If agreement is reached about such matters, OCE and Access Seeker will be bound by the terms of that alternative procedure and not this subsection 5.9.

5.9.4 Non-binding: Subject to subsection 5.9.2, OCE shall not require an Access Seeker:

- a) to provide Forecasts that are legally binding on the Access Seeker, subject to subsection 5.9.14; or
- b) To provide information in its Forecast that identifies or would allow identification of customers.

5.9.5 Forecast Request: OCE may request an Access Seeker to provide, with a sufficient level of detail to enable OCE to carry out Network planning, the following information (forecast information):

- a. The Facilities or Services or both in respect of which Forecasts are required;
- b. The total period of time covered by each Forecast, which period:
  - i. Shall be determined having regard to OCE's own planning and provisioning cycles and the Forecasting requirements which apply to the Access Seeker's own business units the relevant Facilities or Services; and
  - ii. Shall be no longer than one year, unless reasonably justified on grounds of the special Network management requirements of relevant Facilities or Services;
- c. the intervals or units of time to be used in making the forecast, which shall be no longer than three (3) months unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services;
- d. the Network area or operational area to which Forecasts shall relate, which area shall correspond to that which OCE uses for its own Network planning;
- e. the frequency with which a Forecast must be updated or further Forecast made, which

shall not be more frequently than every three (3) months unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services; and

- f. Such other information that OCE reasonably requires in order providing access to Facilities or Services requested by the Access Seeker.

5.9.6 Forecast Provision: OCE may only require an Access Seeker to provide Forecasts in accordance with a Forecast Request:

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

5.9.7 Use of Forecast Information: Forecast Information provided by the Access Seeker shall be treated by OCE as the Confidential Information of the Access Seeker and shall only be used by OCE whose role is within either;

- a) OCE's wholesale or interconnection group; or
- b) that part of the Network engineering group of OCE responsible for interconnection

For the purpose of responding to and planning for the Forecast. OCE must maintain records that indicate which persons are provided with access to forecast information.

5.9.8 Distribution of Forecast Information: OCE may only distribute Forecast Information of an Access Seeker outside the groups of people referred to in subsection 5.9.7

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

5.9.9 Time of acceptance: OCE must notify the Access Seeker:

- a) within five(5) Business Days of receiving the Forecast if OCE considers that the Forecast does not comply with a Forecast Request, specifying in that notice the additional information which the Access Seeker is provide; and

- b) Within fifteen (15) Business Days of receiving a Forecast with the Forecast Request, that the Forecast is accepted.

5.9.10 Reasons for rejection : OCE may only reject a Forecast where OCE reasonably believes that the Forecast is inaccurate, having regard to:

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

5.9.11 Time for rejection: OCE must give notice of any rejection to the Access Seeker:

- a) within fifteen (15) Business Days of receipt of the relevant Forecast; and
- b) such notice of rejection must specify:
  - i. the grounds on which OCEs rejects the Forecast in accordance with subsection 5.9.10, at a sufficient level of detail to enable the Access Seeker to understand the basis of rejection and to undertake its own re-assessment of the Forecast; and
  - ii. An offer to meet within five (5) Business Days of the notice of rejection of the Forecast to discuss the reasons for rejection and alternative methods of compliance. The meeting shall take place between the Access Provider and Access Seeker if the offer is accepted by the Access Seeker (**Rejection Notice**).

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

- a) to confirm its rejected Forecast and explain why the Access Seeker regards the Forecast as being reasonable ;or
- b) To submit a new forecast which the Access Seeker regards as meeting OCE's concerns.

5.9.13 Reconsideration by OCE: OCE shall reconsider any amended Forecast provided pursuant to subsection 5.9.10 subsections 5.9.9 to 5.9.11 shall re-apply.

5.9.14 Recovery for over- Forecasting: OCE shall not seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker if the Forecast is not met by the Access Seeker unless:

- a) such costs and expenses were reasonably and necessarily incurred by OCE;



- b) OCE reasonably seeks to mitigate its loss over a six month period (including through its own usage); and
- c) OCE only recovers from the Access Seeker 75% of such costs and expenses which could not be mitigated under paragraph 5.9.14 (b) above.

5.9.15 Meeting Forecasts: subject to subsection 5.9.9 to 5.9.11, OCE must carry out network planning in order to enable the Forecast under subsection 5.9.2; it will be binding on the Access Seeker.

## **5.10 ORDERING AND PROVISIONING OBLIGATIONS**

5.10.1 Contact point: OCE shall designate a person to whom Orders for access to Facilities and Services are to be delivered and shall notify the Access Seeker of the designated person from time to time.

5.10.2 Order content: Prior to access being provided, OCE may require an Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. OCE may request an Access Seeker to provide, at a level of detail (sufficient for planning provisioning), the following information in Order for access to Facilities and Services:

- a) The Facilities or Services or both to which access is requested;
- b) A requested time for delivery;
- c) The location of the point of delivery;
- d) Equipment of the Access Seeker to be used in connection with the Order; and
- e) Such other information that OCE reasonably requires in Order for it to plan for the provision of access to the Facilities or Services as requested by the Access Seeker.

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

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

For the purpose of responding to and provisioning for the order.

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

5.10.5 Acknowledgement of receipt: OCE shall acknowledge receipt of the Order, in writing (or any

other material or electronic form agreed by the parties), within two (2) Business Days of receipt of an Order from the Access Seeker.

5.10.6 Notice of Receipt: OCE must include in its Notice of Receipt the following information:

- a) The time and date of receipt;
- b) list of any additional information reasonably required by OCE from the Access Seeker to clarify the Order; and
- c) If the relevant Facilities or Services are below the capacity required to provide the relevant Facilities or Services, OCE shall inform the Access Seeker of the available capacity and timeframe for the fulfillment of the Order.

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

5.10.8 Service Qualification: OCE shall only conduct Service Qualification if:

- a) OCE reasonably requires information from such Service Qualifications which is not readily available; and
- b) OCE notifies the Access Seeker that such Service Qualifications are necessary within five (5) Business Days of receiving the Access Seeker's Order, or, if further information has been requested under subsection 5.10.7, within five (5) Business Days of the expiry of the period in subsection 5.10.7, together with the reasons for such Service Qualification.

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

5.10.9 Completion of Service Qualifications: OCE shall:

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

5.10.10Withdrawal of Order following Service Qualifications: OCE shall permit an Access Seeker to withdraw its Order without penalty within fourteen (14) days after receiving the result of a Service Qualification under subsection 5.10.9.

5.10.11Acceptance obligation: OCE must use its reasonable efforts to accept and fulfill Orders from the Access Seeker for Services and Facilities which comply with a Forecast accepted by the OCE pursuant to subsection 5.9.

5.10.12Time for acceptance/rejection: OCE must notify the Access Seeker within fourteen (14) days of receiving an Order that the Order is accepted or rejected, save where OCE undertakes a Service

Qualification as contemplated in subsection 5.10.8 in which case the time of periods in subsection 5.10.9 are to be added to this fourteen (14) days period. If OCE notifies the Access Seeker that an Order is rejected OCE must advise the Access Seeker if it would be able to accept the Order in a modified form.

5.10.13 Notice of acceptance: OCE’s notice of acceptance to the Access Seeker must contain the following information:

- a) the delivery date, which must be date that is requested by the Access Seeker, or if that date cannot be met by OCE, must not later than the indicative delivery timeframe set out in subsection 5.10.14;
- b) the charges applicable to the fulfillment of the Order;
- c) such information as is reasonably necessary for the Access Seeker to benefit from access to the network services or network facilities;
- d) The validity period of the acceptance of the Order which shall be no less than ninety (90) days from the date of acceptance?

5.10.14 Indicative delivery times: for the purposes of paragraph 5.10.13(a), the following are the indicative delivery timeframes for the following aspects of a Facilities or Services:

6	Order type	7	Indicative delivery timeframes
8	All Orders involving the provision of new Facilities and infrastructure relevant to the Services that are the subject of the Order	9	8 months
10	All Orders involving augmentation of capacity on existing Facilities and infrastructure relevant to the Services that are the subject of the Order	11	60 days

- a) The indicative delivery timeframes specified in subsection 5.10.14 shall commence from the date the Access Seeker confirms an Order in accordance with subsection 5.10.15.
- b) Where a delay in the delivery of an Order is caused by the Access Seeker, the delivery date specified in the confirmed Order or indicative delivery time set out above shall be extended for a further period as may be reasonably necessary by OCE.

5.10.15 Access Seeker confirmation: OCE shall permit an Access Seeker to confirm its agreement to proceed with the Order within the validity period of OCE’s acceptance of such Order (as described in paragraph 5.10.13(d)). Upon such confirmation, OCE shall fulfill the Order in accordance with notice of acceptance provided under subsection 5.10.13.

5.10.16 Estimated charges: If the notice of acceptance provided by OCE under subsection 5.10.13 contains estimates of charges (e.g. based on time and materials):

- a. OCE shall not exceed the estimate without providing the Access Seeker with written notice prior to exceeding the estimate that:
  - i. The estimate will likely be exceeded;
  - ii. An explanation of the reasons for exceeding the estimate ; and
  - iii. A further estimate of the charges for the work necessary to fulfill the Order.
- b. OCE shall permit the Access seeker to withdraw the Order without penalty if the revised estimate within fourteen (14) days of the notice given by OCE under subsection 5.10.16(a).
- c. Where the actual cost incurred by OCE exceeds an estimate or revised estimate for a specific scope of work provided by OCE due to:
  - i. Information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker;
  - ii. A change in the scope of work by the Access Seeker

The Access Seeker shall be obliged to pay OCE for the actual cost incurred.

- d. OCE shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate, such confirmation to be provided by the Access Seeker within fourteen (14) days from the notice given by OCE under subsection 5.10.6(a).

5.10.17 Reasons for rejection: OCE may only reject an Order from an Access Seeker an Access Seeker where;

- a) Subject to subsection 5.7, it is not technically feasible to provide access to the Facilities or Services requested by the Access Seeker;
- b) OCE has insufficient capacity to provide the requested Facilities or Services;
- c) Subject to subsection 5.10.19, the Order is in excess of agreed Forecast levels;
- d) The Order or variation request duplicates an Order awaiting fulfillment;
- e) The Access Seeker has not obtained necessary related agreements from OCE (e.g. Facilities access for a new Point of Interface);
- f) There are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions of the Access Agreement; or
- g) There are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the facilities or Services to protect the integrity of a Network; or the safety of individuals working on, or using services supplied by means of, a Network or Equipment.

- 5.10.18 Notice of rejection: OCE's notice of rejection to the Access Seeker must:
- a) set out the grounds on which OCE rejects the Order, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Order; and
  - b) Offer to meet, and meet if the offered is accepted by the Access Seeker, within five (5) Business Days of the notice of rejection of the Order to discuss the reasons for rejection and alternative methods of compliance.
- 5.10.19 Order in excess of Forecast: Notwithstanding paragraph 5.10.17(b), OCE must use its reasonable efforts to provide sufficient capacity to enable OCE to accept and fulfill Orders from an Access Seeker for Facilities or Services or both which are in excess of the relevant Forecast. OCE is only required to do so if, after meeting the Forecast requirements of other Operators and of its business units, there is available capacity or the Access Provider could readily upgrade existing capacity. OCE shall allocate the available capacity on a non-discriminatory basis to meet the over forecast requirements of the Access Seeker, other Operators and its own business units. OCE is not required to supply Facilities or Services or both in excess of Forecast if, despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of Forecast Services provided to other Operators or its own business – or both.
- 5.10.20 Required extra capacity: OCE may require an Access Seeker to procure such additional capacity on the Access Seeker's side of the Network as OCE, in good faith and reasonably estimates may be required by the Access Seeker to meet demand. Where the Access Seeker fails to so procure additional capacity and the demand exceeds the capacity on the Access Seeker's Network, OCE must meet (not later than 5 Business Days after receipt of the notice from OCE) to attempt to identify alternative sources of capacity. If the matter cannot be resolved within 10 Business Days of the date of that meeting, OCE may bar or block calls to the Access Seeker's Network to the extent necessary to minimize congestion within the Access Provider's Network.
- 5.1021 Other uses: OCE shall permit capacity installed in connection with the provision of a network service to be used, to the extent technically feasible, in connection with another network service, at the Access Seeker's option.
- 5.10.22 Delivery Dates: OCE shall deliver the ordered access to Facilities or Services by the date specified in the notice of acceptance (as provided under subsection 5.10.13)
- 5.10.23 Early delivery dates: If OCE, in the normal course of business, is able to offer a delivery date earlier than the delivery date that would otherwise apply, it must advise the Access Seeker and, if requested by the Access Seeker, delivers access to the relevant Facilities or Services or both at the earlier delivery date.
- 5.10.24 Delayed delivery dates: OCE shall :

- a) Notify an Access Seeker of the delay to a delivery date and the revised delivery date, together with the reasons for the delay, as soon as practicable after OCE becomes aware of the possible delay;
  - b) Permit the Access Seeker notified under paragraph 5.10.24 (a) above to cancel the Order without penalty if the delay is longer than fourteen (14) days; and
  - c) Provide the Access Seeker with a remedy in accordance with subsection 5.10.33.
- 5.10.25 Cancellation and variation of Orders: OCE shall allow an Access Seeker to cancel or vary an Order at any time.
- 5.10.26 Cancellation penalty: Except where this Standard provides that cancellation is to be at no penalty, OCE shall only charge an Access Seeker which has cancelled or varied an Order no more than the costs necessarily incurred by OCE in relation to the cancelled or varied Order, reduced by the level at which those costs have been or would have been (had OCE used its best endeavors to do so), mitigated over a six (6) month period after the date of cancellation or variation.
- 5.10.27 Testing and Provisioning: OCE shall:
- a) Cooperate with the Access Seeker in relation to the testing and provisioning of ordered Facilities or Services or both; and
  - b) Treat an Access Seeker's testing and provisioning on an equivalent basis to that which OCE treats itself.
- 5.10.28 Resource charge: OCE may charge the Access Seeker one-off fee, to be determined by reference to the costs incurred by OCE for allocation of manpower and other resources to enable the Access Seeker to test and provide a new Facilities or Services for the purposes of interconnection.
- 5.10.29 Queuing policy: OCE shall establish and demonstrate and maintain a queuing policy system which:
- a) Shall be non-discriminatory;
  - b) Shall treat the Orders of Access Seeker on an equivalent basis to that which OCE treats its own Orders for similar Services; and
  - c) Shall seek to maximize the efficiency of its Ordering and provisioning process.
- 5.10.30 Acceptance on queue: OCE shall promptly notify an Access Seeker, at the time of providing an acknowledgement of receipt of the Order under subsection 5.10.5, of their acceptance on OCE's queue.
- 5.10.31 Constrained capacity: If OCE reasonably believes that the capacity in any Facilities or Services required by:

- a) The Access Seeker pursuant to the relevant Forecast;
- b) Other Access Seekers, pursuant to their relevant Forecasts; and
- c) OCE, for its own purposes

Would, in aggregate, exceed the capacity which OCE will be in a position to be able to provide, OCE must:

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

5.10.32 Capacity Allocation Policy: If OCE claims or is likely to claim that it has in sufficient capacity to meet an Access Seeker's Forecasts or Orders, OCE shall maintain a Capacity Allocation Policy, which:

- a) Shall be disclosed, free of charge, to any other Operator on request;
- b) Shall set out the principles in accordance with which OCE shall determine how to allocate capacity between itself (including its related bodies corporate) and other Operator or Operators, in circumstances where the amount of capacity available is less than the aggregate of capacity required by OCE, its related bodies corporate and other Operator or Operators;
- c) Shall:
  - i. Be fair and reasonable;
  - ii. Be consistent, so far as practicable, with OCE's general duty of non-discrimination in accordance with subsection 149(2) of the Act;
  - iii. Treat the requirements of the Access Seeker and third parties on an equivalent basis to the OCE's own requirements; and\allocate the available capacity in the relevant Facilities or Services or both in proportion to each Operator's Forecast requirements
  - iv. Allocate the available capacity in the relevant facilities or service or both in proportion to each Operator's forecast requirements

5.10.33 Late Delivery: If OCE fails to meet any timeframe in subsection 5.10.14 with respect to the delivery of access to Facilities or Services pursuant to an Order, made in accordance with subsection 5.11, except where such failure has been caused solely by the Access Seeker's delay, that OCE shall, without limitation to any other rights the Access Seeker may have under subsection 5.10 or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities or Services over a period equal to the period of the OCE's delay

## **5.11 NETWORK CONDITIONING OBLIGATIONS**

- 5.11.1 Non –discrimination: OCE shall perform Network Conditioning on an equivalent basis to that which OCE performs for itself for the same or similar services.
- 5.11.2 Impact of retail commercial arrangements: OCE must not refuse to commence or complete Network Conditioning on the basis that the commercial arrangements (other than matters required under subsection 5.11.3 of this Standard to perform Network Conditioning) are not agreed between the parties in relation to the retail service for which the Network Conditioning is to be provided.
- 5.11.3 Commencement: OCE must commence Network Conditioning immediately following receipt of an Order from an Access Seeker and agreement by OCE and the Access Seeker in relation to:
- a) Geographical coverage;
  - b) Number information (i.e. length and code allocation);
  - c) Origins from or destinations to which access is required;
  - d) Network routes (including which Operator is responsible for the provisioning of the Interconnection Links); and
  - e) Handover arrangements and relevant Point of Interface.
- 5.11.4 Number range activation: Subject to subsection 5.11.5, the OCE shall:
- a) use its best endeavors to activate a code or number range in its Network within ten(10) Business Days of being requested to do so by than Access Seeker; and
  - b) In all cases, activate a code or number range within thirty (30) days of being requested to do sob the Access Seeker to whom the code or number range has been allocated.
- 5.11.5 Intra-Network codes and numbers: Subsection 5.11.4 does not apply to codes or number ranges not intended for use across interconnected Networks.
- 5.11.6 Costs: the costs incurred in Network Conditioning shall be apportioned between the Operators as follows:
- a) If the work has been carried out in accordance with a Government or Commission Requirement, the Operators will bear their own costs;
  - b) If the work has been carried out to fulfill an Order made in accordance with this Standard, the



costs shall be apportioned in an equitable manner between the Operators having regards to cost causation.

## **5.12 POINT OF INTERFACE PROCEDURES**

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

5.12.2 Point of Interface locations:

(1) Subject to subsection 5.12.3, OCE shall publish on its website and keep updated a list of the general locations:

a) At which physical co-location is available;

b) In respect of which virtual co-location is available; and

c) In respect of which in-span interconnection is available on and from the date of publication for the following 12 months.

(2) Due to physical constraints, OCE should jointly agree as to which Access Seeker should be given the right to physically co-locate at each POI. The Access Seeker that is granted co-location rights shall offer virtual co-location or in-span interconnection to other Access Seekers.

5.12.3 Virtual and in-span interconnection: Each Operator shall offer virtual co-location or in-span interconnection at all technically feasible points.

5.12.4 Deemed Access Providers: If an Access Seeker (referred to in this subsection 5.13.4 as the deemed Access Providers) obtains physical co-location at a Point of Interface front Access Providers (referred to in this subsection 5.12.4 as the principal Access Provider) it shall be deemed to be an Access Provider to permit other Access Seekers to co-locate at the same procedures in respect of permitting access as those required to be followed by the principal Access Provider in providing access. The deemed Access Provider must notify the principal Access Provider of the Identify of all persons with whom it has reached co-location agreements and must ensure that such persons comply with the relevant co-location obligation contained in subsection 5.12 of this standard.

5.12.5 Lack of space: If there are space constraints at a particular location, OCE shall take reasonable steps to optimize its usage of the, including through the upgrading of Facilities. If OCE has used its best efforts to accommodate all Access Providers and it is not physically possible for any further Access Seekers to be accommodated, OCE shall be excused from providing physical interconnection at such location.

5.12.6 Access Seeker requested Point of Interface: An Access Provider shall reasonably consider a

request by an Access Seeker to interconnect at a point other than that specified under subsection 5.12.2. The Access Seeker under this subsection, and provide the Access Seeker with reasons if it rejects the Access Seeker's request.

- 5.12.7 Network responsibility; Each Operator is responsible for the provisioning and maintenance of facilities (including those Facilities which form part of the Interconnect Links and the transmission equipment) on its side of the Point of Interface.
- 5.12.8 Third Party Point of Interface: OCE shall permit an Access Seeker to nominate a Point of Interface of a third party for the purposes of interconnection and access between OCE and the Access Seeker provided that the Access Seeker remains responsible for the costs of such interconnection and access and for the third party's act and omissions at the Point5 of Interface.
- 5.12.9 Point of Interface factors: When determining which locations are to be listed under subsection 5.12.2, or when determining a request under subsection 5.12.6,OCE must have regard to the following:
- a) OCE shall offer (but shall not require) POI and co-location for every Closed Number Area throughout Malaysia;
  - b) In addition to paragraph 5.12.9(a) above OCE shall offer interconnection and co-location at any other technically feasible point;
  - c) OCE may offer more than one form interconnection in relation to a particular location (e.g. physical interconnection and virtual interconnection);
  - d) OCE shall not reserve space other tab for its own current needs, its future needs (calculated by used of a reasonably projected rate of growth over two(2) years) and the needs of other Access Seekers who nacre currently occupying or have Ordered additional space from OCE; and
  - e) Any possible re-arrangement of its Equipment configuration to eliminate space inefficiencies;
- 5.12.10Intercrossed Number Area service: OCE shall offer interconnection to permit calls to be transmitted across Closed Number Area boundaries, whether directly or in transit.

### **5.13 DECOMMISSIONING OBLIGATIONS**

- 5.13.1 Decommissioning notice: Except where OCE is required to vacate the site where a Point of Interface is located as a result of a third Party landlord's notice (under an arm's length tenancy agreement), OCE must provide no less than:
- a) one (1) year's notice in writing to all relevant Access Seekers prior to decommissioning of a

point of Interface; or

- b) six(6) month's notice in writing to all relevant Access Seekers prior to decommissioning of any other Facilities or Services.

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

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

5.13.3 Alternative arrangements: OCE which notifies an Access Seeker of its intention:

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

5.13.4 Decommissioned Point of Interface compensation: OCE shall pay the Access Seeker reasonable costs necessarily incurred in:

- a) decommissioning any links to Point of Interface that is proposed to be decommissioned that are rendered or will be redundant by the proposed decommissioning;
- b) installing or otherwise procuring links between the Point of Interface that is proposed to be decommissioned and the substitute Point Of Interface to be provided pursuant to paragraph 5.13.3(a); and
- c) the carriage of traffic between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to paragraph 5.13.3(a) for period not less than three (3) years from the date of decommissioning.

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

- a) moving the Access Seeker's Equipment from the decommissioned Facilities to the alternative Facilities offered in accordance with subsection 5.13.5; or
- b) Re-arranging Equipment to connect to the alternative network services offered in accordance

with subsection 5.13.3

## **5.14 NETWORK CHANGE OBLIGATION**

5.14.1 Scope: This subsection 5.14 applies where an Operator proposes to implement a Network Change of a type referred to in subsection 5.14.2 which necessitate a change in the hardware or software (including interface software) of the other Party's Network in Order to ensure the continued proper operation and compatibility of the Parties' respective Networks, services and procedures.

5.14.2 Types of changes; the following kinds of proposed Network Changes may be within the scope of subsection 5.14.1:

- a) Any change by the party proposing to make the change (Notifying Party) to any technical specification of the interconnection interface between their respective networks(Interface Change);
- b) Any change by the Notifying Party to any Technical specification or characteristic of the Facilities or Services to which the other Party (recipient Party) has access which will or might affect:
  - i. The recipient Part's Network;
  - ii. The Recipient Party's use of the Facilities or Services provided by Notifying Party( Service Change);
- c) Any change by the Notifying Party to any technical specification or characteristic of that Notifying Party's Network which will or might affect the recipient Party's Network (Network Change);
- d) Any change by the Notifying Party to any of the operational support system used in intermarried processes, including without limitation:
  1. The billing system;
  2. The ordering and provisioning systems; or
  3. The Customer Churn process, (OSS Change); and
- e) Any enhancement by the notifying party of the features, functions or capabilities of the facilities or services to which the recipient party has access, which enhancement the notifying party propose to make available either:
  - i. To itself; or
  - ii. To any other Operator(functionality Change),  
(Collectively, relevant changes)

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

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

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

Relevant change:	Notice Period:
Interface Change	3 month
Network change	3 month
Service change	3 month
OSS Change	3 month
Functionally Change	3 month

5.14.4 Post-notification Procedures: The notifying Party shall:

- a) Meet with representative of the Recipient Party on the date set out in the change Notice or as soon as practicable thereafter (but no later than the notice period set out in the table in subsection 5.14.3) for the purpose of discussing the Relevant Change and any changes that may be necessary or desirable for the recipient party to make to its Network, Service or procedure in consequence of the Relevant Changes;
- b) Provide any additional information reasonably requested by the Recipient Party no later than ten (10) Business Days after the Recipient Party's request for such additional information and
- c) Take reasonable account of concerns raised and proposal made by the recipient party and revise the change notice accordingly

5.14.5 Testing: A notifying party shall, bearing its own costs in doing so:

- a) Co-operate with a Recipient Party in relation to the development of procedure for testing the impact of the Relevant Changes on the proper operation and compatibility of the Parties respective Networks;
- b) Jointly carry out testing with the recipient Party no less than twenty (20) Business Days before

notifying party propose to effect the relevant change. The testing shall be conducted in accordance with the testing provider developed under paragraph 5.14.5(a).

5.14.6 Testing Failure: subject to the recipient party having co-operated with the Notifying Party in relation to the conduct of test under subsection 5.14.5, if such tests:

- a) Are not accepted by ten (10) Business days prior to their date when the Notifying Party propose to effect the Relevant Changes; or
- b) Do not provide reasonable assurance of the continued proper operation and compatibility of their Parties' respectively Networks, service and procedure the Notifying Party must postpone implementation of their Relevant Changes. The period of postponement will be the period necessary to allow the parties to repeat the steps in subsection 5.14.3 to 5.14.5 above.

## **5.15 EQUAL ACCESS OBLIGATION**

5.15.1 Application: this subsection 5.15 applies where Equal Access (PSTN) Service are to be provided.

5.15.2 Line Activation: to enable Equal Access (PSTN) Services, OCE shall comply with the following procedure in relation to Line Activation:

- a) OCE shall ensure that all Fixed Access Lines connected to that Access Provider's Network are line Activated on and from the date of this standard;
- b) OCE shall ensure that all New Fixed Access Lines connected or to be connected to that OCE's Network are Line Activated on and from the date OCE's services are activated over that Line;
- c) OCE shall not remove the line Activation from a Fixed Access Line unless:
  - i. OCE is also disconnecting all services over the Fixed Access line; or
  - ii. A Customer requests, at the sole initiation of the Customer, the Line Activation to be removed.
- d) Unless otherwise agreed, OCE may not bar access to another operator's CSC on a fixed Access Line connected to OCE's Network unless:
  - i. The customer requests, at the sole initiation of the customer, such barring and the OCE also bars access to all Equal Access (PSTN) Service (including access to its own Equal Access (PSTN) service) over the Fixed Access Line; or
  - ii. that other Operator's Network is not interconnected with the Access Provider's Network; or
  - iii. in accordance with subsection 5.10.20

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

5.15.3 **Customer registration and Billing:**OCE is not obliged to, and may not (unless otherwise agreed with the other Operator):

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

## 5.16 NETWORK FACILITIES ACCESS AND CO-LOCATION

5.16.1 **Scope:** Subsection 5.13 of the MSA Determination applies where co-location or access is to be provided to or at network facilities under this Standard.

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

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

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

5.16.4 **Escorts:** If OCE determines that it is necessary to have an escort present when employees or contractors wish to enter onto property, OCE shall :

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

5.16.5 **Absence of escort:** For the proposes of subsection 5.13.4 of the MSA Determination not arrive at the Access Seeker's property within 30 minutes of the scheduled commencement of the visit by the Access Seeker, the Access Seeker, the Access Seeker's staff may proceeds to enter OCE'S property without an escort.

5.16.6 **Site register:** The Access Seeker must establish and maintain a register of all persons who visit OCE'S property, which must be made available for inspection by OCE, upon request.

- 5.16.7 **Reservation of space:** OCE shall not reserve space other than for its own current needs, its future needs, (calculated by used of a reasonably projected rate of growth over 2 years) and the needs of other Access Seeker who currently occupying or have ordered space from that OCE.
- 5.16.8 **Allocation of space:** OCE shall allocated space at each location where co-location is to be permitted in a non-discriminatory way and will treat other Access Seekers as its treats it self.
- 5.16.9 **No minimum space requirements:** OCE shall not impose minimum space requirement on an Access Seeker.
- 5.16.10 **Re-configuration:** If there are space constraints at a particular location, OCE shall take reasonable steps to optimize its usage of the space, including through the upgrading of facilities or endeavoring to transfer the Equipment to an alternative location.
- 5.16.11 **Advice to the Commission:** OCE shall notify the Commission every twelve (12) months of its space requirements over a three (3) years period from the date of notification, together with a reconciliation of its reservation over the previous twelve (12) months with its actual space needs.
- 5.16.12 **Preparatory work by the Access Seeker:** If preparatory work is necessary for the purpose of allowing the Access Seeker to obtain access to or co-located at or on OCE'S facilities, OCE shall permit the Access Seeker's employees or contractors to perform such preparatory work if the Access Seeker satisfies OCE (acting) that such employees or contractors have the necessary qualifications. Furthermore OCE shall publish and make available a policy about the necessary qualifications of preparatory work under this subsection 5.16.12, such policy to be non-discriminatory in its application to OCE and the Access Seeker personnel who perform similar functions.
- 5.16.13 **Preparatory work by the Access Provider:** If OCE agrees to perform preparatory work and does so on the basis of an estimated charge (e.g. based on a time and materials basis) :
- a) OCE shall not exceed the estimate without providing the Access Seeker with prior written notice that :
    - i. The estimate will likely be exceed; and
    - ii. a further estimate of the charges for the work necessary to complete the preparatory work;
  - b) OCE shall permit the Access Seeker to withdraw the request for preparatory work penalty if the revised estimate exceeds the original estimate by more than 10% of the original estimate.
- 5.16.14 **Delays:** If OCE agrees to perform preparatory work and OCE is or is likely to be unable to perform such work within the agreed time frame, OCE shall :
- a) notify the relevant Access Seeker of the delay to a delivery date, together with the reasons for the delays, as soon as practicable after OCE becomes aware of the possible delay;
  - b) permit the Access Seeker notified under paragraph 5.16.14(a) to cancel the preparatory work without penalty if the delay is longer than fourteen (14) days; and
  - c) compensate the Access Seeker for the costs it has incurred as a result of delay, subject to the Access Seeker using reasonable endeavors to mitigate those costs.
- 5.16.15 **Utilities and ancillary services:** If OCE has permitted access or physical co-location at a particular or network facilities that OCE must, where the relevant utilities and ancillary services are within OCE'S control, ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access or co-location, including but not limited to :



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

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

5.16.17 **Equipment allowance:** OCE shall permit an Access Seeker to locate Equipment on or at OCE'S network facilities which is necessary for the purposes of obtaining the benefit of access to the network services and network facilities provided in accordance with MSA Determination including but not limited to multi-functional Equipment which may also be used for purposes other than those specified in this subsection 5.16.17.

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

5.16.19 **Maintenance:** OCE shall permit, and do all things reasonably necessary to allow an Access Seeker to maintain its Equipment at or on the network facilities to which access has been granted. This may include, for example, the provision of physical access. For the purposes of this subsection 5.16.19, an Access Seeker shall be permitted to maintain its Equipment at or on the network facilities OCE allows external contractors or other third parties to maintain similar Equipment on the network facilities.

5.16.20 **Extension:** OCE shall reasonably permit the Access Seeker, at the Access Seeker's cost's, to extend network facilities of OCE as may reasonably be required to meet the Access Seeker's requirements in the circumstances and to the extend technically feasible.

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

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

## 5.17 BILLING AND SETTLEMENT OBLIGATIONS

5.17.1 **Invoices:** OCE shall use its best endeavors to issue to the Access Seeker an Invoice in writing or in electronic form (as requested by the Access Seeker) within thirty (30) days of the end of the Billing Period for amounts due in respect of the supply of Facilities or Services during such Billing Period.

5.17.2 **Currency:** Unless otherwise agreed, OCE shall state all Invoices in Ringgit Malaysia and

payment shall be made by the Access Seeker in Ringgit Malaysia.

- 5.17.3 Billing cycle:** OCE shall issue invoices in monthly Billing Cycles, unless otherwise agreed with the Access Seeker.
- 5.17.4 Billing verification information:** OCE shall provide, with each Invoice, such information as may be reasonable necessary for the Access Seeker to verify rates and charges contained in an invoice.
- 5.17.5 Other Billing information:** An Operator must provide to any Operator with which it interconnects, information within its possession that is reasonably necessary to allow the other Operator to provide accurate and timely billing services to itself, its affiliates or other Operators.
- 5.17.6 Summarized Invoice and billing information:** OCE shall provide the Access Seeker at the latter's request, Access Seeker with an aggregated summary of billings for access to the network facilities and network services provided to the Access Seeker, in monthly trenches.
- 5.17.7 Billing error:** If an Operator discovers an error in an Invoice, it must notify the Other Operator. The Operator which made the error must make necessary adjustments to correct that error in the next Invoice.
- 5.17.8 Time for payment:** Subject to subsection 5.14.11, OCE shall allow an Access Seeker no less than thirty (30) days from the date of receipt of an Invoice for the Access Seeker to make the payment. This subsection 5.18.8 should not be construed as preventing from OCE granting a discount to an Access Seeker as an incentive to make early payments.
- 5.17.9 Method of payment:** OCE shall allow an Access Seeker to pay an invoice by bank cheque or electronic funds transfer directly to an account nominated by OCE.
- 5.17.10 No set-off:** Unless otherwise agreed, OCE may not set-off Invoices, except where the Access Seeker is in liquidation or at least 3 Invoice have been issued and such Invoice have not been paid (excluding disputed amounts).
- 5.17.11 Withholding of disputed amounts:** OCE shall allow an Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker if:
- a) The Access Seeker notifies OCE within twenty one (21) days from the date of receipt of such Invoice;
  - b) The Access Seeker's notification specifies the information referred to in subsection 5.14.13.
- 5.17.12 Billing Disputes:** OCE shall allow an Access Seeker to dispute an Invoice if:
- a) in the case of domestic calls and interconnection, the Access Seeker notifies OCE within forty-five (45) days after the date of receipt of such Invoice;
  - b) in the case of outgoing and incoming international calls and interconnection, the Access Seeker notifies OCE within six (6) month after the date of receipt of such Invoice; and
  - c) In case of any other Facilities and Services, the Access Seeker notifies within forty-five (45)

days after the date of receipt such invoice and in either case, the Access Seeker's notification specifies the information referred to in subsection 5.17.13.

**5.17.13 Billing Dispute Notification:** OCE may request an Access Seeker to provide the following information when disputing an Invoice:

- a) the reason for which the Invoiced Party disputes the Invoice;
- b) the amount in dispute; and
- c) details required to identify the relevant invoice and charges in dispute including:
  - i. the account number;
  - ii. the invoice reference number;
  - iii. the invoice date;
  - iv. the invoice amount; and
  - v. Billing verification information.

**5.17.14 Billing Dispute Resolution:** OCE and an Access Seeker must comply with the Dispute Resolution Procedures applicable to Billing Disputes.

**5.17.15 Interest:** Subject to an Invoice being disputed by an Access Seeker in good faith in accordance with subsection 5.17.12, OCE charge interest on any amount outstanding from an Access Seeker from to time, in respect of that overdue sum for the period beginning on its due date and ending on the date of the receipt of the overdue sum by OCE. The interest that may be charged by OCE shall be at the rate of 1% per annum above Malayan Banking Berhad Base Lending Rate calculated daily from the due date of actual payment. Payments which are overdue by more than 60 days will interest at the rate of 2% per annum above Malayan Banking Berhad Base Lending Rate calculated from the due date until the date receipt by OCE of full payment. For clarification, OCE shall not charge interest on an amount which is disputed by an Access Seeker in good faith.

**5.17.16 Back billing:** Unless otherwise agreed, OCE may include committed or miscalculated charges from an earlier Invoice in a later Invoice, or issue an Invoice for charges which have previously not been invoiced provided that OCE is able to substantiate the charges to the Access Seeker and such inclusion, amendment or issuance is made within three (3) months from the end of the Billing Period in which the calls were made or other services provided.

**5.17.17 Provisional billing:** Where OCE unable to issue an Invoice, it may issue an Invoice to an Access Seeker for a provisional amount, based on the last invoice (**provisional Invoice**). In such circumstance, OCE may invoice an Access Seeker for a provisional amount for a period of not more than three successive Billing Periods, provided the amount of the provisional Invoice is no more than the average of the most recent three Invoice. Where there have not been three (3) past Invoices for access to the relevant network facilities or network services, OCE may issue a provisional Invoice up to the full value of the amount based on the most recent Invoice. The provisional Invoice be adjusted in the next Invoice or as soon as practicable but not later than sixty (60) days after the calendar month in which the charges were incurred or such other time period as may be agreed in writing.

## **5.18 OPERATIONS AND MAINTENANCE OBLIGATIONS**

**5.18.1 Operations & maintenance responsibility:** Each Operator shall be responsible for the operations and maintenance of its own Facilities and Service.

**5.18.2 Fault reporting systems:** Each Operator shall establish and maintain a fault reporting service that allow Customers who are directly connected to the Network of that Operator and to whom that Operator supplies services (interalia), to report faults relating to any Network or support

system.

**5.18.3 Customer notification:** Each Operator will advise all of its directly connected Customers to report all faults to the reporting service describe in subsection 5.15.2.

**5.18.4 Non-discriminatory fault reporting and identification:** An Operator shall perform reporting and identification on a non-discriminatory basis.

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

a) when the Customer is directly connected to another Operator; or

b) Which clearly relates to a network or support system of another Operator that Operator must promptly inform the other Operator of the reported fault, or refer that Customer to the other Operator's fault reporting service.

**5.18.6 Network fault service responsibility:** The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services.

**5.18.7 Transmission service faults:** The Operator that supplies transmission services is responsible for maintaining and repairing that transmission service, notwithstanding that the transmission service may be used in another Operator's Network.

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

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

(a) the existence of the fault;

(b) the actions being taken by the first mentioned Operator to restore service and to further identify and rectify the fault; and

(c) The outcome of those actions.

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

**5.18.11 Fault priority:** Each Operator shall give priority to fault which have:

a) the highest service loss impact in terms of the number of Customers affected; or

b) Those which have been reported on previous occasions and have re-occurred.

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

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

Priority Level	Fault Type (examples)	Response Time	Restoration Time
Level 1	Major switch outage Transmission bearer Total outage. Route blocking > 30% Major signaling problem Major routing issues	Within 1 hr	4 hrs

	6. Fraudulent calls		
Level 2	Minor switch outage Minor routing issue Minor signaling problems Route blocking 10%-30% Cross line & silent calls	Within 4 hrs	24 hrs
Level 3	1. Faults affecting single or small number of Customers 2. Route blocking < 10%	Within 24 hrs	72 hrs
Level 4	1. Remote Congestion 2. External Technical Irregularities (ETI) 3. Other performance related Issues.	Within 48 hrs	14 days

Explanatory Notes to subsection 5.15.13:

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

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

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

- 5.18.15 **Planned maintenance windows:** An Operator shall undertake planned maintenance within windows of time agreed with other Operators, and where the windows of time for such planned maintenance have the least on end-users.
- 5.18.16 **Emergency maintenance:** If an Operator (**Maintenance Operator**) needs to undertake emergency maintenance which may affect the other Operator's Network, the Maintenance Operator must, if it is able to:
- a) provide at least 24 hours notice of the planned maintenance;
  - b) use its reasonable endeavors to minimize any disruption to the carriage of communications which cross or are to cross both Operator's Networks, and which are caused by the maintenance or re-routing; and
  - c) Where practicable and agreed by the Operator, provide alternative routing or carriage at no additional cost to the other Operator.
- 5.18.17 **Hours of fault reporting and rectification:** OCE shall maintain a twenty-four (24) hours a day, seven (7) days a week fault reporting and rectification service.
- 5.18.18 **Complains Handling:** The Operators must report all interconnection outage that relate to Facilities and/or Service to the respective Fault Reporting Centre.
- 5.18.19 **Routing Testing:** The Operators shall conduct interconnection service tests at agreed half yearly intervals to ensure the maintenance of interconnection services at agreed services level in accordance with standards as agreed by both parties or such other standard as may be determined Commission.

## 5.19 TECHNICAL OBLIGATIONS

- 5.19.1 **Compliance:** Operator shall adhere to the relevant guidelines issued by the Commission from time to time to the extent that they have not been expressly revoked or are not inconsistent with any technical obligations set out MSA Determination.
- 5.19.2 **Prevention of technical harm:** An Operator must take reasonable measures to ensure that the interconnection does not cause physical or technical harm to the other Operator's Network.
- 5.19.3 **Technical Standards:** An Operator must comply with any applicable technical Standard adopted by the Commission under Chapter 3 of Part VII of the Act.
- 5.19.4 **No Interference:** An Operator must not do anything, or knowingly permit any third person to do anything, in relation to a network facilities, network services or Equipment which:
- (a) causes interference; or
  - (b) Materially obstructs, interrupts or impedes the continuous use or operation of, the network facilities, network services or Equipment of another Operator.
- 5.19.5 **Notice of interference and rectification:** If an Operator (**Notifying Operator**) notifies another Operator that the other Operator's network facilities, network services or Equipment is causing interference to the Notifying Operator's network facilities, network services or Equipment:
- (a) the other Operator shall rectify the situation so that no interference is caused within twenty four (24) hours of receiving notice from the Notifying Operator; or
  - (b) if the other Operator is not able to locate the sources of the interference within twenty-four (24) hours under paragraph 5.19.5(a), the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet within twenty-four (24) hours of such notice and jointly examine each other's network facilities, network services or equipment to locate the source of the interference.
- 5.19.6 **Handover principles:** Where access is provided to an O&T Service, an Operator shall handover interconnected calls to the other Operator on the basis requested by unless otherwise agreed. For clarification, for originating Services provided by OCE, the terminating Operator (as Access Seeker) may elect whether handover will be on a Near End Handover basis or on a Far End Handover basis. For terminating Services provided by OCE, the originating Operator (as Access Seeker) may elect whether handover on a Near End Handover or on a Far End Handover basis.
- 5.19.7 **CLI:** For the purpose of billing reconciliation and call charge verification, Operators will provide CLI to each other subject to CLI being forwarded to it from another Network is interconnected.
- 5.19.8 **Dummy CLIs:** An Operator must route a Customer's original CLI and must not translate numbers, use dummy numbers or dummy CLI, or use any means to alter numbers which confuse or have the tendency to confuse the other Operator's Network (including transit Networks) or billing systems. Where technical problems for routing or billing so demand, the use of dummy numbers shall only be permitted as is agreed between the Operators.

5.19.9 **Quality of service:** OCE shall provide access as follows.

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



## 5.20 TERMS, SUSPENSION AND TERMINATION OBLIGATIONS

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

5.20.2 **Term of supply:** Unless otherwise agreed, and subject to OCE not being able to provide access as a result of Force Majeure, OCE individual Facilities and Services under an Access Agreement for a minimum period as follows.

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

5.20.3 **Termination circumstances:** Subject to paragraph 5.20.6, OCE may only terminate an Access Agreement if any of the circumstance referred to on paragraph 5.20.3(a),5.20.3 (b) or 5.20.3(c) apply and OCE has notified the Access Seeker that it will terminate where:

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

Thus, OCE 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.

**5.20.4 Change in law:** Where continued operation of the Access Agreement or access to any Facilities or Services provided under is or will be unlawful (as a result of a legislative change), the Access Seeker and OCE must meet within five (5) Business Days of becoming aware of the Relevant Change in law to review whether access to the relevant Facilities or Services may be provided by OCE on different terms and conditions (which are acceptable to the Access Seeker). If the Parties cannot agree to the provision of access on different terms and conditions, OCE may terminate the provision of access to the relevant Facilities or Services.

**5.20.5 Suspension:** Subject to paragraph 5.20.6, OCE may only suspend access to any Facilities or Services in the following circumstances:

- (a) the Access Seeker's Facilities materially adversely affect the normal operation of the OCE'S Network, or are a material threat to any person's safety;
- (b) the Access Seeker's Facilities or the supply of Services pose an imminent threat to life or property of OCE, its employees or contractors;
- (c) the Access Seeker's Facilities cause material physical or technical harm to any Facilities of OCE any other person;
- (d) where the Access Seeker has failed to pay in accordance with subsection 5.17;
- (e) where Force Majeure applies; or

- (f) The Access Seeker breaches any laws, regulations, rules or standards which have a material adverse effect on OCE or the provision by OCE of Facilities and/or Services under this Agreement.

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

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

**5.20.8 Post-termination fees:** OCE shall not recover any additional charges, costs or expenses on termination of an Access Agreement or access to any Facilities or Services under it except:

- (a) charges on invoices in arrears and not yet paid; or
- (b) charges arising during an applicable minimum contractual period (as described in subsection 5.20.2)

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

**5.20.10 Deposits and guarantees:** Notwithstanding the obligation in subsection 5.20.9, OCE shall:

- a) within sixty (60) days of termination of the Access Agreement refund to the Access Seeker any deposit paid provided all other amounts payable by the Access Seeker to OCE have been paid; and
- b) Immediately upon termination of the Access Agreement unconditionally waive any guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to OCE at the date of termination.

## 5.21 LEGAL BOILERPLATE OBLIGATIONS

- 5.21.1 **Obligation to supply:** Each Operator shall have an absolute obligation to supply access to the Facilities or Services in accordance in MSA Determination. Such obligation shall not be conditional upon the use of that Operator's reasonable or best endeavors. Each Operator shall ensure that it shall not enter into any arrangement which will prevent, hinder or restrict the fulfillment of the Operator's obligation under this Standard.
- 5.21.2 **Mutual compensation:** An Operator must establish mutually acceptable compensation arrangements with other Operator (including bill-and keep arrangement).
- 5.21.3 **Interconnect Steering Group:** Each Operator must appoint a representative to an Interconnect Steering Group (and such other working groups as may be agreed upon) to manage the smooth and timely implementation of the terms and conditions of Access Agreement.
- 5.21.4 **Dispute Resolution:** An Operator must comply with the Dispute Resolution Procedures.
- 5.21.5 **Complete charges:** Each Operator shall specify all charges in an Access Agreement and shall not attempt to recover any costs, expenses or charges which are not specified in the Access Agreement except where such work is to be done on a time materials basis in which case the Access Provider shall do such work in accordance with a quotation agreed with the Access Seeker as set out in the Standard.
- 5.21.6 **Intellectual Property:** Each Operator shall license to the other Operator under an Access Agreement on a royalty-free basis, all intellectual Property rights necessary for the ongoing operation of the Access Agreement and the inter-interopability of the Operator's Networks, subject to any relevant third party license. The term of the license must be consistent with the term of the relevant Access Agreement.
- 5.21.7 **Security review:** An Operator may only review the security provided to it by another Operator in accordance with subsection 5.2.2 during the term of an Access Agreement if there has been a material change circumstances in relation to the other Operator's creditworthiness. For clarification, a material change in circumstances includes, but is not limited to, failure to pay on the due date specified in at least three (3) Invoices rendered in the preceding six (6) months, so long as those amounts have not been disputed in good faith. If amounts contained in Invoices are disputed in good faith, this will not constitute a material change in circumstances for the purposes of this subsection 5.21.7.
- 5.21.8 **Additional security:** If subsection 5.21.7 applies, an Operator may only request additional or substitute security from another Operator in a manner consistent with that which would apply if the Operator was making a new Access Request under subsection 5.3.
- 5.21.9 **Assignment:** An Operator's right to assign its rights under an Access Agreement prepared by it shall reciprocal with the other Operator's rights of assignment.
- 5.21.10 **Review:** An Operator shall specify in an Access Agreement prepared by it that such Access Agreement shall be reviewed:
- (a) if the Minister issues a direction or determination relating to its subject matter;
  - (b) if the Commission issues a direction or determination relating to its a subject matter;
  - (c) if the Act or this Standard is amended in relation to its subject matter;
  - (d) by agreement of each of the parties; or
  - (e) If a condition of the Operator's license is amended or deleted or a new condition is imposed.

- 5.221.11 **Costs and expenses:** Each Operator shall bear its own costs and expenses in relation to the preparation, negotiation and execution of an Access Agreement to which they are parties.
- 5.22.12 **Applicable laws:** An Operator shall include a provision in all Access Agreement prepared by it which provides that the Agreement will be governed by the laws of Malaysia and that Operator will comply with all applicable directions issued by the Malaysian regulatory authorities.
- 5.22.13 **Reciprocity:** OCE offers to acquire access to Facilities and Services on the same terms that it provides access to those Facilities and Services.

## 5.23 INTERNET INTERCONNECTION SERVICES

- 5.23.1 **Domestic connectivity:** The Internet Interconnection Services is a network service which is intended to establish connectivity between routers of two service provider's network in Malaysia. It is not intended that international connectivity is required to be provided as part of the service.
- 5.23.2 **Route advertising:** OCE must advertise all available IP addresses of OCE address customers through its network facilities. OCE must also confirm all advertised routes on request by and Access Seeker except routes where OCE'S customers have specifically requested otherwise.
- 5.23.3 **Route plans:** OCE must publish its routing plan and make available such plan (and any Amendments thereto) to an Access Seeker on request.
- 5.23.4 **Redundancy:** OCE shall establish alternative routing paths in the case of a failure on a Particular link or route.

## 5.24 ACCESS TO NETWORK ELEMENTS

- 5.24.1 **Application:** This subsection 5.24 applies where Access to Network Elements is to be provided.
- 5.24.2 **Seven access elements:** The elements to which access is required to be provided are as follows:
  - (a) access to the copper elements of the access network, being:
    - i. the Full Access Services;
    - ii. the Line Sharing Services;
    - iii. the Bit stream Service (with or without Network Service); and
    - iv. the Sub-loop Service;
  - b) Access to associated optical fiber services in the Full Access Service, the Line Sharing Service and the Sub-Loop Service;
  - c) Access to co- location services in accordance with description under subsection 5.13 and associated tie cable services;
  - d) Access to transmission services in accordance with the description of Domestic Network Transmission Services;
  - e) Access to shared splitting services;

- f) Access to interfaces to Operational Support Systems in accordance with subsection 5.24.4, 5.24.5 and 5.24.6;
- g) Access to network information in accordance with subsection 5.24.4.

5.24.3 **Access to network information:** At an Access Seeker's request, OCE must the following network information to that Access Seeker:

- a) the basic information on the cabling system includes but is not limited to
  - i. :list and/or map MDFs including total number of useable loops and number of loops in use;
  - ii. data on known disturbers per MDF and per cable;
  - iii. line distribution per MDF (weighted average distribution);
  - iv. general information concerning cable characteristics including typical type and quality of cable (e.g. Diameter, results from quality tests that have been conducted, number or lines, technical interference control and spectral management plan);
  - v. statistic information about the network e.g. Loop characteristics;
  - vi. standard spectrum masks and/or list of approved systems;
  - vii. availability of co-location space and type;
  - viii. availability of power;
  - ix. availability of space at MDF;
  - x. Co-location environmental services (such as air conditioning, uninterruptible power supply, security).

b) the detailed information on the cabling system includes:

- (i) Latest update of information in addition to line distribution per MDF, described in 5.24.3(a)iii, where the Access Seeker wants to have access;
- (ii) location (physical address information) associated with the MDFs and the name of the associated local switch and/or number ranges associated with MDFs;
- (iii) exact customer coverage of each MDF;
- (iv) detailed information concerning loop characteristics, any known limitations or incompatibilities;
- (v) results of any DSL tests;
- (vi) any foreseeable limitations of space for MDF extensions;
- (vii) Detailed description of procedures and conditions relating to request form of ANE.

c) the detailed information on access to MDF includes:

- (i) Type of proposed by OCE, either:
- (ii) directly on the MDF; or
- (iii) in-house on HDF (distance, cable type and size(number of pairs)); or
- (iv) outside(remote) on HDF (distance, cable type and size(numbers of pairs)); or
- (v) Cable entry points and capacity available

d) the detailed information on co-location includes:

- (i) availability of co-location space and type, detailed floor plan, if space is required by the Access Seeker;
- (ii) co-location environmental services (such as air conditioning, uninterruptible power supply, security), technical constraints (if any) terms and conditions of use; and
- (iii) Conditions of physical access to the facilities.

**5.24.4 Interface to Operational Support System (OSS):** OCE shall make available access to its OSS for ordering, maintenance and repair and billing purposes.

5.24.4 Ordering and provisioning procedures should follow the general principles of transparency and non-discrimination. An electronic interface should be installed for submission and processing of the ANE Orders as far as this serves to increase efficiency. This interface could also be used for fault reports. The development of electronic interface may be taken jointly by OCE and the Access Seeker.

5.24.6 Access to OCE's OSS should be granted to all Access Seeker on equitable and non-discriminatory terms. In order to allow access, OCE will provide technical specifications concerning an interface between its own and the Access Seeker's systems.

5.24.7 **Activation timeliness:** OCE shall comply with the following activation timeliness for access to each of the elements described in subsection 5.24.2(a) are as follows:

Full Access Service	2 Business Days from receipt of a request and all relevant supporting documentation
Line Sharing Service	2 Business Days from receipt of a request and all supporting documentation
Bit stream Service (with Network Service)	5 Business Days from receipt of a request and all relevant supporting documentation
Bitstream Service (without Network Service)	
Sub-Loop Service	2 Business Days from receipt of a request and all supporting documentation

## **6.0 Exclusion**

6.1 The Access Seeker acknowledges and agrees that:

- (a) The internet is made up of many interconnected networks and that OCE makes no warranties regarding the performance, reliability or integrity of these networks;
- (b) OCE has no control whatsoever over the information, images or other content transmitted through its Network;
- (c) OCE has no control whatsoever over the content, accuracy, quality or integrity of the information, data or programs accessed or transmitted via its Network or for loss of messages, information, data or images resulting from delays, non-deliveries, mis-deliveries or service interruptions;
- (d) The DSL Resale Service shall only be used for the provision of the Access Seeker's services to the public using the DSL Resale Services and not for any other purposes;
- (e) OCE does not accept any responsibility or liability for any illegal entry or Access Seeker or the Access Seeker's data, information or computer network by any means whatsoever including, without limitation, by "worms" or "viruses" or such other breach of the Access Seeker's or the Access Seeker's Customer computer security or privacy by any person, other than by OCE or by its employees.

**IN WITNESS WHEREOF** the parties have hereunto set their hands on the day and year first above written.

**SIGNED** by )  
for and on behalf on )  
The Common Seal of )  
Was hereunto affixed )  
In the presence of:- )

.....  
DIRECTOR  
Name:  
NRIC:

.....  
DIRECTOR/SECRETARY  
Name:  
NRIC:

**SIGNED** by )  
for and on behalf on )  
The Common Seal of )  
Was hereunto affixed )  
In the presence of:- )

.....  
DIRECTOR  
Name:  
NRIC:

.....  
DIRECTOR/SECRETARY  
Name:  
NRIC:



# **ANNEXURE A**

## **ANNEXURE A: DISPUTE RESOLUTION PROCEDURES**

### **1. Introduction**

- 1.1 This dispute Resolution Procedure shall be adopted and complied with in relation to any dispute which may arise between an Access Seeker and OCE in relation to or in connection with supply of Facilities or Services to which the applies (Access Dispute).
- 1.2 MSA Determination a dispute between Parties regarding any matter dealt with under MSA Determination must be attempted to be resolved by negotiation between the Parties. If the Parties to the disputes cannot or otherwise fail to reach an agreement, the Parties shall always be entitled to seek resolution of the dispute by the Commission in accordance with section 151 of the 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 reasonable time;
  - (b) the notification of the dispute is not trivial, frivolous or vexatious; and
  - (c) The resolution of the dispute promotes the objects in the Act.

### **2. General**

- 2.1 Until expiry of these Dispute Resolution Procedures, an Operator may not commence court proceedings relating to that dispute, other than an application for urgent interlocutory relief. Nothing in this subsection shall be construed as ousting the jurisdiction of any court.
- 2.2 An Operator shall ensure that its representatives acting in relation to a dispute are of sufficient seniority and have authority to settle an access dispute on behalf of the Operator. At the commencement of the Dispute Resolution Procedure, each Operator must notify the other Operator of the scope of the authority of each of their representatives. If in the course of the Dispute Resolution Procedure it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to a representative, an Operator may require that those matter be referred to more senior officers of that Operator who have authority to settle those matters.
- 2.3 During a dispute and any Dispute Resolution process invoked in accordance with this Annexure, OCE and Access Seeker must continue to fulfill their obligations under the Access Agreement between them.
- 2.4 Subject to subsection 2.5, the parties to a dispute shall exchange information of a type described in the MSA Determination during the course of, and to facilitate, resolution of such a dispute.
- 2.5 Confidential Information of a Party which disclosed, and any other oral or written submissions made by a Party or a Party's representatives during the course of any Dispute Resolution process will be subject to the confidentiality restrictions in relevant confidentiality provisions contained in the Confidentiality Agreement prepared in accordance with subsection 5.3.7 of the MSA Determination.
- 2.6 A Party must not use information obtained under subsection 2.4 or described in subsection 2.5 above for any purpose other than to resolve the dispute.
- 2.7 Subject to Chapter 7 of part V of the Act, an arbitrator of a dispute (including a Technical Expert or the Commission, in accordance with this Annexure) may decide not to determine the dispute if the arbitrator considers that the dispute is trivial, frivolous or vexations, or if there is insufficient evidence before the arbitrator to determine the dispute.
- 2.8 The costs of the arbitration are to be shared equally between the parties, unless the arbitrator of the dispute has decided not to determine the dispute in accordance with subsection 2.7. If an arbitrator decides not to determine the dispute, the Party that initiated the dispute must pay the other Party's.

### 3. Inter-Party working group

- 3.1 The Access Seeker and OCE should attempt to resolve the Access Dispute between them.
- 3.2 OCE and Access Seeker shall establish a working group, or working groups, to fulfill the requirements of subsection 3.1, the working group shall be comprised of representatives of the Parties, and be headed by a person who holds a position at least equivalent to the headed by Provider's Wholesale or Interconnection Group.
- 3.3 OCE shall provide for:
  - (a) subject areas dealt with by each working group;
  - (b) equal representation by the Access Seeker and OCE;
  - (c) chairmanship and administrative functions of the working group to be shared equally;  
and
  - (d) Formal notification procedures to the working group.
- 3.4 OCE and the Access Seeker shall use reasonable endeavors to attempt to settle an Access dispute in the working group context for a period of no longer than forty five (45) days, Subject always to a Party's right to seek urgent interlocutory relief.

### 4. Interconnect steering group

- 4.1 In the event that the parties cannot resolve the dispute between them within the time specified in subsection 2.3, or after any time extension has expired, either Party may give ten (10) Business Days written notice (**Notice Period**) to the other Party stating its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice Period, then either Party may notify the other Party (**Receiving Party**) that it wishes to refer the issue to the Interconnect Steering Group (**ISG**).
- 4.2 In the event that a dispute is referred to an ISG under clause 4.1, the Parties shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each Party.
- 4.3 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Party of a notice under clause 4.1. If the ISG fails to meet or has not been formed within 10 business Days of the receipt by the Reviewing Party of a notice of a dispute, either Party may refer the dispute to a Technical Expert (in accordance with clause 5) or to the Commission for arbitration.
- 4.4 If the ISG has not resolved a dispute within twenty (20) Business Days after it first meets to review that dispute under clause 4.3, either Party may:
  - (a) refer any technical dispute to a Technical Expert in accordance with section 5 of this Annexure; or
  - (b) Refer the dispute to the Commission for final arbitration.

## 5. Use of a Technical Expert

- 5.1 A dispute will only be referred to a Technical Expert if the provision of section 4 has been complied with.
- 5.2 Once a dispute is referred to a Technical Expert, it may not be referred back to a Working Group or ISG.
- 5.3 The Technical Expert:
  - (a) will be an expert appointed by agreement of the Parties or, if the parties cannot agree, by the Commission;
  - (b) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communications industry;
  - (c) need not be a Malaysian citizen or resident; and
  - (d) Will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest.
- 5.4 If the Parties fail to appoint a Technical Expert within ten (10) Business Days of notice of the need to refer a dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.
- 5.5 When relying on the services of a Technical Expert, the following procedure will apply to the dispute resolution procedure of the Technical Expert:
  - a) the Parties will present written submission to the Technical Expert and each other within fifteen (15) Business Days of appointment of the Technical Expert; and
  - b) Each Party may respond to the other Party's submission in writing within fifteen (15) Business Days from the date of the other Party's submission.
- 5.6 At the request of either party and subject to the Parties agreeing or the Technical Expert deciding within five (5) Business Days of the last written submission that the Technical Expert be by documents only, a Technical Expert hearing will be held within fifteen (15) Business Days of the last written submission.
- 5.7 Should a Technical Expert dispute resolution procedure hearing be held, each Party will have the opportunity of making an oral submission. This will be conducted IV private.
- 5.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Parties) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.
- 5.9 The Technical Expert will not have the power to appoint any other experts.
- 5.10 The Technical Expert will deliver his award within fifteen (15) Business Days of the hearing or of the last written submission where the arbitration is by documents only.
- 5.11 Every dispute referred to a Technical Expert will be considered separately so that time limits for each dispute are complied with.
- 5.12 The Technical Expert's decision will be binding on the Parties (in the absence of manifest error of fact or law).

## 6. Billing Dispute resolution

6.1 As outline in the billing provisions of the Standard at subsection 5.14, a Party (**the Invoicing Party**) shall provide to the other Party (**the Invoiced Party**) an invoice in writing, or such Electronic form as may be agreed from time to time, for amounts due in respect of the supply of Services during such Billing Period.

6.2 An Invoicing Party shall allow an Invoiced Party to dispute an Invoiced prepared by the Invoicing Party if:

- (a) in the case of domestic calls and interconnection, the Invoiced Party notifies the Invoicing Party within forty-five (45) 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; and
- (c) In case of any other Facilities and Services, the Access Seeker notifies the Access Provider within forty-five (45) days after the date of receipt of such invoice.

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

- (a) the Invoicing Party's Billing System is, or has been, defective or Inaccurate in respect of the recording of the calls which are the subject of the details;
- (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generate 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 respects of the recording of the calls or calculation of the Charges which are the subject of the Billing Dispute.

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

- (a) the reasons for which the Invoiced Party disputes the Invoice;
- (b) the amount in dispute;
- (c) details required to identify the relevant Invoice and chargers in dispute including:
  - i. the account number;
  - ii. the Invoice reference number;
  - iii. the Invoice date;
  - iv. the Invoice amounts; and
  - v. Billing verification information.

d) Evidence in the form of the Invoiced Party's outgoing report, indicating the relevant

- ii. Traffic data which is in dispute.

6.5 The Invoiced Party may withhold payments of amounts disputed in good faith in accordance With subsection 5.14.12 of the Standard. If the dispute is resolved against the Invoiced Party, that Party shall be required to pay interest at the rate in subsection 5.14.14 of the Standard on the amount payable.

- 6.6 Where the Invoiced Party has paid an amount 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 that entire amount until the Billing Dispute in respect of that amount. Once the Billing Dispute is resolved, if the Invoicing Party is obliged to refund an amount to the Invoiced Party, interest will be payable on the refunded amount in accordance with clause 5.14.15. Of the Standard. In such circumstances, interest will be payable from the date the Invoiced Party paid the disputed amount to the date of the refund the Invoicing Party.
- 6.7 The Parties agree to use their reasonable endeavors to promptly resolve any Billing Dispute notified under this section 6.
- 6.8 If the Parties are unable to resolve any billing Dispute within thirty (30) days (or such other period as the Parties may agree) from the date on which the Billing Dispute Notice is received, either Party may seek the consent of the other Party to extend the period for resolution of the Billing stating the exceptional reasons for such extension. The other Party is, however, under no obligation to agree to such extension.
- 6.9 To the extent that a Billing Dispute notified under this section involves a Billing Dispute with an international correspondent of the Invoicing Party, the Dispute Resolution Procedures shall be suspended for a reasonable period of time pending resolution of the with that international correspondent. As a general rule, the period of suspension will not exceed one-hundred and twenty days (120). However, the Parties 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.
- 6.10 Once the Negotiation Period and any extension and any extension granted under subsection 6.9 has expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection 6.11 (**Billing Dispute Escalation Procedure**).
- 6.11 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection 6.11 by notifying the Invoicing Party's Billing Representative. Each of the Parties shall then appoint a designated representative that has authority to settle the billing Dispute, and that is at a higher level of management than the persons with direct representatives shall meet often as they reasonable deem necessary in Order to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant made by one Party to the other Party shall be honored.
- 6.12 Once any Billing Dispute has been resolved to the Parties' satisfaction, any sum to be paid or repaid by the relevant Party within 14 days from the date of resolution of the Billing Dispute.
- 6.13 Although it is the good faith intention of the Parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try to solve Billing Disputes, nothing in this Annexure shall prevent either Party from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- 6.14 A Party may request a joint investigation of Invoice discrepancies after that Party has conducted comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the Parties must agree the terms of the joint investigation, including:
- (a) the scope of the joint investigation;
  - (b) how the joint investigation will be conduct; and
  - (c) the date by which the joint investigation must be concluded,

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

- 6.15 Inquiries relating to billing, collecting and settlement arrangement or in relation to Network and Operation issues may be directed to the Billing Representatives nominated by each Party.
- 6.16 Either Party may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 6.17 If the Parties are unable to resolve any Billing Dispute within thirty (30) Days from any extended date as might be agreed upon under subsection 6.8, or if they are unable to agree any such extension, either Party may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act.
- 6.18 In this section 6:
- (a) **“Billing Dispute”** means the dispute of an Invoice prepared by a Party to the other Party which is made in good faith;
  - (b) **“Billing Dispute Notice”** means the written notification made by a Party to the other Party in relation to a Billing Dispute accordance with subsection 6.2;
  - (c) **“Billing Dispute Notification Period”** means the period after the date of an Invoice described in subsection 6.2;
  - (d) **“Billing Representative”** means a representative of the Party appointed in accordance with the billing procedures set out in subsection 6.15;
  - (e) **“Billing System”** means a system to issue Invoices relating to charges payable by each Party under the relevant Access Agreement.

# **ANNEXURE B**





**OPTICAL COMMUNICATION ENGINEERING SDN BHD**  
(151535-H)

**CUSTOMER ORDER FORM**

<b>Our ref.</b>	<b>Date:</b>
<b>Product:</b>	

The details of the requested Service are as follows: -

- (a) Service Feature :
- (b) Service Commencement Date :
- (c) Term :
- (d) Payment Structure :
- (e) Total \_\_\_\_\_-- Year Contract Amount :
- (g) Service Level Availability :

Kindly be informed that your subscription of the Service shall be governed by the terms and conditions set out in this Agreement. Please indicate your acceptance of the terms of this letter as well as the terms and conditions of the attachment hereto by signing the acknowledgement section of this form.

Thank you.

Yours faithfully  
for **OPTICAL COMMUNICATION ENGINEERING SDN BHD**

**PUSHPAN MURUGIAH**  
Chief Commercial Officer

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**ACKNOWLEDGEMENT**

I/We hereby apply for the Service above and have read and accepted the Terms and Conditions herein and such other Terms and Conditions set out in this Agreement.

For and on behalf of

Name :  
Designation : Company Stamp

*Legal/cus.order/05.11-version1*

# ANNEXURE C

## TERMS AND CONDITIONS

### 1. DEFINITIONS AND INTERPRETATIONS

- 1.1 This Agreement, unless the context otherwise requires, the following words and expressions shall bear the following meaning:-
- (a) "**Acceptance Test**" shall mean the relevant tests to be performed by OCE or jointly by both Parties at the relevant location to ensure that the Circuit is ready to be utilized by the Customer.
  - (b) "**Agreement**" shall mean this agreement, including Form, all schedules, appendices, exhibits, amendments and supplements that may be entered into by the Parties from time to time.
  - (c) "**Circuit**" shall mean actual physical telecommunications circuits the type of which is as specified in the Form.
  - (d) "**Commencement Date**" shall mean the day the Acceptance Test for the Circuit has been completed, or such earlier date as the Parties hereto may mutually agree.
  - (e) "**Customer**" shall mean the Party who agreed to subscribe for the Service and shall include its successors and permitted assigns;
  - (f) "**Customer's Equipment**" shall mean routers, hubs, terminal servers, printer servers, modem and other related communication peripheral and equipment, owned, installed and maintained by the Customer to facilitate access to the Service;
  - (g) "**Customer's Premise**" shall mean the premise designated in the installation address as stipulated in the Form, including the building(s) where the premise is located, under or through which the Circuit is to be placed for the provisioning of the Service;
  - (h) "**Days**" shall mean calendar days.
  - (i) "**DCF**" shall mean delivery confirmation form issued by OCE to Customer.
  - (j) "**Effective Date**" shall mean the date of execution and delivery of this Agreement.
  - (k) "**Extended Term**" shall mean the period, if any, after the Term subject to maximum of one (1) billing cycle as referred to in the Customer or three (3) months whichever is less, whereby this Agreement is extended pursuant to Clause 2;
  - (l) "**OCE**" shall mean Optical Communication Engineering Sdn. Bhd. (151535-H) and shall include its subsidiaries, its successors and permitted assigns;
  - (m) "**Form**" shall mean the Customer Order Form duly filled up by the Customer which shall constitute as an offer to OCE by the Customer to subscribe of the Service as on the terms and conditions printed on the back or attached to the Form;
  - (n) "**Government Taxes**" shall mean all taxes imposed by the authorities from time to time for the provision of the Service;
  - (o) "**LAD**" shall mean Liquidated Agreed Damages;
  - (p) "**Party**" shall mean either OCE or the Customer;
  - (q) "**Parties**" shall mean both OCE and the Customer;
  - (r) "**P.O.P**" or "**Points of Presence**" shall mean OCE's network node that acts as an access point from the Customer's Equipment to the Circuit.
  - (s) "**Price**" shall mean the charges, fees, and Government Taxes payable by the Customer for the provision of the Circuit;

"Service Level Availability" or "SLA" shall mean the guaranteed service availability of the Circuit between one P.O.P to another P.O.P calculated on annual basis from the Commencement Date of such Service as requested by the Customer in the Form. The SLA to be provided as stipulated in the Form;

(v) "Term" shall mean the period for which the Customer shall subscribe of the Service as stated in the Form;

(w) "Work" shall mean all the activities necessary for the provision of required Circuit as more specifically set out in this Agreement. The Work shall include not only activities as expressly set forth in the Agreement but also all of OCE's activities from the scope of the Work.

1.2 Unless the context of this Agreement otherwise requires:-

- (a) words denoting the masculine gender shall include the feminine and neuter genders and vice versa;
- (b) words denoting the singular number shall include the plural number and vice versa;
- (c) the headings on the Agreement shall not be used in its interpretation;
- (d) the terms 'hereof', 'hereto' and similar words refer to this entire Agreement and not any particular Article, Section, Appendix, Exhibit, Schedule or any other subdivision of or to this Agreement.

## 2. TERM

2.1 This Agreement shall remain in full force and effect from the Commencement Date for the Term as described in the Form or the Extended Term (if any) unless earlier terminated in accordance with the provisions herein.

2.2 This Agreement shall be subject to renewal extended for the Extended Term at the prevailing charges and rates imposed by OCE and on the terms and conditions contained herein unless the Customer gives OCE notice in writing of its intention to terminate this Agreement at least **thirty (30) days** prior to the expiry of the Term.

2.3 In the event that the Customer wishes to negotiate the terms and conditions herein contained, the Customer shall notify OCE at least **sixty (60) days** prior to the expiry of the Term.

2.4 If the Parties reach an agreement for the new terms and conditions, the Customer shall fill in and submit a new Form to OCE. The new Form shall be treated as a new agreement and shall subject to Clause 15.1 for early termination penalty.

## 3. SCOPE OF AGREEMENT

OCE shall in consideration of the Price and any other monies or charges to be paid by the Customer and subject to the terms and conditions contained in this Agreement, supply, deliver, install and commission the Circuit so as to enable the Customer to utilise the Service from the Commencement Date provided that the Customer concurrently performs its duties and obligations under this Agreement.

## 4. PRICE AND TERMS OF PAYMENT

4.1 The Customer shall pay upon Commencement Date the Price in advance and any other monies or charges as shown in OCE's invoice for utilizing of the Service.

4.2 The Customer shall be billed the installation charges, if any, for the Circuit at the prevailing rate in the first month's invoice;

4.3 In the event that the Price remains unpaid after becoming due, OCE shall be entitled for late charges together with interest calculated at the rate of 1.5% on a monthly basis on the overdue payment at a rate specified in OCE's invoice.

4.4 Unless specified otherwise, the Price shall be paid within **fourteen (14) days** from the date of billing.

4.5 Price for the Extended Term subsequent to the first Term may be reviewed **sixty (60) days** prior to the end of the first Term. In the event the Parties are unable to agree on a new Price, this Agreement shall be terminated on the expiry of the first Term. In the event that there is no such review, then the prevailing Price shall be used for that Extended Term.

## **5. REPRESENTATION, WARRANTIES AND COVENANTS BY OCE**

### **5.1. OCE represents, warrants and covenants with the Customer that: -**

- 5.1.1 OCE shall perform the Work with due diligence and efficiency in accordance with accepted professional standards to meet the intents and obligations as stipulated herein.
- 5.1.2 OCE shall be deemed to be aware of and shall comply to all applicable laws, statutory rules and regulations in effect at the time the Agreement is executed and hereby acknowledges that these laws, rules and regulations shall apply to the performance of the Work and shall keep inform of and abide by future laws, statutory rules and regulations which may affect the Work.
- 5.1.3 OCE shall at all times perform the Work in a manner that will always safeguard and protect the Customer 's interest and take all necessary and proper steps to prevent abuse or uneconomical use of facilities, if any, made available by the Customer to OCE.
- 5.1.4 OCE shall advise the Customer in writing as soon as practicable of any factor that arises which is likely to affect the Work. Such notification shall not be construed as a discharge of any of OCE's obligations under the Agreement.
- 5.1.5 OCE shall assign a project manager and/or account representative who will represent, be responsible and accountable for carrying out the Work to be performed by OCE.
- 5.1.6 OCE warrants that it has the experience and capability, including sufficient and competent specialists and other personnel, to effectively, efficiently and expeditiously accomplish the Work in accordance with the Agreement.
- 5.1.7 OCE shall provide and ensure free access to the Customer and/or the Customer's personnel with the presence of OCE's representative to all areas within OCE's control to enable Customer to perform its duties and obligations required under this Agreement.

## **6. REPRESENTATION, WARRANTIES AND COVENANTS BY CUSTOMER**

### **6.1 The Customer represents, warrants and covenants with OCE that:-**

- 6.1.1 The Customer shall be responsible for making all payments to OCE in accordance with the provisions of the Agreement.
- 6.1.2 The Customer shall provide and ensure free access to OCE personnel with the presence of the Customer's representative to all areas within the Customer's control to enable OCE to perform its duties and obligations required under this Agreement.
- 6.1.3 The Customer shall be responsible to prepare the location where the Work is to be performed, in accordance with OCE's approved specifications or recommendations.
- 6.1.4 When the said location has been so prepared, the Customer shall notify OCE's representative to verify that the said location is ready for commencement.
- 6.1.5 Upon verification by OCE's representative OCE shall commence and complete Work at the said location in accordance with this Agreement.
- 6.1.6 The Customer shall be responsible for the operation, performance or reliability of the Customer's Equipment when it is connected to the Circuit. OCE shall only maintain Customer's Equipment (subject to the provisions of this Agreement).
- 6.1.7 The Customer shall carry out inspection to ascertain the cause of any problem or breakdown of the Circuit before reporting the said problem to OCE.
- 6.1.8 The Customer shall take the necessary steps to remedy or repair the Customer's Equipment if the result of the test and inspection shows that the problem or breakdown is caused by the Customer 's Equipment.

6.1.9 The Customer shall inform OCE of any substitute of the Customer's Equipment with other equipment or any changes, adjustments or modification to the Customer's Equipment after the installation of the Customer's Equipment and its acceptance by OCE. The Customer shall be further responsible for the internet working of the Customer's Equipment with the Circuit.

6.1.10 The Customer shall provide the space to place OCE's equipment at the Customer's premises and provide relevant assistance when required by OCE. The Customer shall also provide OCE with a standard 240AC power supply to enable OCE's equipment to function.

6.1.11 The Customer shall strictly comply with and ensure compliance with all the instructions and/or notices given by OCE regarding the use and installation of the Customer's Equipment.

## **7. RELATIONSHIP WITH CUSTOMER**

7.1 The position of OCE under this Agreement shall be of an independent contractor. The Customer and OCE shall not at any time be construed to have a relationship of principal and agent nor of master and servant.

## **8. CUSTOMER'S EQUIPMENT**

8.1 Except with due consent in writing from OCE, the Customer shall not at any point of time connects its own or third party's equipment to OCE's Equipment or Service;

8.2 Except with prior consent in writing from OCE, the Customer's equipment which has obtained the necessary type approval and which is connected to the service or OCE's Equipment shall be separated by one connecting switch;

8.3 At the discretion of OCE, the Customer may be imposed with a fee or special payment which may be fixed by OCE for connecting the Customer's equipment which type has been approved by SIRIM and/or other approving bodies as recognized by OCE for the Service of which the fees or special payments shall be reasonable value; and

8.4 OCE shall not be held responsible or liable for reduction of quality, accuracy, delay in transmission of the Service once it is connected to the Customer's or third party's equipment.

## **9. CUSTOMER'S PREMISE**

9.1 The Customer shall ensure that at the Customer's Premise conforms to all OCE's requirement for installation and maintenance of the Service;

9.2 The Customer shall ensure that that the Customer's Premise has been approved by local authorities for such installation of the service or Equipment and that the same complies to all the statutory requirements under any law or by-laws for the same

## **10. INSTALLATION AND ACCEPTANCE OF THE CIRCUIT**

10.1 OCE shall, as soon as practicable after the execution of this Agreement install the Circuit and perform Acceptance Test for the Circuit.

10.2 Customer shall carry out all necessary preparations and give the OCE's representative all assistance which they may reasonably require to facilitate the installation and testing of the Circuit.

10.3 The Circuit shall be deemed to have been accepted by the Customer as having been delivered in accordance with this Agreement upon completion of the Acceptance Test provided that the Customer had duly acknowledged receipt of the delivery confirmation form ("DCF") issued by OCE on the acceptance of the Circuit.

10.4 The verification of the Acceptance Test shall be made by the Customer within **seven (30) days** from the date the DCF is issued failing which the Circuit shall be deemed to have been accepted by Customer on the **eighth (8<sup>th</sup>) day** from the date of issuance of the DCF or the date of Acceptance Test whichever is earlier.

## 11. CHANGE OR RELOCATION OF THE CIRCUIT

- 11.1 OCE may on the Customer's request and expenses make any alteration to the Circuit including the wires to the extent of such wires in the premises where the Circuit is fixed or transferring the Circuit to other premises and the tariff charged on the said alteration or transfer, or where there is no tariff charged, all costs and expenses for alteration or transfer shall be paid by the Customer to OCE on demand.
- 11.2 OCE also at any time, without the request and at no expenses on the part of the Customer, make the alteration to the Circuit if the alteration is deemed necessary by OCE in the interest of public services.
- 11.3 The provisions of this Agreement shall be applicable to the altered or transferred Circuit and the said provisions shall not be affected by any interruptions on all or any part of the communications due to the alteration or transfer.

## 12. COST FOR DAMAGES/LOSSES

- 12.1 The Customer shall, on demand, pay to OCE all costs for repairing, replacing or changing any part of the Circuit in the Customer's Premises which was stolen or lost or damaged or destroyed by fire or other causes.

## 13. SERVICE LEVEL AVAILABILITY

- 13.1 OCE hereby agrees to provide the Service to the Customer at the Service Level Availability ("SLA") as requested by the Customer as contained in the Form.
- 13.2 If OCE shall fail to provide the Service at the availability agreed in Clause 13.1 save where such failure due to default by the Customer of his obligation under this Agreement, OCE shall pay to the Customer by way of liquidated ascertained damages calculated as below:

The period of overall performance shall be quantified on yearly (12 months) basis: -

For each specific Circuit :

Expected Performance:

minimal SLA

Actual Performance :X% (if less than SLA)

Price : Y (Ringgit Malaysia)

LAD :  $\frac{(SLA - X)Y}{100}$

100

- 13.3 The LAD shall be capped at **fifteen percent (15%)** of the Price for the corresponding period.
- 13.4 Notwithstanding the above Clause 13.2, the calculation does not include periods of outage resulting in whole, or in part, from one or more of the following causes:-
- (a) suspension of the Service due to non-payment of the Price by the Customer;
  - (b) any act or omission of any person or entity over which the Customer has control or has the right to control;
  - (c) any delay in obtaining access into the Customer's premises for problem resolution;
  - (d) Planned outage maintenance works;
  - (e) Force majeure events as described in Clause 19 hereof.
- 13.5 OCE shall if instructed by relevant authority perform planned outage maintenance work. If such work is necessary, OCE shall give the Customer **three (3) days** notice prior to the commencement of such work.

## 14. SUSPENSION

- 14.1 Without prejudice to any other right or remedy OCE have against the Customer for non-payment of the Price, OCE may at any time give a notice in writing to the Customer within **seven (7) days** to suspend the Circuit.
- 14.2 The suspended Circuit shall only be connected once the Customer has paid the outstanding Price to OCE and pay a re-connection fee to OCE, on demand, as specified in the Form.

## 15. TERMINATION

### 15.1 Early Termination

- 15.1.1 The Customer shall not terminate the Agreement before the expiry of the Term and/or Extended Term.
- 15.2.1 In the event of early termination by the Customer prior to the expiry of the Term and/or Extended Term, the Customer shall be liable to pay the Price for the remaining unexpired Term and/or Extended Term to OCE within **fourteen (14) days** from the date of such termination. In the event that full payment has been made for the whole of the Term and/or Extended Term, the Customer shall not be entitled to claim a refund of such part of the Price for the unexpired Term and/or Extended Term, as the case may be.

### 15.2 Termination Events

- 15.2.1 Without prejudice to any right or remedy a Party may have against the other for breach or non-performance of this Agreement, either Party may at any time give a notice in writing to the other to terminate this Agreement immediately if any one of the following events shall occur:-
- 15.2.2 If any Party shall fail to observe or perform any of its obligations herein and shall fail to remedy such breach (if capable of being remedied) within **thirty (30) days** after written notice thereof to the defaulting Party by the non-defaulting Party specifying the nature of the breach;
- 15.2.3 if any Party shall become insolvent or is wound up or shall go into liquidation whether compulsorily or voluntarily except for the purpose of a bona fide amalgamation or reconstruction with the consent of the Party;
- 15.2.4 if any Party shall have a receiver appointed over any of its assets or undertaking;
- 15.2.5 if any distress execution, sequestration or other process shall be issued against any property of the defaulting Party and is not settled within **thirty (30) days** thereof;
- 15.2.6 if any Party shall cease or threaten to cease to carry on the whole or any substantial part of its business other than in the course of reconstruction or amalgamation with the consent of the other Party;
- 15.2.7 if any Party shall infringe or violate any law or regulation pertaining to the use of the Service and that Party shall fail to remedy the infringement or violation within the time frame stipulated by the relevant authority.

## 16. CONSEQUENCES OF TERMINATION

- 16.1 Notwithstanding Clause 15 herein, upon expiration of this Agreement or early termination of this Agreement in accordance with the provisions of this Agreement, the Customer shall promptly and at its own cost and expense disconnect and remove any equipment and any cable owned by the Customer from OCE's premises and sites.
- 16.2 The expiration or early termination of this Agreement shall not affect any rights which have accrued to the Parties hereto either prior to the expiration or early termination of this Agreement.

## 17. LIMITATION OF LIABILITY

- 17.1 Both Parties shall only be liable (including any liability for the acts or omissions of its employees, servants and contractors) to the other in respect of:
  - 17.1.1 Any breach of warranties or obligations arising under or in connection with this Agreement.
  - 17.1.2 Any misrepresentation or tortious act or omission caused by negligence arising under or in connection with this Agreement.
- 17.2 OCE shall not be liable for any damage or disaster caused by high capacity / voltage flow / current that may be brought to Customer's premises by the Circuit. Notwithstanding the foregoing, OCE shall take all reasonable steps to prevent damage or disaster from this source.
- 17.3 Notwithstanding anything herein contained, OCE shall not be liable in any manner whatsoever to the Customer for any loss of profit, goodwill, consequential or economic loss (including any action brought against the Customer by third parties) even if such loss is reasonably foreseeable or OCE has been informed by the Customer of the possibility of the Customer incurring the same.



## **18. INDEMNITY**

18.1 The breaching Party shall indemnify the aggrieved Party for any loss, damage, action, claims, demands, proceedings, costs or other liabilities suffered or incurred by the aggrieved Party as a result of the breaching Party's failure to carry out its duties under this Agreement or a breach of any obligation under this Agreement and both Parties hereby agree that the indemnity given hereunder shall survive the termination of this Agreement.

## **19. FORCE MAJEURE**

19.1 Neither Party to this Agreement shall be excused from fulfilling its obligations under this Agreement if and to the extent that such fulfillment is hindered or impeded by force majeure which term shall include but not limited to riots, wars, insurrections, rebellions, dispositions or by compliance with any orders of national, local or any other authorities or any body or persons acting for such authorities, all of which cause or event are not within the control of either Party.

19.2 In the event of force majeure situation which hinders the Customer or OCE in the discharge of its respective obligations under this Agreement, the Party claiming to be affected thereby shall promptly notify the other Party giving full particulars thereof and shall use its best efforts to remedy the situation and the Parties shall consult each other with respect to the appropriate measures to be taken.

19.3 The performance of any obligation or obligations suspended while force majeure is operative shall be resumed as soon as such force majeure event ceases. Any loss or damage or delays in, or failure of performance by either Party hereto shall not constitute default hereunder or give rise to any claims for damages or loss of anticipated profits, if and to the extent that such loss, damage, delay or failure is caused by force majeure.

19.4 If the event of force majeure persists for a period of more than **two (2) months**, then either Party may give to the other Party a notice of termination of the Agreement. In this event, termination shall take place **seven (7) days** after the notice is given.

## **20. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed and construed in accordance with the laws of Malaysia and the Parties hereto irrevocably agree to submit to the jurisdiction of the Malaysian courts.

## **21. ENTIRE AGREEMENT**

This Agreement and Annexure hereto contains the entire agreement and understanding of the Parties with respect to the subject matter herein and supersedes all prior understandings and representations between the Parties hereto.

## **22. AMENDMENT**

This Agreement shall not be amended or modified in any respect except by the mutual consent, in writing, of both Parties herein.

## **23. SEVERABILITY**

23.1 Any provision of, or the application of any provision of this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

23.2 Provision of or the application of any provision of this Agreement which is void, illegal or unenforceable does not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

## **24. NON-WAIVER**

The failure of either Party to give notice to the other Party of any breach or non-fulfillment of any provision, term or Article of this Agreement shall not constitute a waiver thereof, nor shall the waiver of any breach or non-fulfillment of any provision, term or Article hereof constitute a waiver of any other provision, term or Article hereof.

## **25. NOTICES**

- 25.1 Every notice or demand or other communication required or permitted to be given or made hereunder shall:-
- 25.1.1 be in writing and delivered personally or by registered post or telex or legible facsimile;
  - 25.1.2 be deemed to have been received, subject as otherwise provided in this Agreement, in the case of a letter, when delivered personally or **five (5) days** after it has been put into the post box and, in the case of a telex or facsimile, at the time of despatch with confirmed answer back of the addressee appearing at the beginning and end of the transmission (provided that if the date of despatch is not a business day it shall be deemed to have been received at the opening of business on the next such business day); and
  - 25.1.3 be sent to the Parties at the respective addresses set out in the Form.

## **26. ASSIGNMENT**

Except with OCE's prior written consent, the Customer shall not assign or in any way transfer its rights and obligations under this Agreement or any benefit and interest under it.

## **27. BINDING EFFECT**

This Agreement shall be binding upon the permitted assigns and successors-in-title of the Parties hereto. It is further provided that this Agreement shall not be discharged or in any way affected by any change in the composition or identity of the Parties hereto by amalgamation, reconstruction or otherwise.

## **28. TIME OF ESSENCE**

- 28.1 Time for the performance of the obligations under this Agreement, whenever stated in this Agreement, shall be of the essence.

## **29. LEGAL COSTS AND STAMP DUTY**

- 29.1 Each Party shall be responsible for its own legal costs incurred in relation to the preparation of this Agreement.
- 29.2 The Customer shall bear all legal cost and expenses incurred by OCE in recovering any money, charges, costs or expenses due and outstanding by the Customer under this Agreement or in bringing any action or proceeding to recover the same.
- 29.3 The Customer shall bear all stamp duty in respect of this Agreement, Government Taxes and/or any cost imposed by law.

# **ANNEXURE D**

## 1.SERVICE LEVEL AGGREMENT

- ⌘ This Service Level Agreement ('SLA') shall form part of the Agreement
- ⌘ The essence of this document is divided into generic service levels and products specific service levels.

### 1.1 DEFINITIONS

1.1.1 Except otherwise defined in this SLA or unless the context requires, all defined terms in this SLA shall have the same meanings as defined in the Agreement.

- ⌘ '**Actual Performance Level**' shall have the meaning as set out in **Clause 3.1**
- ⌘ '**Biling Cycle**' shall mean Customer's specified Biling Cycle as depicted in OCE's Customer Order Form
- ⌘ '**Docket**' shall have the meaning set out in **Clause 2.3**
- ⌘ '**Fault**' shall mean Service Unavailability
- ⌘ '**On-Net**' shall mean the Services supplied over infrastructure owned by or controlled by OCE or its Affiliates.
- ⌘ '**Off-Net**' shall mean the Services or any part of them supplied over a thirist-party's local or international tail.
- ⌘ '**Scheduled Outage/ Maintenance**' shall mean maintenance, service configuration, migration or upgrading of any of the Services scheduled by OCE or its Affiliates.
- ⌘ '**Rebates**' shall mean rebates payable in accordance to this SLA.
- ⌘ '**Services**' shall mean the telecommunication service to be provided by OCE as requested by the Customer in the Customer Order Form.
- ⌘ '**Service Availability**' shall mean

the service availability of each type of Services set out in the tables in **Clause 2.6.1** and **Clause 2.6.4** and calculated in accordance with the formula set out in **Clause 3.1**

- ⌘ '**Service Unavailability**' shall mean failure of the OCE Services resulting in Customer being unable to connect to the OCE network from Customer;s location. Service Unavailability shall not include failure as depicted in Section 2.5

1.1.2 The definition of each type of Services is found in the Agreement.

## 2. GENERIC SERVICE LEVELS

### 2.1 SERVICE LEVELS

2.1.1 OCE agrees to use its reasonable endeavors to supply the Services in accordance with the service levels set out in this SLA.

### 2.2 SCHEDULED OUTAGE/ MAINTENANCE

2.2.1 Scheduled Outage / Maintenance is scheduled maintenance work whereby a minimum downtime of fifteen (15) minutes is expected for each maintenance work.

2.2.2 OCE or its Affiliates will where possible give the Customer not less than three (3) calendar weeks of any Scheduled Outage/ Maintenance before the scheduled date. Customer may request for the date and time to be altered in which case every effort shall be made to accommodate the request.

### 2.3 FAULT REPORTING AND MAINTENANCE

2.3.1 Any Faults shall be reported to OCE's Service Desk 24 hours a day, 7

days a week. OCE's Network Operation Centre can be contacted on:-

☎ Telephone:

☎ Fax:

☎ Email:

2.3.2 Customer must ensure that the Faults is not caused by Customer's equipment malfunction before making the report and provide all the necessary information and cooperation required by OCE to remedy the problem.

2.3.3 OCE, upon receiving the report, shall as as soon as practicable log the report and open a Docket number. OCE shall ensure Customer's personnel in charge of the problem reporting have been briefed on the reporting procedure.

2.3.4 When the problem is resolved, the Docket number is closed.

## **2.4 REBATES**

2.4.1 Rebates will only be applied to a Fault for which a Docket number is logged.

2.4.2 Following the calculation of the Rebates, they will be applied to the next invoice issued to the Customer under the Agreement or any other agreement. If there is no further invoice to be issued to the Customer, OCE will pay the Customer the amount equivalent to the Rebates.

2.4.3 Where Monthly Rental Charges are used as the basis for calculating Rebates for Services provided during any period less than full calendar month, such Rebates shall be calculated on a pro-rata basis.

2.4.4 In the event any dispute between OCE and Customer in respect of any Rebates, the records at OCE's service management system shall prevail.

## **2.5 EXCLUSION IN SERVICE LEVEL CALCULATION**

2.5.1 OCE shall not be **responsible** for any Fault to the extent that such Fault results from any of the following events:-

a. The Services being modified or altered in any way at the Customer's request;

b. Any force majeure event as described in the Agreement

c. Any interruptions resulting from defects or failures in or use of the Customer Provided Apparatus, Customer Co-location Equipment or any services or any facilities provided or operated by or on

behalf of the Customer;

d. Incomplete or inaccurate information provided by the Customer to OCE or its Affiliates;

e. The performance of tariff exchange points, including Internet networks or exchanges controlled by any third parties (other than those owned or controlled by OCE's Affiliates);

f. Any delay or failure in complying with any of the Customer's obligations under the Agreement;

g. Scheduled Outage / Maintenance

2.5.2 The period of any Fault commences from the time the Docket is logged by the OCE's Service Desk until the time that Docket is closed.

## **3. PRODUCT SPECIFIC SERVICE LEVELS**

3.1 Service Availability for each type of Services and the Rebates payable depend on the type of Services as set out in the tables in this section:-

3.2 The maximum rebate payable to Customers is 15% of the contractual price over the period of the mode of payment.

## **5. REBATE CALCULATION**

4.1 At the end of the Customer's billing cycle, OCE will perform Actual Performance Level and rebate calculation.

4.2 Subject to Section 2.5.1, Rebate calculation is based on the following formula:-

**Rebate=(associated SLA Level-X) x Y**

**X (%) = Actual Performance Level  
(over Customer's Billing Cycle Period)**

**Y (RM) =Contractual Price over  
Customer's Billing Cycle Period  
excluding One-Time Charges**

Total time is measured in hours

# **ANNEXURE E**

This Supplementary Service Agreement ('SSA') shall be read together with the terms and conditions to the Agreement and Customer Order Form ('COF') signed by the OCE and the CUSTOMER ('the Parties'). However, should the Agreement be amended by the Parties, it would not only be applicable to this Supplementary and COF but also to any further Supplementary and COF requested by the CUSTOMER during the term of the Agreement.

## **1. DEFINITIONS AND INTERPRETATIONS**

1.1 In this SSA and in the recitals hereto in addition to the definitions elsewhere contained, unless the context otherwise requires, the following words and expressions shall bear the following meaning:-

(a) **'Service'** shall mean the telecommunication service to be provided by OCE to the CUSTOMER.

(b) **'Work'** shall mean all the activities necessary for the provision of required Service as more specifically set out in this SSA. The Work shall include not only activities as expressly set forth in the SSA but also all of OCE's activities from the scope of Work.

## **2. CHANGE OR RELOCATION OF THE SERVICE**

2.1 OCE may on the CUSTOMER's request and expenses make any alteration to the Service including the wires to the extent of such wires in the premises where the Service is fixed or transferring the Service to other premises and the tariff charged on the said alteration or transfer, or where there is no tariff charged, all costs and expenses for alteration or transfer shall be paid by the CUSTOMER to OCE, on demand.

2.2 OCE also at any time, without the request and at no expenses on the part of the CUSTOMER, make the alteration to the Service if the alteration is deemed necessary by OCE in the interest of public services or on instruction from the relevant authorities provided that OCE has given at least **three (3) days** notice in writing to the CUSTOMER.

2.3 The provisions of this SSA shall be applicable to the altered or transferred Service and the said provisions shall not be affected by any interruptions on all or any part of the communications due to the alteration or transfer.

## **3. FAULT REPORTING**

3.1 Any Faults shall be reported to OCE's Service Desk 24 hours a day, 7 days a week. OCE's Network Operation Centre can be contacted on:-

Telephone:

Fax:

Email:



# **ANNEXURE F**

**OPTICAL COMMUNICATION ENGINEERING SDN BHD (151535-H)  
MUTUAL NONDISCLOSURE AGREEMENT**

This Mutual Nondisclosure Agreement (the “Agreement”) is made as of \_\_\_\_\_, 2006, by and between **OPTICAL COMMUNICATION ENGINEERING SDN BHD (151535-H)** a company incorporated in Malaysia and having its registered office at No. 19, Jalan Semangat, 46200 Petaling Jaya, Selangor Darul Ehsan, Malaysia (hereinafter referred to as “OCESB”) and \_\_\_\_\_, a company incorporated in Malaysia and having its business office at \_\_\_\_\_

**1. Purpose.**

OCESB and \_\_\_\_\_ wish to explore a possible business opportunity of mutual interest (the “Relationship”) in connection with which each party may disclose its Confidential Information (as defined below) to the other. This Agreement is intended to allow the parties to discuss and evaluate the Relationship while protecting each party’s Confidential Information against unauthorized use or disclosure.

**2. Definition of Confidential Information.**

“**Confidential Information**” means any oral, written, graphic or machine-readable information including, but not limited to, that which relates to patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, mask works, computer programs, algorithms, business plans, agreements with third parties, services, customers, marketing or finances of the disclosing party, which Confidential Information is designated in writing to be confidential or proprietary, or if given orally, is confirmed in writing as having been disclosed as confidential or proprietary within a reasonable time (not to exceed thirty (30) days) after the oral disclosure.

**3. Nondisclosure of Confidential Information**

(a) OCESB and \_\_\_\_\_ each agree not to use any Confidential Information disclosed to it by the other party for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Relationship. Neither party shall disclose or permit disclosure of any Confidential Information of the other party to third parties or to employees of the party receiving Confidential Information, other than directors, officers, employees, consultants and agents who are required to have the information in order to carry out the discussions regarding the Relationship. Each party has had or will have its directors, officers, employees, consultants and agents who have access to Confidential Information of the other party sign a nondisclosure agreement in content substantially similar to this Agreement. Each party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that the receiving party utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Each party agrees to notify the other in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information of the disclosing party which may come to the receiving party’s attention.

(b) Exceptions.

Notwithstanding the above, neither party shall have liability to the other with regard to any Confidential Information of the other which the receiving party can prove:

- (i) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving party;
- (ii) was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;
- (iii) is disclosed with the prior written approval of the disclosing party;
- (iv) was independently developed by the receiving party without any use of the Confidential Information of the disclosing party and by employees of the receiving party who have not had access to the Confidential Information, as demonstrated by files created at the time of such independent development;
- (v) becomes known to the receiving party, without restriction, from a source other than the disclosing party without breach of this Agreement by the receiving party and otherwise not in violation of the disclosing party's rights;
- (vi) is disclosed generally to third parties by the disclosing party without restrictions similar to those contained in this Agreement; or
- (vii) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party shall provide prompt notice of such court order or requirement to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

**4. Return of Materials.**

Any materials or documents that have been furnished by one party to the other in connection with the Relationship shall be promptly returned by the receiving party, accompanied by all copies of such documentation, within ten (10) days after (a) the Relationship has been rejected or concluded or (b) the written request of the disclosing party.

**5. No Rights or Warranties Granted.**

Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property right of either party, nor shall this Agreement grant either party any rights in or to the other party's Confidential Information other than the limited right to review such Confidential Information solely for the purpose of determining whether to enter into the Relationship. All Confidential Information disclosed under this Agreement is provided "AS IS" and without warranty of any kind, express, implied or statutory, including without limitation any warranty of accuracy or non-infringement.

**6. No Modification.**

OCESB and \_\_\_\_ each agree that it shall not modify, reverse engineer, decompile, create other works from or disassemble any software programs contained in the Confidential Information of the other party unless permitted in writing by the disclosing party.

**7. Term.**

The foregoing commitments of each party shall survive any termination of the Relationship between the parties, and shall continue for a period terminating on the later to occur of the date (a) five (5) years following the date of this Agreement or (b) three (3) years from the date on which Confidential Information is last disclosed under this Agreement.

**8. Successors and Assigns.**

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties, provided that Confidential Information of the disclosing party may not be assigned without the prior written consent of the disclosing party unless the assignee shall be the successor entity to the assignor upon the dissolution of the assignor in its present form. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

**9. Severability.**

If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

**10. Independent Contractors.**

OCESB and \_\_\_\_ are independent contractors, and nothing contained in this Agreement shall be construed to constitute OCESB and \_\_\_\_ as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

**11. Governing Law.**

This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with Malaysian laws, without giving effect to principles of conflicts of law.

**12. Remedies.**

OCESB and \_\_\_\_ each agree that its obligations set forth in this Agreement are necessary and reasonable in order to protect the disclosing party and its business. OCESB and \_\_\_\_ each expressly agree that due to the unique nature of the disclosing party's Confidential Information, monetary damages may be inadequate to compensate the disclosing party for any breach by the receiving party of its covenants and agreements set forth in this Agreement. Accordingly, OCESB and \_\_\_\_ each agree and acknowledge that any such violation or threatened violation may cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the receiving party, without the necessity of proving actual damages.

**13. Amendment and Waiver.**

Any term of this Agreement may be amended with the written consent of OCESB and \_\_\_\_\_. Any amendment or waiver effected in accordance with this Section shall be binding upon the parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party.

**14. Counterparts.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

**15. Entire Agreement.**

This Agreement is the product of both of the parties hereto, and constitutes the entire agreement between such parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.

The parties have caused their duly authorized representatives to execute and deliver this Mutual Nondisclosure Agreement as of the date first above written.

**\*\*\*The rest of this page is left intentionally blank\*\*\***

**IN WITNESS WHEREOF** the parties hereto have hereunto set their hands the day and year written on this Agreement.

On behalf of **OPTICAL COMMUNICATION** }  
**ENGINEERING SDN BHD (151535-H),** }  
Name : }  
Designation : }

On behalf of \_\_\_\_\_ }  
Name : }  
Designation : }

# ANNEXURE G

## Fast Track Service Terms and Conditions

5. This Fast Track Service Order Form (here after FTSO) shall form a part of the Access Agreement made or to be made between the Access Provider and the Access Seeker
6. Access Seeker shall pay Access Provider the sum equivalent to one month recurring Charges (non refundable) being the advanced payment for the first month charge, which is made upon before or on the confirmation of this Order.
7. Access Provider shall be responsible for the installation and commissioning of the Services for each Link. Access Provider shall carry out the Acceptance Tests after installation to establish whether the Services in respect of each Link are ready for Service. Acceptance Certificates will be issued by Access Provider to Access Seeker when the Acceptance Tests have been successfully concluded. Access Seeker shall notify Access Provider within 24 hours if testing done by Access Seeker has failed on their part, failing which the Access Seeker is deemed to have accepted the Acceptance Certificate. If, however, Access Seeker does so notify Access Provider, then Access Provider shall either replace or repair, at its sole option, such Service or any part thereof and repeat the Acceptance Tests until they are successful
8. Subject to Clause 2 herein, the Services shall be Ready For Service on the Ready For Service Date, which shall be the date as stipulated in the Fast Track Order Form
9. In consideration of the Services, Access Seeker shall pay Access Provider monthly in advance the recurring Charges from the 'Ready for Service Date' as stipulated in the Acceptance Certificate. All recurring Charges are due thirty (30) days from date of invoice.
10. Unless earlier terminated in accordance to the provisions of this Agreement, the Term of the Services shall commence from the Commencement Date and shall be in effect for the Term as stipulated overleaf
11. A party has the right (without prejudice to its other rights) to terminate this Agreement in any of the following events by notice in writing to the other party: (a) a liquidator (other than for the purpose of solvent amalgamation or reconstruction), administrative receiver, administrator, receiver or person of similar function is appointed in respect of the whole or part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or if it becomes "unable to pay its debts" as that term may be defined in the solvency laws of the other party's country or state of incorporation, or other circumstances arise which entitle a court or a creditor to appoint an administrative receiver, administrator, receiver or person of similar function to make a winding-up order in relation to the other party; or (b) the other party fails to make any payment when due or shall default in due performance or observance of any material obligation under this Agreement and (in the case of a remediable breach) fails to remedy the breach within a reasonable time (not less than 30 days) specified by the terminating party in a notice so to do.
5. If this Agreement is terminated earlier due to the Access Seeker cancels a Service before the expiration of the Term for that Service, Access Seeker shall upon demand pay Access Provider the entire Charges for the Term, being liquidated ascertained damages (LAD) for early termination or cancellation Charges. When calculating the LAD credit shall be given for the Charges paid up to termination of Agreement or cancellation of Service
6. Interest will be imposed on any late payments from the due date until full settlement at the rate
7. Access Seeker shall not permit anything to be done to damage Access Provider's equipment or any part thereof or cause a disruption to any services that Access Provider provide to other third parties and to fully indemnify in respect thereof.
8. Access Seeker shall not permit to be done anything which may violate any regulation pertaining to the utilization of the Services and to be solely responsible for any violation against such laws regulations and to fully indemnify the Access Provider
9. Access Provider shall not be liable in any manner whatsoever to Access Seeker for any loss of profits goodwill consequential or economic loss ( including any action taken against Access Seeker by third parties), whether direct or indirect.
10. Upon the termination or expiry of this agreement, Access Seeker shall remove its equipment from the Access Provider network at its own costs and expenses.
11. The terms in the Access Agreement shall prevail in the event of conflict between the terms herein and the terms in the Access Agreement
12. All Appendixes to this Agreement and all certificates and other agreement delivered pursuant to this Agreement shall form part of this Agreement.





OPTICAL COMMUNICATION ENGINEERING

Note:

A. To expedite processing, please complete this form in full and in **BLOCK LETTERS**.

B. Please attach these following documents:

**REGISTRATION FOR MALAYSIAN COMPANY**

- 1. A photocopy of Business Registration (Where applicable)
  - \*Form D and A or Form D and B (Proprietor or Partnership)
  - \*Form 49 and Form 9 of Form 49 and Form 13 (Company)
  - \*Certificated or any other relevant documents from professional bodies

**REGISTRATION FOR NON-MALAYSIAN COMPANY**

- 1. A copy of Form 79 or Form 80A or Form 83 or Form 83A

**A. DETAIL OF APPLICANT**

1. COMPANY NAMES

2. TYPE OF APPLICANT MALAYSIAN COMPANY  NON-MALAYSIAN

3. CORRESPONDENCE ADDRESS

USER/DEPT:  POST CODE:

4. BILLING ADDRESS

POST CODE:

5. BUSINESS REGISTRATION NUMBER

6. COMPANY'S TELEPHONE NUMBER

7. COMPANY'S FAX NUMBER

8. CONTACT PERSON & DESIGNATION

9. NATURE OF BUSINESS

**B. DETAILS OF SERVICE (STATE TYPE OF SERVICE)**

Type of service

LINKS *	CAPACITY*	TERM*	Ready for Service Date	Charges/Month
				<input type="text"/>

**TOTAL**

\* Links means the Service Link between POI to POI along Access Provider's Network  
POI shall be limited to the existing and available Point to Interface on Access Provider's Network

**C. DECLARATION**

By signing below, we declare that we wish to subscribe for the service above upon and subject to the Fast Track Terms and conditions and agree to be bound by them. We agree to be liable for all fees and charges stipulated in this Agreement for the subscription of the services herein.

SIGNED FOR AND ON BEHALF \_\_\_\_\_

IN THE PRESENCE OF \_\_\_\_\_