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**REFERENCE ACCESS OFFER**

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**OF**

**XMT TECHNOLOGIES SDN BHD  
(COMPANY NO. 200001029307 (531914-T))  
("XMT" OR "ACCESS PROVIDER")**

**EFFECTIVE 15 JUNE 2023**

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## **BACKGROUND, SCOPE AND STRUCTURE**

1 **BACKGROUND**

This XMT Reference Access Offer “**XMT RAO**” is prepared pursuant to the Commission Determination on Access List (Determination No.6 of 2021) (“**Access List Determination**”), the Commission Determination on the Mandatory Standard of Access (Determination No.1 of 2022) (“**MSA Determination**”) and the Commission Determination on the Mandatory Standard on Access Pricing (Determination No.1 of 2023) (“**MSAP Determination**”).

2 **GENERAL SCOPE AND STRUCTURE OF THE XMT RAO**

2.1 Access is subject to agreement

This RAO governs the terms and conditions on which XMT as an Access Provider will provide the Facilities and/or Services to the Access Seeker. It shall only apply in respect of the wholesale relationship between XMT and the Access Seekers in relation to access to the Facilities and/or Services included in the Access List Determination. More specifically: -

- (a) the Definitions and Rules of Interpretation are applicable to all documents consisting part of this XMT RAO unless otherwise stated;
- (b) the General Terms and Conditions govern the supply of the Facilities and/or Services unless otherwise stated;
- (c) the Terms and Conditions for Technical Matters govern the technical matters pertaining to the Facilities and/or Services unless otherwise stated; and
- (d) the Terms and Conditions for Regulated Facilities and/or Services govern the supply of Facilities and/or Services unless otherwise stated.

2.2 Changes to XMT RAO

2.2.1 This XMT RAO may change from time to time.

2.2.2 XMT shall, within no less than thirty (30) Business Days of making any amendments to its RAO, except to the extent that such amendments relate to 5G Services, provide a copy of the amendments or an amended copy of the XMT RAO to: -

- (a) the Access Seeker who is being provided with access to Facilities and/or Services; and
- (b) the Access Seeker who has requested XMT RAO within the period of three (3) months 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.

2.2.3 Upon expiry of the thirty (30) Business Days in **Clause 2.2.2**, the Access Provider will:

- (a) make available the amended RAO on the Access Provider’s publicly accessible website without delay (including updating its date and version number, both on the cover and on each page of the document); and
- (b) provide the updated RAO to the Commission before being made available under **Clause 2.2.3(a)** above.

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### Background, Scope and Structure

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- 2.2.4 For the purposes of clarification, the terms and conditions of this XMT RAO are only applicable to the Facilities and/or Services specified in the XMT RAO. If the Access Seeker requests for unregulated facilities and/or services outside the XMT RAO, the terms and conditions for the provisions of such facilities and/or services shall remain outside the scope of this XMT RAO.
- 2.2.5 Nothing in this **Clause 2.2** prevents an Access Seeker from initiating a dispute in relation to an amendment made to this XMT RAO.
- 2.2.6 Where the terms and conditions of an Access Agreement are not identical to XMT RAO, an amendment to the XMT RAO will not alter the terms of that Access Agreement except as agreed between the Access Provider and Access Seeker.
- 2.2.7 Without prejudice to an Access Seeker's right to dispute a change to XMT RAO, where the terms and conditions of an Access Agreement are identical to those in XMT RAO, an amendment to XMT RAO will be deemed to alter the relevant terms and conditions of that Access Agreement. However, if the Access Seeker disputes the change to the XMT RAO, no amendments to the Access Agreement will be deemed to have occurred unless and until such dispute is resolved in favor of XMT.
- 2.3 Notice of Withdrawal, Replacement and Variation of this XMT RAO
- 2.3.1 If the Commission revokes, varies or replaces the Access List in accordance with Section 56 of the Act, XMT may, by giving written notice to all Access Seekers to whom it is supplying the Facilities and/or Services, withdraw or replace this XMT RAO with effect from a date no earlier than the effective date of the Commission's revocation, variation or replacement.
- 2.3.2 XMT shall comply with **Conditions 7.4.2** and **7.4.3** of the MSA Determination where it is given written notice pursuant to **Condition 2.3.1** above.
- 2.3.3 In addition to **Clause 2.3.2** above, XMT may give the Access Seekers to whom it is supplying the Facilities and/or Services under this XMT RAO a notice of variation or replacement of this XMT RAO to effect such variations that are necessary or appropriate in the event of:-
- (a) the occurrence of a Legislative Event that materially affects the rights or obligations of XMT under XMT RAO;
  - (b) the occurrence of a Regulatory Event that relates to XMT; or
  - (c) a review by the Commission of the MSA Determination pursuant to **Condition 7.5** of the MSA Determination.
- 2.4 Availability
- This XMT RAO shall be made available to an Access Seeker:
- (a) on written request to persons specified in **Condition 13, General Terms and Conditions** of this XMT RAO; and
  - (b) on a publicly accessible website at [<https://www.xmt.com.my/>].

3            **CONDITIONS PRECEDENT**

3.1            This Access Agreement pursuant to XMT RAO shall be effective once it is duly registered with the Commission under section 150 of the Act.

3.2            The Access Provider shall not be obliged to provide the Facilities and/or Services unless the Access Seeker has provided the Security Deposit in accordance with **Condition 3.3** and **Condition 5.3** of the **General Terms and Conditions**.

4            **CONVERSION OF REGULATED FACILITIES AND/OR SERVICES TO NON-REGULATED FACILITIES AND/OR SERVICES AND VICE VERSA**

4.1            In the event that a Regulated Facility and/or Service is removed from the Access List pursuant to a Determination by the Commission in accordance with section 146 of the Act, thereby becoming a non-Regulated Facility and/or Service, that Facility and/or Service shall be deemed to be:

- (a)    removed from the Terms and Conditions for Regulated Facilities and Services; and
- (b)    incorporated into the Terms and Conditions for non-Regulated Facilities and Services, on the date the Regulated Facility and Service is removed from the Access List as specified in the Commission's Determination.

4.2            In the event that a non-Regulated Facility and/or Service is included into the Access List pursuant to a Determination by the Commission in accordance with section 146 of the Act, thereby becoming a Regulated Facility and/or Service, that Facility and/or Service shall be deemed to be:

- (a)    removed from the Terms and Conditions for non-Regulated Facilities and Services; and
- (b)    incorporated into the Terms and Conditions for Regulated Facilities and Services, on the date the non-Regulated Facility and Service is added to the Access List as specified in the Commission's Determination.

4.3            Notwithstanding **Clauses 4.1 and 4.2** above, either Party may exercise its rights to terminate in accordance with **Condition 10.4 of the General Terms and Conditions**.



5           **PRECEDENCE OF DOCUMENTS**

5.1           The following documents shall be deemed to form and be read and construed as an integral part of this RAO:

- (a)    this Background, Structure and Scope;
- (b)    Terms and Conditions for Regulated Facilities and/or Services;
- (c)    the General Terms and Conditions and the Terms and Conditions for Technical Matters including all annexures, appendices and schedules referred to therein; and
- (d)    the Definitions and Rules of Interpretation.

5.2           In the event there is a conflict between or amongst the above stated documents in **Clause 5.1**, the documents shall take precedence according to the order in which they are listed. If there are any conflicts between a document incorporating any annexures, appendices or schedules ("**Main Document**") and its annexures, appendices or schedules, the Main Document shall take precedence.

5.3           Notwithstanding **Clause 5.2**, there shall be no order of precedence between the following:

- (a)    the General Terms and Conditions and the Terms and Conditions for Technical Matters;
- (b)    the terms and conditions of the different Facilities and/or Services within a particular category; and
- (c)    the annexures, appendices and schedules unless expressly specified.

6           **SERVICES PROVIDED BY XMT**

6.1           The following Facilities and/or Services shall be provided by XMT in accordance with the terms of this XMT RAO:

- (a)    Infrastructure Sharing – CMTS IBC;
- (b)    End to End Transmission;
- (c)    Wholesale Local Leased Circuit; and
- (d)    Trunk Transmission

7            The definitions of all words used in this XMT RAO are contained in the Definitions and Rules of Interpretation.

Background, Scope and Structure

STRUCTURE OF THIS RAO

This diagram is only a broad summary and illustration of the scope and structure of this XMT RAO. This diagram shall not limit or prejudice the interpretation or scope of the respective documents forming this XMT RAO.

Structure of this XMT RAO					
Background, Structure and Scope	Definitions	General Terms and Conditions	Terms and Conditions for Technical Matters	Terms and Conditions for Regulated Facilities and/or Services	
				Part A	Part B
<p>This document sets out the:</p> <p>(a) generic scope of this XMT RAO; and</p> <p>(b) list of documents forming part of this XMT RAO.</p>	<p>Sets out the definitions and rules of interpretation applicable to this XMT RAO.</p>	<p>Applicable to the Facilities and/or Services.</p>	<p>Sets out the technical and operational matters applicable to the Facilities and/or Services.</p>	<p>Sets out the <b>service description</b> of the Facilities and/or Services</p>	<p>Sets out the <b>Charges and charging principles</b> applicable to the Facilities and/or Services</p>

**IN WITNESS WHEREOF** the Parties have hereunto set their hands the day and year first above written.  
Signed for and on behalf of

XMT TECHNOLOGIES SDN BHD

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signed for and on behalf of

ACCESS SEEKER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **DEFINITIONS & RULES OF INTERPRETATION**

Definitions and Rules of Interpretation

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1.1 The following words have these meanings in this RAO unless the contrary intention appears:

**“Act”** means the Communications and Multimedia Act 1998 and includes all amendments thereto from time to time;

**“Access Agreement”** means an agreement:-

- (a) entered into between XMT and the Access Seeker pursuant to XMT RAO; or
- (b) which is commercially negotiated between the Operators,

whereby XMT provides the requested Facilities and/or Services to the Access Seeker in accordance with the terms therein contained and registered with the Commission in accordance with Section 150 of the Act;

**“Access List”** or **“Access List Determination”** means the Commission Determination on Access List (Determination No.6 of 2021) which sets out a list of Facilities and/or Services determined by the Commission under Chapter 3 of Part VI of the Act;

**“Access Provider”** means:-

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

For the purpose of clarification, in this RAO, the Access Provider is XMT.

**“Access Request”** means a request for access to Facilities and/or Services by the Access Seeker to the Access Provider containing the information in **Condition 3.1.3 of the General Terms and Conditions** and any additional information requested under **Condition 3.1.4 of the General Terms and Conditions**;

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

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

**“Billing Dispute”** means the dispute of an Invoice prepared by a Party to the other Party which is made in good faith;

**“Billing Dispute Notice”** means the written notification made by a Party to the other Party in relation to a Billing Dispute in accordance with **Conditions 12.6.1 and 12.6.4 of the General Terms and Conditions**;

**“Billing Period”** means, the regular periodic basis on which the Access Provider shall issue Invoices for the supply of access to Facilities and/or Services as set out in the Terms and Conditions for Regulated Facilities and/or Services below;

**“Billing Representative”** means a representative of the Party appointed in accordance with the billing procedures set out in **Condition 12.6.12 of the General Terms and Conditions**;

**Definitions and Rules of Interpretation**

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**“Billing System”** means a system to issue Invoices relating to Charges payable by each Party under this RAO;

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

**“Charges”** means the Charges payable by the Access Seeker to the Access Provider for accessing Facilities and/or Services provided by the Access Provider. The Charges shall be based on the charges stated in **Part B of the Terms and Conditions for Regulated Facilities and/or Services**;

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

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

**“Confidentiality Agreement”** means a confidential agreement executed between Operators, a copy of which is annexed in **Appendix 1** to the **General Terms and Conditions**;

**“Creditworthiness Information”** means the information required by the Access Provider to assess the creditworthiness of the Access Seeker which is more particularly described in **Condition 3.2 of the General Terms and Conditions**;

**“Customer”** a person having a contractual relationship with the Access Seeker for the provision of Communications Service;

**“Determination”** means any lawful determination made by the Commission and/or Minister, pursuant to the Act;

**“Direction”** means any lawful direction made by the Commission and/or Minister, pursuant to the Act;

**“Due Date”** means, in respect of an Invoice, thirty (30) days from the date of receipt of an Invoice;

**“Effective Date”** means the date on which this RAO is duly registered with the Commission under section 150 of the Act in its entirety;

**“Emergency”** means circumstances where urgent action is necessary to protect any one or more people, property or the environment from, or mitigate against, injury, loss or damage in circumstances where such injury, loss or damage is occurring or is imminent;

**“End User”** means a consumer and final recipient of the services, and includes an ultimate retail Customer of an Operator;

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

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

**Definitions and Rules of Interpretation**

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**“Facilities”** means the Regulated Facilities as more particularly described in **Part A of the Terms and Conditions for Regulated Facilities and/or Services**;

**“Forecast”** means a forecast made by the Access Seeker pursuant to **Section II of the Terms and Conditions for Technical Matters** and the documents referred to in **Section I of the Terms and Conditions for Technical Matters**;

**“Force Majeure”** means an event or circumstance beyond the reasonable control of a Party which affects the Party’s ability to perform its obligations under this RAO including but not limited to natural disasters, change in governmental or any authority policy and premature termination of any rights provided to the Access Provider.

**“Infrastructure Sharing”** is a facilities and/or service which comprises

- (a) the provision of physical access, which refers to the provision of space at specified network facilities to enable an Access Seeker to install, operate and maintain its own equipment; or
- (b) provision of access to an in building common antenna system and physical access to central equipment room and is further described in **Section I of Part A of the Terms and Conditions for Regulated Facilities and/or Services**. For the avoidance of doubt, these may also include the common shared space for all telecommunications parties to install their equipment and to interconnect with the Access Provider’s distributed antenna system;

Physical access includes power, environmental services (such as heat, light, ventilation and air-conditioning) security, site maintenance and access for the personnel of the Access Seeker.

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

**“Insurance Information”** means the insurance information required by the Access Provider pursuant to **Conditions 3.4 and 9.2 of the General Terms and Conditions**;

**“Interconnect Steering Group” or “ISG”** means the inter-Party relations group established by the Parties in accordance with **Section 4 of Annexure A of the MSA Determination**;

**“Intellectual Property”** means all rights conferred under statute, common law and equity and any intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in relation to registered and unregistered trademarks and service marks including goodwill in the business concerned in the relevant goods and/or services, trade, business or company names, logos and get up, inventions, discoveries and novel designs, whether or not registered or registerable as patents, innovation patents or designs, technology, processes, methods or techniques; designs, literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works, databases and any other subject matter in which copyright subsists; circuit layouts, internet domain names, confidential information, know-how and trade secrets and all rights and interests in them, whether created or in existence before or after the date of this RAO and includes anything, whether tangible or intangible, which incorporates, embodies or is based on any of the things referred to in this definition;

**“Invoice”** means the invoice for amounts due in respect of the supply of Facilities and/or Service(s) during a Billing Period;

**Definitions and Rules of Interpretation**

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**“Licence”** means an individual or class licence granted by the Minister pursuant to the Act for Communications Services;

**“Legislative Event”** means:-

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

**“Manual(s)”** means the Operations and Maintenance Manual and other manuals which the Parties may establish pursuant to the RAO.

**“Minimum Value”** for the purposes of calculating the Security Deposit, means:

- (a) the total value of access to the Services provided (based on the amounts invoiced for those Services) for three (3) Billing Periods immediately preceding the date the Security Deposit is calculated; or
- (b) the total value of access to the Services to be provided to the Access Seeker for three (3) Billing Periods immediately after the date the Security Deposit is calculated;

**“Minister”** means the Minister administering the Act, i.e. the Malaysian Minister of Communications and Digital;

**“Network”** means network facilities and/or network services comprising a system, or a series of systems within Malaysia, that carries or is capable of carrying communications by means of guided or unguided electromagnetic energy or both;

**“Non-Binding Forecast Period”** means, for the purposes of **Condition 2.12, Section II Terms and Conditions for Technical Matters**, any period of time in which the Forecast is non-binding except to the extent a Forecast has been confirmed in accordance with **Condition 2.2, Section II Terms and Conditions for Technical Matters**.

**“Operations and Maintenance Manual”** means the manual associated with the **Terms and Conditions for Technical Matters**;

**“Operator”** has the meaning given to it in the Access List Determination;

**“Order”** means an order placed by the Access Seeker pursuant to **Section III of the Terms and Conditions for Technical Matters** and the documents referred to in **Section I of the Terms and Conditions for Technical Matters**;

**“Point of Interconnection”** or **“POI”** means any technically feasible point which demarcates the Network of the Access Provider and the Network of the Access Seeker (collectively referred to as the **“interconnecting networks”**) and is a point at which a call communication is transferred between the interconnecting networks;



**Definitions and Rules of Interpretation**

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**“Point of Presence” or “POP”** means a point at which an Access Seeker has established itself for the purposes of obtaining access to the Facilities and/or Service(s) and is a point at which a call communication is transferred between the Operators;

**“Preparatory Work”** means all supporting task including supply and engineering services to be conducted in order for the Access Seeker to co-locate in the Access Provider’s premises;

**“QOS standards”** means the mandatory standards for quality of service set out in the following Commission determinations:

- (a) Commission Determination on the Mandatory Standards for Quality of Service (Wireless Broadband Access Service), Determination No.2 of 2021;
- (b) Commission Determination on the Mandatory Standards for Quality of Service (Public Cellular Services), Determination No.3 of 2021; and
- (c) Commission Determination on the Mandatory Standards for Quality of Service (Customer Service), Determination No.4 of 2021,

including such modification or variation and any other applicable mandatory standards as may be determined by the Commission from time to time;

**“RAO”** means this reference access offer including any modification, amendment or addition thereto as may be agreed in writing between the Parties from time to time;

**“Regulated Facilities and/or Services”** means:

- (a) network facilities and/or other facilities that are listed in the Access List; and/or
- (b) network services and/or other services that are listed in the Access List,

specified in this RAO which facilitates the provision of network services or applications services including content applications services;

**“Regulatory Event”** means:

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

**“RM”** means Ringgit Malaysia which shall be the monetary currency used in this RAO unless otherwise provided;

**“Security Deposit”** means the security in the form of irrevocable bank guarantee, in a form acceptable to the Access Provider, provided or to be provided by the Access Seeker to the Access Provider under **Condition 5.3 of the General Terms and Conditions** for the supply of Service(s) or under **Condition 3.3 of the General Terms and Conditions** for the supply of Services;

**“Services”** means the Regulated Services;

**“Service Level”** means quality of service as described in the Operations and Maintenance Manual;

Definitions and Rules of Interpretation

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**“Service Qualification”** means a desk and field study that may be conducted in accordance with **Section III of the Terms and Conditions for Technical Matters** that has been approved by the Access Provider, and includes the testing of a line to ascertain whether it could be used in response to an Access Request by the Access Seeker;

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

**“Technical Specifications”** means any technical parameters, specifications and procedures applicable to the provision of Facilities and/or Services documented in the Manuals to the RAO;

1.2 In this RAO except where the contrary intention appears;

- (a) the singular includes the plural and vice versa; and
- (b) a document includes all amendments or supplements to that document, or replacements or novation of it; and
- (c) a reference to a statute, ordinance, regulation, code or other law and other instruments under it, shall include any statute, ordinance, regulation, code and other law consolidating, amending, re-enacting or replacing of any of them from time to time relating thereto or in connection therewith; and
- (d) a reference to a person includes a firm, body corporate, unincorporated association or an authority; and
- (e) a reference to a person includes the person’s executors, administrators, successors, substitutes (including, persons taking by novation), and assigns; and
- (f) if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day and any reference to acts that have to be done or to be done by or on or before a particular day or Business Day means by or on or before the close of business at 5.00pm on that particular day or Business Day; and
- (g) a reference to a related body corporate of the Party has the same meaning as in the Companies Act 2016; and
- (h) a reference to a third person is a reference to a person who is not a party to this Agreement; and
- (i) headings are included for convenience and do not affect the interpretation of this Agreement; and
- (j) use of the word “include” or “including” means without limitation.

## **GENERAL TERMS AND CONDITIONS OF THE AGREEMENT**

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**General Terms and Conditions**

**Condition 1**

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**1           CONDITION 1 - PRINCIPLES OF ACCESS**

**1.1           Provision and Usage of Facilities and/or Services subject to Licence**

1.1.1       The Facilities and/or Services provided by the Access Provider shall at all times be subject to Facilities and/or Services which the Access Provider is permitted to provide under its Licence. Concurrently, the Facilities and/or Services provided to the Access Seeker shall only be used in connection with an activity or activities in which the Access Seeker is authorized to provide under its Licence.

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

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

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

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

- (a)   supply of the relevant listed Facilities and/or Services would not be reasonable (see **Condition 1.4** below); or
- (b)   supply of the relevant listed Facilities and/or Services would be reasonable, but the terms and conditions requested by the Access Seeker are not reasonable (see **Condition 1.5** below).

1.4        **Unreasonable request:** A request for access to a listed Facility and/or Service may not be reasonable if one or more of the criteria in **Condition 3.5.4** of the **General Terms and Conditions** of this XMT RAO are satisfied. For clarification, this XMT RAO does not intend or attempt to narrow the grounds of refusal upon which a party may rely upon under the Act.

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.

**1.6           Principles of Non-Discrimination**

1.6.1       The Parties agree and acknowledge that the governing principle of this RAO is that the Parties are, in respect of the provision of Facilities and/or Services, in a party-to-party relationship.

1.6.2       Consistent with section 149(2) of the Act, access to Facilities and/or Services provided by the Access Provider to the Access Seeker shall be:

- (a) of at least the same or more favorable technical standard and quality as the technical standard and quality provided for itself on the Access Provider's Facilities and/or Services; and
  - (b) provided on an equitable and non-discriminatory basis.
- 1.6.3 For the purpose of this XMT RAO, the non-discrimination principle and the term "non-discriminatory" apply on an Equivalence of Inputs basis and require a comparison of:
  - (a) the basis on which a Facility and/or Service is provided by the Access Provider to an Access Seeker; with
  - (b) the basis on which that Facility and/or Service is provided by the Access Provider to itself and to other Access Seekers.
- 1.6.4 The non-discrimination principle contained in subsection 149(2) of the Act applies to, amongst others the following:
  - (a) processing of applications for access;
  - (b) acceptance or refusal of Access Requests;
  - (c) provision of information required to provide Forecasts or place Orders;
  - (d) provisioning of Facilities and/or Services;
  - (e) allocation of constrained capacity;
  - (f) fault reporting and fault rectification;
  - (g) network conditioning;
  - (h) allocation of space at exchanges;
  - (i) the purpose or use for which access is provided;
  - (j) the technical parameters with which Facilities and Services are supplied; and
  - (k) if applicable, access to operational support systems in respect of service fulfilment and service assurance.
- 1.6.5 However, nothing in this RAO shall limit the Access Seeker's ability to freely request and agree on the terms and conditions of access to the Access Provider's Facilities and/or Services that are either superior or inferior (in terms of technical standard and quality) to that which the Access Provider provides to itself.
- 1.7 Customer Relationship Principles**
- 1.7.1 The Operators acknowledge and agree that the following customer relationship principles apply:
  - (a) A Customer will be regarded as a Customer of an Operator when the Customer utilises Facilities and/or Services provided to that Customer by the Operator.
  - (b) The same person may be a Customer of more than one Operator:
    - (i) in respect of the same or different Facilities provided by different Operators;

(ii) in respect of the same or different Services Provided by different Operators;  
or

(iii) in respect of Facilities provided by one Operator and Services provided by another Operator.

(c) The supply by an Operator to another Operator, which the latter Operator then utilises in providing Facilities and/or Services to its Customers, does not mean that those Customers are also Customers of the first-mentioned Operator.

(d) Each Operator will be responsible for billing its own Customers, unless express agreement to the contrary is made by the Operators. An agreement to the contrary may include, without limitation:

(i) the Access Provider billing on behalf of the Access Seeker; or

(ii) the Access Provider in its own right billing the Customer of the Access Seeker and making a separate payment to the Access Seeker.

1.7.2 The Access Provider shall not use an Access Seeker's Customer information to market or offer to supply its goods or services to that or any other Customer, except where:

(a) the Customer information is publicly available; or

(b) the Customer information has been received or developed by the Access Provider from sources other than the Access Seeker,

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

## **1.8 Necessary third-party involvement causing or contributing to non-compliance in timeframe**

1.8.1 If:

(a) the Access Provider fails to comply with a timeframe under this RAO; and

(b) the Access Provider considers that such failure was caused or contributed to by necessary third-party involvement or other matters reasonably outside the Access Provider's control (for example, where approval from local or any other authority is required),

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

## **1.9 No exclusivity and no restriction on resale**

(a) The Access Provider must not, in relation to the supply of a Facility and/or Service, include a term or condition in this RAO preventing the Access Seeker from acquiring the same or any other Facility and/or Service from another operator.

- (b) The Access Provider must not, in relation to the supply of a Facility and/or Service, include a term or condition in this RAO preventing the Access Seeker from re-supplying that Facility and/or Service to any person.

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**Condition 2**

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**2            CONDITION 2 - PARAMETERS OF XMT RAO**

- 2.1            The scope of this RAO is, unless otherwise specified in this RAO, limited only to the provision of the Facilities and/or Services pursuant to **Condition 1** (i.e. Provision and Usage of Facilities and/or Services subject to Licence).
- 2.2            The Parties agree that this RAO is not intended to govern the provision of any facilities and/or services not specified in this RAO except to the extent that the supply of the facilities and/or services is incidental to the functionality required for:
- (a)    the interconnection of the Facilities of one Operator with the Network of the other Operator; or
- (b)    the carriage of Call Communications across the other Operator's Network.
- 2.3            The obligation of the Parties to agree, in accordance with this RAO, to the extension of this RAO to cover the provision of a Communications Service to the other Party is first subject to the Party being so obliged by virtue of its Licence or by applicable regulations, Determinations and/or Directions, and the other Party being in full compliance of all the material terms herein.
- 2.4            Except where this RAO provides to the contrary, the rights and obligations conferred by this RAO apply reciprocally as between the Parties. For the purposes of clarification, where this RAO expressly states that a facility and/or service is only to be provided by one named Party to the other named Party, the obligations in respect of that facility and/or service are not regarded as reciprocal.
- 2.5            For the avoidance of doubt, this RAO is intended to apply only to the provision of Facilities and/or Services by one Operator to the other and to related matters concerning the Operators and not be construed as conferring benefits on third persons.
- 2.6            The Parties hereby agree and acknowledge that this RAO in its entirety shall only be effective and enforceable upon inclusion of the relevant Conditions of this RAO in an Access Agreement (which requires registration) with the Commission pursuant to section 150 of the Act.
- 2.7            Each Party shall notify the other Party as soon as possible of all correspondences from the Commission pertaining to the registration of this RAO. In the event that the Commission refuses or fails to register the relevant portion of this RAO requiring registration or part thereof, the Parties shall negotiate in good faith and may consider the advice, recommendations and suggestions of the Commission in deciding on the next course of action to be undertaken by the Parties.



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**3            CONDITION 3 - PROCEDURES FOR REQUESTING NEW SERVICES**

**3.1           Application for Access to New Services**

3.1.1        The Access Seeker may request the Access Provider to supply the Facilities and/or Services listed in this RAO by submitting an Access Request to the Access Provider.

3.1.2        The purpose of such Access Request is to provide the Access Provider with sufficient information to assess the Access Seeker's request for the Facilities and/or Services.

3.1.3        The Access Request must:

- (a)    contain the name and contact details of the Access Seeker;
- (b)    specify the Facilities and/or Services in respect of which access is sought;
- (c)    a list of the relevant licences held by Access Seeker;
- (d)    indicate whether the Access Seeker wishes to either accept the Access Provider's terms of offering as stated in this RAO or negotiate different terms and conditions;
- (e)    specify the ready for service date(s) for the Services that is being sought by the Access Seeker;
- (f)    contain the information (if any) set out in **Condition 3.1.4** that the Access Seeker reasonably requires the Access Provider to provide for the purposes of the access negotiations;
- (g)    contain the names of personnel(s) whom the Access Seeker nominates to represent the Access Seeker in access negotiations with the Access Provider, and in respect of each of those personnel:
  - (i)    his or her contact details;
  - (ii)   his or her job title; and
  - (iii)   details of his or her availability for the access negotiations;
- (h)    state the identity of the negotiating team leader whom shall have the authority to make binding representations on behalf of the Access Seeker in relation to matters arising from the access negotiations (subject to final approval from the Access Seeker's Chief Executive Officer or Board of Directors, if required by the Access Seeker);
- (i)    contain two (2) copies of the confidentiality agreement properly executed by the Access Seeker in the form prescribed by the Access Provider as set out in Appendix 1 of the General Terms and Conditions, where there is no such confidentiality agreement already in force;
- (j)    contain preliminary information regarding the scale and scope of Facilities and/or Services that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request;
- (k)    where applicable, specify forecasts of the capacity which the Access Seeker reasonably requires, having regard to the Access Provider's disclosed provisioning

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cycle and forecasting procedures as described in **the Terms and Conditions for Technical Matters**;

- (l) provide the relevant information relating to the Access Seeker's Network and the functionality of its services, to the extent that the Access Seeker is aware that such information may affect the Access Provider's Network;
- (m) specify the type of Licences held by the Access Seeker and a copy of the licence where a copy had not been previously provided;
- (n) contain Creditworthiness Information as set out in **Condition 3.2**;
- (o) contain assessed security (or, if applicable, confirmation of security provided) in accordance with the Access Provider's security requirements, as set out in **Condition 3.3**;
- (p) contain Insurance Information as set out in **Condition 3.4**;
- (q) relevant technical information relating to the interface standards of the Access Seeker; and
- (r) such other information as the Access Provider may reasonably request for the sole purpose of providing access to the requested Facilities and/or Services.

3.1.4 For the purpose of **Condition 3.1.3(f)**, an Access Provider must provide the following information to an Access Seeker within ten (10) Business Days of receipt of a written request from that Access Seeker, to the extent that it is not provided in the RAO:

- (a) the Access Provider's description of each of the Facilities and/or Services that may be supplied by the Access Provider, such description to be consistent with the description (if applicable) of the Facilities or Services in the Access List;
- (b) the application forms required to be completed by the Access Seeker to apply for access to network facilities or network services;
- (c) a confidentiality agreement required to be executed by the Access Seeker, where there is currently none in force;
- (d) the Access Provider's current Charges for access to network facilities or network services, including individual and wholesale offerings;
- (e) details of the basis on which the Access Provider's current Charges are determined;
- (f) all relevant technical information relating to the network facilities or network services which may be the subject of the Access Request, including any physical and logical interfaces of its Network necessary to allow the development and deployment of Communications Services, value-added services and communications equipment that can interconnect to, and interoperate with, that Access Provider's Network;
- (g) details of the Access Provider's provisioning cycles and any impact such cycles may have upon an Access Request by the Access Seeker (e.g. capacity constraints);

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- (h) details of the Access Provider's quality of service targets and achievements in respect of the network facilities or network services which may be the subject of the Access Request;
- (i) any security and insurance requirements and Creditworthiness Information required by the Access Provider under **Conditions 3.2, 3.3 and 3.4**;
- (j) the Access Provider's reasons for failing to supply any of the information referred to in paragraphs (a) to (i) of this **Condition 3.1.4**. Prior to the provision of information under this **Condition 3.1.4**, the Access Provider may request the Access Seeker to enter into a confidentiality agreement;
- (k) supplementary details of the Access Provider's operational processes and procedures not included in this RAO (if any); and
- (l) any supplementary access charges for access to Facilities and/or Services not included in the RAO (for example, discounts for inferior service levels or surcharges for enhanced service levels).

**3.2 Creditworthiness Information**

3.2.1 The Creditworthiness Information that is required to accompany an Access Request are:

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

**3.3 Security Deposit for the Facilities and/or Services**

3.3.1 The Access Provider shall not impose any security requirements on the Access Seeker unless the Access Provider determines, acting reasonably, that the Access Seeker presents a credit risk and that imposing the security requirement will materially reduce or remove that risk.

3.3.2 In the event that the Access Provider determines that security requirements should be imposed under **Condition 3.3.1** above, the Access Provider shall ensure that the amount of security imposed on the Access Seeker in its security policy, commensurate with:

- (a) the estimate of the value of access to the Services to be provided to the Access Seeker by the Access Provider shall be equivalent to the Minimum Value;
- (b) the creditworthiness of the Access Seeker (including prior payment records of the Access Seeker); and
- (c) the Security Deposit previously provided by the Access Seeker (if any).

3.3.3 The Access Seeker must provide the Security Deposit to the Access Provider in the form of a Bank Guarantee in a form acceptable to the Access Provider.

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- 3.3.4 If applicable, the Security Deposit to be provided shall be provided within thirty (30) days upon written request from the Access Provider. The Access Provider is not obliged to provide the Facilities and/or Services until the Security Deposit has been provided.
- 3.3.5 The Access Provider must not impose a security requirement on an Access Seeker which:
- (a) exceeds a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to Facilities and/or Services to be provided by XMT to the Access Seeker; or
  - (b) is designed to, or has the effect of, denying or delaying the Access Seeker's access to Facilities and/or Services.
- 3.3.6 The Access Provider shall only vary the amount and type of any security requirements imposed on the Access Seeker:
- (a) a maximum of once in any twelve (12) month period;
  - (b) if there is a material increase in the credit risk to the Access Provider due to changes in either or both of the circumstances under **Conditions 3.3.2(a)** and **(b)**; and
  - (c) if the Access Provider determines, acting reasonably, that the variation will materially reduce or remove the increased credit risk.

If amounts contained in invoices are disputed in good faith, this will not constitute a material increase in the credit risk to the Access Provider for the purposes of **Condition 3.3.6(b)** above.

**3.4 Insurance Information**

- 3.4.1 Subject to **Condition 9.2**, the Access Provider may request for any additional insurances as set out in this RAO, the sum of which is to be specified by the Access Provider, prior to the provisioning of the Facilities and/or Services.

**3.5 Processing of Access Request**

- 3.5.1 Access Provider's Reply to the Access Request

Subject to **Condition 2.10 of Section III of the Terms and Conditions for Technical Matters**, the Access Provider 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) request for additional information from the Access Seeker where there is a need for further information prior to considering the Access Request. The Access Provider shall comply with **Section 5.4.16 of the MSA Determination** when it requests for such additional information;
- (b) if the Access Seeker is willing to accept a RAO from the Access Provider, the Access Provider will provide access to Facilities and/or Services in accordance with the processes and the terms and conditions of this RAO;
- (c) if **Condition 3.5.1(b)** above does not apply, the Access Provider is willing to proceed to negotiate amendments to the RAO or an Access Agreement on alternative terms; or

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- (d) if the Access Provider refuses the Access Request, it should be in accordance with **Condition 3.5.5** below.
- (e) If the Access Provider requests additional information under **Condition 3.5.1(a)** and the Access Seeker provides the requested information to the Access Provider's satisfaction, the Access Provider shall within ten (10) Business Days of such response, provide the Access Seeker with a response under **Condition 3.5.1(b)** to **Condition 3.5.1(d)**.
- (f) If Access Provider is willing to provide access to the Facilities and/or Services, the Access Provider shall indicate the Security Deposit and any non-refundable processing fee payable by the Access Seeker.

**3.5.2 Acceptance of Access Request**

- (a) Where the Access Seeker has requested under **Condition 3.1.3(d)** and the Access Provider agrees to provide access to the Facilities and/or Services to the Access Seeker in accordance with the terms and conditions as specified in this RAO, the Access Provider shall within ten (10) Business Days of such response under **Condition 3.5.1(b)**, provide the Access Seeker two (2) copies of XMT RAO for execution by the Access Seeker and one (1) copy of the executed confidentiality agreement by the Access Provider.

**3.5.3 Negotiation of Access Request**

- (a) If the Access Seeker elects to negotiate the different terms and conditions under **Condition 3.1.3(d)** above and the Access Provider is willing to proceed with negotiation of the different terms and conditions (as described in **Condition 3.5.1(c)** above), the Access Provider must set a place, date and time not later than fifteen (15) Business Days from the date of Access Provider's response pursuant to **Condition 3.5.1(c)** above at which the Access Provider representatives will be available for an initial meeting with the Access Seeker's representatives and one (1) copy of the executed confidentiality agreement returned by the Access Seeker [in accordance with Condition 3.1.3(i)] that has also been properly executed by the Access Provider;
- (b) The Parties must use their best endeavors to negotiate in good faith and to conclude the Access Agreement within:
  - (i) where there is no Access Agreement in place between the Operators, four (4) months; or
  - (ii) where there is already a commercial agreement or an Access Agreement in place between the Operators, three (3) months,after a written request by the Access Seeker to commence negotiations under **Condition 3.1.3(d)** of this RAO and the Access Provider's response confirming it is willing to proceed to negotiate under **Condition 3.5.1(b)** of this RAO.
- (c) If negotiations are not completed within the applicable timeframe specified under **Condition 3.5.3(b)** of this RAO:

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- (i) the Parties may jointly apply to the Commission for further time to negotiate and if the further time is not granted, the Parties are deemed to be in dispute and the Dispute Resolution Procedures in **Condition 12** will take effect; or
- (ii) either Party may initiate the Dispute Resolution Procedures in **Condition 12**.
- (d) If the Commission grants an extension of time under **Condition 3.5.3(c)(i)** above, it may do so subject to such conditions as it specifies (such as an ongoing requirement to provide updates on negotiations at specified intervals and the right to reduce or extend any extension).
- (e) The Access Provider will not be taken to have agreed to provide and the Access Seeker will not be taken to have agreed to acquire the requested Facilities and/or Services until: -
  - (i) the Security Deposit, where required by the Access Provider, has been provided in accordance with **Condition 3.3**; and
  - (ii) an Access Agreement has been executed between the Parties and the terms in respect of the Facilities and/or Services are registered with the Commission in accordance with section 150 of the Act.

3.5.4 Rejection of Access Request

3.5.4.1 Reasons for Refusal

Without limiting any other grounds that may be relied upon under the Act, the Access Provider may refuse to accept an Access Request for the supply of a new service ("**New Service**") and accordingly may refuse to supply the New Service to the Access Seeker for any of the following reasons (such reason to be provided to the Access Seeker in writing):

- (a) [not used]
- (b) in the Access Provider's reasonable opinion, the Access Request does not contain the information reasonably required by the Access Provider as set out in this RAO provided that the Access Provider has sought the information from the Access Seeker under **Condition 3.5.1(a)**;
- (c) the Access Provider does not currently supply or provide access to the requested Services to itself or to any third parties, except where the Access Seeker compensates the Access Provider for the supply of access to the Facilities and/or Services;
- (d) it is not technically feasible to provide access to the Services;
- (e) the Access Provider has insufficient capacity or space to provide the requested Facilities and/or Services;
- (f) there are reasonable grounds in the Access Provider's opinion to believe that the Access Seeker would fail to make timely payment for the supply of the Facilities and/or Services and such concern cannot be addressed through a Security Deposit under **Condition 3.3**;

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- (g) there are reasonable grounds in the Access Provider's opinion to believe that the Access Seeker would fail, to a material extent, to comply with this RAO and the terms and conditions applicable to the supply of the Facilities and/or Services;
- (h) there are reasonable grounds for the Access Provider to refuse access in the national interest; or
- (i) such other reasons expressly provided under the Act or the MSA Determination.

**3.5.4.2 Determination of technical infeasibility**

For the purposes of **Condition 3.5.4.1(d)**, the Access Provider shall not refuse an Access Request on the grounds of technical infeasibility unless the Access Provider establishes that there are substantial technical or operational concerns preventing the fulfillment of the Access Request. Each of the following matters shall be taken into account in determining whether access is technically feasible:

- (a) economic, accounting, billing, space or site concerns shall be disregarded by the Access Provider except that space or site concerns may be taken into account in circumstances where there is no possibility of expanding the space available on the relevant site;
- (b) any requirement for the Access Provider to modify its facilities or Equipment in order to meet the Access Request will not, of itself, mean that the access is not technically feasible;
- (c) if the Access Provider asserts that meeting the Access Request would have an adverse impact on network reliability, the Access Provider must provide evidence that provision of the requested Facilities or Services would result in a specific and significant adverse impact on network reliability; and
- (d) the Access Provider must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this **Condition 3.5.4.2**) improvements that would allow the Access Provider to meet the Access Request (in whole, or in part, and including for an interim period until any primary difficulties can be resolved).

**3.5.4.3 Determination of capacity constraints**

An Access Provider may only refuse an Access Request on the ground set out in **Condition 3.5.4.1(e)** where the Access Provider notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is:

- (a) already carrying traffic to capacity or near full capacity;
- (b) already reserved for future use by the Access Provider or another access seeker, where such future use shall commence not later than six (6) months from the date of the Access Request. If the reserved capacity is not subsequently used by the reserving Party within seven (7) months from the date of the Access Request, the Access Provider must promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access Request in accordance with the process set out in **Condition 3**; and

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- (c) in the case of both **Conditions 3.5.4.3(a)** and **3.5.4.3(b)**, the Access Provider is unable to expand capacity to meet the requirements in the Access Seeker's Access Request.

**3.5.4.4**      Assessment of the Access Seeker's ability to pay for supply of Facilities and/or Services

Reasonable grounds in which the Access Provider may refuse in accordance with **Condition 3.5.4.1(f)** includes evidence that the Access Seeker is not, in the reasonable opinion of the Access Provider, creditworthy.

**3.5.4.5**      Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of Facilities and/or Services

Reasonable grounds in which the Access Provider may refuse in accordance with **Condition 3.5.4.1(g)** includes repeated failures by the Access Seeker to comply with the terms and conditions on which similar access to Facilities and/or Services are being or have been provided (whether or not by the Access Provider).

**3.5.4.6**      Assessment of Creditworthiness

In determining the creditworthiness of the Access Seeker, the Access Provider:

- (a) may have regard to, but is not limited to the matters referred to in **Condition 3.2** but
- (b) shall not take into account amounts outstanding for the Facilities or Services previously provided by the Access Provider to the Access Seeker where, in accordance with the terms and conditions governing the provision of such network facility or network service, the Access Seeker is not required to pay such amounts to the Access Provider to the extent that there is bona fide dispute in relation to the amounts outstanding by the Access Seeker to the Access Provider and the Access Seeker is relying on such terms and conditions as a basis for its non-payment.

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

Subject to **Condition 2.10 of Section III of the Terms and Conditions for Technical Matters**, where the Access Provider rejects the Access Request, the Access Provider shall within ten (10) Business Days of receiving the Access Request or additional information requested under **Condition 3.5.1(a)**, as the case may be:

- (a) notify the Access Seeker in writing of the Access Provider's rejection;
- (b) provide reasons for rejection under **Condition 3.5.4.1** to the Access Seeker;
- (c) provide the basis for the Access Provider's rejection of the Access Request; and
- (d) indicate a place, date and time, not later than seven (7) Business Days from the date of the notice of rejection, at which representatives of the Access Provider authorized to review the Access Provider's assessment of Access Request will be available to meet with representatives of the Access Seeker to discuss the refusal of the Access Request. At this meeting, the Access Seeker may request the Access Provider to substantiate its reasons for refusal (and the Access Provider shall do so), and if access has been refused on the basis of:



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- (i) **Condition 3.5.4.1(b)**, the Access Provider must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;
- (ii) the ground in **Condition 3.5.4.1(e)**, identify when additional capacity or space is likely to be available;
- (iii) **Condition 3.5.4.1(f)**, identify the form of security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested Facilities and/or Services, its reasons for the security requirement and why it considers such concern cannot be addressed through a security requirement under **Condition 3.3**.

Where the Parties are unable to resolve their differences following the meeting held pursuant to **Condition 3.5.5(d)**, either Party may request resolution of the dispute in accordance with **Condition 12**.

**3.5.6 Non-Refundable Processing Fee**

- (a) The Access Provider may charge the Access Seeker a one-off non-refundable Processing Fee to be determined by reference to the reasonable costs incurred by the Access Provider for the allocation of manpower and other resources to enable the Access Provider to process, test and fulfill the Access Request by the Access Seeker.
- (b) The Access Provider shall forward to the Access Seeker in writing the scope of works, estimated duration of the works and the resource charges in relation to the works. The Access Provider shall not be obliged to commence work until the scope of works and the said resource charge has been agreed to in writing by the Access Seeker.
- (c) The non-refundable Processing Fee for the respective Facilities and/or Services are set out in **Appendix 2 to Section III of the Terms and Conditions for Technical Matters**. The resource charges for the Facilities and/or Services not currently specified in this RAO will be mutually agreed by the Parties from time to time.

**3.6 Good faith**

Each Party shall co-operate, in good faith and in a commercially reasonable manner, in negotiating and implementing the terms of its Access Agreement, which includes:

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

**3.7 Confidentiality**

An Operator must protect from disclosure any Confidential Information provided by another Operator in the course of negotiating an Access Agreement and during the term of an Access Agreement in accordance with a confidentiality agreement prepared under **Condition 8, General Terms and Conditions** of this RAO.

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**3.8 Fast-track application and agreement**

- 3.8.1 As an alternative process to that set out in **Conditions 3.1 to 3.7** of this RAO, the Access Seeker may wish to proceed with the fast-track application and agreement process based on the principles set out in **Conditions 3.8.2** until **Condition 3.8.5** below:
- 3.8.2 The Access Provider may refuse the Access Seeker's fast-track application for the reasons set out in **Condition 3.5.4.1(c), 3.5.4.1(f)** and/or **3.5.4.1(g)** of this RAO;
- 3.8.3 The fast-track agreement between the Access Provider and the Access Seeker must be on the terms of this RAO.
- 3.8.4 Within ten (10) Business Days of XMT's receipt of a fast-track application, the Access Provider must:
- (a) provide the Access Seeker with two (2) copies of the RAO for further execution by the Access Seeker, or a notice of refusal that sets out the grounds for refusal under **Condition 3.8.2** above (including the basis on which those grounds apply); and
  - (b) provide the Commission with a copy of the response at the same time that it provides the response to the Access Seeker under **Condition 3.8.4(a)** above.
- 3.8.5 The criteria on which Access Seekers will be eligible for the fast-track application and agreement process are in accordance with the following principles:
- (a) the fast-track process may be limited to the supply of Facilities and/or Services to the extent that such supplies do not have a material impact on the Access Provider's current level of network resources; and
  - (b) the Facilities and/or Services which may be the subject of a fast-track application is limited to Transmission Services.

**3.9 Intellectual Property**

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

**3.10 Initial Meeting**

- 3.10.1 Unless otherwise agreed between the Operators, each Operator shall ensure that its representatives meet on the date notified pursuant to **Condition 3.5.3(a)** of this RAO and that such representatives:
- (a) agree on a timetable for the negotiations, including milestones and dates for subsequent meetings within the applicable timeframe for negotiations under **Condition 3.5.3(b)** of this RAO;
  - (b) agree on negotiating procedures, including:
    - (i) calling and chairing meetings;

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- (ii) responsibility for keeping minutes of meetings;
- (iii) clearly defined pathways and timetables for escalation and resolution by each Operator of matters not agreed in meetings;
- (iv) procedures for consulting, and including in the negotiating process, relevant experts from each of the Operators; and
- (v) procedures for preparing and exchanging position papers;
- (c) review the information requested and provided to date and identify information yet to be provided by each Operator; and
- (d) identify what technical investigations, if any, need to be made and by whom such investigations should be made.

**3.11 Additional Matters**

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

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- (i) information about the Access Provider's Network that the Access Seeker reasonably requires in identifying the network elements or network components to which it requires access; and
- (ii) information about the basis of the determination of rates, charges or fees.

**3.12 Non-permitted information**

3.12.1 An Access Provider shall not impose an obligation on an Access Seeker to provide any of the following information to the Access Provider (whether as a condition of the provision of further information or as a condition of assessing the Access Seeker's application, or at any other time):

- (a) the Access Seeker's proposed service launch date (though the Access Provider may request the Access Seeker to specify any ready-for-service dates which the Access Seeker requires from XMT in respect of the requested Facilities and/or Services);
- (b) details of the functionality of the Access Seeker's proposed service, except to the extent that such functionality may affect the Access Provider's Network;
- (c) details of the Access Seeker's Network rollout plans, except to the extent that such rollout plans relate to ready-for-service dates requested by the Access Seeker;
- (d) details of the Access Seeker's current or proposed retail charges;
- (e) details of the Access Seeker's marketing strategy or proposed client base;
- (f) financial information relating to the Access Seeker's business, except to the extent that such information may be required pursuant to the creditworthiness requirement in **Condition 3.2**;
- (g) details of any other supply arrangements or agreements to which the Access Seeker may be a party, except to the extent that such details are directly relevant to technical characteristics of the requested Facility and/or Service; or
- (h) any other commercially sensitive information of the Access Seeker which is not strictly required by the Access Provider to supply a requested Facility and/or Service.

**3.13 Form of negotiation**

Any meeting or negotiation under this **Condition 3** may take place in person, or virtually by conference call, video conference or using other communications technology with participants in one or more geographical places (or in a combined form).

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**4. CONDITION 4 - PROVISION OF INFORMATION**

- 4.1 The obligations of each Party to provide information to the other Party are as set out in this RAO or as otherwise agreed between the Parties and are subject to the requirements of confidentiality imposed by this RAO.
- 4.2 A Party must provide the other Party on a timely basis with all agreed information reasonably required to determine charges to be billed by each Party to the other Party or by each Party to its Customers.
- Such information, pursuant to **Condition 4.1** shall include information necessary:
- (a) for the provision of the Facilities and/or Services;
  - (b) to plan and implement operational practices and procedures; and
  - (c) to design and build its network in such a way as will ensure that the Parties' networks are properly interconnected.
- 4.3 To the extent permitted by Malaysian law and any relevant guidelines or customer service standards in force, pursuant to the Party's respective Licence conditions, the Parties shall exchange information and otherwise cooperate in relation to the prevention and investigation of fraudulent use or misuse of the Parties' respective Communications Services and the theft of the Party's provided terminal equipment.
- 4.4 Information provided under this RAO may only be used for the purpose for which it was given. Personal information about a Customer's credit worthiness, credit standing, credit history or credit capacity may only be used for the purposes permitted by, and in compliance with, Malaysian law.
- 4.5 If any of the information is used by a Party for any purpose other than the purpose for which it was given, the providing Party may deny the recipient Party further access to the information for the period during which the non-observance or non-conforming use continues on notice specifying the non-observance or non-conforming use. The Parties shall cooperate to resolve the providing Party's reasonable concerns so that information exchange can be resumed as soon as possible.
- 4.6 The Parties acknowledge that when information (including, for the purposes of this **Condition 4.6** any updated information) required to be provided under this **Condition 4.6** is held on a database, the Party entitled to receive the information will not be entitled to obtain direct access to the database. The precise method by which such information is to be made available will be determined by the Party having regard to the reasonable cost, convenience, and security concerns of the Parties.
- 4.7 Subject to the Act and any subordinate legislation, nothing in this RAO may be construed as requiring a Party at any time to disclose to the other Party information which is at the date when this RAO comes into force, the subject of a confidentiality obligation owed to a third person unless the third person consents to such disclosure. Where the consent of a third person is required, the Party holding the information must use its reasonable endeavors to obtain the consent of that third person.
- 4.8 After this RAO comes into force a Party must use its best endeavors not to enter into any contract which would prevent it from making information available to the other Party unless

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the contract includes a term which permits the contracting Party to make the information available if directed to do so by the Commission.

- 4.9 The Parties further agree that the information provided for the purpose of this RAO shall be subject to **Condition 8**.
- 4.10 Information required to be provided under this RAO need not be provided if the recipient Party has not established security measures agreed by the other Party to be adequate to protect the confidentiality of the information. If the recipient Party does not observe such security measures or any of the information is used by it for any purpose other than the purpose for which it was given, the providing Party may deny the recipient Party further access to the information for the period during which the non-observance or non-conforming use continues on notice specifying the non-observance or non-conforming use. The Parties will cooperate to resolve the providing Party's reasonable concerns so that information exchange can be resumed as soon as possible.

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**5            CONDITION 5 - BILLING AND SETTLEMENT**

**5.1           Billing**

5.1.1           Unless otherwise agreed in writing, the Access Provider shall invoice through electronic format within one (1) month from the end of the Billing Period for amounts due in respect of the supply of Facilities and/or Services during the Billing Period. The Access Provider shall provide with each Invoice, such information as may be reasonably necessary for the Access Seeker to verify the rates and charges specified in the Invoice.

5.1.2           Where Access Provider is unable to issue an Invoice within one (1) month after the end of the Billing Period in accordance with **Condition 5.1.1**, it may issue an Invoice to an Access Seeker for a provisional amount, based on the last Invoice ("**Provisional Invoice**"). In such circumstances, XMT may invoice the Access Seeker for a provisional amount for a period of not more than three (3) successive Billing Periods, provided that the total provisional amount is no more than the average of the three (3) most recent Invoices. Where there have not been three (3) past Invoices for access to the relevant Facilities and/or Services, XMT may issue a Provisional Invoice up to the full value of the amount based on the most recent Invoice.

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

5.1.4           The billing cycles for the purposes of invoicing shall be in monthly Billing Periods, unless otherwise agreed between the Parties or provided otherwise in this RAO.

5.1.5           Where appropriate, any taxes (including goods and services tax), duties or other imposts as required by law (as at the date of this RAO or imposed after the date of this RAO) shall be added to all or any Charges under this RAO and be paid by the Party responsible for making such payment within sixty (30) Business Days from the date of such imposition.

5.1.6           A Party must provide to the other Party with which it interconnects, information within its possession that is reasonably necessary to allow the other Party to provide accurate and timely billing services to itself, other operators and customers.

**5.2           Terms of Payment**

5.2.1           The Access Seeker must pay any amount due and owing to the Access Provider within one (1) month unless otherwise agreed in writing by both Parties.

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- 5.2.2 The Access Seeker to whom any Facilities and/or Service is provided under this RAO must pay the Access Provider the applicable rates and charges, and on the terms and conditions set out or referred to, as the case may be, in this RAO.
- 5.2.3 All payments are payable within one (1) month from the date of receipt of the invoice for the relevant charges for the Facilities and/or Services.
- 5.2.4 All payments:
- (a) must be paid by electronic transfer to the Access Provider or by cheque to the nominated account(s) of the Access Provider;
  - (b) must be accompanied by such information which is reasonably required by the Access Provider to properly allocate payments received, failing which the Access Provider shall have the absolute discretion to allocate payments received to any amounts due and payable;
  - (c) unless otherwise agreed by the Parties, shall not be subject to any set-offs except where the Access Seeker is in liquidation or at least three (3) Invoices have been issued and such Invoices have not been paid; and
  - (d) the Access Seeker shall be responsible to bear all bank charges upon settlement of amount due including outstation cheque commission or telegraphic transfer charges or any other charges imposed by the bank.
- 5.2.5 All Invoices shall be stated in Ringgit Malaysia and payment must be made in Ringgit Malaysia.
- 5.2.6 It is hereby expressly agreed that the Access Provider is entitled to the payment of interest on overdue undisputed sum without prejudice to any other rights of the Access Provider. The interest that may be charged by the Access Provider on due and unpaid amounts shall be at the rate of two percent (2%) per annum above Malayan Banking Berhad's base rate calculated on daily basis from the Due Date until the date of actual payment. Payments which are overdue by more than two (2) months will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad's base rate calculated from the Due Date until the date of receipt by the Access Provider of full payment. For avoidance of doubt, an Access Provider shall not charge interest on an amount which is disputed by an Access Seeker in good faith.
- 5.2.7 Where interest in respect of any due and unpaid amount is due to the Access Provider under **Condition 5.2.6**, the Access Provider may add the amount of such interest to its next invoice.
- 5.2.8 If either Party discovers an error in an invoice given to the Access Seeker under this **Condition 5**, it must notify the other Party. The Access Provider which made the error must make the necessary adjustment to correct that error within one (1) month of notification.
- 5.2.9 The Access Provider may include omitted or miscalculated Charges from an earlier Invoice in a later Invoice or issue an Invoice for Charges which have not been invoiced provided that the Access Provider is able to substantiate the Charges to the Access Seeker and the inclusion or amendment is made within three (3) months from the end of the Billing Period for the Facilities and/or Services provided. For the avoidance of doubt, in the event



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the Access Provider fails, neglects, or omits to submit an omitted or miscalculated Charges in a later invoice, or fails, neglects or omits to submit an invoice for any Charges within the time period specified in this **Condition 5**, then the Party shall be deemed to have waived and/or forfeited its right to make any further claims on the said omitted Charges.

5.2.10 Notwithstanding anything to the contrary, the Access Provider shall be entitled to deduct or withhold such taxes, duties, levies or such other sums imposed by such governmental authorities ("**said taxes**") from any sum or sums due to the Access Seeker in the event the Access Provider is required by law to pay the said taxes for and on behalf of the Access Seeker.

5.2.11 In the event of overpayment of any Charges by the Access Seeker to the Access Provider, the Access Seeker shall be permitted to deduct from the subsequent payment due to the Access Provider or be entitled to a refund within sixty (60) days from written demand.

**5.3 Security Deposit**

5.3.1 The Access Provider shall not impose any security requirements on the Access Seeker unless the Access Provider determines, acting reasonably, that the Access Seeker presents a credit risk and that imposing the security requirement will materially reduce or remove that risk.

5.3.2 If the Access Provider determines that a Security Deposit is required in accordance with this RAO, the Access Seeker shall have deposited the Security Deposit (based on terms and conditions reasonable acceptable to the Access Provider) as security for the performance of the Access Seeker's payment obligations under this RAO. The amount of the initial Security Deposit shall be based on the Minimum Value. For the purpose of clarification, the Security Deposit does not relieve the Access Seeker from its obligations to pay amounts to the Access Provider as they become due and payable, nor does it constitute a waiver of the Access Provider's right to suspend, disconnect, or terminate the relevant Facilities or Services due to non-payment of any sums due or payable to the Access Provider.

5.3.3 The Access Provider shall be entitled, from time to time, to revise the Security Deposit in any of the following events:

- (a) where, the amount of the Security Deposit is less than the Minimum Value;
- (b) where, in the opinion of the Access Provider, there is a material increase in the credit risk to the Access Provider due to changes in either or both of the circumstances under **Conditions 3.3.2(a)** and **3.3.2(b)** and the Access Provider determines, acting reasonably, that the variation will materially reduce or remove the increased credit risk. For clarification, material increase in credit risk includes failure to pay on the Due Date in respect of three (3) Invoices rendered in the preceding six (6) months, so long as those amounts have not been disputed in good faith. Revisions made by the Access Provider to the Minimum Value shall be notified in writing to the Access Seeker and, where revisions are based on this **Condition 5.3.3(b)** only, shall set out the method of calculation and basis of determination of the Minimum Value. The Access Seeker shall be entitled to seek and obtain clarifications to the notifications of revision to the Minimum Value; and/or

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- (c) upon the provisioning of new or additional Facilities and/or Services to the Access Seeker, to ensure that the Security Deposit is equivalent to the Minimum Value after taking into consideration the estimated value of new or additional Facilities or Services provided or to be provided over three (3) Billing Periods,

provided that any revision of the Security Deposit shall only be carried out (i) a maximum of once in any twelve (12) month period. For the avoidance of doubt, if amounts contained in the Invoices are disputed in good faith, this will not constitute a material increase in the credit risk to the Access Provider for the purposes of this **Condition 5.3**.

- 5.3.4 Where the amount of the Security Deposit is, at any time, less than the Minimum Value (including when a demand has been made by the Access Provider) determined in accordance with **Condition 5.3.3**, the Access Seeker shall within twenty-one (21) Business Days from the written request of the Access Provider, deposit a new security equivalent to the revised Minimum Value.

- 5.3.5 The Security Deposit deposited by the Access Seeker with the Access Provider shall only be used for the purposes set out in **Condition 5.3.2**. The Access Provider may at its discretion call upon the Security Deposit at any time after the Due Date (if payment has not been made by the Access Seeker) or upon a breach of the Access Seeker's payment obligations (other than that due to disputes in good faith) or in the event of any fines or penalties by authorities imposed on the Access Provider due to the default, breach or negligence of the Access Seeker, subject to the limitation on liability stipulated in **Condition 9** (except for non-payment).

- 5.3.6 Upon termination of the RAO the Access Provider shall immediately in writing unconditionally waive its rights under any guarantee provided as Security Deposit in respect of future performance (from the date of termination) of this RAO by the Access Seeker if any, since this RAO has been terminated. However, the guarantee shall remain in full force in respect of any antecedent breaches under this RAO, without prejudice to the rights and remedies of the Access Provider under this RAO (including the right to claim for any or all amounts due and payable under the RAO and/or to call upon the Security Deposit) and/or under law.

**5.4 Billing Disputes**

- 5.4.1 Where there is a Billing Dispute, the Parties shall comply with the dispute resolution procedures in **Condition 12**.

- 5.4.2 For the avoidance of doubt, the Access Seeker shall not use the dispute resolution procedure in **Condition 12** to avoid or delay payment due to the Access Provider where there is no genuine dispute.

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**6            CONDITION 6 - AUDITS**

- 6.1            Where the Operators agree to a joint investigation pursuant to **Condition 12.6.11**, either Operator may at any time after the Effective Date request an audit of the other Operator's data, and the other Operator will facilitate and provide access upon reasonable notice for such audit to be carried out by an independent auditor agreed upon by the relevant Parties and an audit certificate provided. The cost of such an audit will be agreed and equally shared by the Operators. Audits cannot be conducted more frequently than at six (6) month intervals unless the requesting Operator pays the entire cost of the audit.
- 6.2            If the other Party is not satisfied with the result of the audit conducted under **Condition 6.1** ("**First Audit**"), then the other Party may appoint its own auditor, at its own cost, to conduct an audit to verify the data ("**Second Audit**"). If either Party is dissatisfied with the results of either Audit or there is a discrepancy between the results of the First Audit or Second Audit or the interconnect usage report, then this matter may be resolved by jointly appointing a third auditor in the manner set out in **Condition 6.3**. The cost of the third audit shall be borne by the Parties equally and the results of the third audit shall be final and binding. Hence, the dispute resolution procedures set out in **Condition 12** shall not apply to this **Condition 6**.
- 6.3            The independent auditor shall be appointed by both Parties within thirty (30) days from the date of the request of the audit ("**appointment date**"). Failing an agreement on the independent auditor abovementioned, another auditor will be appointed by an independent third party (the Director of the Asian International Arbitration Centre in Kuala Lumpur) within thirty (30) days from the appointment date. The results of the audit shall be final and binding.

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**7            CONDITION 7 - INTELLECTUAL PROPERTY RIGHTS**

- 7.1            An Operator shall only use such Intellectual Property and information provided by another Operator for the purposes of providing or acquiring access to requested Facilities and/or Services. An Operator must not use such Intellectual Property or information for the development or marketing of other communication services or Equipment by that Operator, its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest, or third parties.
- 7.2            All rights, title and interest in and to any:
- (a)          Intellectual Property (in relation to matters which are the subject of this RAO) developed or to be developed vests in the Operator who developed that Intellectual Property or for whom that Intellectual Property was developed by a third person; and
  - (b)          Improvements to or adaptations, versions or modifications of Intellectual Property (in relation to matters which are the subject of this RAO) vest in the Operator who developed that Intellectual Property or on behalf of whom that Intellectual Property was developed.
- 7.3            The Operators will negotiate arrangements (including in respect of title) concerning Intellectual Property jointly developed in the course of performing or otherwise in connection with this RAO.
- 7.4            Each Operator shall license to the other Operator on a royalty-free basis, all Intellectual Property rights necessary for the on-going operation of this RAO and the interoperability of the Operators' Networks but shall be subject to any relevant third party licences. The Operators agree that such Intellectual Property rights accorded to them shall only be used for purposes of this RAO unless otherwise agreed in writing.
- 7.5            Without prejudice to any other rights and remedies of the Parties under this RAO, each Operator ("**Indemnifying Operator**") shall at its own expense indemnify and hold harmless the other Operator ("**Innocent Operator**") against all liability or loss arising directly from, and all reasonable costs, charges and expenses incurred in connection with any claim, action, suit or demand alleging infringement by the Innocent Operator of the rights of a third party arising from use by the Innocent Operator of Intellectual Property disclosed or licensed by the Indemnifying Operator under this RAO provided that:
- (a)          the Innocent Operator notifies the Indemnifying Operator without undue delay of any claim which would fall within the scope of this **Condition 7.5**, and provide the Indemnifying Operator with all information which it may have in relation to such claim; and
  - (b)          the Innocent Operator turns over to the Indemnifying Operator sole and exclusive control of defending or settling the claim, subject to the Innocent Operator having the right to be represented by counsel of its choice at its own expense and to participate in, and be kept informed of the status of such claim. If the Indemnifying Operator should fail to defend or settle the claim, the Innocent Operator shall have the right to do so without prejudice to any claim the Innocent Operator may have against the Indemnifying Operator for indemnity pursuant to this Clause; and

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- (c) the Innocent Operator fully cooperates with the Indemnifying Operator on the claim, including its defense and settlement.

7.6 This indemnification will represent the only remedy and form of compensation available to the Innocent Operator in relation to the infringement of Intellectual Property licensed or disclosed by the Indemnifying Operator under this RAO.

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**8            CONDITION 8 - CONFIDENTIALITY OBLIGATION**

8.1           All Information relating to or arising from this RAO and all matters contemplated herein shall be treated as Confidential Information by the receiving Party.

**“Confidential Information”** of a Party means all information, contract terms, know-how, ideas, concepts, technology and/or technical information, manufacturing processes, industrial, business, operations, financial conditions, customers’ information, pricing, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) and all information of any kind relating to either Party, their respective shareholders and/or related or associated companies or corporation which are disclosed, submitted or howsoever made available, either directly or indirectly by or on behalf of one Party to the other or to their personnel relating to or developed in connection with or in support of the business of the Party, whether before or after the date of this RAO.

8.2           Disclosure of Confidential Information to the Party’s advisers, consultants, employees, subsidiaries, holding or related companies, is permitted only if necessary and on a need-to-know basis for the purpose of performing the Party’s obligations under this RAO and provided that the undertaking of confidentiality shall extend to such parties.

8.3           The receiving Party hereby undertakes to protect the Confidential Information of the disclosing Party using, not less than the standard of care with which it treats its own Confidential Information, but in no event less than reasonable care, to prevent unauthorized use or disclosure of such information.

8.4           Except as otherwise provided in this RAO, a Party (**“receiving Party”**) may disclose the Confidential Information of the other Party (**“disclosing Party”**) which information:

- (a)    is or becomes part of the public domain (other than through any breach of this RAO); or
- (b)    is received by the receiving Party from a third person without a duty of confidentiality being owed by the receiving Party to the third person, except where the receiving Party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the disclosing Party; or
- (c)    has been independently developed by another Party; or
- (d)    is required by law or by order of a court of competent jurisdiction or by any rule, direction or regulation of any regulatory or governmental authority or any other relevant authority, including a recognized stock exchange, to be disclosed, provided always that, to the extent permitted by law, prior to any such disclosure being made, the receiving Party shall notify the disclosing Party in writing and consult with the disclosing Party as to the proposed form, nature and purpose of the disclosure where possible; or
- (e)    is required to be made on a need to know basis to any investor or potential investor, financier or potential financier in connection with the following provided always that the receiving Party is required to notify the disclosing Party in writing prior to any disclosure:
  - (i)    an investment or potential investment; or

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- (ii) funding or potential funding for the Party or a corporation that is deemed related to such Party within the meaning of section 7 of the Companies Act, 2016 and such investor or potential investor or financier or potential financier, as the case may be, is bound by confidentiality obligations.

- 8.5 All Confidential Information (including copies of such Confidential Information) disclosed by or on behalf of the disclosing Party shall remain the property of the disclosing Party and shall be returned (or, at the disclosing Party's option certified destroyed) upon written request or upon the receiving Party's need for it having expired, and in any event, upon completion or termination of this RAO. The Parties agree that they shall within ten (10) days of written notice, return or destroy all documents and tangible items in their possession which contain any Confidential Information and provide a certificate of destruction if such Confidential Information is destroyed. Even though the Confidential Information is returned or destroyed, each Party shall continue to be bound by its obligations under this RAO. No right or licences to trademarks, inventions, copyrights, patents or trade secrets or other intellectual property rights are implied or granted under this RAO. Neither Party shall use for its own benefit or the benefit of any third party any information disclosed from access to or work with the Party's Confidential Information.
- 8.6 Each Party shall keep all Confidential Information of the other Party which:
- (a) is disclosed, communicated or delivered to it by a Party under this RAO; or
  - (b) comes to its knowledge or into its possession in connection with this RAO in accordance with the Confidentiality Agreement.
- 8.7 The Parties acknowledge that a breach of this confidential obligation by one Party may cause the other Party irreparable damage for which monetary damage would not be an adequate remedy. Accordingly, in addition to other remedies that may be available (including recovery of monetary damages), a Party may seek injunctive relief against such a breach or threatened breach.
- 8.8 The Parties' obligations of confidentiality herein shall survive the expiration or termination of this RAO.

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**9            CONDITION 9 - LIABILITY AND INDEMNITY**

**9.1           General Principle**

9.1.1        Save to the extent that another provision of this RAO expressly provides for (or expressly excludes or limits) a remedy, a liability or a form of compensation in relation to an act, omission or event, this **Condition 9.1** shall regulate the liability (whether arising in contract, in tort, under statute or in any other way and whether due to negligence, willful or deliberate breach or any other cause) of a Party to the other Party under and in relation to this RAO and in relation to any act, omission or event relating to or arising out of this RAO.

**9.2           Insurance**

9.2.1        The Access Provider shall ensure that any insurance that it requires the 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 this RAO;
- (b)    comprehensive general liability insurance in excess of Ringgit Malaysia Twenty Million (RM20,000,000) for any one claim or series of claims arising out of an accident or occurrence in connection with this RAO; and
- (c)    the Access Seeker to specifically list the Access Provider's name as the beneficiary.

**9.3           Damage to Property**

9.3.1        Either Party ("**defaulting Party**") shall indemnify and hold the other Party safe and harmless from and against all costs, expenses and claims relating to damage to or destruction or loss of all or any property beneficially and/or absolutely owned by the other Party arising out of any act or omission of the defaulting Party, its servants or agent in so far as such damage, destruction or loss arises out of or in the course of or by reason of the carrying out of any works for or in relation to the Facilities and/or Services or providing the Communications Services.

**9.4           Death and Personal Injury**

9.4.1        Subject to **Condition 9.6**, the defaulting Party shall be absolutely liable for, and hereby indemnifies the other Party from and against all costs, expenses and claims in respect of all injuries to, including the death of any and all employees of the other Party arising out of any act or omission of the defaulting Party, its servants or agent.

**9.5           Third Person Indemnity**

9.5.1        The defaulting Party shall indemnify and hold the other Party safe and harmless from and against all costs, expenses and claims in respect of: -

- (a)    all injuries to, including death of; and/or
- (b)    loss of or damage to property of,



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third parties arising out of or in connection with or in the course of or by reason of the defaulting Party's breach or when due to any acts, omission or default of the defaulting Party, its servants and/or agents in the carrying out of any works for or in relation to the Facilities and/or Services.

**9.6 Liability**

9.6.1 Neither Party excludes liability for death or personal injury attributable to its own negligence or the negligence of its servants and agents.

9.6.2 Subject to **Conditions 7.5** and **9.5**, no Party shall be liable to the other Party or any other third party including the Customers of the Party and shall not indemnify the other Party for any claims, proceedings or actions brought or made by a third party against the other Party, howsoever arising, including:

- (a) the lack of or loss of interruption or any delays to access, interconnection transmission or otherwise; and
- (b) any claims, proceedings or actions brought or made against the other Party by any person pursuant to a contractual relationship with the other Party.

9.6.3 Notwithstanding **Conditions 9.3.1** and **9.5.1**, a Party shall not be liable for damage to property due to hacking and the transmission of malicious codes and/or programs by third parties (other than its employees, agents, servants, contractors and/or other persons under its control) provided that presently available security solutions and anti-virus solutions have been put in place by the Party.

9.6.4 Subject to **Condition 9.6.1**, in no event will either XMT or the Access Seeker's liability under this RAO exceed RM 20,000,000.00 only per event for any accident or occurrence, in connection with this RAO. The limitation of liability set out in this **Condition 9.6.4** shall not apply to obligations and/or liabilities relating to death, personal injury, damage to property, intentional default, amount due and payable under an Invoice, breach of confidentiality, fraud and to the indemnification obligations set out in **Condition 7.5** of this RAO relating to breach of Intellectual Property rights.

**9.7 Exclusion of Warranties**

9.7.1 Except as expressly set out in this RAO, all representations, conditions and warranties (whether express or implied, statutory or otherwise) including any implied warranty of merchantability, implied warranty of fitness for a particular purpose, implied warranty of non-infringement and implied warranty arising out of the course of dealing, custom or usage of trade with respect to any service provided by either Party are expressly negated and excluded. The warranties set forth in this RAO are the only warranties made by each Party and will not be enlarged or diminished without that Party's approval.

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- 9.7.2 In no event shall either Party be liable to the other Party or any other person for special, exemplary, indirect loss of profits, loss of business, loss of use of data or special, exemplary, indirect, incidental, consequential or punitive damages of any kind for any reason, including the breach of this RAO or any termination of this RAO, whether such liability is asserted on the basis of contract, equity, tort (including negligence and strict liability) or otherwise, even if either Party has been advised of the possibility of such damages. The essential purpose of this provision is to limit the potential liability of each Party arising out of this RAO.

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**10            CONDITION 10 - TERMINATION AND SUSPENSION**

**10.1          Terms of XMT RAO**

10.1.1        This RAO shall only take effect on the Effective Date and shall remain in force until the termination of this RAO.

10.1.2        A Party shall, unless otherwise required by the Access Seeker, enter into the Access Agreement with a term of no less than three (3) years from the date of execution of the Access Agreement.

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

Facilities and/or Services	Minimum Term
Transmission Services	Twelve (12) months or twenty-four (24) months (at the Access Provider's discretion)
Facilities access - Infrastructure Sharing	Three (3) years

Upon expiry of the relevant minimum term, the Access Seeker can terminate the Access Agreement at any time without penalty for early termination, provided that the Access Seeker provides three (3) months' notice to the Access Provider.

**10.2          Termination circumstances and notice**

- (a)    The Access Provider or Access Seeker, as the case may be, ("**Notifying Party**") may terminate this RAO or part thereof if:
- (i)    the other Party ("**Defaulting Party**") fails to remedy a breach of a material obligation under this RAO (including events specified in **Conditions 10.2(a)(i) to (ix)**) within thirty (30) days of receiving a notice of breach from the Notifying Party;
  - (ii)   a winding up order has been made against the Defaulting Party (whether compulsorily or voluntarily) and the order remains or will remain in effect for a continuous period of thirty (30) days;
  - (iii)   an order is made or an effective resolution is passed, for the reconstruction and amalgamation of the Defaulting Party or otherwise under Section 366 to 368 of the Companies Act 2016 or any other similar action or proceeding under any other law and the order or resolution remains or will remain in effect for a continuous period of sixty (60) days;
  - (iv)   the Defaulting Party ceases to trade in the normal course of business or becomes insolvent or any analogous insolvency event related to the Defaulting Party has occurred in any jurisdiction;

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- (v) a receiving order is made against the Defaulting Party or a receiver, receiver and manager, official manager, provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the Defaulting Party;
  - (vi) the Defaulting Party has entered into any agreement or composition with or assignment for the benefit of its creditors;
  - (vii) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the Defaulting Party;
  - (viii) the Defaulting Party's assets are subject of any form of distress or execution;
  - (ix) the Defaulting Party fails to remedy breaches (which are capable of remedy) of any laws, regulations, rules or standards which has a material adverse effect on the Notifying Party or this RAO or the provision of Facilities and/or Services, within one (1) month of receiving a notice of breach from the Notifying Party; or
  - (x) an event of Force Majeure has occurred, in accordance with **Condition 13.1**.
- (b) Upon the occurrence of the events set out in **Condition 10.2** above or where a breach is incapable of remedy, and subject to the provision of **Condition 10.4** below, the Notifying Party may terminate this RAO by issuing a termination notice to the Defaulting Party and this RAO shall terminate in accordance with the terms of the termination notice and any direction(s) by the Commission.

**10.3**      Suspension circumstances and notice

- (a) The Notifying Party may, without liability, suspend, to the extent necessary, access to its Facilities and/or Services where:
- (i) the Defaulting Party fails to remedy a breach (which is capable of remedy) of a material obligation under this RAO (including the failure to pay Invoices in accordance with this RAO) within thirty (30) days of receiving a notice of breach from the Notifying Party;
  - (ii) the Defaulting Party fails to remedy breaches (which are capable of remedy) of any laws, regulations, rules or standards, which has a material adverse effect on the Notifying Party or this RAO or the provision of Facilities and/or Services, within thirty (30) days of receiving a notice of breach from the Notifying Party;
  - (iii) the Defaulting Party fails to remedy any fault or condition (which is capable of remedy), that causes the Defaulting Party's network facilities to materially and adversely affect the normal operation of the Notifying Party's Network, or are a material threat to any person's safety;
  - (iv) the Defaulting Party fails to remedy any condition (which is capable of remedy), that causes the Defaulting Party's network facilities or supply of a network service posing an imminent threat to life or property of the Notifying Party, its employees or contractors;

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- (v) the Defaulting Party fails to remedy any fault or condition (which is capable of remedy) in the Defaulting Party's network facilities that cause material, physical or technical harm to any network facilities of the Notifying Party or any other person; or
  - (vi) subject to **Condition 13.1**, where Force Majeure applies;
  - (vii) the Defaulting Party fails to settle any Invoices due to the Notifying Party in accordance with **Condition 5**; or
  - (viii) where the Access Seeker has failed to provide or renew the Security Deposit as required under **Conditions 3.3 and 5.3**.
- (b) Upon the occurrence of the events set out in **Condition 10.3(a)** above or where a breach is incapable of remedy and subject to the provisions of **Condition 10.4** below, the Notifying Party may suspend access to its Facilities and/or Services by issuing a seven (7) Business Days' suspension notice and the suspension of access to the Notifying Party's Facilities and/or Services shall take effect in accordance with the terms of the suspension notice.
- (c) During the period of suspension, the Notifying Party shall be entitled to charge the Defaulting Party for all fixed periodic Charges in respect of the Facilities and/or Services provided that where a suspension is due to Force Majeure, the fixed periodic Charges for Facilities and/or Services affected by the Force Majeure only will not be charged. The Defaulting Party shall be solely responsible for any loss, costs, damages or expenses which the Defaulting Party may incur or suffer during the period of suspension.

**10.4**      Notices to the Commission

- (a) Where the Notifying Party seeks to terminate the RAO (or part thereof) or suspend, to the extent necessary, access to Facilities and/or Services on any grounds including those specified in:
- (i) **Conditions 10.2(a)(i) to (x)** with respect to termination; and/or
  - (ii) **Conditions 10.3(a)(i) to (viii)** with respect to suspension,
- (b) the Notifying Party shall first notify the Commission in writing ("**Notice to the Commission**") of the action that the Notifying Party proposes to take and the reasons why it considers such action is appropriate (such notice to be copied immediately to the other Parties).
- (c) If the Commission notifies the Notifying Party that the Notifying Party is permitted to:-
- (i) terminate this RAO (or part thereof); and
  - (ii) suspend access to the Facilities and/or Services,
- the Notifying Party may, issue a termination or suspension notice to the Defaulting Party and this RAO shall terminate or access to the Facilities and/or Services shall suspend (as the case may be) in accordance with the terms of the notice.

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- (d) The Commission will endeavour to respond to the Notifying Party's notice within ten (10) Business Days or such other period that the Commission considers is reasonable.
- (e) The Notifying Party must not give effect to the proposed termination, suspension or material variation unless the Notifying Party has received written consent from the Commission to such termination, suspension or material variation.
- (f) The Operators shall take all steps practicable to minimise disruptions and inconvenience to the Customers as a result of termination and/or suspension of the Facilities and/or Services.

10.5 Subject to **Condition 10.4**, the issuance of a suspension notice shall not in any way prejudice or prevent the Notifying Party from exercising its right to issue a termination notice under **Condition 10.2**.

10.6 In the event the Notifying Party suspends access to Facilities and/or Services by reason of the Defaulting Party's failures set out in **Condition 10.3**, the Notifying Party must reinstate access to Facilities and/or Services upon the Defaulting Party remedying its failure or at the direction of the Commission.

10.7 Notwithstanding **Condition 10.4**, in the event that:

- (a) a Party's Licence(s) is terminated, cancelled or suspended and the Party is not immediately granted another Licence(s) of that type (where a Licence of that type or another Licence is required); or
- (b) there are any changes in law or regulation which renders this RAO or access to any Facilities and/or Services unlawful,

the RAO or part thereof shall terminate in so far as the RAO or part thereof is affected by the termination of a Party's Licence(s) or change in law or regulation. However, other obligations under this RAO which are not affected by such events shall remain in force. The Parties shall meet within five (5) Business Days of the affected Party becoming aware of the events specified in **paragraphs (a) or (b)** above, review the RAO to ascertain whether access to the Facilities and/or Services are lawful and may be provided on different terms which are mutually agreeable by Parties.

10.8 Notwithstanding anything to the contrary, in the event a Party breaches any of its obligations under this RAO, the other Party shall, without prejudice to any of its rights and remedies under this RAO and under law, have the absolute discretion to immediately seek urgent interlocutory action which shall include but not be limited to:

- (a) preventing such further breaches from occurring;
- (b) preventing the continuation of the said breach; and/or
- (c) requiring the Party in breach to comply with their obligations under this RAO,

without the necessity of first exercising any of its rights herein. For the avoidance of doubt, **Conditions 10.2, 10.3, 10.4 and 12** shall not preclude the other Party from immediately seeking urgent interlocutory action under this Condition.

10.9 If, after the termination or expiry of this RAO in whole or in part:

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- (a) a Party ("**requesting Party**") gives the other Party written notice requesting the other Party to carry out necessary disconnection works and to return any equipment or facilities of the requesting Party or a third person installed by or for the requesting Party; and
- (b) the other Party has failed to comply with the request, the requesting Party may enter the premises of the other Party on reasonable notice for the purposes of carrying out any necessary disconnection works and repossessing any such equipment and facilities. The other Party on whose premises such equipment or facilities were installed is responsible for compensating the requesting Party for any such equipment or facility which is not delivered up in good condition (fair wear and tear excepted) and for making good all the damage to the requesting Party's premises, if the equipment or facilities of the other Party are in the requesting Party's premises or under the requesting Party's care. The other Party shall indemnify the requesting Party in respect of any damage thereby caused to the premises, equipment and facilities of or under the care of the requesting Party.

**10.10** Upon termination of this RAO or part thereof:

- (a) subject to **Condition 10.10 (b)** below, the Access Provider shall within sixty (60) days:
  - (i) refund to the Access Seeker all amounts paid in advance in respect of Facilities and/or Services; and
  - (ii) unconditionally waive any rights under any guarantees provided by the Access Seekerto the extent that the amount (or part of the amount calculated on a pro-rata basis) relate to the period after the effective date of termination; and
- (b) the Access Seeker shall immediately pay all amounts due to the Access Provider for the provision of Facilities and/or Services prior to and up to the effective date of termination (save for disputed amounts which the Access Seeker is entitled to withhold under **Condition 12.6.5**).

For the avoidance of doubt, the Access Provider shall be entitled to claim for all Charges arising during an applicable minimum contractual period provided under this RAO notwithstanding that the provision of Facilities and/or Services was terminated prior to the expiry of the applicable minimum period save that:

- (1) where the provision of Services is terminated due to Force Majeure, the minimum charge for Services affected by the Force Majeure shall not be applicable during the period of Force Majeure;
- (2) such Charges must be reduced to reflect any cost savings to the Access Provider from not having to supply the Facilities and/or Services to the extent that they have been terminated or suspended; and
- (3) the Access Provider must use reasonable endeavours to mitigate its costs of termination or suspension and maximise cost savings under paragraph (2) above.

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- 10.11 Without prejudice to the Access Provider's rights and remedies under this RAO and/or law, upon termination of this RAO or suspension of access to Facilities and/or Services, the Access Provider shall not be entitled to penalise the Access Seeker with a penalty with respect to the provision of Facilities and/or Services. Nothing in this **Condition 10.11** shall prejudice, limit or negate the rights and remedies of the Access Provider under this RAO or law to seek redress or claim damages, cost and expenses for breach of this RAO by the Access Seeker, to enforce its right of indemnities, to claim interest and generally to enforce its rights and remedies.
- 10.12 Termination or expiry of this RAO, in whole or in part, does not operate as a waiver of any breach by a Party of any of its provisions and is without prejudice to any rights, liabilities or obligations of any Party which have accrued up to the date of the termination or expiry, including a right of indemnity.



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**11            CONDITION 11 - REVIEW**

11.1          Subject to **Condition 11.2** if: -

- (a)    the Minister issues a Direction or Determination relating to the subject matter of this RAO;
- (b)    the Commission issues a Direction or Determination relating to the subject matter of this RAO;
- (c)    there are any amendment, changes or modifications to the Act, its subsidiary legislation and the instruments issued thereunder, including the Access Pricing Determination, the MSA Determination and the Access List Determination, which relates to the subject matter of this RAO;
- (d)    enactment of new laws, regulations, guidelines, policies and directions, or changes to existing laws, regulations, guidelines, policies and directions which relates to the subject matter of this RAO;
- (e)    the registration, Determination, promulgation, issue, amendment or replacement of any industry code with which a Party is required or obliged to comply;
- (f)    if a condition of a Party's Licence is amended or deleted or a new condition is imposed which relates to this RAO; or
- (g)    by agreement of the Parties,

the Parties agree to review the RAO as soon as practicable in good faith. Where the changes referred to in **paragraphs (a) to (g)** above affect this RAO, the Parties shall negotiate, as soon as practicable and in good faith, such amendments to this RAO as are necessary or appropriate to ensure compliance with such changes.

11.2          If the Commission removes, varies or replaces Facilities and/or Services in the access list under section 146 or 147 of the Act, and the Access Provider wishes to terminate or change the terms of the supply of that Facility and/or Service, the Access Provider may only do so in a manner that is consistent with the supply of that Facility and/or Service to itself, and must provide notice of its intention to terminate or vary, to the Access Seeker.

11.3          The notice period given pursuant to **Condition 11.2** above shall be no shorter than:

- (i)    the period of time between the time of giving notice and the time at which the Access Provider is proposing to no longer provide the network facility or network service to itself; or
- (ii)   twelve (12) months,

whichever is earlier.

11.3          The notice given pursuant to **Condition 11.2** must state when the variation or replacement will come into effect, how the variation or replacement is likely to affect the Access Seeker; and any alternative network facility or network service that may be available to be provided by the Access Provider to the Access Seeker and the terms and conditions of such alternative arrangement.

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**12            CONDITION 12 - DISPUTE RESOLUTION PROCESS**

**12.1           Introduction**

12.1.1        Subject to **Condition 12.2.3**, the Parties shall adopt and comply with this dispute resolution procedure in relation to any dispute which may arise between the Parties in relation to or in connection with the supply of any Facilities and/or Services ("**Access Dispute**").

12.1.2        The following dispute resolution mechanisms are governed by this **Condition**:

- (a)    interconnect steering groups; and
- (b)    specific resolution of disputes, being:
  - (i)    technical disputes (which must follow the procedures set out in **Condition 12.5** if they cannot be resolved through the application of the general dispute resolution provisions in **Condition 12.3**);
  - (ii)   Billing Disputes, which must follow the procedures set out in **Condition 12.6**; or
  - (iii) any other types of disputes which, if cannot be resolved through the application of the general dispute resolution provisions in **Conditions 12.2** and **12.3**, may be referred to the Commission for resolution.

12.1.3        An Access Dispute between the Parties regarding any matter dealt with under this Agreement shall first be attempted to be resolved by good faith negotiation between the Parties in accordance with this Agreement. The Parties shall always be entitled to seek resolution of the Access Dispute by the Commission in accordance with section 151 of the Act, and the Commission will decide the Access Dispute if it is satisfied that:

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

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

12.1.5        All Access Disputes referred to the Commission pursuant to this RAO shall be dealt with in accordance with the Act. Where the decision of the Commission is appealed in the Appeals Tribunal under the Act, the decision of the Appeals Tribunal shall be final and binding subject always to the right of judicial review contained in the Act.

**12.2           General**

12.2.1        Until expiry of the dispute resolution procedures set out herein, a Party may not commence court proceedings relating to that Access Dispute, other than an application for purposes set out in **Condition 13.2.3**. Nothing in this **Condition 12.2.1** shall be construed as ousting the jurisdiction of any court.

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- 12.2.2 A Party 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 Party. At the commencement of the dispute resolution procedure, each Party must notify the other Party of the scope of the authority of each of their representatives. If in the course of the dispute resolution procedures it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to a representative, a Party may require that those matters be referred to more senior officers of that Party who have authority to settle those matters.
- 12.2.3 During an Access Dispute and any dispute resolution process invoked in accordance with this **Condition 12**, the Parties must continue to fulfill their obligations under this RAO between themselves.
- 12.2.4 Subject to **Condition 12.2.5**, the Parties shall exchange information of a type described in this RAO during the course of, and to facilitate, resolution of such Access Dispute.
- 12.2.5 Confidential information of a Party which is disclosed, and any other oral or written submissions made by a Party or a Party's representatives during the course of any dispute resolution process shall be subject to the confidentiality restrictions contained in the **Condition 8** and this RAO.
- 12.2.6 A Party must not use information obtained under **Condition 12.2.4** or described in **Condition 12.2.5** for any purpose other than to resolve the dispute.
- 12.2.7 An arbitrator of a dispute (including a Technical Expert or the Commission) may decide not to determine the dispute if the arbitrator considers that the dispute is trivial, frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the dispute.
- 12.2.8 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 **Condition 12.2.7** above. If an arbitrator decides not to determine the dispute, the party that initiated the dispute must pay the other party's costs.
- 12.3 **Interconnect Steering Group**
- 12.3.1 In the first instance, the Access Seeker and the Access Provider should attempt to resolve the dispute between themselves. Either Party may give written notice ("**Notice**") to the other Party ("**Receiving Party**") stating its intention to form, within ten (10) Business Days, an Interconnect Steering Group ("**ISG**") and outline the details of the dispute.
- 12.3.2 The Parties shall form the ISG within ten (10) Business Days, to fulfil the requirements of **Condition 12.3.1** above. Each Party must appoint an equal number of representatives to the ISG (and such other working groups as may be agreed upon) to manage the smooth and timely implementation of the terms and conditions of this Access Agreement and these Dispute Resolution Procedures. The ISG be headed by a person who holds a position that is at least equivalent to the Chief Officer or Executive Vice President of the Access Provider.
- 12.3.3 The Parties shall provide for:
- (a) subject areas dealt with by the ISG;

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- (b) equal representation by the Parties;
  - (c) chairmanship and administrative functions of the ISG which is to be shared equally; and
  - (d) formal notification procedures to the ISG.
- 12.3.4 The Parties shall use reasonable endeavors to attempt to settle an Access Dispute in the working group level for a period of no longer than thirty (30) Business Days from the date of the Notice unless otherwise agreed by the Parties, subject always to a Party's right to obtain relief in court as set out in **Condition 13.2.3**.
- 12.3.5 In the event that the Parties cannot resolve the Access Dispute between themselves within the time specified in **Condition 12.3.4**, or after any agreed time extension has expired, either Party may notify the other Party that it wishes to refer the issue to:
  - (a) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with **Condition 12.5**); or
  - (b) to the Commission for final arbitration.
- 12.3.6 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Party of the Notice under subsection 4.1 of this Annexure. If the ISG fails to meet or has not been formed within ten (10) Business Days of the receipt by the Receiving Party of the Notice, either Party may refer the Dispute:
  - (a) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with section 12.5 below; or
  - (b) to the Commission for final arbitration.
- 12.4 **[Not Used]**
- 12.5 **Use of a Technical Expert**
- 12.5.1 A dispute will only be referred to a Technical Expert if the provisions in **Condition 12.3** have been complied with.
- 12.5.2 Once a dispute is referred to a Technical Expert, it may not be referred back to the ISG.
- 12.5.3 The Technical Expert:
  - (a) shall be an expert appointed by agreement of the Parties or, if the Parties cannot agree, by the Commission;
  - (b) shall have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communication industry;
  - (c) need not be a Malaysian citizen or resident; and
  - (d) shall not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest.

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- 12.5.4 If the Parties fail to appoint a Technical Expert within ten (10) Business Days of the notice to refer a dispute to a Technical Expert, a Technical Expert shall be appointed by the Commission.
- 12.5.5 When relying on the services of a Technical Expert, the following procedures shall apply to the dispute resolution procedure of the Technical Expert:
- (a) the Parties shall present written submission to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
  - (b) each Party may respond to the other Party's submission in writing within fifteen (15) Business Days from the date of the other Party's submission. No further submissions in reply shall be made except with the Technical Expert's approval.
- 12.5.6 A Technical Expert hearing shall be within fifteen (15) Business Days of the last written submission unless:
- (a) a Party requests for and the other Party agrees that the use of the Technical Expert be by documents only; or
  - (b) failing agreement of the Parties, the Technical Expert decides within five (5) Business Days of the last written submission that the use of the Technical Expert be by documents only.
- 12.5.7 Should a Technical Expert dispute resolution procedure be held; each Party shall have the opportunity of making an oral submission in addition to the written submissions submitted in **Conditions 12.5.5 and 12.5.6**. This process shall be conducted in private.
- 12.5.8 The procedure for hearing technical disputes shall 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.
- 12.5.9 The Technical Expert shall not have the power to appoint any other experts.
- 12.5.10 The Technical Expert shall deliver his award within fifteen (15) Business Days of the conclusion of the hearing or of the last written submission where the arbitration is by documents only. A failure to comply with the time frame in this **Condition 12.5.10** does not invalidate the Technical Expert's award.
- 12.5.11 Every dispute referred to a Technical Expert shall be considered separately so that time limits for each dispute are complied with.
- 12.5.12 The Technical Expert's decision shall be final and binding on the Parties (in the absence of manifest error of fact or law).
- 12.5.13 The costs of the Technical Expert are to be shared equally between the Parties, unless the Technical Expert has decided not to determine the Dispute. If the Technical Expert decides not to determine the Dispute, the Party that initiated the Dispute must pay the other Party's costs.
- 12.5.14 A dispute that has been referred to a Technical Expert shall not be referred to the Commission and the Technical Expert shall be the final arbiter of the dispute.
- 12.6 **Billing dispute resolution**

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**Condition 12**

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- 12.6.1 The Access Provider shall allow the Access Seeker to dispute an Invoice prepared by the Access Provider if the Access Seeker notifies the Access Provider in writing within thirty (30) Business Days from the date of such Invoice.
- 12.6.2 If the Access Seeker fails to dispute an Invoice within the specified time period above, the Access Seeker is deemed to have accepted the Invoice.
- 12.6.3 Unless otherwise agreed in writing, 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 or capacity which are the subject of the dispute;
  - (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Party's Billing System;
  - (c) there is, or has been, a fraud perpetrated by the Invoicing Party; or
  - (d) the Invoicing Party has made some other error in respect of the recording of the calls or capacity or calculation of the charges which are the subject of the Billing Dispute.
- 12.6.4 All Billing Dispute Notices given under this **Condition 12.6** must specify:
- (a) the reasons for which the Access Seeker disputes the Invoice;
  - (b) the amount in dispute;
  - (c) details required to identify the relevant Invoice and Charges in dispute including:
    - (i) the account number;
    - (ii) the Invoice reference number;
    - (iii) the Invoice date;
    - (iv) the Invoice amount;
    - (v) billing verification information; and
  - (d) evidence in the form of the Access Seeker's report, indicating the relevant data which is in dispute.
- 12.6.5 The Access Seeker may withhold payment of amounts disputed in good faith and if the Billing Dispute is resolved against the Access Seeker, the Access Seeker shall be required to pay interest at the rate specified in **Condition 5.2.6** of this Agreement on the amount payable from the due date of the disputed invoice until the date of payment. Where the Access Seeker has paid an amount and subsequently notifies the Access Provider of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the Access Provider is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. Once the Billing Dispute is resolved, if the Access Provider is obliged to refund an amount to the Access Seeker, interest will be payable on the refunded amount at the rate specified in subsection 5.2.6 of this Agreement. In such circumstances, interest will be payable from the date the Access Seeker paid the disputed amount to the date of the refund by the Access Provider.

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**Condition 12**

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- 12.6.6 The Access Seeker and the Access Provider agree to use their reasonable endeavors to promptly resolve any Billing Dispute notified under this **Condition 12.6**.
- 12.6.7 If the Access Seeker and the Access Provider are unable to resolve any Billing Dispute within one (1) month (or such other period as the Access Seeker and the Access Provider may agree) from the date on which the Billing Dispute Notice is received, either Party may seek the consent of the other Party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other Party is, however, under no obligation to agree to such extension.
- 12.6.8 Once the negotiation period under **Condition 12.6.7** has expired and the extension is granted, the Billing Dispute may be referred by the Access Seeker to the procedure described in **Condition 12.6.9** ("**Billing Dispute Escalation Procedure**").
- 12.6.9 The Access Seeker may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this **Condition 12.6.9** by notifying the Access Provider's Billing Representative. Each of the Access Seeker and the Access Provider shall then appoint a designated representative that has authority to settle the Billing Dispute, and that is at a higher level of management than the persons with direct responsibility for administration of this RAO. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute within sixty (60) Business Days of the Billing Dispute Notice. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honored. Once any Billing Dispute has been resolved to the Parties' satisfaction, any sum to be paid or repaid shall be paid by the relevant Party within ten (10) Business Days from the date of resolution of the Billing Dispute.
- 12.6.10 Notwithstanding anything to the contrary herein, although it is the good faith intention of the Access Seeker and the Access Provider to use the Billing Dispute resolution procedures to the fullest extent to try to solve Billing Disputes, nothing in this RAO 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.
- 12.6.11 Either the Access Seeker or the Access Provider 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 Access Seeker or the Access Provider must agree the terms of the joint investigation, including:
- (a) the scope of the joint investigation;
  - (b) how the joint investigation will be conducted; and
  - (c) the date by which the joint investigation must be concluded.
- 12.6.12 Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operation issues may be directed to the Billing Representatives nominated by the Access Seeker or the Access Provider respectively.

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**Condition 12**

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- 12.6.13      Either the Access Seeker or the Access Provider may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 12.6.14      If the Access Seeker or the Access Provider are unable to resolve any Billing Dispute after exhausting the Billing Dispute Escalation Procedure, either Party may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act. For the purposes of clarification, the Billing Dispute procedure shall follow the procedure in this **Condition 12.6** and does not involve the ISG and Technical Expert under **Conditions 12.3 and 12.5**.
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**Condition 13**

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**13            CONDITION 13 - GENERAL PROVISIONS**

**13.1          Force Majeure**

13.1.1        Neither Party shall be in breach of its obligations under this RAO if it is unable to perform its obligations under this RAO (or any part of thereof), other than the payment obligations as a result of the occurrence of an Event of Force Majeure.

13.1.2        If any Event of Force Majeure occurs by reasons of which any of the Parties is unable to perform any of its obligations under this RAO, that Party so affected shall immediately notify the other in writing of the occurrence of any Event of Force Majeure applicable to its obligations under this RAO giving full details thereof and measures being taken by the Party so affected to reduce the severity of such event and subsequently the cessation of such event. If any Party does not agree that an Event of Force Majeure has occurred then the dispute shall be dealt with pursuant to **Condition 12**.

13.1.3        If an Event of Force Majeure has occurred and any Party reasonably considers such Event of Force Majeure applicable to it to be of such severity or to be continuing for a period of more than three (3) months, the parties shall mutually decide whether or not this RAO shall be terminated. If this RAO is terminated pursuant to this **Condition 13.1.3**, all rights and obligations hereunder shall forthwith be terminated and the processes set out in **Condition 10** shall apply.

13.1.4        For avoidance of doubt, the Parties shall continue to perform those parts of those obligations not affected, delayed or interrupted by an Event of Force Majeure and such obligations shall, pending the outcome of this condition continue in full force and effect.

13.1.5        If the continuing occurrence of an Event of Force Majeure is of such severity that it frustrates the original intention and objective of the Parties, the Parties shall forthwith take steps to discuss the circumstances and the consequences of such event and shall consider how best to achieve the objectives and shall, if appropriate, conduct a review of this RAO in accordance with **Condition 11**.

**13.2          Governing Law**

13.2.1        This RAO and the transactions contemplated by it are governed by the laws of Malaysia.

13.2.2        The Parties shall comply with all applicable directions by the Malaysian regulatory authorities.

13.2.3        In the event of:

- (a)    any Party seeking urgent interlocutory relief in respect of any matter; or
- (b)    any Party seeking relief in respect of the other Party failing to comply with the dispute resolution process set out in **Condition 12**; or
- (c)    a Party seeking relief in respect of a manifest error or mistake of law of the arbitrator (be it the Technical Expert or the Commission), established by the Party pursuant to any dispute resolution procedures agreed in writing,

each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of Malaysia for such relief.

### **13.3 Parties to Act in Good Faith**

- 13.3.1 Each Party agrees that it will act in good faith in relation to the other Party with respect to all matters relating to or contemplated by this RAO.

### **13.4 Costs and Expenses**

- 13.4.1 The Parties agree to bear their own legal, registration and other costs incurred in relation to the preparation, negotiation and execution of this RAO and all documents contemplated by it (except where this RAO or those other documents expressly provides to the contrary). The stamp duty in respect of this RAO shall be borne equally between the Access Provider and the Access Seeker.

### **13.5 Relationship of the Parties**

- 13.5.1 The relationship of the Parties to this RAO is one of independent contractors only. Nothing in this RAO is to be construed as creating an agency, partnership, association, trust or joint venture between the Parties. Each Party is responsible only for its obligations as set out in this RAO.

### **13.6 Surviving Obligations**

- 13.6.1 Termination or expiration in whole or in part of this RAO does not affect those Conditions (including **Conditions 7, 8, 9, 10.7, 10.9 and 12**) which by their nature survive termination or expiry.

### **13.7 Relationship with Third Persons**

- 13.7.1 A Party and any of its employees, agents, representatives or contractors shall not be deemed to be an employee, agent, contractor or representative of the other Party unless the other Party is a related body corporate of the first mentioned Party.

- 13.7.2 Subject to **Condition 13.7.1**, no Party has any authority to bind or oblige or incur any liability on behalf of the other Party and no such authority is to be implied.

- 13.7.3 **Conditions 13.7.1 and 13.7.2** have neither the effect nor imply:

- (a) that a Party or any of its employees, agents, representatives or contractors is the employee agent contractor or representative of the other Party, or
- (b) that a Party has the authority to bind or oblige or incur a liability on behalf of the other Party,

unless the first mentioned Party is a related body corporate of the other Party.

- 13.7.4 Either Party may advise its Customers that certain services are provided by it, but each Party must not represent that the other Party jointly participates in the Party's services.

### **13.8 Variation**

- (a) A variation of any part of this RAO is valid if, and only if, made between and in writing subscribed by the Parties and that the variation in respect of Facilities and/or Services is registered with the Commission in accordance with the Act.
- (b) Subject to **Condition 13.8(a)**, where the Parties agree to materially vary the RAO or access to its Facilities and/or Services, the Parties shall inform the Commission in writing of the action the Access Provider proposes to take and the reasons why such

action is appropriate. This RAO or access to Facilities and/or Services shall not be varied until such reasonable time and on such reasonable conditions as the Commission may legally specify and as mutually agreed by the Parties.

- (c) In this **Condition 13.8**, a reference to a variation includes a reference to an addition, deletion, amendment, modification, alteration or other variation.

### **13.9 Assignment**

13.9.1 The Access Seeker may transfer and assign this RAO to its holding, or affiliate or subsidiary company within the same business provided that prior written request is sent to the Access Provider and the consent of Access Provider has been obtained.

13.9.2 The Access Provider may transfer and assign this RAO provided that reasonable prior written notice is provided to the Parties.

### **13.10 Remedies Cumulative**

13.10.1 Subject to any clause or provision of this RAO which provides for a remedy or form of compensation to the exclusion of any other remedy or form of compensation, the rights, powers and remedies provided in this RAO are:

- (a) cumulative; and
- (b) not exclusive of the rights, powers or remedies provided by law independent of this RAO.

### **13.11 Notices**

13.11.1 A notice, invoice, approval, consent, request or other communication in connection with this RAO:

- (a) must be in writing;
- (b) must be left at the address of the addressee, or sent by ordinary post, registered post or licensed courier to the address of the addressee, sent by email to the email address of the addressee or sent by facsimile (to be followed by post) to the facsimile number of the addressee which is set out below or if the addressee notifies another address, email or facsimile number then to that address, email or facsimile number;

The address, email and facsimile number of each Party is:

#### **XMT/Access Provider:**

Attention: Latipah Mohamed Sani  
Address: Suite 2B-1-1, Plaza Sentral, Jalan Stesen Sentral 5, Kuala Lumpur Sentral, 50470 Kuala Lumpur  
Phone: +603 2780 5700  
Email: latipah@xmt.com.my

#### **ACCESS SEEKER:**

Attention:  
Address:  
Phone:  
Email:

- 13.11.2 A notice, invoice, approval, consent, request or other communication takes effect from the time it is received unless a later time is specified in it.
- 13.11.3 A notice, invoice, approval, consent, request or other communication is, in the absence of contrary evidence, deemed to be received:
- (a) in the case of a posted letter or registered post, on the third day after posting;
  - (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicated that the facsimile was sent in its entirety to the facsimile number of the recipient;
  - (c) in the case of a communication left at the address of the addressee, at the time the communication was so left; and
  - (d) in the case of electronic mail sent by a Party, at the time the electronic mail was sent and delivered to the other Party on the same Business Day.
- 13.12 Application for Registration**
- 13.12.1 The Parties shall jointly submit the application to the Commission for registration of this RAO in accordance with the MSA Determination and any requirements of the Commission.
- 13.13 Waiver**
- (a) A provision of or right under this RAO may not be waived except in writing signed by the non-defaulting Party or Parties to be bound.
  - (b) No failure or delay on the part of any Party in exercising any rights hereunder shall operate as a waiver thereof nor shall any single or partial exercise of such right preclude any other or further exercise of any other right hereunder provided however that nothing in this Condition shall extend time or be construed to extend time for the performance of any right or obligation under this RAO if a time period is imposed for the performance of such right or obligation.
  - (c) Knowledge or acquiescence by any Party of, or in, breach of any of the provisions of this RAO shall not operate as, or be deemed to be, a waiver of such provision and, notwithstanding such knowledge or acquiescence, such Party shall remain entitled to exercise the rights and remedies under this RAO, and at law, and to require strict performance of all of the provisions of this RAO.
- 13.14 Entire Agreement**
- 13.14.1 This RAO constitutes the entire agreement of the Parties regarding the subject matter of this RAO.
- 13.15 Severability**
- 13.15.1 The whole or any part of this RAO that is illegal or unenforceable:
- (a) will be:
    - (i) read down to the extent necessary so that it is legal and enforceable; or
    - (ii) severed (if it cannot be read down in accordance with paragraph (i)); and
  - (b) will not affect the continued operation of the remaining provisions of this RAO.

**13.16 Time of the Essence**

Time wherever referred to in this RAO shall be of the essence.

**13.17 Counterparts**

- (a) This agreement may be executed in any number of counterparts and by the Parties on separate counterparts but shall not be effective until each Party has executed at least one counterpart.
- (b) Each counterpart, when executed, will be deemed to constitute an original copy of this agreement, but the counterparts, taken together, shall constitute one and the same instrument.

**13.18 Electronic Signature**

Parties acknowledge and agree that this agreement may be entered into between the Parties by the affixation or placement of a digital image of the hand written signature of the authorized signatories of the respective Parties which shall be equivalent to physically signing this agreement and that such digital image of the hand written signatures shall constitute signification of the Parties' acceptance of and agreement to the terms of this agreement and that this agreement will legally bind the Parties thereafter.

**Private and Confidential**

**Appendix 1**

**Confidentiality Agreement**

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**APPENDIX 1**  
**CONFIDENTIALITY AGREEMENT**

## Confidentiality Agreement

Dated this                      day of                      20[ ]

Between

**XMT TECHNOLOGIES SDN BHD**  
(Company No: 200001029307 (531914-T))

And

**[ACCESS SEEKER]**  
(Company No:)

**NON-DISCLOSURE AGREEMENT**

**Private and Confidential**

**Appendix 1**

**Confidentiality Agreement**

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This NON-DISCLOSURE AGREEMENT ("**Agreement**") is entered into on this [DATE] day of [YEAR] ("**Effective Date**"), by and between:

1. **XMT TECHNOLOGIES SDN BHD** (Company No: 200001029307 (531914-T)) a private limited company incorporated in Malaysia under the Companies Act, 1965 and having its registered office at Suite 2A-3-1, Level 3 Plaza Sentral, Jalan Stesen Sentral 5, Kuala Lumpur Sentral, 50470 Kuala Lumpur, Malaysia (hereinafter referred to as "**XMT**") of the second part; and
2. **ACCESS SEEKER** (Company Name, no:) a private limited company incorporated in Malaysia under the Companies Act, 1965 and having its registered office at (company address) (hereinafter referred to as the "**Recipient**") of the third part.

**WHEREAS:**

- A. The Disclosing Party and Recipient are also hereinafter individually referred to as the "Party" and collectively as the "Parties".
- B. This Agreement is entered into to provide for the confidentiality, protection and handling of all Confidential Information (as defined in **Clause 1.1** below) related to any access request dated [DATE] submitted by the Recipient to the Disclosing Party for the supply of network facilities or network services in the access list issued by the Malaysian Communications and Multimedia Commission ("**Purpose**").
- C. In consideration of such Confidential Information being furnished by the Disclosing Party to the Recipient, the Recipient agrees to treat the information and material in accordance with the provisions of this Agreement and to take or abstain from taking certain actions as stated herein. Such information and material shall be deemed to include all information of the below mentioned nature obtained from discussions with the Disclosing Party and/or investigations by the Recipient.

**NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

**1. CONFIDENTIAL INFORMATION**

- 1.1 The Disclosing Party proposes to disclose confidential non-public proprietary and/or confidential information belonging to the Disclosing Party and those of other parties received by the Disclosing Party on confidential basis, any and all information, in any form, whether of a technical or commercial nature, relating to the Purpose which is disclosed prior or subsequent to the date of this Agreement by the Disclosing Party to the Recipient and identified by the Disclosing Party at the time of disclosure as being confidential non-public and/or proprietary ("**Confidential Information**"). Confidential Information disclosed in a form other than writing shall be confirmed in writing by the Disclosing Party as being confidential non-public and/or proprietary after disclosure.



## **Private and Confidential**

### **Appendix 1**

#### **Confidentiality Agreement**

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- 1.2 Confidential Information furnished in tangible and written form shall not be duplicated by the Recipient except for purposes of this Agreement. Upon the request of the Disclosing Party, Recipient shall return all Confidential Information received in written or tangible form, including copies or reproductions or other media containing such Confidential Information, within seven (7) days of request.
- 1.3 Confidential Information shall not include information which, at the date of this Agreement or thereafter becomes public domain, is known to the Recipient prior to being disclosed by the Disclosing Party, in which case the Recipient will notify to the Disclosing Party within seven (7) days that the information was already known prior to disclosure, is developed independently by the Recipient, or is legally obtained by the Recipient at any time from other sources who are not subject to proprietary restrictions. The Recipient shall have the burden of proof in establishing any of the above-mentioned exceptions.

#### **2. RECIPIENTS OBLIGATIONS**

- 2.1 The Recipient agrees to use the Confidential Information solely for the mutual benefit of the Parties in furtherance of the above stated Purpose, as specifically approved by the Disclosing Party, and agrees not to disclose the Confidential Information to any third party or to any of its affiliates, employees or agents except as may be required to conduct the above-mentioned Purpose. Any such disclosure to third parties shall be subject to the prior written consent of the Disclosing Party and shall be conditional upon obtaining in advance a non-disclosure agreement substantially in the form of this Agreement from such affiliates, employees, or agents.
- 2.2 The Recipient agrees to retain the Confidential Information of the Disclosing Party in strict confidence and to exercise towards it at least the same degree of care and protection that it takes to safeguard its own confidential information.
- 2.3 The Confidential Information whether capable of being copyrighted, patented, or otherwise registered at law, or not, is for the purposes of this Agreement acknowledged by the Recipient as being the sole property of the Disclosing Party.

#### **3. TERM**

- 3.1 This Agreement shall remain in force and effect throughout the period in which the Recipient is actively engaged in the execution of the Purpose and for a period of five (5) years thereafter. Further, the obligation not to disclose shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against the Recipient, nor by the termination of any agreement between the Disclosing Party and the Recipient, by a trustee of Recipient in bankruptcy, or by the Recipient as a debtor-in-possession.
- 3.2 Promptly upon the termination of this Agreement, unless otherwise agreed in writing by both Parties, the Recipient shall return to the Disclosing Party all Confidential Information of the Disclosing Party that it has received or that is in its possession, together with all copies thereof, and will immediately cease to make further use or disclosure of such Confidential Information.

## **Private and Confidential**

### **Appendix 1**

#### **Confidentiality Agreement**

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#### **4. BREACH OF AGREEMENT**

- 4.1 The Recipient shall fully indemnify the Disclosing Party against any and all actions, claims, liability, costs, damages, charges and expenses suffered or incurred in connection with or arising out of any breach by the Recipient of any of the provisions of this Agreement or by any unauthorized disclosure or use of the Confidential Information by a third party or by any employee of any party to whom Confidential Information has been disclosed or who has been allowed access thereto and acknowledges and confirms that a breach of its obligations hereunder cannot be compensated adequately by an award of damages or indemnity or other pecuniary remedy. The Disclosing Party shall also be entitled in the event of any such breach to the remedies of injunction, specific performance or other equitable relief in respect of any such breach.

#### **5. JURISDICTION**

- 5.1 This Agreement shall be governed by and construed in accordance with the laws of Malaysia.
- 5.2 Any dispute or difference arising out of or in connection with this Agreement which shall not have been resolved amicably by the parties within 30 (thirty) days from the start of informal negotiations, shall be finally settled in accordance with the Rules for Arbitration of the Asian International Arbitration Centre. The arbitral award shall be final and binding upon the Parties thereto and subject to no appeal.

#### **6. FINAL AGREEMENT**

- 6.1 The Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further written agreement that is duly executed by both Parties.

#### **7. NO LICENCE**

- 7.1 Nothing contained herein shall be construed as granting or conferring any rights by licence or otherwise in any Confidential Information. It is understood and agreed that the Recipient shall not solicit any change in the organization, business practice, service or products, or encourage expansion of funds in development or research efforts. Recipient agrees not to use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product, and/or services.

#### **8. NO ASSIGNMENT**

- 8.1 Recipient may not assign this Agreement or any interest herein without the Disclosing Party's express prior written consent.

#### **9. SEVERABILITY**

- 9.1 If any term in this Agreement is held by a court of competent jurisdiction to be invalid or enforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or enforceable term had never been included.

**Private and Confidential**

**Appendix 1**

**Confidentiality Agreement**

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**10. NOTICES**

- 10.1 Any notice required by this Agreement or given in connection with it, shall be in writing and be given to the appropriate Party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services.

**11. OTHER INFORMATION**

- 11.1 Nothing herein (including the exchange of Confidential Information hereunder) shall be deemed as obligating the Parties to enter into any business relationship with respect to the Purpose or otherwise.

IN WITNESS WHEREOF this Agreement has been signed by each of the Parties hereto on the date first written above.

Signed by

for and on behalf of	)	
<b>XMT TECHNOLOGIES SDN BHD</b>	)	
(Company No: 200001029307 (531914-T))	)	
	)	
In the presence of:	)	.....
Signed by	)	
	)	

for and on behalf of	)	
<b>(Company name)</b>	)	
(Company No: )	)	
	)	
In the presence of:	)	.....
Signed by	)	
	)	

## **TERMS AND CONDITIONS FOR TECHNICAL MATTERS**

**Private and Confidential**  
**Terms and Conditions for Technical Matters**

**Section I**

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**SECTION I -OPERATIONAL PROCEDURES**

**1 General**

**1.1** The Parties shall:

- (a) within thirty (30) days from the date of this RAO or any other date as may be mutually agreed by the Parties in writing, use their best endeavors to negotiate, agree and document new or modified provisions of the Operations and Maintenance Manual and any other manuals (“**Manuals**”) which the Parties deem necessary to establish pursuant to this RAO. The Access Provider shall promptly provide a copy of any and all finalized Manuals to the Access Seeker;
- (b) comply with the operational procedures and methods set out in the Manuals; and
- (c) where such procedures and methods have not been agreed, negotiate operational procedures and methods, in relation to:
  - A. the planning, ordering, provisioning and delivery of the relevant Facilities and/or Services;
  - B. the management of the relevant Facilities and/or Services including:
    - (i) QOS indicators, reporting on performance in terms of those indicators and determining the appropriate action to be taken in the event that service quality falls below the agreed indicator levels;
    - (ii) network operations in the event of Network failure, congestion and blockage;
    - (iii) ensuring that the Parties’ Networks are adequately protected from harm;
    - (iv) test procedures and other technical and operational matters relating to the provision of Facilities and/or Services by the Access Provider to the Access Seeker;
    - (v) the handling of the Customer operations; and
    - (vi) such other matters as the Parties may agree.

**1.2** Where relevant, the detailed procedures and/or contents pertaining to matters set out in **Sections II to VI of the Terms and Conditions for Technical Matters** shall be documented.

**1.3** In the event of any inconsistency between the agreed operational procedures and the terms of this RAO, the terms of this RAO shall prevail.

**Private and Confidential**  
**Terms and Conditions for Technical Matters**

**Section II**

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**SECTION II - FORECASTING**

**1 General**

- 1.1 **Section II** sets out forecasting terms and procedures that are applicable in relation to the provision of the Facilities and/or Services.
- 1.2 Subject to **Conditions 1.4 and 2.2** below, the Access Provider may require that the Access Seeker provide Forecasts in good faith with regard to a certain period of supply of access to and/or Services in this **Section II**.
- 1.3 The Access Seeker may request preliminary information from the Access Provider about the availability and capacity of its Facilities and/or Services to the extent the Access Seeker requires such information to provide Forecasts.
- 1.4 The Access Provider and the Access Seeker may agree to an alternative forecasting and ordering procedure other than that set out in this **Section II**, as part of an access agreement. If agreement is reached about such matters, the Access Provider and the Access Seeker will be bound by the terms of that alternative procedure and not this **Section II**.
- 1.5 Subject to **Condition 2.2** below, the Access Provider shall not require the Access Seeker to provide Forecasts that are legally binding on the Access Seeker, except to the extent that the Access Provider is permitted to recover costs and expenses as set out in **Condition 2.12** below.
- 1.6 The Access Provider must not request an Access Seeker to provide Forecast that contains:
- (a) any information that is or would allow the Access Provider to infer any non-permitted information listed under **Condition 5.4.16** of the MSA Determination; or
  - (b) any information that identifies or would enable the identification of Customers or particular services of the Access Seeker unless otherwise mutually agreed by the Operators.

**2 Forecasting Obligations**

**2.1 Forecasting Requirements**

- 2.1.1 The Access Seeker shall meet the requirements of forecasting process to the extent that it enables the Access Provider to plan for the expected need for the Facilities and/or Services in order to carry the forecasted traffic and conform to the agreed grade of service standards to be mutually agreed between the Operators.
- 2.1.2 The Access Seeker and the Access Provider shall discuss in good faith the planning and design of the relevant part of the respective networks and the dimensioning of Network Capacity to carry traffic within the Operator's Network.

**2.2 Confirmation of Forecast**

If the Access Provider, acting reasonably shall incur significant costs in ensuring that access can be provided in accordance with a Forecast, the Access Provider may request the Access Seeker to confirm the relevant Forecast, and the Access Seeker shall as soon as possible (unless otherwise agreed between the Access Seeker and Access Provider),

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upon receipt of the Access Provider's request, confirm the Forecast. Once confirmed, the Forecast is deemed to be an Order for the purposes of this RAO, and **Section III**, beginning from **Condition 2.2.1** thereof, will apply.

**2.3**      Forecast Request

The Access Provider may request the Access Seeker to provide, with a sufficient level of detail to enable the Access Provider to carry out network planning, the following information ("**Forecast Information**"):

- (a) the Facilities and/or Services in respect of which Forecasts are required;
- (b) the total period of time covered by each Forecast, which period:
  - (i) shall be determined having regard to the Access Provider's own planning and provisioning cycles and the Forecasting requirements which apply to the Access Seeker's own business units in using the relevant Facilities and/or Services; and
  - (ii) shall be the shorter of the period set out in the relevant Terms and Conditions for Regulated Facilities and/or Services and the period of forecasting which the Access Provider provides for itself for network planning and provisioning purposes, unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities and/or Services;
- (c) the intervals or units of time to be used in making the Forecast, which shall be the shorter of the period set out in the relevant Terms and Conditions for Regulated Facilities and/or Services and intervals of times in which the Access Provider provides forecasting for itself, unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities and/or Services;
- (d) the Network area or operational area to which Forecasts shall relate, which area shall correspond to that which the Access Provider uses for its own Network planning;
- (e) the frequency with which a Forecast must be updated or a further Forecast made in accordance with this RAO, which shall be the shorter of the period set out in the relevant Terms and Conditions for Regulated Facilities and/or Services and the length of time after which the Access Provider provides for itself with the updated or further Forecasts; and
- (f) such other information that the Access Provider reasonably requires and stipulates in writing in advance in order to provide access to the Facilities and/or Services requested by the Access Seeker.

**2.4**      Forecast provision

The Access Provider may only require the Access Seeker to provide Forecasts in accordance with a Forecast Request no sooner than four (4) weeks after receipt of a Forecast Request.

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**2.5      Use of Forecast Information**

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

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

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

**2.6      Distribution of Forecast Information**

The Access Provider may only distribute Forecast Information of the Access Seeker outside the groups of people referred to in **Condition 2.5** if:

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

**2.7      Time for response**

The Access Provider must notify the Access Seeker:

- (a) within five (5) Business Days of receiving a Forecast whether or not the Access Provider considers the Forecast to be in compliance with the Forecast Request and if the Access Provider considers that the Forecast does not comply with a Forecast Request, to specify in that notice the additional information which the Access Seeker is to provide to comply with the Forecast Request not sooner than four (4) weeks after such a notice; or
- (b) If the Access Provider considers that the Forecast does comply with the Forecast Request, to specify in that notice that Forecast is provisionally accepted subject to verification of the details of the Forecast and the matters set out in **Conditions 2.8(a) to 2.8(d)** below.

**2.8      Reasons for rejection**

The Access Provider may only reject a Forecast following provisional acceptance where the Access Provider reasonably believes that the Forecast is unreasonable and/or there is insufficient capacity having regard to:

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



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

**2.9**      Time for acceptance or rejection

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

- (a) within fifteen (15) Business Days of receipt of the relevant Forecast; and
- (b) such notice of rejection must specify:
  - (i) the grounds on which the Access Provider rejects the Forecast in accordance with **Condition 2.8** above, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Forecast; and
  - (ii) an offer to meet within five (5) Business Days of the notice of rejection of the Forecast to discuss the reasons for rejection and alternative methods of compliance.

**2.10**      Reconsideration by Access Seeker

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

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

If the Access Seeker does not respond within the stipulated time, the Access Seeker is deemed to have accepted the Rejection Notice.

**2.11**      Reconsideration by Access Provider

The Access Provider shall reconsider any re-submitted or amended Forecast provided pursuant to **Condition 2.10**. In such an event, **Conditions 2.7 to 2.9** shall re-apply.

**2.12**      Recovery for over-Forecasting

The Access Provider shall not seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker, if the Forecast is not met by the Access Seeker, unless:

- (a) the relevant portion of the Forecast that was not met by the Access Seeker does not relate to a Non-Binding Forecast Period;

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- (b) such costs and expenses were reasonably and necessarily incurred by the Access Provider;
- (c) the Access Provider reasonably seeks to mitigate its loss (including through its own usage) provided the Access Provider shall not be required to do so for any greater period than the relevant Forecast period; and
- (d) the Access Provider only recovers from the Access Seeker seventy-five percent (75%) of such costs and expenses which could not be mitigated under **Condition 2.12(b)** above.

**2.13**      Failure to Provide Forecasts

**2.13.1**      In the event of any failure, neglect or refusal by the Access Seeker to update the Forecast, the Access Provider shall continue to provide access to the Access Seeker for a period of one (1) year based on the last agreed Forecast, unless otherwise stated in the **Ordering and Provisioning process** in **Section III**.

**2.13.2**      The Access Provider shall not be responsible for any loss suffered or incurred by the Access Seeker due to the latter's failure to provide the Forecast.

**2.14**      Meeting Forecasts

**2.14.1**      Subject to **Conditions 2.7 to 2.9** above, the Access Provider and the Access Seeker (where applicable) must carry out network planning in order to enable Forecasts to be met. If an Access Seeker has confirmed a Forecast under **Condition 2.2 above**, it will be binding on the Access Seeker.

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**SECTION III - ORDERING AND PROVISIONING**

**1 General**

- 1.1 **Section III** sets out ordering and provisioning terms and procedures that are applicable in relation to the provision of Facilities and/or Services.

**2 Ordering and Provisioning Obligations**

2.1 Contact Point

Orders for access to the Facilities and/or Services are to be delivered to the senior personnel of the Access Provider to whom orders for access to Facilities and/or Services are to be delivered and the Access Provider shall notify the Access Seeker in writing from time to time of any change to the designated persons.

The Access Provider shall also designate and notify the Access Seeker of a mechanism where Orders for access to Facilities and/or Services can be made (such as a web portal or B2B gateway), provided that if such a mechanism is the only method which the Access Provider provides for the receipt of Orders for that Facility and/or Service, the Access Provider cannot require the Access Seeker to unreasonably invest in specialized technology or systems (such as an automated interface between the Operational Support Systems of the Operators).

2.2 Order content

- 2.2.1 The Access Seeker may place firm Orders for Facilities and/or Services from time to time in accordance with the agreed Service Order Form format as **Appendix 1 of Section III**.

- 2.2.2 Prior to access being provided, the Access Provider may require an Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. An Access Provider may request an Access Seeker to provide (where applicable), at a level of detail (sufficient for planning provisioning), the following in an Order for access to Facilities and/or Services:

- (a) the Facilities and/or Services to which access requested;
- (b) a requested date and time for delivery;
- (c) the detailed address of the location of the points of delivery and location maps, if necessary;
- (d) Equipment of the Access Seeker to be used in connection with the Order, to the extent it may adversely affect the Access Provider's Network;
- (e) the configuration of the requested Facilities and/or Services;
- (f) level to be opened;
- (g) signaling point code;
- (h) contact person and telephone number;

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- (i) in relation to Transmission Services requested by the Access Seeker, space availability at the Access Seeker's premises; and
- (j) such other information that the Access Provider reasonably requires in order for it to plan for the provision of access to the Facilities and/or Services as requested by the Access Seeker provided such information shall not include any information which:
  - (i) the Access Provider does not require from itself for similar provisioning;
  - (ii) identifies, or which enables the identification of, a Customer or services of the Access Seeker; or
  - (iii) is non-permitted information under **Condition 3.12** of the **General Terms and Conditions**.

2.2.3 When the Order is placed, the Access Seeker must give the Access Provider a priority list, allowing for progressive delivery and setting out its preferred order of delivery.

2.3 Use of Ordering Information

Ordering information provided by the Access Seeker shall be treated by an Access Provider as the Confidential Information of the Access Seeker and shall only be used by those persons within the Access Provider whose role is within (a) the Access Provider's wholesale or interconnection group; and (b) that part of the Network engineering group of the Access Provider responsible for interconnection for the purpose of responding to and provisioning for the Order.

2.4 Treatment for Orders and Service Qualifications

An Access Provider shall:

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

2.5 Acknowledgement of receipt

The Access Provider shall acknowledge receipt of the Order, in writing (or any other material or electronic form agreed by the parties), within the period specified for the respective Facilities and/or Services under **Part A of the Terms and Conditions for Regulated Facilities and/or Services**.

2.6 Notice of Receipt

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

- (a) the time and date of receipt;

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- (b) a list of any additional information reasonably required by the Access Provider from the Access Seeker to clarify the Order;
- (c) whether the Access Provider needs to perform post-Order Service Qualification because information is not readily available to the Access Provider, for example its operational support systems, together with the reasons for needing to undertake the Service Qualification; and
- (d) the position of the Order in the Access Provider's queue.

**2.7**      Further information

The Access Seeker has a period of up to ten (10) Business Days after a request for additional information to provide the Access Provider with such additional reasonable information that is reasonably necessary to clarify an Order.

**2.8**      Service Qualifications

**2.8.1**      The Access Provider shall make Service Qualifications available to the Access Seekers prior to placing Orders if such pre-Order Service Qualifications are undertaken for a given Facility and/or Service by the Access Provider for itself.

**2.8.2**      The Access Provider shall only require post-Order Service Qualifications to be requested if:

- (a) no pre-Order Services Qualification has been completed;
- (b) the Access Provider reasonably requires information from post-Order Service Qualifications which are not readily available, for example in its operational support systems;
- (c) the Access Provider notifies that the post-Order Service Qualifications are necessary (together with the reasons for needing to take such Service Qualifications) at the time of providing (and as specified in) the Access Provider's Notice of Receipt under **Condition 2.6**, or, if further information has been requested under **Condition 2.7**, within two (2) Business Days upon the expiry of the period specified in **Condition 2.7**; and
- (d) any way-leave or any authority approval is required to be obtained for installation of the Services ordered.

**2.9**      Commencement and Completion of Service Qualifications

- (a) The Access Provider shall commence the Service Qualification on the date of issuing a Notice of Receipt and complete and notify the Access Seeker of the result of any Service Qualification within the shorter of:
  - (i) fifteen (15) Business Days after the date of the Notice of Receipt; and
  - (ii) the time within which the Access Provider performs and notifies the result of an equivalent Service Qualification undertaken for itself; and

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- (b) Where there is a delay in the commencement and/or completion of the Service Qualification, and the delay is caused by either the Access Seeker or by a third party that is not acting under the Access Provider's direction or control:
  - (i) the Access Provider shall notify the Access Seeker of the delay to the delivery date as soon as practicable after the Access Provider becomes aware of it;
  - (ii) the Access Provider and Access Seeker must work together to minimize the delay; and
  - (iii) the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised completion date.
- (c) If the relevant Facilities and/or Services available to the Access Provider are below the capacity required to provide the relevant Facilities and/or Services to the Access Seeker, the Access Provider shall notify the Access Seeker, at the same time as providing notice under **Condition 2.9(a)**, of the available capacity and timeframe for the fulfilment of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfil the Order as submitted.

**2.10**      Withdrawal of Order following Service Qualifications

The Access Seeker may withdraw its Order, by giving written notice to the Access Provider, without penalty, except that it may recover from the Access Seeker reasonable costs incurred by the Access Provider for any Service Qualification undertaken in respect of the withdrawn Order (irrespective of whether the Access Provider has accepted the Order or not) before the earlier of:

- (a) ten (10) Business Days after receiving the result of a Service Qualification under **Condition 2.9**; or
- (b) one (1) Business Day before the Access Provider commences works to provision the Order (where the works are required to provision the Facility and/or Service within the delivery timeframe specified in the Notice of Acceptance), and any works to be conducted must be subject to the issuance of a notice in writing by the Access Provider, which may be in the form of a Notice of Acceptance if works is to occur after the Access Provider has accepted the Order.

**2.11**      Acceptance obligation

The Access Provider must use its reasonable efforts to accept and fulfill Orders from the Access Seeker for Facilities and/or Services which comply with a Forecast accepted by the Access Provider pursuant to **Section II**.

**2.12**      Time for acceptance/rejection

- 2.12.1**      The Access Provider must notify the Access Seeker that an Order is accepted or rejected within the specified timeframe for the respective Facilities and/or Services under **Part A of the Terms and Conditions for Regulated Facilities and/or Services**, save where the:

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- (a) Access Provider requests for additional information pursuant to **Condition 2.6(b)**, in which case the specified time shall commence from the Access Seeker's provision of the additional information pursuant to **Condition 2.7**; or
  - (b) Access Provider undertakes a post-Order Service Qualification as contemplated in **Condition 2.8.2**, in which case the time periods in **Condition 2.9** are to be added to the time specified in **Part A of the Terms and Conditions for Regulated Facilities and/or Services**.
- 2.12.2 If the Access Provider notifies the Access Seeker that an Order is rejected, the Access Provider must advise the Access Seeker of the grounds of rejection and if it would be able to accept the Order in a modified form.
- 2.13 Notice of acceptance

The Access Provider's notice of acceptance ("**Notice of Acceptance**") to the Access Seeker must contain the following information:

  - (a) the delivery date or activation date (as applicable), which must be the date that is requested by the Access Seeker, or if that date cannot be met by the Access Provider, then no later than the indicative delivery timeframe or activation time frame specified in the respective Facilities and/or Services under **Part A of the Terms and Conditions for Regulated Facilities and/or Services**
  - (b) the date when works (if any) are intended to commence;
  - (c) the charges applicable to fulfil of the Order, including without limitation additional works such as internal wiring, right of way, land rental, local authority permits and third party deposits;
  - (d) such information as is reasonably necessary for the Access Seeker to benefit from access to the Facilities and/or Services; and
  - (e) the validity period, which shall be a period not shorter than three (3) months from the date of Notice of Acceptance ("**Validity Period**").
- 2.14 Commencement of delivery timeframes
  - 2.14.1 The applicable delivery timeframe for an Order, as determined under **Condition 2.13(a)**, shall commence from:
    - (a) where the Access Seeker's confirmation of an Order is required under **Condition 2.15**, the date the Access Seeker confirms the Order in accordance with **Condition 2.15**; and
    - (b) in any other case, from the start of the Validity Period.
  - 2.14.2 The Access Provider is not required to commence work on an Order unless and until all requisite wayleave and/or authority approval has been obtained.
  - 2.14.3 Where a delay in the delivery of an Order is caused by the Access Seeker or any governmental authority, agency or third parties (not within the control of the Parties), the delivery date specified in the confirmed Order or indicative delivery time set out

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above shall be extended for a further period as may be reasonably required by the Access Provider.

- 2.14.4 Where an Order has been confirmed by the Access Seeker in accordance with **Condition 2.15** below, the Access Seeker may only request for a change in the delivery dates to the Services ordered where the Operators are in agreement.

2.15 Access Seeker's confirmation

- 2.15.1 The Access Seeker's confirmation of an Order is not required if the Access Provider accepts the Order without change. A change may include circumstances where delivery dates are delayed, estimated charges are exceeded, a post-Order Service Qualification is required or any other matter that requires further confirmation from the Access Seeker before the Access Provider can proceed with the Order.

- 2.15.2 Where the Access Seeker's confirmation is required for the Access Provider to proceed with fulfilling an Order, the Access Provider shall confirm its agreement to proceed with an Order within the Validity Period of the Access Provider's acceptance of such Order (as described in **Condition 2.13** above), failing which the Order is deemed cancelled or withdrawn. Upon such confirmation, the Access Provider shall fulfill the Order in accordance with the Notice of Acceptance provided under **Condition 2.13** above subject to **Condition 2.15.3** below.

- 2.15.3 Notwithstanding anything to the contrary, in the event the necessary;

- (a) governmental authority or agency's approval; and/or
- (b) wayleave from third parties

to fulfill the Order is not obtained within three (3) months from the date of the Access Seeker's confirmation of the Order pursuant to **Condition 2.15**, Access Seeker may, without liability cancel the Order at any time by giving written notice to the other Party.

2.16 Estimated charges

If the notice of acceptance provided by the Access Provider under **Condition 2.13** contains estimates of charges (e.g. based on time and materials) for a specific scope of works:

- (a) the Access Provider shall not exceed the estimate without providing the Access Seeker with written notice prior to exceeding the estimate that:
  - (i) the estimate shall likely be exceeded;
  - (ii) an explanation of the reasons for exceeding the estimate; and
  - (iii) a further estimate of the charges for the work necessary to fulfil the Order
- (b) the Access Seeker may withdraw the Order without penalty if the revised estimate exceeds the original estimate by more than ten percent (10%) within ten (10) Business Days of the notice given by the Access Provider under **Condition 2.16 (a)**;



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- (c) where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of work provided by the Access Provider due to:
  - (i) information or facts provided by the Access Seeker which are inaccurate or erroneous, or which were not disclosed or provided by the Access Seeker; or
  - (ii) a change in the scope of work by the Access Seeker,the Access Seeker shall be obliged to pay the Access Provider for the actual cost incurred (but in no other circumstances); and
- (d) the Access Provider shall commence work after the Access Seeker confirms in writing that the Access Seeker is agreeable to the estimate or revised estimate for a specific scope of work provided by the Access Provider, whereby such confirmation is to be provided by the Access Seeker within the timeframe set out in **Condition 2.13(e)** or **Condition 2.15.3**. If the Access Seeker fails to confirm the Order within the said time period, the Order is deemed to have been withdrawn.

2.17 Reasons for rejection

2.17.1 The Access Provider may only reject an Order from an Access Seeker where:

- (a) subject to **Condition 3.5.4.2 of the General Terms and Conditions**, it is not technically feasible to provide access to the Facilities and/or Services requested by the Access Seeker;
- (b) subject to compliance with **Condition 2.31 and 2.32**, the Access Provider has insufficient capacity to provide the requested Facilities and/or Services;
- (c) subject to **Condition 2.19**, the Order is in excess of agreed Forecast levels;
- (d) the Order or variation request duplicates an Order awaiting fulfillment;
- (e) [not used];
- (f) there are reasonable grounds to believe that the Access Seeker would fail to a material extent, to comply with the terms and conditions of this RAO and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through the application of a security requirement in accordance with this **Condition 2.17**); or
- (g) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities and/or Services to protect the integrity of the Access Provider or its Network; or the safety of individuals working on, or using services supplied by means of, a Network or Equipment and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through the application of reasonable security or escorted access requirement).

2.18 Notice of rejection

2.18.1 The Access Provider's notice of rejection to the Access Seeker must:

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

**2.19**      Order in excess of Forecast

The Access Provider must use its reasonable efforts to provide sufficient capacity to accept and fulfill Orders from the Access Seeker for Facilities and/or Services which are in excess of the relevant Forecast. The Access Provider is only required to do so if, after meeting the Forecast requirements of other Parties and of its own business units, there is available capacity, or the Access Provider could readily upgrade existing capacity. The Access Provider shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirements of the Access Seeker, other Parties and its own business units. The Access Provider is not required to supply the Facilities and/or Services in excess of the Forecast, if despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of the Facilities and/or Services provided to Access Seeker, other Parties and/or its own business.

**2.20**      Required Extra Capacity

The Access Provider may by written notice require an Access Seeker to procure such additional capacity on the Access Seeker's side of the Network as the Access Provider, in good faith and reasonably estimates, may be required by the Access Seeker to meet demand. Where the Access Seeker fails to so procure additional capacity and the demand exceeds the capacity on the Access Seeker's Network, the Access Provider must notify the Access Seeker in writing, and the Access Seeker and the Access Provider must meet (no later than 5 Business Days after receipt of the notice from the Access Provider) to attempt to identify alternative sources of capacity. If the matter cannot be resolved within ten (10) Business Days of the date of that meeting, the Access Provider may bar or block calls to the Access Seeker's Network to the extent necessary to minimize congestion within the Access Provider's Network.

**2.21**      Other uses

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

**2.22**      Delivery dates

The Access Provider shall deliver the ordered access to the Facilities and/or Services by the delivery date or activation date specified in the notice of acceptance (as provided under **Condition 2.13**) or the extended delivery date (if any) as determined in accordance with **Condition 2.24**.

**2.23**      Early Delivery Dates

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

2.24      Delayed Delivery Dates

2.24.1      Where there is a delay in the delivery of an Order and:

- (a)    the delay is caused by either the Access Provider or by a third party, that is not acting under the Access Provider's direction or control:
  - (i)    the Access Provider shall notify an Access Seeker of the delay to the delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;
  - (ii)   the Access Provider shall permit the Access Seeker to cancel the Order without penalty if the delay is longer than the equivalent time period for delivery of the Facility and/or Service; and
  - (iii)   the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date; or
- (b)    where the delay is caused by the Access Seeker:
  - (i)    the Access Provider shall notify the Access Seeker of the delay to the delivery date as soon as practicable after the Access Provider becomes aware of it;
  - (ii)   the Access Provider and Access Seeker must work together to minimize the delay; and
  - (iii)   the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date.

2.25      Cancellation and Variation of Orders

2.25.1      Subject to **Condition 2.26**, the Access Provider shall allow the Access Seeker to cancel or vary an Order at any time prior to the issuance of a signed Service Order Form as per Appendix 1 under Terms & Condition for Technical Matters. Where a Service Order Form has been issued, the Access Seeker is not allowed to cancel or vary an Order unless otherwise agreed by the Access Provider.

2.25.2      If the Access Seeker wishes to change an Order already issued but not yet implemented, then the Access Seeker should issue a formal amendment to the original Order indicating:

- (b)    original order reference number;
- (c)    original route, quantity, locations and ready for testing date;
- (d)    new requirements; and

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(e) Order identified as "Amendment".

2.25.3 The Access Provider shall then respond to whether the changes can be accommodated in the original time scale or propose a new delivery date.

2.26 Cancellation and Variation Charges

Except where provided in this RAO that cancellation is to be without charge:

- (a) the Access Provider may impose a charge for the cancellation or variation; and
- (b) the charge which the Access Seeker is required to pay shall not exceed the lesser of the following amounts:
  - (i) the sum of costs necessarily incurred by the Access Provider which is directly attributable to the cancellation or variation; or
  - (ii) an amount equal to the sum of charges that would have been payable by the Access Seeker in the six (6) months immediately following the cancellation or variation had the Order not been cancelled or varied,
- (c) and reduced to the extent that those costs have been mitigated or would have been mitigated had the Access Provider used its best endeavors to do so.
- (d) Notwithstanding the foregoing, and to the extent that the Access Provider is not able, using its reasonable commercial endeavors to mitigate losses in relation to the cancelled or varied order, the Access Provider shall be entitled to charge the Charges payable for the minimum period required for certain Facilities and/or Service in accordance with this RAO. The Access Seeker shall either:
  - (iii) proceed with the cancellation or variation of the Order and pay the charges charged by the Access Provider; or
  - (iv) proceed with the original Order.

The Access Seeker shall notify the Access Provider of its decision within fourteen (14) days of being informed by the Access Provider of the cost payable in respect of any cancellation or variation of an Order.

2.27 Testing and Provisioning

The Access Provider:

- (a) shall co-operate with the Access Seeker in relation to the testing and provisioning of ordered Facilities and/or Services, including but not limited to, by implementing a proof of concept if requested by the Access Seeker;
- (b) treat an Access Seeker's testing and provisioning on an equivalent basis to that which the Access Provider treats testing and provisioning for itself; and
- (c) may require reasonable co-operation by the Access Seeker in respect of such activities.

2.28 Non-refundable Processing fee

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- 2.28.1 The Access Provider may charge the Access Seeker non-refundable processing fee for undertaking the necessary administrative work to process the Order.
- 2.28.2 The fees for the respective Facilities and/or Services are set out in Appendix 2 to Section III of the Terms and Conditions for Technical Matters ("**Processing Fee**") and reflect the costs to be incurred by the Access Provider in processing the Order. Processing Fees for Facilities and/or Services not currently specified in **Appendix 2 to Section III of the Terms and Conditions for Technical Matters** will be mutually agreed by the Parties from time to time.
- 2.28.3 The above Processing Fee as specified in **Condition 2.28.2** will be set-off against the Charges for the ordered Facilities upon the confirmation by the Access Seeker of the Order in accordance with **Condition 2.15**.
- 2.28.4 In the event that additional or non-routine work is required in order to process the Order, the Access Provider may charge the Access Seeker a separate one-off non-refundable resource charge ("**Resource Charge**") to be determined by reference to the reasonable cost incurred by the Access Provider and/or the Access Seeker to test and fulfil an Order for the new Facilities, provided that the Resource Charge is justified by the Access Provider to the Access Seeker as necessary for the Access Provider to provide the requested Facilities and/or Services. Prior to commencing such additional and non-routine work, the Access Provider shall provide an estimate of charges for the approval of the Access Seeker.
- 2.29 Queuing Policy
- The Access Provider shall establish and maintain a queuing policy system for each Facility and/or Service, which:
- (a) shall be non-discriminatory;
  - (b) shall be applied to Orders and Service Qualifications of the Access Seeker and other Parties as well as of itself for the same or similar Facilities and/or Services, and shall treat all Orders and Service Qualifications on an equivalent basis to that which the Access Provider treats its own Orders and Service Qualifications for similar Facilities and/or Services; and
  - (c) shall seek to maximize the efficiency of its Ordering and provisioning process.
- 2.30 Acceptance on Queue
- The Access Provider shall promptly notify an Access Seeker, at the time of providing an acknowledgement of receipt of the Order under **Condition 2.5**, of their acceptance of, a position in, the Access Provider's queue.
- 2.31 Constrained Capacity
- 2.31.1 If the Access Provider reasonably believes that the capacity in any Facilities and/or Services required by:
- (a) the Access Seeker pursuant to the relevant Forecast and/or Order;
  - (b) other access seekers, pursuant to their relevant forecasts and/or order; and

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(c) the Access Provider, for its own purposes,  
would, in aggregate, exceed the capacity which the Access Provider will be in a position to be able to provide, the Access Provider must:

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

The Access Provider, where possible, will also indicate when extra capacity is likely to be made available to the Access Seeker.

**2.32**      **Capacity Allocation Policy**

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

- (a) shall be disclosed, free of charge, to the Access Seeker upon entry into an agreement, the Commission upon the Effective Date, and to both Access Seekers with whom the Access Provider has an access agreement and the Commission each time it is amended and any other Party on request;
- (b) shall set out the principles in accordance with which the Access Provider shall determine how to allocate capacity between itself (including its related bodies corporate), the Access Seeker and other Parties, in circumstances where the amount of capacity available is less than the aggregate of capacity required by the Access Provider, its related bodies corporate, the Access Seeker and other Parties;
- (c) shall:
  - (i) be fair and reasonable;
  - (ii) be consistent, so far as practicable, with the Access Provider's general duty of non-discrimination in accordance with subsection 149(2) of the Act;
  - (iii) treat the requirements of the Access Seeker and third parties on an equivalent basis to the Access Provider's own requirements;
  - (iv) allocate the available capacity in the relevant Facilities and/or Services in proportion to each Party's Forecast requirements; and
- (d) shall set out the Access Provider's plans to expand their capacity over time (if any) where such information must be provided to the Access Seeker and other Parties on a non-discriminatory basis in terms of its content and frequency of updates.

**2.33**      **Late delivery**

**2.33.1**      If the Access Provider fails to meet any timeframe in **Condition 2.14** or any extended delivery date notified to the Access Seeker in accordance with **Condition 2.24**, except where such failure has been caused solely by the Access Seeker's delay or lack of authorization by a third party, the Access Provider shall, without limitation to any other

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- rights the Access Seeker may have under this RAO or law, provide a rebate to the affected Access Seeker.
- 2.33.2 The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities and/or Services for the period of the Access Provider's delay subject to a maximum of one (1) month charges payable for access to the Facilities and/or Services.
- 2.33.3 If the Access Provider alleges that a failure has been caused solely by the Access Seeker's delay or lack of authorisation by a third party, the Access Provider shall have the burden of demonstrating:
- (e) that allegation; and
  - (f) that the Access Provider has done all things necessarily practicable to minimise or avoid such failure.
- 2.33.4 For avoidance of doubt, the rebates may only be used by the Access Seeker for future Invoices.

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**APPENDIX 1**



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**SERVICE ORDER FORM**  
**ACCESS AGREEMENT SERVICES/FACILITIES**

ACCESS SEEKER DETAILS	
New Customer <input type="checkbox"/>	Existing Customer <input type="checkbox"/> _____ <small>[State Existing Customer ID]</small>
Registered Company Name:	Registration No.:
Business Address:	
Business's Office Tel:	Business's Office Fax:
Authorized Personnel Name:	Designation:
Authorized Personnel NRIC/Passport No:	Applicant's Mobile No.:
Applicant's Email:	

  

BILLING INFORMATION	
Same as Access Seeker Details <input type="checkbox"/>	
Billing Address:	
Business's Office Tel:	Business's Office Fax:
Billing Contact Person:	Designation:

  

INSTALLATION & PROVISIONING CONTACT	
Technical Contact Person:	Mobile No:
Email:	

  

365/24/7 NOC/TECHNICAL CONTACT	
Technical Contact Person:	Mobile No:
Email:	



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**SERVICE ORDER FORM**  
**ACCESS AGREEMENT SERVICES/FACILITIES**

ORDER DETAILS						
Service/Facilities Type	Service Description & Configuration	RFS Date	Annual Recurring Charge [RM]	Monthly Recurring Charge [RM]	One Time Charge [RM]	Minimum Subscription Period [Mths]
Total (Ex Tax)						

<b>IMPORTANT ACKNOWLEDGEMENT</b>		
<p>The Service Order form is governed under the terms and condition of the Access Agreement between the parties.</p> <p>I / We Agree have read, understand and agree to accept and be bound by the Terms and Conditions for the Services attached hereto subject to such amendments as may be notified to me / us by XMT from time to time in such manner as XMT may determine. I / We acknowledge that the minimum subscription period for the services as stated in this Service Order Form and I/we will be liable for a surcharge if I / we terminate the subscription before the expiry of such minimum subscription period. I/We confirm that the information given herein by me / us is true and correct as at today's date.</p>		
<div></div>	<div></div>	<div></div>
Access Seeker's Signature	Date	Company Stamp

<b>XMT ACKNOWLEDGEMENT</b>			
Form received by		Date	
Application Accepted	<input type="checkbox"/>	Rejected	<input type="checkbox"/>
Remark(s)			



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**APPENDIX 2**

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**NON-REFUNDABLE PROCESSING FEE**

<b>Type of Facilities or Service</b>	<b>Type of Access Request</b>	<b>Man Days</b>	<b>Processing Fee*</b>
Infrastructure Sharing Service CMTS IBC	Establishment of new Service and/or Technology	15	RM5,700 per Request*
	Changes to Service and/or Technology	15	RM5,700 per Request*
End To End Transmission Service	Establishment of new route/bearer	1	RM380 per circuit
	Circuit Migration	0.5	RM190 per circuit
Wholesale Local Leased Circuit	Establishment of new route/bearer	1	RM190 per POI
	Circuit Migration	0.5	RM190 per circuit
	Provisioning of Additional Circuits	0.5	RM190 per circuit
Trunk Transmission Service	Establishment of new route/bearer	1	RM380 per circuit
	Circuit Migration	0.5	RM190 per circuit

The Processing Fees is based on a fee of RM380 per man day based on XMT annual cost of remuneration, emoluments, statutory contributions and a margin divided by the total number of employees and divided by 231 days to conduct the applicable works in relation to process, test and fulfill the Access Request or any changes to the Services.

\* The Processing Fee excludes any third-party cost which may be incurred in the processing of the Access Request which may include cost such as to any government authorities and vendors to process the Access Request. These charges shall be mutually agreed between the parties before XMT incurring to such cost.

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**SECTION IV - NETWORK CHANGE, POINT OF INTERFACE PROCEDURES &  
DECOMMISSIONING OBLIGATIONS**

**1 General**

1.1 Subject to **Section I**, this **Section IV** sets out the network change, point of interface and decommissioning terms and procedures that are applicable in relation to the provision of Facilities and/or Services.

1.2 Notwithstanding anything else to contrary in this **Section IV**, any Network Changes under this Section IV is subject ultimately to the Access Provider's review and final approval.

**2 Network change obligations**

**2.1 Scope**

This **Condition 2** applies where a Party proposes to implement a Network Change of a type referred to in **Condition 2.2** which necessitates a change in the hardware or software (including interface software) of the other Party's Network in Order to ensure the continued proper operation and compatibility of the Party's respective Networks, services and procedures.

**2.2 Types of Changes**

The following types of proposed network changes are within the scope of **Condition 2.1** ("**Network Changes**"):

- (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;
- (b) any change by the Notifying Party to any technical specification or characteristic of the Facilities and/or Services to which the other Party ("**Recipient Party**") has access to, which will or might affect:
  - (i) the Recipient Party's Network; or
  - (ii) the Recipient Party's use of the Facilities and/or Services provided by the Notifying Party;
- (c) any change by the Notifying Party to any technical specification or characteristic of that Notifying Party's Network which shall or might affect the Recipient Party's Network;
- (d) any enhancement by the Notifying Party of the feature, functions or capabilities of the Facilities and/or Services to which the Recipient Party has access, which enhancement the Notifying Party proposes to make available either:
  - (i) to itself; or
  - (ii) to any other Party.
- (e) any other changes that the Access Provider may deem necessary for the Facilities and/or Services.

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**2.3**      Notification of change

If a Notifying Party proposed 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 and the expected completion date of the proposed Relevant Change, described at a sufficient level of detail to enable the Recipient Party to identify and begin planning such changes as may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Change; and
- (b) a date, which shall be no later than ten (10) Business Day from the date of the Change Notice under this **Condition 2.3(b)**, on which representatives of the Notifying Party will be available to discuss with representatives of the Recipient Party, the proposed Relevant Change and the changes that may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Change,
- (c) as soon as reasonably practicable and, in any event with not less than the relevant notice period set out in the table below or such other notice period as agreed between the Notifying Party and Recipient Party in this RAO:

Relevant Change	Notice Period
Interface Change	3 months
Other Network Change	3 months
Facility and/or Service Change	3 months
Functionality Change	3 months

**2.4**      Post-notification procedures

The Notifying Party shall:

- (a) meet with representatives of the Recipient Party in 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 **Condition 2.3(c)**), for the purpose of discussing the Relevant Change and any changes that may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Changes;
- (b) provide any additional information reasonably requested by the Recipient Party no later than ten (10) Business Days after the Recipient Party's request for such additional information; and
- (c) take reasonable account of concerns raised and proposal made by the Recipient Party to minimize any adverse impact of the Relevant Changes on the Recipient Party and revise the Change Notice accordingly.

**2.5**      Testing

The Notifying Party shall, bearing its own costs in doing so:

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- (a) co-operate with a Recipient Party in relation to the development of procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Parties' respective Networks, including where required by implementing a POC; and
- (b) jointly carry out testing with the Recipient Party in a timely manner, using its best endeavours to accommodate any timing requested by the Recipient Party and, in any case, no less than twenty (20) Business Days before the Notifying Party proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under **Condition 2.5(a)**.

**2.6**      Testing failure

Subject to the Recipient Party having co-operated with the Notifying Party in relation to the conduct of tests under **Condition 2.5**, if such tests:

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

the Notifying Party must postpone implementation of the Relevant Changes. The period of postponement will be for a period until a successful solution is implemented but such period shall not be shorter than the period necessary to allow the Parties to repeat the steps in **Conditions 2.3 to 2.5**.

**3**            **POINT OF INTERFACE PROCEDURES**

**3.1**          Interconnection

Each Operator shall interconnect and keep its Network interconnected with the Network of another Operator in accordance with the terms of the Access Agreement.

**3.2**          Point of Interface Locations

The Access Provider shall publish on its publicly accessible website and keep updated a list of the general locations and technically feasible points at which physical co-location is available on and from the date of publication for the following twelve (12) months.

**3.3**          Access Seeker requested Point of Interface

**3.3.1**        The Access Provider shall reasonably consider a request by an Access Seeker to interconnect at a point other than that specified under **Condition 3.2**.

**3.3.2**        The Access Provider shall promptly notify the Access Seeker whether it accepts or refuses a request by an Access Seeker under this **Condition 3.3.2** and provide the Access Seeker with reasons if it refuses the Access Seeker's request.

**3.4**          Network Responsibility

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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.

**3.5**      Third Party Point of Interface

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

**3.6**      Point of Interface Factors

When determining which locations are to be listed under **Condition 3.2**, or when determining a request under **Condition 3.3**, the Access Provider shall have regard to the following:

- (a) offer POI and co-location in which the Access Provider has network facilities;
- (b) offer physical co-location in which the Access Provider has network facilities, but may additionally offer other forms of co-location in relation to a particular location (e.g. virtual co-location) if requested by the Access Seeker;
- (c) offer interconnection at each other technically feasible point;
- (d) shall not reserve space other than current needs for itself, future needs for itself (calculated by use of a reasonably projected rate of growth over two (2) years) and the needs of other Access Seekers who are currently occupying or have ordered additional space from XMT; and
- (e) any possible re-arrangement of its Equipment to eliminate space inefficiencies.

**4**      **DECOMMISSIONING OBLIGATIONS**

**4.1**      Decommissioning notice

**4.1.1**      Except where the Access Provider is required to vacate the site where a Point of Interface is located, or any other Facility and/or Service which relies on the Access Provider's use of that site, as a result of a third-party landlord's notice (under an arm's length tenancy agreement) or local authority's notice, XMT shall provide no less than:

- (a) one (1) year's notice in writing to all relevant Access Seekers prior to the decommissioning of a Point of Interface; or



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- (b) six (6) months' notice in writing to all relevant Access Seekers prior to the decommissioning of any other Facilities and/or Services which rely on XMT's use of that site.

4.1.2 Where the Access Provider is required to vacate the site as result of a third-party landlord's notice (under an arm's length tenancy agreement) or local authority's notice, the Access Provider shall provide all relevant Access Seeker with as much notice as possible in relation to the matters in **Conditions 4.1.1(a) and 4.1.1(b)** above.

4.2 Co-Operation

XMT shall co-operate and negotiate with all relevant Access Seekers in relation to the timetable for decommissioning of the relevant Point of Interface, Facilities and/or Services.

4.3 Alternative arrangements

Where XMT notifies an Access Seeker of its intention:

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

4.4 Decommissioned Facilities/Service Compensation

XMT shall pay the Access Seeker reasonable costs, necessarily incurred in:

- (a) decommissioning any links to the Point of Interface that is proposed to be decommissioned, that are, or will be, rendered redundant by the proposed decommissioning;
- (b) installing or otherwise procuring links between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to **Condition 4.3(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

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**Condition 4.3(a)** for a period that is not less than 3 years from the date of decommissioning.

4.5     Decommissioned Facilities/Service Compensation

Except where decommissioning is caused by Force Majeure, XMT shall pay the Access Seeker's reasonable costs, necessarily incurred in:

- (a) moving the Access Seeker's Equipment from the decommissioned Facilities to alternative Facilities offered in accordance with **Condition 4.3(b)**; or
- (b) re-arranging Equipment to connect to the alternative Services offered in accordance with **Condition 4.3(b)**.

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**Section V**

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**SECTION V - OPERATIONS AND MAINTENANCE**

**1 General**

- 1.1 Subject to **Section I** including any **Manuals**, this **Section V** sets out the operations and maintenance procedures that are applicable in relation to the provision of the Facilities and/or Services.

**2 Operations and Maintenance Obligations**

2.1 Operations & Maintenance Standard & Procedure

- 2.1.1 The Parties shall take such reasonable steps within their respective Networks in accordance with agreed operations and maintenance standards.

- 2.1.2 Where this Agreement and the documents referred to in **Section I** do not cover any operations and maintenance standards, the Parties may, upon mutual agreement, use applicable standards and/or any quality standards determined by the Commission.

- 2.1.3 The Parties shall ensure that the operations and maintenance standards and procedures used in the respective Network do not adversely affect the operations of each other's Networks or any other systems.

- 2.1.4 Each Party shall be responsible for the operations and maintenance of its own network facilities and network services and shall provide for adequate management of the operations and maintenance of its facilities and support systems.

- 2.1.5 Each Party shall on its own establish the recommended maintenance procedures for maintaining and servicing its own network facilities and network services.

- 2.1.6 The Parties shall take all necessary precautions to avoid causing damage to the equipment and premises of the other Party when such facilities are placed in the same co-located space.

- 2.1.7 The Parties shall comply with the relevant national safety laws, regulations and any related policies.

- 2.1.8 The Parties shall comply with the Act, and any applicable laws to the extent that is applicable to this Agreement.

- 2.1.9 The Access Seeker shall ensure the due compliance with any third party including any requirements, related to and applicable to the Access Seeker scope of works.

2.2 Fault reporting systems & fault management

- 2.2.1 The Parties shall co-operate to enable each other to meet the terms of their respective Licences and to fulfill their obligations under the Agreement and to provide Communications Services to their Customers.

- 2.2.2 The Parties shall manage their Networks to minimize disruption to services and restore those services in the event of interruption or failure of any service, subject to the Act and any applicable laws.

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- 2.2.3 Each Party must manage, notify and correct faults arising in its Network which affect the provision of any Communications Service by the other Party:
- (a) as it would in the ordinary course for similar faults affecting the provision of Communications Services by it;
  - (b) in accordance with the fault notification procedures and the principles of priority of repair of faults documented in this **Section V**; and
  - (c) in accordance with any service quality standards mutually agreed and/or determined by the Commission.
- 2.2.4 Each Party shall use its best endeavors to determine faults on its own Network and establish the nature of the fault by carrying out thorough tests as is of common practice in Malaysia on its Network. If such tests prove that the fault is genuine and not residing on its own Network, then the Party will report this fault to the other Party's full reporting center.
- 2.2.5 Each Party shall perform fault reporting and identification on a non-discriminatory basis and treat the faults reported by another Party on an equivalent basis as it treats the faults report by itself.
- 2.3 Customer fault reporting service
- 2.3.1 Each Party shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of that Party and to whom that Party supplies services (inter alia), to report faults relating to any Network or support system.
- 2.3.2 Both Parties shall maintain a twenty-four (24) hours a day, seven (7) days a week fault reporting and rectification service.
- 2.3.3 Each Parties shall advise all of its directly connected Customers to report all faults to its own fault reporting service.
- 2.3.4 If the fault concerns the service of the other Party, the Party may promptly inform the other Party's interconnect fault reporting centre of the reported fault.
- 2.4 Network fault responsibility
- 2.4.1 The Party in whose Network the fault occurs is responsible for rectifying it and restoring services.
- 2.4.2 Each Party is responsible for the operations and maintenance of any Network elements under its control and ownership.
- 2.4.3 Each Party shall be responsible for its own fault management escalation procedures and shall offer full assistance for interconnection faults.
- 2.5 Transmission service faults
- The Party that supplies transmission services is responsible for maintaining and repairing that transmission service, notwithstanding that the transmission service may be used in the other Party's Network.

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**2.6**      Major inter-working faults

2.6.1      If a major fault occurs which affects a communication that crosses or is to cross both Party's Networks, initial responsibility for identifying the fault rests with the Party who first becomes aware of the fault.

2.6.2      If a Party identifies the presence of a fault, the Party shall first establish the nature of the fault. The Party shall verify that the fault does not reside in its own Equipment and/or Network, by conducting thorough tests of its Equipment and/or Network. Upon ensuring that the fault does not reside in its Equipment and/or Network, the Party shall then inform the other Party of the fault for rectification.

**2.7**      Faults affecting other Networks or Equipment

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

- (a)      the existence and nature of the fault which persists for more than thirty (30) minutes that could degrade the services;
- (b)      the actions being taken by the first mentioned Party to restore service and to further identify and rectify the fault; and
- (c)      the expected time of restoration and the outcome of those actions.

**2.8**      Bear own costs

Each Party is responsible for establishing and maintaining a fault reporting service at its own cost irrespective of the location of the fault.

**2.9**      Fault priority

Each Party shall give priority to faults which have:

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

**2.10**      Fault rectification

2.10.1      Each Party shall rectify faults on a non-discriminatory basis where the priority level is the same.

2.10.2      In undertaking service restoration in respect of interconnection, the Parties shall have regard to matters including the following:

- (a)      service restoration shall take priority over Equipment repair;
- (b)      available standby capacity shall be automatically brought in and/or undertaking network management actions shall be undertaken to restore service;

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- (c) performing testing to determine the nature and location of the fault in cooperation with the distant end as necessary;
- (d) immediate rectification of an identified fault, if possible;
- (e) where the source of a fault cannot be quickly identified and rectified, the Party who has identified the fault shall notify the other Party of the problem and keep that other Party informed of progress in relation to the identification and rectification of the fault;
- (f) where the source of a fault has been identified by a Party but immediate rectification is not feasible, the Party responsible for rectification shall immediately notify the other Party of the estimated fault rectification time (based on the Party rectifying the fault using its best endeavours in view of the nature of the fault and its effect on services);
- (g) where a Party has rectified a fault on a temporary basis, that Party shall inform the other Party of this fact and provide the timeline required for permanent rectification; and
- (h) faults unresolved within stipulated target times shall be discussed at regular operation and maintenance meetings.

2.10.3 For the avoidance of doubt, any spares which are required to rectify a fault shall be provided by the Party which owns the relevant Equipment.

2.11 Target times

2.11.1 Subject to the applicable laws, each Party shall respond to, rectify and restore faults in its Network in accordance with the target times set out in **Table A of this Section V** or as specified in **Part A, Terms and Conditions for regulated Facilities and/or Services**.

2.12 Planned maintenance

- 2.12.1 If a Party ("**Maintenance Party**") intends to undertake planned maintenance which may affect a Party's Network, the Maintenance Party must:
- (a) provide at least ten (10) Business Days' notice of the planned maintenance;
  - (b) use its reasonable endeavours to minimise any disruptions to the other Party's Network or any third party systems which are caused by the maintenance; and
  - (c) if the planned maintenance is not restored to full service within the expected duration, the additional maintenance time shall be regarded as an unplanned outage occasioned by a planned outage and the procedure for dealing with unplanned outages applies. The Party responsible for the outage shall inform the other Party of the cause of the unplanned outage.
  - (d) where practicable and agreed by the Parties, provide alternative routing or carriage at no additional cost to the other Party.

2.13 Planned maintenance windows

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A Party shall undertake planned maintenance within windows of time agreed with the other Party, and where the windows of time for such planned maintenance have the least effect on end-users.

**2.14      Emergency maintenance**

**2.14.1**      If a Party (Maintenance Party) needs to undertake emergency maintenance which may affect the other Party's network, the Maintenance Party must, if it is able to:

- (a)    alert the other Party of the emergency maintenance via an immediate verbal communication upon providing at least twenty-four (24) hours' written notice of the emergency maintenance save for circumstances where such maintenance is required pursuant to an Emergency, then the Party shall be entitled to provide such written notification as it determines to be reasonable in such circumstances;
- (b)    use its reasonable endeavours to minimize any disruption to the other Party's Network or any other third party systems which are caused by the maintenance; and
- (c)    where practicable and agreed by the Parties, provide alternative routing or carriage at no additional cost to the other Party.

**2.15      Fault Reporting Centre**

**2.15.1**      Both Parties shall maintain a twenty-four (24) hours a day, seven (7) days a week fault reporting and rectification service.

**2.15.2**      All faults must be reported to the respective fault reporting center. Fault reports to a Party's fault reporting centre shall be acted upon promptly and shall include the exchange of:

- (a)    a unique fault reference number for a fault report;
- (b)    the date and time the fault was initially reported; and
- (c)    the date and time the fault was informed to the other Party.

**2.16      Joint Investigation**

Prolonged or recurring faults may need to be investigated by a joint engineering team consisting of representatives from the Parties. The formation of such a team does not imply that a Party's representatives have any rights of access to the other Party's premises, Equipment, documentation and other property, for the purposes of inspection.

**3           Network Monitoring and maintenance**

**3.1**           Each Party is responsible for monitoring of alarms belonging to its own Network.

**3.2           Detailed Testing**

**3.2.1**        The Parties shall conduct detailed service tests as and when required and agreed by both Parties to ensure the maintenance of service at agreed quality standards determined by the Commission.

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3.2.2 A Party must notify the other Party of any and all abnormal test results obtained from the service tests within five (5) Business Days from the time of discovery. Such abnormal test results may also be raised as an issue by a Party at a subsequent service review meeting.

3.3 Fault history

The Parties must each keep a record of fault escalations ("**Fault Escalation Record**"), which shall be retained for a period of two (2) years from the date of the faults. The Fault Escalation Record must contain details including the fault reference number, the cause of the fault, the fault report date/ time, restoration action and the corresponding restoration date/time. These records may be used to determine the performance of the Services.

4 **Service Review**

The Parties shall hold meetings on a half yearly basis or at mutually agreed intervals to review the performance of Party's Network and mutually exchange operational information. In addition, the Parties shall discuss at the meetings, any other inter-working issues that may arise. The information provided in such reports is Confidential Information and subject to confidentiality obligations under this Agreement.

Prolonged or recurring faults may need to be investigated by a joint engineering team consisting of representatives from the Parties. The formation of such a team does not imply that a Party's representatives have any rights of access to the other Party's premises, Equipment, documentation and other property, for the purposes of inspection.



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**Section V**

**TABLE A**  
**TARGET RESPONSE & RECTIFICATION TIMES**

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

**Explanatory Notes to Table A**

- (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 Parties involved shall cooperate with one another to achieve the target timeframes corresponding to the severity of the fault reported as set out in that table.
- (b) The "Fault Types" listed in the table above are only examples of possible type of faults. Parties are required to categories all faults by reference to specified "Priority Levels", "Response Timeframes" and "Rectification Timeframes".
- (c) **"Response Timeframe"** refers to the timeframe for the Party whose Network, Network and/or Service is faulty to respond to and appropriately attend to the fault. Response Timeframes are to be measured from either the time the fault is notified by the other Party or from the time when the Party first becomes aware of the Fault, whichever is the earlier.
- (d) **"Progress Update Frequency"** refers to the frequency to update the other Party until the fault is rectified.
- (e) **"Rectification Timeframe"** refers to the time taken by the Party to restore a faulty Network, Facility and/or Service and is determined by the period between the reporting of a fault to the relevant fault reporting service of the Party and the rectification of fault on a permanent or temporary basis (provided that if rectified on a temporary basis, the Party must continue attempting to achieve a permanent rectification without delay). In the event the Rectification Timeframe is extended beyond the timeframe set out in this RAO due to compliance to any applicable laws requirements in relation to granting access to the other Party on the affected portions of the Network situated on the third-party locations, the Access Provider and/or Access Provider must notify the Commission accordingly.

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**SECTION VI - OTHER TECHNICAL MATTERS**

**1 General**

1.1 **Section VI** sets out the other technical matters and procedures that are applicable in relation to the provision of Facilities and/or Services.

**2 Technical Obligations**

2.1 Compliance

The Parties shall adhere to the provisions of this Agreement and all applicable laws and regulations, including without limitations the relevant guidelines issued by the Commission from time to time to the extent that they have not been expressly revoked or are not inconsistent with any technical obligations set out in the MSA Determination, the Act and other applicable laws.

2.2 Prevention of technical harm and interference

2.2.1 Each Party is responsible for the safe operation of its Network and must take all reasonable and necessary steps to ensure that its Network, its Network operations and implementation of this Agreement:

- (a) do not endanger the safety or health of the officers, employees, contractors, agents or Customers of the other Party; and
- (b) do not damage, interfere with or cause any deterioration in the operation or impedes or interrupts the continuous use of the other Party's Network.

2.2.2 The Access Seeker acknowledges and agrees that the Facilities and/or Services provided under this Agreement is shared with other access seekers and therefore agrees that it shall take all reasonable and necessary steps in order not to damage, interfere with or cause any deterioration in the operation or impedes or interrupts the continuous use of the Facilities and/or Services by other access seekers.

2.3 Prohibition of tampering and modification

2.3.1 A Party must not modify or take any action which would have the effect of modifying the operation of the Network of the other Party or take any action with respect to the other Party's Network without the other Party's permission.

2.4 Notice of interference and rectification

2.4.1 If a Party ("**Notifying Party**") notifies another Party that the other Party's network facilities, network services or Equipment is causing interference to the Notifying Party's network facilities, network services or Equipment:

- (a) the other Party shall rectify the situation so that no interference is caused within twenty-four (24) hours of receiving notice from the Notifying Party; or
- (b) if the other Party is not able to locate the source of the interference within twenty four (24) hours under **Condition 2.4.1(a)**, the other Party shall promptly notify the Notifying Party, and both Parties shall meet within twenty four (24) hours of such

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

2.5      Excessive Request

2.5.1      In the event that the Access Provider receives large number of Access Requests, Forecasts and/or Orders from the Access Seeker and various other access seekers such that it is not:

- (a)      within the reasonable estimation or contemplation of the Access Provider;
- (b)      reasonably practicable for the Access Provider to process the Access Requests, Forecast and/or Orders within their respective time frames as stipulated in this Agreement; and/or
- (c)      fair and equitable to process the Access Requests, Forecasts and/or Orders on first come first served basis,

the Access Provider shall notify the Access Seeker in writing of the same. The Parties and/or other interested parties shall meet within (5) Business Days or such other period to be mutually agreed to develop a process to manage the large volume of Access Requests, Forecasts and/or Orders made to ensure fair and equitable management or processing of the Access Requests, Forecasts and/or Orders received ("**Excessive Request Process**").

2.5.2      Notwithstanding anything in the General Terms and Conditions and Sections in the Technical Matters, the Parties agree, that upon the occurrence of any event specified in **Condition 2.5.1**, the Access Provider shall not be bound by the time frames applicable for the management and processing of the Access Requests, Forecasts and/or Orders provided that the management and processing of the same is in accordance with the Excessive Request Process.

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**TERMS AND CONDITIONS FOR  
REGULATED FACILITIES AND/OR SERVICES**

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**Terms and Conditions for Regulated Facilities and/or Services**

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**1 General**

1.1 The General Terms and Conditions and the Terms and Conditions for Technical Matters shall also apply to these Regulated Facilities and/or Services subject to any modifications specified herein.

1.2 These Terms and Conditions for Regulated Facilities and/or Services must be registered with the Commission in accordance with section 150 of the Act and shall only take effect upon registration.

1.3 These Terms and Conditions for Regulated Facilities and/or Services comprise of:

- (a) Part A – Service Description
- (b) Part B – Charges and Charging Principles

**2 List of Regulated Facilities and/or Services**

2.1 The list of Regulated Facilities and/or Services under this document are as follows:

<b>Regulated Facilities / Services</b>	<b>Sections in Part A and B</b>
Infrastructure Sharing Service – CMTS IBC	Section I
End to End Transmission Service	Section II
Wholesale Local Leased Circuit Services	Section III
Trunk Transmission Service	Section IV

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**Part A – Section I**

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**PART A**  
**SERVICE DESCRIPTION**

**SECTION I - INFRASTRUCTURE SHARING SERVICES (CMTS IBC)**

**1 Overview and definitions**

1.1 This **Section I of Part A** sets out the terms and conditions which are applicable to Infrastructure Sharing – CMTS IBC.

1.2 Capitalized terms used in this **Section I** but not defined herein will have the respective meanings ascribed to such terms in definition of the RAO.

**DEFINITIONS FOR SCHEDULE SECTION I TERMS**

<b>SBK</b>	Sungai Buloh - Kajang Line
<b>CMTS IBC</b>	CMTS In Building Coverage System, which includes Equipment Space and Facilities, Active DAS System, Leaky Cables & Power System. The system in its entirety is for the purpose of providing mobile coverage within the SBK underground section
<b>CMTS IBC Specification</b>	The General Specification and Particular Specification for the CMTS IBC as per Annexure A ( <b>Section I</b> )
<b>Network Operation Centre</b>	is one or more locations from which network monitoring and control, or network management, is exercised over a computer
<b>Equipment Space</b>	means the space described in this <b>Section</b> allocated and dedicated for use by Access Seeker at the CTER for installation and connection of the Access Seeker Equipment to the DAS;
<b>CTER</b>	Commercial Telecom Equipment Room, where all Access Seekers equipment would be located
<b>Leaky Cable</b>	Communication system consists of a coaxial cable run along SBK tunnels which emits and receives radio waves, functioning as an extended antenna to provide coverage within the tunnel system
<b>Equipment</b>	Access Seeker Equipment placed within the Equipment Space perimeter for the purpose of providing mobile coverage within the SBK underground section
<b>Standard 42U Rack</b>	600mm x 900mm x 2000mm Standard IT Equipment Rack

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**2 General**

- 2.1 The type of CMTS IBC Service provided by Access Provider is a Mobile Inbuilding Solution for the SBK, which allows the Access Seeker to provide mobile coverage within the underground section of SBK which comprises the following sections of SBK:
- (a) 7 underground stations
  - (b) 9.5km of Northbound tunnel
  - (c) 9.5km of Southbound tunnel
- 2.2 The CMTS IBC Specifications is built based on the specifications and requirements to support six mobile operators for 2G, 3G & 4G Mobile Networks utilizing FDD and TDD Technologies. The CMTS IBC Specifications comprises of the following components:
- (a) BTS Equipment Room  
  
Which is the common shared space for all Access Seekers to install and operate their equipment and to interconnect with the Access Provider Network
  - (b) Active DAS System  
  
Includes Antenna's, Remote Units, Access Units, Interface, Leaky Cables, Coaxial Cables, Fiber Cables, Power System, Network Monitoring System ("**NMS**") and Point of Interface Points to Access Seeker Equipment
  - (c) Designated Equipment Space  
  
The space allocated and dedicated for use by Access Seeker at the CTER for installation and connection of the Access Seeker Equipment to the CMTS IBC
- 2.3 Access Provider agrees to:
- (a) operate and maintain the CMTS IBC in accordance with the Service Levels set out in **Section I of Part B**; and
  - (b) provide the Services for the Term on the terms and conditions of this RAO.
- 2.4 The minimum period in which the Access Seeker may lease CMTS IBC System is three (3) years.
- 2.5 For the purpose of **Condition 2.3, Section II, Terms and Conditions for Technical Matters**, the Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding the Infrastructure Sharing Service is one (1) year;
  - (b) the minimum intervals or units of time to be used in Forecasts regarding the Infrastructure Sharing Service is one (1) year; and
  - (c) the maximum frequency to update or to make further Forecasts regarding the Infrastructure Sharing Service is once every year.

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- 2.6 For the purposes of **Condition 2.5, Section III, Terms and Conditions for Technical Matters**, the Access Provider shall acknowledge receipt of each Order for the Infrastructure Sharing Service within two (2) Business Days.
- 2.7 Subject to any shorter timeframe required under **Condition 2.12, Section III, Terms and Conditions for Technical Matters**, the Access Provider must notify an Access Seeker that an Order for the Infrastructure Sharing Service is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post—Order Service Qualification for that Order under **Condition 2.8, Section III, Terms and Conditions for Technical Matters**; or
  - (b) providing the Access Seeker with the result of post-Order Service Qualification under **Condition 2.9, Section III, Terms and Conditions for Technical Matters**, where the Access Provider has undertaken post—Order Service Qualification for that Order under **Condition 2.8, Section III, Terms and Conditions for Technical Matters**.
- 2.8 For the purpose of **Condition 2.13(a), Section III, Terms and Conditions for Technical Matters**, the indicative delivery timeframe for the Infrastructure Sharing Service is:
- (a) for ground-based towers and new sites, ninety (90) Business Days; and
  - (b) for Common Antenna Systems in High Priority Areas
    - (i) which are existing Common Antenna Systems, forty (40) Business Days; and
    - (ii) which are new Common Antenna Systems, one hundred and twenty (120) Business Days;
  - (c) for fixed telecommunications poles, ten (10) Business Days; and
  - (d) for all other structures (including street furniture), forty (40) Business Days.
- For clarification, the indicative delivery timeframe in this **Condition 2.8** commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with **Condition 2.14, Section III, Terms and Conditions for Technical Matters** and subject to any Service Qualification and/or approval from the relevant authorities. The Access Provider shall provide progress updates of the site delivery to the Access Seeker on a monthly basis.
- 2.9 For the purpose of **Condition 5.1.4, General Terms and Conditions**, between the Parties, the Billing Period for Infrastructure Sharing Service will be quarterly in advance.
- 2.10 The Access Seeker will pay to Access Provider for Infrastructure Sharing – CMTS IBC System charges as stated in **Section I of Part B**.
- 3 **Terms & Conditions for CMTS IBC**
- 3.1 Use of Equipment Space
- The Access Seeker shall only use the Equipment Space for the sole purpose of providing Mobile In Building Solution within the underground section of the SBK to its customers on the Access Seekers mobile network and shall not do or permit any act or thing which



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is illegal or may become a nuisance or give reasonable cause for complaint by the owner or any of the other access seekers in Access Provider's Equipment Space or any other buildings adjoining the Equipment Space.

**3.2      Storage**

The Access Seeker shall not permit to be kept on the Equipment Space or any Section thereof:

- (a) any materials the storage of which may contravene any ordinance, statute, regulation or bye-law;
- (b) any materials the storage of which an increased rate of insurance is usually required; or
- (c) any explosive, combustible or radioactive substances.

**3.3      Increase in Premium**

The Access Seeker shall not do or permit to be done anything which would render the insurance policy or policies against damage by fire on Access Provider's premise on which the Equipment Space is located void or voidable or whereby the premium of the said policy or policies may be increased. In the event of an increase in premium or other expenses on renewal of such policy of policies due to a breach or non-observance of this **Condition 3.3** by the Access Seeker, the Access Seeker undertakes to repay all sums paid by Access Provider including the expenses incurred thereto.

**3.4      Repair**

In the event of any damage caused to the Equipment Space by the Access Seeker, the Access Seeker shall, at its own cost and expense, restore and to forthwith make good any replacement and/or repair (fair wear and tear excepted) as specified in the notice in writing given by Access Provider to the Access Seeker specifying therein all necessary replacements and/or repairs to be effected.

If the Access Seeker fails to effect the replacements and/or repairs within the time period stipulated in the notice, Access Provider may, whether or not together with its workmen, enter the Equipment Space and make all necessary replacements and/or repairs. The costs for all such necessary replacements and/or repairs shall be a debt due from the Access Seeker and shall be recoverable by Access Provider save where the replacements and/or repairs were due to the natural failure of the structure or due to Access Provider.

**3.5      Tenantable Condition**

The Access Seeker shall keep the shared space and the interior thereof including the flooring and interior plaster or other surface material or rendering on walls or ceilings and Access Provider's fixtures thereon including doors, window, glass shutters, locks, fastenings, electric wires, installations and fittings for electricity supply and other fixtures and additions and other goods therein including the items specifically attached thereto, if any, in good and tenantable repair and condition (reasonable wear and tear excepted).

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**3.6      Consents, Licences and Approvals**

The Access Seeker shall be fully responsible to obtain all necessary consents, permits, approvals and licences from third parties and governmental authorities or agencies to carry out/provide its Communications Services at the Equipment Space including operating and using all equipments, systems, cables, links and devices.

The Access Seeker shall further observe and comply with all laws, bye-laws, rules and regulations affecting the Access Seeker which are now in force or which may hereafter be enacted.

The Access Seeker shall further observe and perform and cause all its employees, independent contractors, agents or invitees to observe and perform all rules and regulations made by Access Provider from time to time and notified to the Access Seeker in writing Provided Always that Access Provider shall not be liable to the Access Seeker in any way for violation of the rules and regulations by any person including the Access Seeker or its employees, independent contractors, agents or invitees.

**3.7      Sharing, Sub-letting and Assignment**

The Access Seeker shall not share, sub-let, assign or part with the possession of the Equipment Space without the prior written approval of Access Provider. Where Access Provider allows the Access Seeker to sub-let the Equipment Space, the Access Seeker shall be fully responsible for the acts and omission of its sub-lessee and shall ensure that its sub-lessee complies with all Access Provider obligations with respect to the Equipment Space under this RAO.

**3.8      Payment of Quit Rents, Rates and Taxes**

Access Provider will pay all quit rents, rates (save for utilities), taxes, assessments which are or may hereafter be charged upon the Equipment Space. Any increase in quit rent, assessment, taxes or rates on the Equipment Space from the Commencement Date of the Infrastructure Sharing - CMTS IBC shall be borne by the Access Provider.

**3.9      Physical Access**

Where required to fulfill an Order for Service or for the Access Seekers to perform operations or maintenance activities, Access Provider shall allow the Access Seekers, its employees, contractors and authorized representatives to physically access the Access Provider network facilities/premises and the Access Seekers' Equipment, for the purpose of installing, commissioning, modifying, maintaining, repairing, decommissioning and/or removing its Equipment in accordance with the standard operating procedure and time frame as set out in Terms and Conditions for Technical matters subject to the terms and conditions of this RAO and any applicable laws, the Act and other applicable laws provided always, Access Provider is given ten (10) Business Days prior written notice.

Where access to Access Provider network facilities/premises is required for emergency maintenance and repairs, the Access Seeker shall provide Access Provider pre-registered employees with a verbal notice on the day access is required and a facsimile or email confirmation within two (2) days, subject always to any applicable laws.

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All employees, contractors and authorized representatives which requires physical access into the Equipment Space shall be pre-registered and must undergo all necessary training and certification, of which the Access Seeker shall solely bear this cost in its entirety, before being allowed access into the Equipment Space. In addition, the employees and/or contractors nominated by the Access Seeker under this **Condition 3.9, Condition 3.10 and 3.10A** must be reasonable, having regard to (a) the position of each person and the number of persons nominated; and (b) the position of each of the Access Provider's own personnel and the number of the Access Provider's personnel to which the Access Provider provides physically access to the Equipment Space.

**3.10**      **Escorts**

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

- (a) bear the costs of such escort service;
- (b) subject to **Condition 3.10(d)** below, provide immediate physical access to the Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
- (c) subject to **Condition 3.10(d)** below, provide physical access at the time requested by an Access Seeker for planned maintenance requests on the shorter of:
  - (i) two (2) Business Days' notice for manned sites and five (5) Business Days' notice for unmanned sites; and
  - (ii) the period of notice which it requires from itself when providing itself with physical access for planned maintenance;
- (d) for both planned and emergency maintenance requests at unmanned sites only, have its escort arrive within the shorter of:
  - (i) thirty (30) minutes of time required by the Access Seeker pursuant to **Condition 3.10(b)** or **3.10(c)** above (as applicable) plus a reasonable window to allow for travel time (which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and
  - (ii) the period of time it requires for its escorts to arrive for planned and emergency maintenance at manned sites.

**3.10A**      **Absence of Escort**

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For the purposes of **Condition 3.9** above, if an escort does not arrive at the Access Provider's property within the timeframe specified in **Condition 3.10**, the Access Seeker's nominated employees and/or contractors may proceed to enter the Access Provider's property without an escort.

**3.11**      Register

The Access Seeker must establish and maintain a register of all persons who visit Access Provider property, the purpose of visit, and all equipment installed, replaced or added into the site which must be made available for inspection by Access Provider, upon request.

**3.12**      Preparatory Work by the Access Seeker

If preparatory work is necessary for the purposes of allowing the Access Seeker to obtain access to or co-locate at or on Access Provider network facilities/premises, Access Provider shall permit the Access Seekers employees or contractors to perform such preparatory work.

If the Access Seekers agree that Access Provider shall carry out the preparatory work on behalf of the Access Seeker, then Access Provider shall undertake the preparatory work and the Access Seeker shall furnish all necessary and sufficient co-operation to Access Provider to complete the preparatory work.

**3.13**      Preparatory Work by Access Provider

If Access Provider agrees to perform preparatory work and does so on the basis of an estimated charge (e.g. based on a time and materials basis) for a specific scope of work, Access Provider shall not exceed the estimate without providing the Access Seekers with prior written notice that:

- (a) the estimate shall likely be exceeded; and
- (b) a further estimate of the charges for the work necessary to complete the preparatory work.

Access Provider shall permit the Access Seeker to withdraw the request for preparatory work without penalty if the revised estimate exceeds the original estimate by more than ten percent (10%) within fourteen (14) days of the notice given by Access Provider.

**3.14**      Delays

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

- (a) notify the relevant Access Seeker of the delay to a delivery date, together with the reasons for the delay, as soon as practicable after Access Provider becomes aware of the possible delay (including if such delay is caused by the need to comply with any applicable laws, policy or directions by governmental authorities); and
- (b) Provided that such delay is not caused by the need to comply with any applicable laws, policy or directions by governmental authorities:

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- (i) permit the Access Seeker notified under **paragraph (a)** to cancel the preparatory work without penalty if the delay is longer than ten (10) Business Days unless otherwise agreed between the Access Provider and the Access Seeker; and
- (ii) compensate the Access Seeker for the costs it has incurred as a result of the delay, subject to the Access Seeker using reasonable endeavors to mitigate those costs.

3.15 Utilities

The Access Seeker shall be responsible to apply for its own individual meter and power supply to the Equipment Space and shall be further responsible for and bear the cost of all electricity utilized by the Access Seeker at the Equipment Space.

In the event that there no avenues for the Access Seeker to apply directly or Access Seeker's application to the relevant authority for an individual meter is not successful, the Access Seeker may, subject to Access Provider's prior written approval, utilise the electricity supplied to Access Provider at that premises provided that:

- (a) Access Provider is of the opinion that the electricity power load is sufficient to be shared with the Access Seeker and other access seekers within its Equipment Space; and
- (b) approval from any relevant authorities is obtained; and
- (c) the Access Seeker reimburse Access Provider for all electricity charges utilised by the Access Seeker at the Equipment Space, whereby the following charging methodology shall apply:

*Utility Charges = (Power Consumed x Applicable Power Rates) + RM600 Fixed Utility Charges*

Fixed Utility Charges are in relation to the cost of maintaining the power system backed up via genset and its related components installed at the respective location

3.16 To Permit Access Provider to Enter and View Condition

The Access Seeker shall permit Access Provider and his agents, servants and contractors, to enter the Equipment Space at all reasonable times and upon reasonable notice for the purpose of viewing the state and condition thereof or for any other reasonable purpose.

3.17 Installation of Equipment

3.17.1 The Access Seeker shall ensure that all equipment, system or devices on the shared space shall:

- (a) be type-approved and comply with all relevant laws and regulations;
- (b) not cause any frequency interference to Access Provider's and/or any of the other access seekers' equipment or services provided in or around the Equipment Space. Where the Access Seeker's equipment causes frequency interference to Access Provider's and/or other access seekers' equipment or services provided in or

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around the Equipment Space, the Access Seeker shall immediately (and in any event no longer than 24 hours) take all such necessary steps to stop any such interference;

- (c) be electromagnetically compatible in accordance with the prescribed standards and shall not cause electromagnetic interference to the Access Provider's and/or any of the other access seekers' equipment or services provided in or around the Equipment Space. Where the Access Seeker's equipment causes electromagnetic interference to Access Provider and/or other access seekers' equipment or services provided in or around the Equipment Space, the Access Seeker shall immediately (and in any event no longer than 24 hours) take all such necessary steps to stop any such interference; and/or
- (d) not cause any damage, interference with, deterioration, impediment or interruption in the operation of third party systems.

3.17.2 The Access Seeker shall only be permitted to install its Equipment within the Equipment Space allocated and shall not be permitted to install any other party's equipment, system and/or devices within the Equipment Space perimeter without the prior written approval of Access Provider.

3.17.3 The Access Seeker shall not damage, tamper, modify, alter or handle:

- (a) any equipment, system or devices belonging to Access Provider or any other access seeker in the Equipment Space and/or the Equipment Space without the prior written approval of Access Provider and/or the other access seeker; and/or
- (b) any third party operations, as well as any other equipment, system or devices belonging to the Access Provider or third parties without the prior written approval of the Access Provider.

3.18 Equipment Allowance in Equipment Space Area

Access Provider shall permit the Access Seeker to locate Equipment on or at the Access Seeker facilities which is necessary for the purposes of obtaining the benefit of access to the Services provided in accordance with this RAO. The Access Seeker Equipment shall only be used for the CMTS IBC System. All Equipment shall be installed on a Standard 42U Rack, installed by the Access Seeker, and be within the perimeter allocated during the Service Acceptance. Any additional space required shall be mutually agreed between Parties.

3.19 Equipment Marking

The Access Seeker shall mark or label the Equipment in such a manner that they can be easily identified as the Equipment of the Access Seekers.

3.20 Equipment Space Marking

Access Provider shall mark the equipment space allocated to Access Seeker for the use of the Access Seeker Equipment.

3.21 Allocation of Space

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Subject to **Condition 3.22**, Access Provider shall allocate space for physical co-location in a non-discriminatory way and will treat the Access Seeker as it treats itself.

**3.22**      Lack of Space

If there are space constraints at a particular location, Access Provider shall take reasonable steps to optimize its usage of the space, including through the upgrading of facilities and transferring Equipment to an alternative location. The Access Seeker would not withhold consent for any such relocation of their Equipment in the event such request arises as per **Condition 3.30**.

**3.23**      Installation of Electrical Points and Plumbing Connection

The Access Seeker shall not install any electrical sockets, plugs or electrical power points or electrical motor or engine or appliances or make any additional plumbing connections on or to the Equipment Space without the prior written consent of Access Provider.

**3.24**      Safety and Health and Security Procedures

The Access Seeker shall comply with the provisions and requirements of the Occupational Safety and Health Act 1994 (OSHA 1994) and Factories and Machinery Act 1967 (FMA 1967). These provisions include safety plan (JSA/HIRARC, safety procedures, safety work instruction, supervision, etc) and the usage of personal protective equipment such as safety helmet, safety boots, safety goggles and other safety gadgets as prescribed by OSHA 1994 and FMA 1967.

The Access Seeker shall exercise due care in the execution of their work so as to prevent accidents and are required to report any incidents including but not limited to accidents as a result of their works to Access Provider within twenty-four (24) hours from the time of the occurrence.

The Access Seeker shall comply and cause its employees, agents and contractors to comply with all guidelines, rules and regulations issued by Access Provider from time to time on site access and security procedures with respect to access to and use of the Equipment Space. Further, the Access Seeker shall ensure the security of its Equipment Space is such that no unauthorized person shall enter the Equipment Space.

**3.25**      Exclusive Possession

The Access Seeker recognizes that it does not have exclusive possession of the Equipment Space since Access Provider occupies the Equipment Space and may sub-let or intend to sub-let the Equipment Space to other parties. However, Access Provider agrees that it shall not tamper, modify, alter or handle any equipment, system or devices belonging to the Access Seeker at the Equipment Space for the duration the Access Seeker leases the space unless an emergency situation arises.

**3.26**      Vacating the Equipment Space

The Access Seeker shall on the expiration or termination of the RAO, at its own cost and expense, remove all its equipment, system and devices which may have been installed by the Access Seeker and to peaceably and quietly yield up the Equipment Space to

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Access Provider with all Access Provider's fixtures and additions thereto in good and tenantable repair and condition in accordance with the covenants herein contained.

The Access Seeker shall be given a grace period of ten (10) Business Days to vacate the Equipment Space effective from the expiry or termination of the RAO during which no monthly rental will be charged by Access Provider. Should the equipment, system or devices not be removed within the grace period, Access Provider shall have the right to:

- (a) charge for the use of the Equipment Space at the rate of two (2) times the current rental or the cost of reinstatement as debt due and payable; and
- (b) without any liability to the Access Seeker, dispose of the equipment, system or devices in such manner as Access Provider deems fit with a one (1) month's written notice. If the Access Seeker fails to settle any debt due, Access Provider shall have a lien on the equipment, system or devices and is entitled to retain such equipment, system or devices or to sell the equipment, system or devices at any price in such manner as it deems fit for payment of any such debt and the cost of sale shall be borne by the Access Seeker. Access Provider shall be entitled to set off the proceeds from the sale of the equipment, system or devices against any and all debts due by the Access Seeker to Access Provider.

**3.27**      Relocation of Space/Structure

In the event that Access Provider intends to relocate any of the Space/Structure utilized for any purpose whatsoever, Access Provider shall prior to the relocation give reasonable written notification which in any case shall not be less than one (1) month written notice to Access Seeker before the proposed relocation date.

**3.28**      Compliance with Land-Owners requirements

Access Seeker shall ensure that its employees, agents, contractors and servants observe and adhere at all times to the obligations and Conditions imposed or shall be imposed by the Landlord if applicable, the landowner of the railway corridor or any other landowner in the future (hereinafter referred to as the "**Landowner**"), upon which the Equipment are installed and shall ensure its employees, servants, agents and contractors shall not do or omit to do anything which is in breach of such Conditions and obligations as imposed by the Landowner in relation to the use of the Equipment Space.

**3.29**      Network Operation Center

Access Provider shall establish and operate a network operations center ("**Access Provider NOC**"). Access Provider and the Access Seeker shall ensure that all alarms of the occurrence of a Major Fault or Critical Fault as these terms are defined in **Table A in Section V of the Terms and Conditions for Technical Matters** shall be reported within sixty (60) minutes to Access Seekers or Access Provider NOC.

**3.30**      Inclusion of New Party and/or New Technology

If Access Provider intends to include a new party (i.e. additional Operator) or any new technology, the Access Provider shall provide written notice to the Access Seeker. For the purpose of clarification, Access Provider does not require to seek the Access Seekers prior consent as long as there is no impact to the Access Seeker Standards and Service Levels



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as set out in **Section I of Part B**. Any variation to the IBC Charges shall be mutually agreed between Access Seekers.

**3.31**      Access Seeker Employees

Access Seeker agrees to be fully responsible and shall cause its subcontractors to be fully responsible for all matters relating to compliance with applicable labour laws, laws relating to occupational safety and health, industrial relations, wages, worker's compensation and the hiring, discharging, treatment and safety of workmen including, but not limited to, the Employment Act 1955, Employment (Restriction) Act 1968, Employees Provident Fund Act 1991, Industrial Relations Act 1967, Workmen's Compensation Act 1952, Wages Councils Act 1947, Weekly Holidays Act 1950, Children and Young Persons (Employment) Act 1966, Minimum Retirement Age Act 2012, registering or cause to be registered all local workmen employed in the execution of the Services, Value Added Assets and/or Other Assets and who are subject to registration under the Employee's Social Security Scheme (the "**SOCSSO Scheme**") in accordance with the Employee's Social Security Act 1969, Worker's Compensation benefits, health insurance, or any other benefits which typically accompany an employer-employee relationship in Malaysia. Access Seeker agrees to be responsible for its own acts and those of its agents, subcontractors, and employees during the term of this RAO.

**3.32**      Ancillary Services

The Access Provider must, where the relevant ancillary services are within the Access Provider's control, ensure that all necessary ancillary services are provided to enable the Access Seeker to benefit from such access to the same extent that the Access Provider provides to itself, including but not limited to power, environmental services (including but not limited to heat, light, ventilation and air conditioning, fire protection), 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 site maintenance.

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

**3.33**      Maintenance and rectification

The Access Provider shall:

- (a) ensure that it maintains in reasonable working condition all fixed telecommunications poles which comprise specified network facilities, subject to paragraph (b) below;
- (b) on notice by an Access Seeker, or upon otherwise becoming aware, that any fixed telecommunications pole does not comply with paragraph (a) above, perform within forty (40) Business Days such activities as required to rectify such non-compliance.

**3.34**      Service Assurance Targets

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Security	Service Definition	Fault Type (including but not limited)	Response Time	Progress Update Frequency	Temporary Restoration Time	Rectification Time	Incident Report (RCA) Issuance
Level 1	Hub Sites (a site with more than 5 child sites)	<ul style="list-style-type: none"> <li>• Outage caused by fault of AC power supply system provided by Access Provider</li> <li>• Outage caused by power issue at landlord/building</li> <li>• Outage caused by CME Issues</li> <li>• Outage due to flooding</li> </ul>	1 hour	Every 1 hour	4 hours	48 hours	48 hours
Level 2	End Sites (Site that is not a Hub Site)	<ul style="list-style-type: none"> <li>• Outage caused by fault of AC power supply system provided by Access Provider</li> <li>• Outage caused by power issue at landlord/building</li> <li>• Outage caused by CME Issues</li> <li>• Outage due to flooding</li> </ul>	1 hour	Every 2 hours	4 hours	7 Business Days	5 Business Days
Level 3	No Service Affecting Fault	Issues related to power system asset belonging to Access Provider, landlord/building site access or CME Issues	1 hour	Every 24 hours	24 hours	14 Business Days	N/A

- (i) All faults reported shall be ascribed with a severity level set out above and Parties shall cooperate with one another to achieve rectification times based on the severity of the fault reported.

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- (ii) “Progress Update Frequency” means the frequency at which the Access Seeker may call the Access Provider for restoring the fault to obtain a verbal or written progress update.
- (iii) “Response Time” refers to the time for the Access Provider to respond to the fault and is measured from the time the fault is reported by the Access Seeker to the Access Provider.
- (iv) “Rectification Time” refers to the time for the Access Provider to rectify a fault and is determined by the period the reporting of a fault by the Access Seeker to the Access Provider and the rectification of the fault on a permanent basis.
- (v) “Temporary Restoration Time” refers to the time for the Access Provider to temporarily rectify a fault and is determined by the period between the reporting of a fault by the Access Seeker to the Access Provider and the rectification of the fault on a temporary basis.

**3.35      Rebates**

If the Access Provider is unable to provide the Service due to negligence on its part (e.g. poorly designed structure or platform that does not function properly, the Access Provider failed to pay rental to its landlord on time, the Access Provider failed to provide site access), without limiting the Access Provider’s obligation to provide any applicable rebates under **Condition 2.33, Section III Terms and Conditions for Technical Matters**, affected Access Seekers are entitled to a rebate for not meeting the service assurance target under **Condition 3.34** above, which shall at a minimum reflect the rental amount paid or to be paid by the Access Seeker to the Access Provider for the period of site downtime.

**3.36      Grounds for refusal**

In addition to the grounds for refusal in **Condition 3.5.4.1 of the General Terms and Conditions**, an Access Provider may, based on reasonable safety and security reasons, refuse an Order Request to fixed telecommunication poles being utilized for critical government services, including in connection with government agencies, the military or the police.

**3.37      Capacity Allocation Policy**

In addition to **Condition 2.32, Section III Terms and Conditions for Technical Matters**, the Access Provider’s Capacity Allocation Policy for CMTS IBC Service shall set out the principles to be applied on an equivalent basis between itself and other Access Seekers, where:

- (a) the Access Provider has already taken steps to optimize space by using the current available technology, including removing any unused cables;
- (b) the Access Provider shall determine the available space only after considering:
  - (i) the requirements for CMTS IBC Service for the Access Provider’s then existing maintenance purpose;

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- (ii) the reservation of the CMTS IBC Service for future use by the Access Provider or another Access Seeker, applicable on an equivalent basis for six (6) months, upon receipt of an Order; and
  - (iii) the structural integrity of the infrastructure to safely accommodate additional capacity; and
- (c) the allocation of available space shall be:
  - (i) on a first-come, first-served basis;
  - (ii) applicable to reserved capacity that is not used by either the Access Provider or an Access Seeker within the seven (7) months from the date of the Order; and
  - (iii) to the extent possible, based on efficient allocation principles to minimize space wastage.

**3.38      Exit Management**

**3.38.1**      The Parties acknowledge that MRT Corp who is the owner of the facilities used for the CMTS IBC Service has appointed XMT as the Access Provider to provide the CMTS IBC Service to the Access Seeker.

**3.38.2**      In the event that XMT is no longer the party appointed by MRT Corp to provide the CMTS IBC Service, the terms and processes as set out in Appendix 14 (Handback and Transfer Plan) of the Facilities Agreement entered into between XMT and MRT Corp shall apply. The Parties acknowledge that a copy of the said handback and transfer plan has been provided to the Access Seeker.

**3.39      Augmentation of Common Antenna Systems**

The Access Provider shall use all reasonable endeavours to augment in-building Common Antenna Systems to the extent required to enable the Access Provider to supply access to such in-building Common Antenna Systems on request by the Access Seeker.

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**Part A – Section III**

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**PART A**  
**SERVICE DESCRIPTION**

**SECTION II - END TO END TRANSMISSION SERVICE**

**1 General**

This **Section II of Part A** sets out the terms and conditions which are applicable to End to End Transmission Service.

**2 General Terms and Conditions**

2.1 The End to End Transmission Service is a Facility and/or Service for the carriage of communications between;

- (a) two End User locations;
- (b) between two Access Seeker Points of Presence; or
- (c) between one End User location and one Access Seeker Point of Presence.

via such network interfaces at such transmission rates as may be agreed between the Access Provider and the Access Seeker on a permanent or virtual basis.

2.2 Network interfaces may use any technology as may be agreed between the Access Provider and the Access Seeker including, for example Ethernet interfaces.

2.3 The functionalities of the End to End Transmission Service include:

- (a) transmission and switching (whether packet or circuit);
- (b) the signaling required to support the technology or to provide a service;
- (c) termination at either end by a port; router, network termination unit, switch, submarine cable landing centre or earth station; and
- (d) a digital protocol (including Internet Protocols).

2.4 The End to End Transmission Service may be for the carriage of Communications which comprise of content applications service.

2.5 For the purpose of **Condition 2.3, Section II, Terms and Conditions for Technical Matters**, the Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding the End to End Transmission Service is one (1) year, or as mutually agreed by the Parties;
- (b) the minimum intervals or units of time to be used in Forecasts regarding the End to End Transmission Service is one (1) year or as mutually agreed by the Parties; and
- (c) the maximum frequency to update or to make further Forecasts regarding the End to End Transmission Service is once a year or as mutually agreed by the Parties.

2.6 For the purposes of **Condition 2.5, Section III, Terms and Conditions for Technical Matters**, the Access Provider shall acknowledge receipt of each Order for the End to End

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#### Part A – Section III

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Transmission Service within two (2) Business Days. For clarification, the Access Provider may acknowledge receipt of Orders in batches of no more than 20 Orders per batch.

2.7 Subject to any shorter timeframe required under **Condition 2.12, Section III, Terms and Conditions for Technical Matters**, the Access Provider must notify an Access Seeker that an Order for the End to End Transmission Service is accepted or rejected within ten (10) Business Days after:

- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post—Order Service Qualification for that Order under **Condition 2.8, Section III, Terms and Conditions for Technical Matters**; or
- (b) providing the Access Seeker with the result of post-Order Service Qualification under **Condition 2.9, Section III, Terms and Conditions for Technical Matters** of this RAO, where the Access Provider has undertaken post—Order Service Qualification for that Order under **Condition 2.8, Section III, Terms and Conditions for Technical Matters**.

2.8 For the purpose of **Condition 2.13(a), Section III, Terms and Conditions for Technical Matters**, and unless otherwise agreed between the Access Provider and Access Seeker having regard to the volume of the relevant Order(s), the indicative delivery timeframe for the End to End Transmission Service is:

- (a) if no new Facilities are required to supply the End to End Transmission Service, twenty (20) Business Days for Urban Areas, thirty (30) Business Days for non-urban areas and mutually agreed upon timeline between Access Seeker and Access Provider for geographically difficult regions (like unpaved roads, hills, and remote islands); or
- (b) if new Facilities are required to supply the End to End Transmission Service, sixty (60) Business Days for Urban Areas, ninety (90) Business Days for non-urban areas and mutually agreed upon timeline between Access Seeker and Access Provider for geographically difficult regions (like unpaved roads, hills, and remote islands).

For clarification, the indicative delivery timeframe in this **Condition 2.8** commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with **Condition 2.14, Section III, Terms and Conditions for Technical Matters**.

2.9 For the purpose of **Condition 5.1.4, General Terms and Conditions**, between the Parties, the Billing Period for End to End Transmission Service will be quarterly unless otherwise agreed between the Parties.

2.10 The Access Provider shall provide access to the End-to-End Transmission Service to Access Seeker in accordance with the quality of service parameters set out in the table below, and otherwise on an equivalent basis as it provides for itself:

Parameter	Threshold %
Network availability	≥ 99.99%
Latency (intra-region): <ul style="list-style-type: none"><li>within Peninsular Malaysia</li><li>within Sabah</li></ul>	Between >1ms and <40ms

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<ul style="list-style-type: none"><li>• within Sarawak</li></ul>	
Latency (inter-region)_ <ul style="list-style-type: none"><li>• between Peninsular Malaysia and Sabah</li><li>• between Peninsular Malaysia and Sarawak</li><li>• between Sabah and Sarawak</li></ul>	≥ 40ms

2.11 The Access Provider shall discuss and negotiate with the Access Seeker in good faith the provision of a rebate in respect of each Billing Period in which the service level availability the End-to-End Transmission Service provided by the Access Provider does not meet the relevant service level availability specified in the Commission Determination on the Mandatory Standards for Quality of Service (Digital Leased Line Service), Determination No.3 of 2009 or the service level availability mutually agreed between the Access Seeker and the Access Provider, including such modification or variation and any other mandatory standards that may be determined by the Commission from time to time, other than to the extent to which such non-compliance arises due to:

- (a) any act or omission of the Access Seeker other than in accordance with the directions of the Access Provider;
- (b) Force Majeure; or
- (c) any other excluded reason specified in that Determination.

2.12 The amount of any rebate for the purpose of **Condition 2.11** above shall, at the minimum, reflect:

- (a) The reduced costs that would have been incurred by the Access Seeker in acquiring the End-to-End Transmission Service availability equivalent to that provided by the Access Provider; and
- (b) Any other diminution in value (including any rebates paid by the Access Seeker) in the End-to-End Transmission Service provided to the Access Seeker due to the Access Provider's failure to comply with the service level availability required under the Commission Determination on the Mandatory Standards for Quality of Service (Digital Leased Line Service), Determination No.3 of 2009, including such modification or variation and any other mandatory standards that may be determined by the Commission from time to time.

The maximum cap on the rebate amount offered shall be a sum mutually agreed upon between the Access Provider and Access Seeker.

2.13 The Access Provider must provide End-to-End Transmission Service on an Equivalence of Inputs basis to Access Seekers, including the product, speed tiers, speed, price, timeframes, service level performance and terms and conditions that are equivalent to what it provides to itself and/or another Access Seeker.

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**3 Provisioning of End to End Transmission Services**

- 3.1 The Access Provider will provide End to End Transmission Service requested by the Access Seeker in accordance with this RAO.
- 3.2 Where the Access Seeker leases End to End Transmission Service from the Access Provider, the Access Provider's Equipment can be co-located in the Access Seekers Premises.
- 3.3 The Access Seeker shall provide the Access Provider reasonable access to its premises when the Access Provider reasonably requires it for the purpose of installing, maintaining, modifying or removing Equipment related to the provision of End to End Transmission Service by the Access Provider.
- 3.4 The Access Provider shall ensure the End to End Transmission Services conform to the QoS Standards and Technical Specifications as described in **Section II of Part B**, subject to the Access Seeker's use of those End to End Transmission Services in accordance with the Technical Specifications and other agreed requirements.
- 3.5 The minimum period in which the Access Seeker may lease End to End Transmission Services is one (1) year.
- 3.6 The Access Seeker shall pay to the Access Provider for End to End Transmission Services stated in this **Section II of Part A** provided by the Access Provider, Charges in accordance with the applicable provisions set out in **Section II of Part B**.
- 3.7 The Access Seeker shall not:
- (a) cause any damage, interference with, deterioration, impediment or interruption in the operation of third party system; or
  - (b) damage, tamper, modify, alter or handle third party systems, as well as any other equipment, system or devices belonging to the Access Provider, the Access Provider or other third parties without the prior written approval of the relevant owner.



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**Part A – Section III**

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**PART A**  
**SERVICE DESCRIPTION**

**SECTION III - WHOLESALE LOCAL LEASED CIRCUIT SERVICES**

**1 General**

- 1.1 This **Section III** of **Part A** sets out the terms and conditions which are applicable to Wholesale Local Leased Circuit Service.

**2 General Terms and Conditions**

- 2.1 A Wholesale Local Leased Circuit Service is a Facility and/or Service for the carriage of communications by way of a private circuit between a POI at the Access Provider's premises and an End User location or an Access Seeker Point of Presence, available only at one end of a private circuit.
- 2.2 The Wholesale Local Leased Circuit Service comprises transmission and switching, whether packet or circuit, at such transmission rates as may be agreed between the Access Provider and the Access Seeker on a permanent or virtual basis.
- 2.3 The functionalities of the Wholesale Local Leased Circuit Service include:
- (a) transmission and switching (whether packet or circuit);
  - (b) the signaling required to support the Interconnect Link Service or onward transmission via a Trunk Transmission Service provided by the same Access Provider; and
  - (c) a digital protocol (including Internet Protocol).
- 2.4 An example of technology used in the Wholesale Local Leased Circuit Service would be integrated Service Digital Network (ISDN), IP based networks and Ethernet interfaces.
- 2.5 For the purposes of this **Section III**, an end user includes:
- (a) a wholesale or retail customer; or
  - (b) an operator (who is a licensed application service provider or licensed network service provider under the Act, where such licence is required) and the final recipient of the service.
- 2.6 For the purpose of **Condition 2.3, Section II, Terms and Conditions for Technical Matters**, the Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding Wholesale Local Leased Circuit Service is one (1) year, or as mutually agreed by the Parties;
  - (b) the minimum intervals or units of time to be used in Forecasts regarding Wholesale Local Leased Circuit Service is one (1) year or as mutually agreed by the Parties; and
  - (c) the maximum frequency to update or to make further Forecasts regarding Wholesale Local Leased Circuit Service is once a year or as mutually agreed by the Parties.

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- 2.7 For the purposes of **Condition 2.5, Section III, Terms and Conditions for Technical Matters**, the Access Provider shall acknowledge receipt of each Order for the Wholesale Local Leased Circuit Service within two (2) Business Days. For clarification, the Access Provider may acknowledge receipt of Orders in batches of no more than 20 Orders per batch.
- 2.8 Subject to any shorter timeframe required under **Condition 2.12, Section III, Terms and Conditions for Technical Matters**, the Access Provider must notify an Access Seeker that an Order for the Wholesale Local Leased Circuit Service is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under **Condition 2.8, Section III, Terms and Conditions for Technical Matters**; or
  - (b) providing the Access Seeker with the result of post—Order Service Qualification under **Condition 2.9, Section III, Terms and Conditions for Technical Matters**, where the Access Provider has undertaken post-Order Service Qualification for that Order under **Condition 2.8, Section III, Terms and Conditions for Technical Matters**.
- 2.9 For the purpose of **Condition 2.13(a), Section III, Terms and Conditions for Technical Matters**, and unless otherwise agreed between the Access Provider and Access Seeker having regard to the volume of the relevant Order(s), the indicative delivery timeframe for Wholesale Local Leased Circuit Service is:
- (a) if no new Facilities are required to supply the Wholesale Local Leased Circuit Service, twenty (20) Business Days for Urban Areas, thirty (30) Business Days for non-urban areas and mutually agreed upon timeline between Access Seeker and Access Provider for geographically difficult regions (like unpaved roads, hills, and remote islands); or
  - (b) if new Facilities are required to supply the Wholesale Local Leased Circuit Service, sixty (60) Business Days for Urban Areas, ninety (90) Business Days for non-urban areas and mutually agreed upon timeline between Access Seeker and Access Provider for geographically difficult regions (like unpaved roads, hills, and remote islands).
- For clarification, the indicative delivery timeframe in this **Condition 2.9** commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with **Condition 2.14, Section III, Terms and Conditions for Technical Matters**.
- 3.8 For the purpose of **Condition 5.1.4, General Terms and Conditions**, between the Parties, the Billing Period for Wholesale Local Leased Circuit Service will be quarterly unless otherwise agreed between the Parties.
- 3.9 The Access Provider shall provide access to the Wholesale Local Leased Circuit Service to Access Seeker in accordance with the quality of service parameters set out in the table below, and otherwise on an equivalent basis as it provides for itself:

Parameter	Threshold %
Network availability	≥ 99.99%

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Latency (intra-region): <ul style="list-style-type: none"><li>• within Peninsular Malaysia</li><li>• within Sabah</li><li>• within Sarawak</li></ul>	Between >1ms and <40ms
Latency (inter-region)_ <ul style="list-style-type: none"><li>• between Peninsular Malaysia and Sabah</li><li>• between Peninsular Malaysia and Sarawak</li><li>• between Sabah and Sarawak</li></ul>	≥ 40ms

3.10 The Access Provider shall discuss and negotiate with the Access Seeker in good faith the provision of a rebate in respect of each Billing Period in which the service level availability the Wholesale Local Leased Circuit Service provided by the Access Provider does not meet the relevant service level availability specified in the Commission Determination on the Mandatory Standards for Quality of Service (Digital Leased Line Service), Determination No.3 of 2009 or the service level availability mutually agreed between the Access Seeker and the Access Provider, including such modification or variation and any other mandatory standards that may be determined by the Commission from time to time, other than to the extent to which such non-compliance arises due to:

- (a) any act or omission of the Access Seeker other than in accordance with the directions of the Access Provider;
- (b) Force Majeure; or
- (c) any other excluded reason specified in that Determination.

3.11 The amount of any rebate for the purpose of **Condition 2.11** above shall, at the minimum, reflect:

- (a) The reduced costs that would have been incurred by the Access Seeker in acquiring the Wholesale Local Leased Circuit Service availability equivalent to that provided by the Access Provider; and
- (b) Any other diminution in value (including any rebates paid by the Access Seeker) in the Wholesale Local Leased Circuit Service provided to the Access Seeker due to the Access Provider's failure to comply with the service level availability required under the Commission Determination on the Mandatory Standards for Quality of Service (Digital Leased Line Service), Determination No.3 of 2009, including such modification or variation and any other mandatory standards that may be determined by the Commission from time to time.

The maximum cap on the rebate amount offered shall be a sum mutually agreed upon between the Access Provider and Access Seeker.

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**Part A – Section III**

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3.12 The Access Provider must provide Wholesale Local Leased Circuit Service on an Equivalence of Inputs basis to Access Seekers, including the product, speed tiers, speed, price, timeframes, service level performance and terms and conditions that are equivalent to what it provides to itself and/or another Access Seeker

**3 Provisioning of Wholesale Local Leased Circuit Service**

3.1 Subject to the applicable Charges and the agreed procedures in **Section III of Part B**. The Access Provider shall provide a Wholesale Local Leased Circuit Service to the Access Seeker.

3.2 The minimum period in which the Access Seeker may lease Wholesale Local Leased Circuit Service is one (1) year.

3.3 The Access Seeker shall not:

- (a) cause any damage, interference with, deterioration, impediment or interruption in the operation of any third party system;
- (b) damage, tamper, modify, alter or handle any third party system, as well as any other equipment, system or devices belonging to the Access Provider, the Access Provider or other third parties without the prior written approval of the relevant owner.

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**Part A – Section V**

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**PART A**  
**SERVICE DESCRIPTION**

**SECTION IV - TRUNK TRANSMISSION SERVICE**

**1 General**

1.1 This **Section IV of Part A** sets out the terms and conditions which are applicable to Trunk Transmission Service.

**2 General Terms and Conditions**

2.1 The Trunk Transmission Service is a Facility and/or Service for the carriage of communications between any two technically feasible network transmission points, not being End User locations or Access Seeker Points of Presence, on the Access Provider's network, via such network interfaces at such transmission rates as may be agreed between the Access Provider and the Access Seeker on a permanent or virtual basis.

2.2 Network interfaces may use any technology as may be agreed between the Access Provider and the Access Seeker.

2.3 The functionalities of the Trunk Transmission Service include:

- (a) transmission and switching (whether packet or circuit);
- (b) the signaling required to support the technology or to provide a service;
- (c) termination at either end by a port, router, network termination unit, switch; and
- (d) a digital protocol (including Internet Protocols).

2.4 The Trunk Transmission Service may be for the carriage of Communications which comprise of content applications service.

2.5 For the purpose of **Condition 2.3, Section II, Terms and Conditions for Technical Matters**, the Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding the Trunk Transmission Service is one (1) year, or as mutually agreed by the Parties;
- (b) the minimum intervals or units of time to be used in Forecasts regarding the Trunk Transmission Service is one (1) year or as mutually agreed by the Parties; and
- (c) the maximum frequency to update or to make further Forecasts regarding the Trunk Transmission Service is once a year or as mutually agreed by the Parties.

2.6 For the purposes of **Condition 2.5, Section III, Terms and Conditions for Technical Matters**, the Access Provider shall acknowledge receipt of each Order for the Trunk Transmission Service within two (2) Business Days. For clarification, the Access Provider may acknowledge receipt of Orders in batches of no more than 20 Orders per batch.

2.7 Subject to any shorter timeframe required under **Condition 2.12, Section III, Terms and Conditions for Technical Matters**, the Access Provider must notify an Access Seeker that

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an Order for the Trunk Transmission Service is accepted or rejected within ten (10) Business Days after

- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post—Order Service Qualification for that Order under **Condition 2.8, Section III, Terms and Conditions for Technical Matters**; or
- (b) providing the Access Seeker with the result of post—Order Service Qualification under **Condition 2.9, Section III, Terms and Conditions for Technical Matters**, where the Access Provider has undertaken post—Order Service Qualification for that Order under **Condition 2.8, Section III, Terms and Conditions for Technical Matters**.

2.8 For the purpose of **Condition 2.13(a), Section III, Terms and Conditions for Technical Matters**, and unless otherwise agreed between the Access Provider and Access Seeker having regard to the volume of the relevant Order(s), the indicative delivery timeframe for Trunk Transmission Service is:

- (a) if no new Facilities are required to supply the Trunk Transmission Service, twenty (20) Business Days for Urban Areas, thirty (30) Business Days for non-urban areas and mutually agreed upon timeline between Access Seeker and Access Provider for geographically difficult regions (like unpaved roads, hills, and remote islands); or
- (b) if new Facilities are required to supply the Trunk Transmission Service, sixty (60) Business Days for Urban Areas, ninety (90) Business Days for non-urban areas and mutually agreed upon timeline between Access Seeker and Access Provider for geographically difficult regions (like unpaved roads, hills, and remote islands).

For clarification, the indicative delivery timeframe in this **Condition 2.8** commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with **Condition 2.14, Section III, Terms and Conditions for Technical Matters**.

2.9 For the purpose of **Condition 5.1.4, General Terms and Conditions**, between the Parties, the Billing Period for Trunk Transmission Service will be quarterly unless otherwise agreed between the Parties.

2.10 The Access Provider shall provide access to the Trunk Transmission Service to Access Seeker in accordance with the quality of service parameters set out in the table below, and otherwise on an equivalent basis as it provides for itself:

Parameter	Threshold %
Network availability	≥ 99.99%
Latency (intra-region): <ul style="list-style-type: none"><li>• within Peninsular Malaysia</li><li>• within Sabah</li><li>• within Sarawak</li></ul>	Between >1ms and <40ms
Latency (inter-region)_	≥ 40ms

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<ul style="list-style-type: none"><li>• between Peninsular Malaysia and Sabah</li><li>• between Peninsular Malaysia and Sarawak</li><li>• between Sabah and Sarawak</li></ul>	
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2.11 The Access Provider shall discuss and negotiate with the Access Seeker in good faith the provision of a rebate in respect of each Billing Period in which the service level availability the Trunk Transmission Service provided by the Access Provider does not meet the relevant service level availability specified in the Commission Determination on the Mandatory Standards for Quality of Service (Digital Leased Line Service), Determination No.3 of 2009 or the service level availability mutually agreed between the Access Seeker and the Access Provider, including such modification or variation and any other mandatory standards that may be determined by the Commission from time to time, other than to the extent to which such non-compliance arises due to:

- (a) any act or omission of the Access Seeker other than in accordance with the directions of the Access Provider;
- (b) Force Majeure; or
- (c) any other excluded reason specified in that Determination.

2.12 The amount of any rebate for the purpose of **Condition 2.11** above shall, at the minimum, reflect:

- (a) The reduced costs that would have been incurred by the Access Seeker in acquiring the Trunk Transmission Service availability equivalent to that provided by the Access Provider; and
- (b) Any other diminution in value (including any rebates paid by the Access Seeker) in the Trunk Transmission Service provided to the Access Seeker due to the Access Provider's failure to comply with the service level availability required under the Commission Determination on the Mandatory Standards for Quality of Service (Digital Leased Line Service), Determination No.3 of 2009, including such modification or variation and any other mandatory standards that may be determined by the Commission from time to time.

The maximum cap on the rebate amount offered shall be a sum mutually agreed upon between the Access Provider and Access Seeker.

2.13 The Access Provider must provide Trunk Transmission Service on an Equivalence of Inputs basis to Access Seekers, including the product, speed tiers, speed, price, timeframes, service level performance and terms and conditions that are equivalent to what it provides to itself and/or another Access Seeker

**3 Provisioning of Trunk Transmission Services**

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**Part A – Section IV**

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- 3.1 The Access Provider will provide Trunk Transmission Service requested by the Access Seeker in accordance with this RAO,
- 3.2 Where the Access Seeker leases Trunk Transmission Service from the Access Provider, the Access Provider's Equipment can be co-located in the Access Seeker's premises.
- 3.3 The Access Seeker shall provide the Access Provider reasonable access to its premises when the Access Provider reasonably requires it for the purpose of installing, maintaining, modifying or removing Equipment related to the provision of Trunk Transmission Service by the Access Provider.
- 3.4 The Access Provider shall ensure Trunk Transmission Services conform to the QoS Standards and Technical Specifications as stipulated in **Section IV of Part B**, subject to the Access Seeker's use of those Trunk Transmission Services in accordance with the Technical Specifications and other agreed requirements.
- 3.5 The minimum period in which the Access Seeker may lease Trunk Transmission Services is one (1) year.
- 3.6 The Access Seeker shall pay to the Access Provider for Trunk Transmission Services stated in this **Section IV of Part B** provided by the Access Provider. Charges in accordance with the applicable provisions set out in **Section IV of Part B**.
- 3.7 The Access Seeker shall not:
- (a) cause any damage, interference with, deterioration, impediment or interruption in the operation of third party systems; or
  - (b) damage, tamper, modify, alter or handle any third party system, as well as any other equipment, system or devices belonging to the Access Provider, the Access Provider or other third parties without the prior written approval of the relevant owner.



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**Part B – Section I**

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**PART B**

**CHARGES AND CHARGING PRINCIPLES**  
**SECTION I – INFRASTRUCTURE SHARING SERVICE: CMTS IBC**

**1 General**

This **Section I of Part B** sets out the Charges and the charging principles which would be applicable to Infrastructure Sharing Services - CMTS IBC.

**2 Charges and Charging Principles**

2.1 The Infrastructure Sharing Service – CMTS IBC supplied by the Access Provider shall be subject to the Charges listed in **Section I of Part B**.

2.2 The Monthly Recurring Charges for Infrastructure Sharing Service CMTS IBC charges are charged according to the configuration of the Services.

2.3 Monthly Recurring Charges for Infrastructure Sharing Service CMTS IBC charges shall be fixed for the contract period. In the event the Access Seeker wishes to renew the contract, the Access Provider reserves the right to revise the rental the rental charges for the subsequent contract period by giving three (3) months' prior written notice of such change in the rental charges to the Access Seeker.

2.4 In the event that there is an increase in the utility tariff / rates after the Commencement Date of the Services of this RAO, the Access Provider reserves the right to revise the utility charges by giving three (3) months written notice to the Access Seeker reflecting the actual increase in the utility tariff/rates based on the agreed formula. For the avoidance of doubt, the revised utility charges shall also be applicable to any contract for the Service that exist or is still subsisting at the time of the revision of the utility charges. The revised utility charges shall take effect at the expiry of the three (3) months written notice.

**3 Access Provider's Payment Terms**

3.1 The payment terms for Infrastructure Sharing Service – CMTS IBC shall be quarterly in advance unless otherwise agreed between the Parties.

3.2 The contract period for the lease agreement shall commence from the Commencement Date of the Services of Infrastructure Sharing Service – CMTS IBC.

3.3 The Access Seeker shall pay to the Access Provider for the one-time charges stated in **Condition 2.1** above within thirty (30) days from the date of receipt of the invoice,

3.4 The Access Seeker agrees to pay the Access Provider the Monthly Recurring Charges for Infrastructure Sharing Service CMTS IBC charges for the minimum three (3) year period irrespective of use of the Infrastructure Sharing Service as the Access Seeker has committed to the minimum period of three (3) years. The minimum three (3) year commitment period shall apply to every renewal of the Infrastructure Sharing Service unless otherwise agreed between the Operators (or such lesser period specified by the Access Provider, where the Access Provider lease or tenancy is less than three (3) years).

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**Part B – Section I**

**4 Charges For Infrastructure Sharing Service: CMTS IBC**

**Table A: One Time Charges**

	RM/Units*	Units
Installation (non-recurring charge)	5,700	Per Request
Third Party Escort Services	As incurred	
Engineering Services	380	Per Man hr
Any other Cost	At Cost	At Cost

\* The One Time Charges excludes any third-party cost which may be incurred in the processing of the Access Request such as cost to any government authorities, landlords and vendors to implement the Access Request. These charges shall be mutually agreed between the parties before XMT incurring to such cost.

**Table B: Monthly Recurring Charges**

Description	Units	Units Cost	Total Cost/Month
Co-Location Space	3 Location	5,000/Location	15,000
Active IBC System	3 Locations	5,000/Location	15,000
In Station Passive Antenna System	268 Units	55/Unit	14,740
In Tunnel Antenna System	38,000 meters	RM0.80/meter	30,260
<b>Total</b>			<b>75,000</b>

*Note: The charges breakdown stipulated above are estimations only as of 1<sup>st</sup> July 2022 and does not reflect the actual cost for each component of the system in its entirety.*

1. The Charges stipulated in Table B of this **Section** is based upon the current design and the acceptance test conducted jointly between Access Provider and Access Seeker, if the Access Seeker request to make any changes to the configuration, including but not limited to:

- (a) Additional Equipment being installed within the Equipment Room; and/or
- (b) Additional Point of Interface to be interconnected with CMTS IBC System; and/or
- (c) Any other changes that changes the capacity or utilization of the CMTS IBC System.

The Access Provider reserve the right to charge an additional One Time Charge for the requested change and make a revision to the recurring Charges. Any change to the Charges shall be mutually agreed between Access Provider and Access Seeker before any works conducted by the Access Provider.

2. The Charges for the services offered above is subject to the following standards, terms and conditions:
  - (a) Determination No 2 of 2021 Mandatory Standards for Quality Service (Wireless Broadband Access Service)

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**Part A – Section IV**

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- (b) Determination No 3 of 2021 Mandatory Standards for Quality Service (Public Cellular Service)
- (c) Internal cabling between Access Seekers equipment to CMTS IBC shall be borne by the Access Seeker with no cost from the Access Provider.

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**Part B – Section II**

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**PART B**

**CHARGES AND CHARGING PRINCIPLES**  
**SECTION II - END TO END TRANSMISSION SERVICE**

**1 General**

- 1.1 This **Section II of Part B** sets out the charges and charging principles which would be applicable to the End-to-End Transmission Service.

**2 Charges and Charging Principles**

- 2.1 End-to-End Transmission Services supplied by the Access Provider shall, only to the extent necessary, be subject to the Charges listed in **Section II of Part B**.

- 2.2 The Access Seeker will not be entitled to terminate any of the lease agreements in respect of any End-to-End Transmission Service in the first year. If the Access Seeker terminates the Access Seeker shall pay the applicable charges for the minimum period of one (1) year irrespective of use. After the first year, the Access Seeker may terminate the lease agreement by providing the Access Provider three (3) months prior written notice. Any advance payment for the utilised portion of the lease agreement will be refunded on a pro-rated basis. Upon expiry, the lease agreement will be automatically renewed for the same duration unless either Party gives a written notice to the other Party, three (3) months prior to the expiry of the agreement, stating its intention not to renew the agreement.

**3 Access Provider's Payment Terms**

- 3.1 The payment terms for End-to-End Transmission Service shall be quarterly unless otherwise agreed between the Parties.
- 3.2 The contract period for the lease agreement shall commence from the date of commissioning of the respective End-to-End Transmission Service circuit.

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**Part B – Section II**

**4 Charges For End-To-End Transmission Service**

**Table A: One Time Charges**

<b>Within Access Provider Network</b>	<b>2023 RM</b>	<b>2024 RM</b>	<b>2025 RM</b>
Installation (non-recurring charge)	6,571	6,768	6,971

**Table B: Monthly Recurring Charges**

<b>Within Access Provider Network</b>	<b>2023 RM</b>	<b>2024 RM</b>	<b>2025 RM</b>
1 Mbps	82	55	0
10 Mbps	1,037	817	598
100 Mbps	1,508	1,122	735
200 Mbps	2,033	1,460	888
500 Mbps	3,606	2,476	1,345
750 Mbps	4,917	3,321	1,726
1 Gbps	6,561	4,663	2,765
3 Gbps	17,669	11,741	5,813
5 Gbps	28,383	18,622	8,861
6 Gbps	33,977	22,181	10,385
7 Gbps	39,571	25,740	11,909
8 Gbps	45,165	29,299	13,433
9 Gbps	50,759	32,858	14,957
10 Gbps	56,353	36,417	16,482

The price for the services offered above is subject to the following terms and conditions;

- (a) SLA 99.99% per annum
- (b) Latency of less than 40ms
- (c) Single path design
- (d) The services are only applicable on circuits terminating at Access Providers existing nodes
- (e) The price is not inclusive of internal cabling and cross connect charges to Access Seekers equipment/premises which may be provided by third parties, however if XMT provides the cross connect charges, XMT shall charge a monthly fee of RM2,000 per month.

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**Part B – Section II**

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**Part B – Section III**

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**PART B**

**CHARGES AND CHARGING PRINCIPLES**  
**SECTION III- WHOLESALE LOCAL LEASED CIRCUIT**

**1 General**

- 1.1 This **Section III of Part B** sets out the charges and charging principles which would be applicable to Wholesale Local Leased Circuit Service.

**2 Charges and Charging Principles**

- 2.1 The Wholesale Local Leased Circuit Service provided by the Access Provider shall, only to the extent necessary, be subject to the Charges listed in **Section III**. Where a Wholesale Local Leased Circuit Service is commissioned in a particular year (e.g. 2013) and continues through to the following calendar year (e.g. 2014), the Charges set out in **Section III** for that particular contract period, shall be apportioned and calculated based on the stipulated Charges applicable to the relevant calendar year or part thereof.
- 2.2 The Access Seeker will not be entitled to terminate any of the lease agreements in respect of any Wholesale Local Leased Circuit Service in the first year. If the Access Seeker terminates, the Access Seeker shall pay the applicable charges for the minimum period of one (1) year irrespective of use. After the first year, the Access Seeker may terminate the lease agreement by providing the Access Provider three (3) months prior written notice. Any advance payment for the utilized portion of the lease agreement will be refunded on a pro-rated basis. Upon expiry, the lease agreement will be automatically renewed for the same duration unless either Party gives a written notice to the other Party, three (3) months prior to the expiry of the agreement, stating its intention not to renew the agreement.

**3 Access Provider's Payment Terms**

- 3.1 The payment terms for Wholesale Local Leased Circuit Service shall be quarterly unless otherwise agreed between the Parties.
- 3.2 The contract period for the lease agreement shall commence from the date of commissioning of the respective Wholesale Local Leased Circuit Service circuit.

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**Part B – Section III**

**4 Charges For Circuit Based Wholesale Local Leased Circuit**

**Table A: One Time Charges**

<b>Within Access Provider Network</b>	<b>2023 RM</b>	<b>2024 RM</b>	<b>2025 RM</b>
Installation (non-recurring charge)	3,422	3,525	3,631

**Table B: Monthly Recurring Charges**

<b>Within Access Provider Network</b>	<b>2023 RM</b>	<b>2024 RM</b>	<b>2025 RM</b>
Below 1 Mbps	43	35	0
From 1Mbps to 1Gbps	492	392	291
From 1Gbps to 10Gbps	10,119	5,370	620
From 1Gbps (using DWDM)	817	746	675

The price for the services offered above is subject to the following terms and conditions;

- (a) SLA 99.99% per annum
- (b) Latency of less than 40ms
- (c) Single path design
- (d) The services are only applicable on circuits terminating at Access Providers existing nodes
- (e) The price is not inclusive of internal cabling and cross connect charges to Access Seekers equipment/premises which may be provided by third parties, however if XMT provides the cross connect charges, XMT shall charge a monthly fee of RM2,000 per month.



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**Part B – Section IV**

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**PART B**

**CHARGES AND CHARGING PRINCIPLES**  
**SECTION IV- TRUNK TRANSMISSION SERVICE**

- 1 General**
- 1.1 This **Section IV of Part B** sets out the charges and charging principles which would be applicable to Trunk Transmission Service.
- 2 Charges and Charging Principles**
- 2.1 The Trunk Transmission Services supplied by the Access Provider shall, only to the extent necessary, be subject to the Charges listed in **Section IV**.
- 2.2 The Access Seeker will not be entitled to terminate any of the lease agreements in respect of any Trunk Transmission Service in the first year. If the Access Seeker terminates, the Access Seeker shall pay the applicable charges for the minimum period of one (1) year irrespective of use. After the first year, the Access Seeker may terminate the lease agreement by providing the Access Provider three (3) months prior written notice. Any advance payment for the utilised portion of the lease agreement will be refunded on a pro-rated basis. Upon expiry, the lease agreement will be automatically renewed for the same duration unless either Party gives a written notice to the other Party, three (3) months prior to the expiry of the agreement, stating its intention not to renew the agreement.
- 3 Access Provider's Payment Terms**
- 3.1 The payment terms for Trunk Transmission Service shall be quarterly unless otherwise agreed between the Parties.
- 3.2 The contract period for the lease agreement shall commence from the date of commissioning of the respective Trunk Transmission Service circuit.
- 4 Charges For Trunk Transmission Service**

**Table A: One Time Charges**

Within Access Provider Network	2023	2024	2025
	RM	RM	RM
Installation (non-recurring charge)	2,738	2,820	2,905

**Table B: Monthly Recurring Charges**

Within Access Provider Network	2023	2024	2025
	RM	RM	RM

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10 Mbps	52	34	15
100 Mbps	524	338	152
200 Mbps	1,049	677	305
500 Mbps	2,622	1,692	762
750 Mbps	3,932	2,538	1,143
1 Gbps	5,357	3,440	1,524
3 Gbps	16,071	10,322	4,572
5 Gbps	26,785	17,203	7,620
6 Gbps	32,142	20,643	9,145
7 Gbps	37,499	24,084	10,669
8 Gbps	42,856	27,524	12,193
9 Gbps	48,213	30,965	13,717
10 Gbps	53,570	34,405	15,241

The price for the services offered above is subject to the following QoS, terms and conditions;

- (a) SLA 99.99% per annum
- (b) Latency of less than 40ms
- (c) Single path design
- (d) The services are only applicable on circuits terminating at Access Providers existing nodes
- (e) The price is not inclusive of internal cabling and cross connect charges to Access Seekers equipment/premises which may be provided by third parties, however if XMT provides the cross connect charges, XMT shall charge a monthly fee of RM2,000 per month