

Access Reference Document

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Reach Bandwidth Services Malaysia
Sdn Bhd

Pursuant to the Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005), and varied as per Determination No. 2 of 2009 issued by the Malaysian Communications and Multimedia Commission in accordance with the Communications and Multimedia Act 1998

**THIS DOCUMENT SETS OUT THE TERMS AND CONDITIONS FOR
ELIGIBLE LICENSEES (UNDER THE CMA 1998) TO APPLY TO
RBSM FOR ACCESS TO CERTAIN ACCESS SERVICES**

Dated 30 April 2009

Document No.RBSM/ARD/2009

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Introduction

1. This Access Reference Document is prepared by Reach Bandwidth Services Malaysia Sdn Bhd (“**RBSM**”) as an Access Provider, pursuant to Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005) and as varied by Commission Determination No. 2 of 2009, published by the Malaysian Communications and Multimedia Commission, to enable eligible licensees under the Communications and Multimedia Act 1998 to seek access to RBSM’s network facilities and/or network services.

2. This Access Reference Document is divided into the following parts :

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|---------------|---|
| Part A | Applicability & Scope of the Access Reference Document |
| Part B | Application Process for Access |
| Part C | Negotiation Process and Timelines |
| Part D | General Terms and Conditions for Access |
| Part E | Specific Terms and Conditions for Access for particular Access Services |
| Part F | Dispute Resolution Process |
| Part G | The Schedules |
| Part H | The Specified Forms |

3. This Access Reference Document is:

- (a) the basis upon which any person, who holds a license under the Communications and Multimedia Act 1998, would seek access to RBSM’s network facilities and/or network services;
- (b) the basis upon which such persons will be granted access to the Access Services set out in Part A Section 2, upon the execution of and registration of an Access Agreement between RBSM and any eligible person under Section 3(a) above, such agreement containing the general terms and conditions and appropriate specific terms and conditions as applicable for the relevant Access Service.

4. RBSM reserves its right to amend this Access Reference Document from time to time without notice. Access will be considered based on the current ARD published by RBSM.

Existing Access Seekers who are being provided access under the ARD will be provided a copy of the amendments within 10 business days of the amendments being made.

Access Seekers who are in the process of negotiating access under the ARD with RBSM will be provided with a copy of the amendments within 10 business days of the amendments being made.

5. ***RBSM’s Address ;***

All notices, forms, requests which are required to be sent pursuant to this ARD, shall be sent to RBSM at the address set out below:

Reach Bandwidth Services Malaysia Sdn Bhd

Level 49, Tower 2, Petronas Twin Towers

Kuala Lumpur City Centre

50088 Kuala Lumpur, Malaysia

6. ***Definitions***

The following definitions are used throughout the Access Reference Document. Where a word is not defined in this ARD, unless the context otherwise requires, such word shall have the same meaning as that in the MSA.

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| ARD | Access Reference Document |
| Access List | The list of network facilities and network services as determined by the Commission Determination on Access List (Determination No. 1 of 2005) which came into force on 1 July 2001 and as varied pursuant to Determination No. 1 of 2009. |
| Access Services | The network facilities and network services that RBSM may provide access to pursuant to this ARD in accordance with Part A Section 2. |
| Access Agreement | The agreement entered into between the Access Seeker and RBSM pursuant to this ARD |
| Access Request | The formal request for access made by the Access Seeker pursuant to Part B Section 3. |
| CMA | Communications and Multimedia Act 1998 (Act 588) |
| Commission or CMC or MCMC | The Malaysian Communications and Multimedia Commission |
| MSA | Commission Determination on the Mandatory Standard on Access Determination No. 2 of 2005 and as varied by Determination No. 2 of 2009 issued by the Malaysian Communications and Multimedia Commission |
| POP | Point of Presence, where an Access Seeker has established itself for the purposes of obtaining access to RBSM's services and/or facilities. An example of POI is MyIX. |
| RBSM | Reach Bandwidth Services Malaysia Sdn Bhd |

7. ***Interpretation***

The ARD is structured as follows:

Parts – The main modules of the ARD, e.g. **Part A** – (Applicability and Scope of ARD)

Sections – The sections within each Part, e.g. **Part B** Section 2 – (Preliminary Request)

Sub-sections - The sub-sections within each Section, e.g. **Part B** Section 2 Sub-section 2.2 – (Licensee information)

Part A **Applicability & Scope of ARD**

1. *Introduction*

This ARD only applies to such access as may be provided by RBSM in respect of those network facilities which are owned by RBSM and, network services which are provided by RBSM as set out in Section 2 below.

RBSM may, at its sole discretion, agree to provide access to an Access Seeker to any other network facilities and/or network services, which are not included in the Access List on terms and conditions to be agreed between RBSM and the Access Seeker. RBSM is not bound by the provisions in the MSA nor the terms and conditions set out in this ARD to provide access to those facilities and services not on the Access List.

RBSM will provide access based on the Standard Access Obligations (Section 149 of CMA) and on reasonable and non-discriminatory terms.

2. *The network facilities and network services offered by RBSM*

The following network facilities and/or network services may be made available by RBSM subject to availability of capacity at the time of the Access Request.

(a) Private Circuit Completion Service (Applicable until 30 June 2010)

(b) Wholesale Local Leased Circuit Service

These facility and/or service is defined in the Access List and RBSM adopts the definition as used therein.

3. *Who is eligible to Apply for Access*

This ARD applies to those Access Seekers who are licensed under the CMA as:

- (a) Network Facilities Providers ;
- (b) Network Service Providers ;
- (c) Applications Service Providers ; and
- (d) Content Applications Service Providers.

Part B **Application Process for Access**

1. *Introduction*

- 1.1 The following Sections set out the process for initiating an Access Arrangement and the respective obligations of both the Access Seeker and RBSM.

2. *Preliminary Request (Form B.2.1)*

- 2.1 If an Access Seeker intends to obtain access from RBSM, the Access Seeker must, prior to making a formal Access Request, submit a preliminary request in writing to RBSM providing the following:

- (a) the name and contact details of the Access Seeker;
- (b) the nature of the Access Services sought from RBSM ;
- (c) the forecasts of the capacity the Access Seeker may reasonably require for an initial 12 month period;
- (d) execute the Confidentiality Agreement attached to this ARD (Schedule G.7)

- 2.2 Upon receipt of the preliminary request, RBSM shall within ten (10) Business Days provide the following information in a written response to the licensee:

If RBSM is able to provide the requested access :

- (a) description of each of the Access Service(s) that may be supplied by RBSM;
- (b) the application forms required to be completed by the Access Seeker to apply for Access Service(s);
- (c) RBSM's current access charges for the specific Access Services including individual and wholesale offerings;
- (e) all relevant technical information relating to the Access Services which may be the subject of the Access Request, including but not limited to any physical and logical interfaces of its network necessary to allow the development and deployment of communications services, and communications equipment that can interconnect to, and interoperate with, that RBSM's Network;
- (g) details of RBSM's provisioning cycles and any impact such cycles may have upon an Access Request by the Access Seeker (e.g. capacity constraints);
- (h) details of the Access Provider's quality of service targets and achievements in respect of the network facilities and/or network services which may be the subject of the Access Request; and
- (i) any security requirements, insurance requirements and creditworthiness information required by the Access Provider under subsections 5.3.8, 5.3.9 and 5.3.10 of the MSA, corresponding to the value of the access to be provided by RBSM
- (j) such other information which RBSM may reasonably require the Access Seeker to provide

If RBSM is unable to accede to the Access Seekers request :

- (a) If RBSM is unable to comply with the Access Seeker's request for the provision of access to the requested Access Service(s), RBSM will state in writing to the Access Seeker the grounds on which it is relying for the refusal in accordance with Part B Section 7 (***Form B.3.3***).

- 2.4 Upon RBSM providing the information set out in Section 2.2 above, the Access Seeker may either proceed to submit an Access Request or end the access process. If it chooses not to submit an Access Request, the information so provided shall be subject to the confidentiality obligations and the licensee shall not in anyway (whether directly or indirectly) utilise any such information provided to it by RBSM.

3. *Submission of Formal Request for Access (Form B.3.1)*

- 3.1 If RBSM is able to provide access to one or more Access Services (in response to the preliminary request – Section 2.2 above), and the Access Seeker wishes to obtain access to such Access Service from RBSM, the Access Seeker shall complete Form B.3.1 (Formal Access Request), which must be duly signed by an authorised officer or representative of the Access Seeker.
- 3.2 The Access Seeker must return Form B.3.1 to RBSM together with all the relevant information as required by RBSM.
- 3.3 Notwithstanding that the Access Seeker has not submitted a preliminary request for access, the Access Seeker may submit a Formal Access Request to RBSM for the any of the Access Services. RBSM shall not be obliged to process such request unless it is accompanied by a confidentiality agreement executed by the Access seeker as provided in this ARD.

4. *RBSM's Response to Formal Access Request*

- 4.1 Within ten (10) Business Days of receipt of the Access Request (**Form B.3.1**), RBSM shall respond to the Access Seeker by either:
- (a) **accepting** the Access Request, and issuing either **Form B.5.1.** (Access Request Acceptance – ARD Response) or **B.6.1** (Access Request Acceptance – Negotiation Response) to the Access Seeker; or
 - (b) **rejecting** the Access Request, and issuing **Form B.7.1** (Access Request Rejection) to the Access Seeker; or
 - (c) **requesting for further information**, and issuing **Form B.9.1** (Request for Further Information) to the Access Seeker.

5. *Access Request Acceptance – ARD Response (Form B.5.1.)*

- 5.1 If the Access Seeker accepts the terms and conditions of this ARD as the basis for the access agreement, then RBSM shall issue an acceptance to the Access Seeker through Form **Form B.5.1.** (Access Request Acceptance).
- 5.2 Upon the submission of Form **Form B.5.1.**, RBSM will provide the following information to the Access Seeker:
- (a) Description of each of the Access Services that may be provided by RBSM pursuant to the Access Request;
 - (b) Standard application forms required to be completed by the Access Seeker to apply for the relevant Access Service;
 - (c) current access charges for access to the requested Access List facilities and services, including individual and wholesale offerings;
 - (e) RBSM's current access charges for the relevant Access Service;

- (f) all relevant technical information relating to the relevant Access Service, including any physical and logical interfaces of RBSM's network which can interconnect to, and interoperate with the Access Seekers network;
- (g) details of RBSM's provisioning cycles and any impact such cycles may have upon an Access Request by the Access Seeker;

6. Access Request Acceptance – Negotiation Response (Form B.6.1)

- 6.1 If the Access Seeker has submitted an Access Request which contains a request to negotiate the terms and conditions of the Access Agreement, then RBSM shall do the following:
- (i) issue Form B.6.1 (Access Request Acceptance – Negotiation Response)
 - (ii) provide the information set out in Section 5.2(a) to (g);
 - (iii) require the Access Seeker to provide all relevant technical information relating to the Access Seeker's network which RBSM may reasonably need;
 - (iv) require the Access Seeker to provide such additional information as may be reasonably required to provide access to the Access Service.
- 6.2 Upon the issuance of Form B.6.1 (Access Request Acceptance – Negotiation Response) by RBSM, the negotiation timetable as set out in Part C of this ARD shall be deemed to have commenced.

7. Access Request Rejection (Form B.7.1)

- 7.1 If RBSM rejects an Access Request, RBSM shall do so using Form B.7.1. The Access Seeker may attend and meet with the representatives of RBSM on the date and time specified in Form B.7.1 (Access Request Rejection) to discuss issues relating to the refusal.
- 7.2 If the Access Seeker fails or neglects to attend the meeting with RBSM on the date and time stated, then such failure shall be deemed as an acceptance of the basis of rejection of the Access Request by RBSM.
- 7.3 If the Access Seeker does attend, and the rejection of the Access Request is not resolved (whether at that meeting or any subsequent meetings between the parties), then either RBSM or the Access Seeker may initiate the Dispute Resolution Procedures set out in Part E of this ARD, in order to determine the reasonableness or unreasonableness of the rejection by RBSM.
- 7.4 Pending the final determination of the dispute, RBSM shall not be obliged to provide access to the Access Seeker.

8. Right to Reject

RBSM may reject an Access Request made by an Access Seeker, upon any of the following grounds:

- 8.1 If the provision of the Access Service requested in the Access Request would not be reasonable in certain circumstances. For the purposes of this provision, it will be deemed unreasonable (thus entitling RBSM to reject the Access Request), in the following cases :
- (a) the information provided by the Access Seeker is incomplete for RBSM to fully evaluate the access request;

- (b) RBSM does not currently supply or provide access to the network facility or network service requested by the access seeker to itself or to any third party ;
 - (c) it is not technically feasible (as determined in accordance with the criteria set out in Section 5.4.19 of the MSA) to provide access to the network facilities or network services requested by the Access Seeker;
 - (d) RBSM has insufficient capacity to provide the requested network services or network facilities. RBSM may rely on this ground if the network is: (i) already carrying traffic to capacity or near full capacity; or (ii) already reserved for future use by RBSM and/or its holding, associate or affiliate companies, if such future use shall commence not later than six (6) months from the date of this Access Request or, (iii) RBSM is unable to expand its own capacity within the period forecast by the Access Seeker.
 - (e) RBSM reasonably believes that the Access Seeker may fail to make timely payments for the Access Services;
 - (f) RBSM reasonably believes that the Access Seeker may fail, to a material extent, to comply with the terms and conditions set out in this ARD for the Access Services;
 - (g) RBSM reasonably believes that the safety of its network will be compromised by the grant of the access requested;
 - (h) RBSM reasonable believes that the provision of access to the Access Seeker will be in furtherance of an activity which is illegal under Malaysian law; or
 - (i) RBSM reasonably believes that the provision of access to the Access Seeker will be contrary to the provisions and objectives of the CMA or the national interest.
- 8.2 If the terms and conditions of access requested by the Access Seeker for the provision of the Access Services is in the opinion of RBSM, unreasonable, notwithstanding that the supply of the Access Services requested by the Access Seeker may be reasonable.

9. *Request for Further Information (Form B. 9.1)*

- 9.1 RBSM may request the Access Seeker to provide further information pursuant to an Access Request, by issuing Form B.9.1 to the Access Seeker.
- 9.2 Upon receipt of Form B.9.1 (Request for Further Information), the Access Seeker shall within ten (10) Business Days provide the further information to RBSM.
- 9.3 If in RBSM's opinion the information provided is sufficient for it to make a decision as to whether to accept or reject the Access Request, it shall reconsider the Access Request and inform the Access Seeker of its decision within ten (10) Business Days from the date RBSM has received the further information from the Access Seeker.
- 9.4 For the avoidance of doubt, RBSM may make more than one requests for additional information from the Access Seeker in order for RBSM to make a decision as to whether to accept or reject the Access Request. Each request shall be subject to the provisions in Sections 9.2 and 9.3 above.
- 9.5 If RBSM issues Form B.9.1 (Request for Further Information) then the time limits set out in this Part B of the ARD shall not be applicable, other than the provisions set out in Sections 9.2 and 9.3 above.
- 9.6 If the Access Seeker does not provide the further information in response to a request made by RBSM, then the Access Seeker shall be deemed to have abandoned the Access

Request. Such abandonment shall be without prejudice to the Access Seeker submitting a fresh Access Request.

10. *Right to Withdraw Access Request*

- 10.1 No later than the fifth (5th) Business Day following the date of the Access Request, the Access Seeker may withdraw the Access Request and if so withdraws, then the Access Seeker must inform RBSM in writing of its decision before the expiry of the sixth (6th) Business Day.
- 10.2 If RBSM does not receive such written notice by the sixth (6th) Business Day following the date of the Access Request, then the Access Request shall remain valid and subsisting, notwithstanding such withdrawal by the Access Seeker.
- 10.3 If the withdrawal is effective, then RBSM shall not be obliged to nor be under any obligation to fulfil the Access Request.
- 10.4 No Access Request may be withdrawn after the expiry of the fifth (5th) Business Day, and if an Access Seeker does do so, such withdrawal will not be effective unless agreed to by RBSM (whether on terms or otherwise).

11. *Applicability for Additional Services*

- 11.1 Notwithstanding that the Access Seeker may have entered into an Access Agreement with RBSM, the Access Seeker shall for each additional Access Service which it requires access to in addition or in substitution to the access already provided under an Access Agreement, the Access Seeker shall submit an Access Request in accordance with these provisions set out above.

12. *Outline of the Access Agreement Between Access Seeker and RBSM*

- 12.1 This outline of the Access Agreement will be as follows :
 - 1. Articles of Agreement
 - 2. General Terms and Conditions (adopted from Part D.1 to this ARD)
 - 3. Specific Terms and Conditions (adopted from the relevant section of Part D.2 to this ARD)
 - 4. The applicable Schedules (adopted from Part G to this ARD, including such additional schedules as may be necessary)
 - 5. Appendix A – Technical Requirements
 - 6. Appendix B – Specifications
 - 7. Appendix C – Price List [To be inserted at Time of Negotiating Access Agreement]
 - 8. Appendix D – Prices set out in Determination No. 1 of 2003, and as varied by Determination No. 1 of 2008 and any subsequent Determinations published by the MCMC from time to time.

Part C **Negotiation Process and Timeline**

1. *Introduction*

The following negotiation process and timelines shall be applicable to all forms of negotiation between an Access Seeker and RBSM in respect of an Access Agreement whether based on the ARD or otherwise.

All negotiations shall be conducted in good faith. For the purposes of determining “good faith” the provisions in subsection 5.4.17 of the MSA shall apply mutatis mutandis, and references to Access Provider and Access Seeker shall be construed accordingly.

2. *Commencement of Negotiation*

- 2.1 If an Access Seeker has received Form B.3.5 (Access Request Acceptance – Negotiation Response expressing an intention to negotiate terms and conditions of the Access Agreement), the Access Seeker must within five (5) Business Days of receipt of the Form B.3.5 (Access Request Acceptance – Negotiation Response) submit the following to RBSM:
- (a) A list of the clauses which it wishes to change or negotiate and the proposed language for such clauses ; or
 - (b) The draft Access Agreement for negotiation,
 - (c) The date when negotiations are to commence.
- 2.2 If the Access Seeker fails, neglects or refuses to do so within the time stipulated, then the Access Seeker shall have been deemed to have withdrawn its Access Request and RBSM shall not be under any obligation to provide access to the Access Seeker.

3. *Duration of Negotiations*

- 3.1 All negotiations shall be concluded within one-hundred and twenty (120) days from the date RBSM receives a written request to commence negotiations, or in default, the time shall commence from the date Form B.3.2 was issued to the Access Seeker.
- 3.2 RBSM and the Access Seeker may agree in writing to extend the time limited for concluding such negotiations, and upon such agreement, submit a joint request for the approval of the extension to the Commission.
- 3.3 Pending such approval by the Commission, the parties shall continue to negotiate in good faith to conclude the access agreement.

4. *Initial Meeting*

- 4.1 The designated representatives of RBSM and Access Seekers as specified in Form B.3.1 and Form B.3.5 shall meet on the date and time at the venue specified in Form B.2.5, and shall:
- (a) agree the target ready for service date(s);
 - (b) agree a timetable for the negotiations, including milestones and dates for subsequent meetings, required to meet the agreed target ready for service date;
 - (c) agree the negotiating procedures, including:
 - (i) the calling and chairing of meetings;
 - (ii) the party responsible for keeping minutes of meetings;

- (iii) clearly defined pathways and timetables for escalation within each party of matters not agreed in meetings;
- (iv) procedures for consulting and including in the negotiating process relevant experts from the staff of each of the parties; and
- (v) procedures for preparing and exchanging position papers;
- (d) review the information requested and provided to date and identify information yet to be provided by each party;
- (e) identify what technical investigations, if any, need to be made and by whom such investigations should be made.
- (f) if applicable, resolve the objection of the rejected representative if the party to whom an Objection Notice has been given still wishes to have that person included in its negotiating team.

5. *Right of Objection*

- 5.1 Either party may object to the person or persons nominated by the other party to attend and/or lead any negotiations.
- 5.2 If a party wishes to object to such person or persons, then that party must as soon as reasonably practicable but not less than five (5) Business Days prior to the date of the initial meeting set out in Form B.3.5, submit an objection in writing ("**Objection Notice**") to the other party:
- (a) identifying the person or persons which the party objects to; and
 - (b) stating the reasons or explanation of the basis for such objection.
- 5.3 RBSM or the Access Seeker may only object to a person nominated by the other party on the ground that the participation of such nominee would adversely affect the legitimate business activities of the objecting party.
- 5.4 Upon receipt of an Objection Notice, the recipient shall ensure that the person objected to does not attend the initial meeting.
- 5.5. Unless the objection is resolved at the initial meeting, such objected person shall not attend any of the negotiations between the parties.

6. *Failure to reach agreement*

- 6.1 If the parties are unable to reach agreement by the time limited for so doing, then:
- (a) both parties may apply to the Commission for an extension of time to complete the negotiations, and if such application for extension of time is refused by the Commission, then either party may seek the resolution of such failure pursuant to the Dispute Resolution Procedures set out in Part E to this ARD; or
 - (b) either party may seek the resolution of such failure pursuant to the Dispute Resolution Procedures set out in Part E to this ARD.
- 6.2 If RBSM and the Access Seeker are unable to reach agreement despite an extension of time is granted by the Commission, then the provisions set out in Section 6.1 of this ARD shall apply.

Part D General Terms and Conditions

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

1. Forecasting Obligations

1.1 General

1.1.1 The Access Seeker shall, for the duration of the Term of the Access Agreement:

- (a) provide RBSM with a 12 month forecast of its requirements of access within thirty (30) days from the date of this Access Agreement; and
- (b) periodically not less than thirty (30) days before the anniversary of the Commencement Date of this Access Agreement, furnish to RBSM, reasonably accurate 12 month forecasts of its requirements for Access Services from RBSM.

1.1.2 **Duration of Forecast.** All forecast provided by the Access Seeker shall, unless the context otherwise requires, be for a twelve (12) month period.

1.2 Forecast Request

1.2.1 RBSM may at any time, request in writing ("Forecast Request") that the Access Seeker provide to RBSM the following information ("Forecast Information") in sufficient detail to enable RBSM to carry out its Network and provision planning for the Access Services for which access is required:

- a) Network area or operational area where access is required ;
- b) Specific time table when each of the Access Services is required ;
- c) The required bandwidth capacity;
- d) Such other information as may be reasonably necessary for RBSM to carry out Network planning.

1.2.2 **Time to Provide Forecast Information.** The Access Seeker shall provide the Forecast Information to RBSM within five (5) weeks from the date of receipt of the Forecast Request, unless RBSM agrees in writing to an extension of the time limited for the provision of the Forecast Information.

1.2.3 **Confidentiality of Forecast Information.** RBSM shall treat all Forecast Information provided by the Access Seeker to RBSM pursuant to this Access Agreement as confidential and shall only be used by the following personnel: (a) those personnel of RBSM who are in RBSM's wholesale or interconnection group or (b) those personnel of RBSM who are part of RBSM's Network engineering group with responsibility for interconnection, for the purpose of responding to and planning for the forecast.

1.2.4 **Distribution of Forecast Information.** RBSM may only distribute Forecast Information of an Access Seeker outside the groups of people referred to in Section 1.2.3 above if: (a) the Forecast Information of the Access Seeker is aggregated with

forecasts provided by other operators and RBSM's own requirements; and (b) the Forecast Information or its use does not otherwise specifically identify the Access Seeker in any manner.

1.3 *Updating & Confirming Forecasts*

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

1.4 *Constrained Capacity*

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

1.5 *Forecast Rejection or Acceptance*

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

1.6 *Reconsideration*

- 1.6.1 **By Access Seeker.** Upon the rejection of the Forecast Information by RBSM pursuant to Section 1.5.4 above, the Access Seeker may within twenty-one (21) Business Days from the receipt of the rejection notice by the Access Seeker, reconsider its Forecast Information and either (a) confirm that its rejected forecast is reasonable and submit an explanation justifying its reasonableness to RBSM; or (b) submit a new forecast to RBSM.
- 1.6.2 **By RBSM.** If an Access Seeker submits an amended forecast, RBSM shall reconsider the same and the provisions set out in this Section 1 shall apply as if such amended forecast were a fresh forecast.

1.7 *Over-forecasting*

- 1.7.1 The Access Seeker shall not over-forecast its requirements for the Access Services that it seeks from RBSM.
- 1.7.2 RBSM shall determine whether or not the Access Seeker has over-forecasted its requirements on an annual basis by comparing the forecast amount and the Access Orders made for that year.
- 1.7.3 Should the Access Seeker's forecasted requirements exceed the Access Orders for that year, then there shall be deemed to be an over-forecast, whereupon section 1.8 shall apply.

1.8 *Effect of Over-Forecasting*

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

1.9 *Failure to provide Forecasts*

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

2. Ordering and Provisioning Obligations

2.1. Access Order Information by Access Seeker

- 2.1.1 The Access Seeker shall provide RBSM with an Access Order, which shall set out the following information (“Access Order Information” or “AOI”):
- (a) the Access Services to which access is requested;
 - (b) the proposed time for delivery of access by RBSM to the Access Seeker;
 - (c) the locations of the points of delivery in accordance with RBSM’s published points of interface;
 - (d) the specifications, technical data, functionality and inter-operability of the Equipment which the Access Seeker will be using in connection with the Access Order;
 - (e) details of the Access Seeker’s requirements; and
 - (f) such other information as the Access Seeker may reasonably believe that RBSM may require in order to fulfil the requirements of Access Seeker.
- 2.1.2 The Access Seeker shall provide the AOI in sufficient detail and in sufficient time to enable RBSM to evaluate and plan the provisioning of the Access Services.
- 2.1.3 **Confidentiality of AOI.** RBSM shall treat all AOI provided by the Access Seeker to RBSM pursuant to this Access Agreement as confidential and such AOI shall only be used by the following RBSM personnel: (a) those personnel of RBSM who are in RBSM’s wholesale or interconnection group; or (b) those personnel of RBSM who are part of RBSM’s Network engineering group with responsibility for interconnection for the purpose of responding to and provisioning the Order.

2.2 Acknowledgement of Receipt of Access Order by RBSM

- 2.2.1 An acknowledgment of receipt by RBSM of the Access Order shall be issued to the Access Seeker within two (2) Business Days, and will include the following information in the notice of receipt :
- a) the time and date of receipt;
 - b) the available capacity in RBSM’s relevant network facilities or services;
 - c) time frame for the fulfilment of the Access Order;
 - d) a statement that the Access Order has been placed in the queue based on RBSM’s queuing policy;
 - e) such additional information as may be required by RBSM to clarify the Access Order; and
 - f) such other information as may be necessary to comply with the provisions of Section 5.7.6 of the MSA.

2.3 Additional Information

The Access Seeker shall revert to RBSM within fourteen (14) Business Days, with the additional information requested by RBSM in section 2.2.1 (e). Insufficient or

incomplete information provided by the Access Seeker will entitle RBSM to reject the Access Order.

2.4 *Service Qualifications*

- 2.4.1 RBSM shall be entitled to conduct Service Qualifications on the relevant portion of its network as deemed necessary, pursuant to any request for access by an Access Seeker. RBSM will give a written notice to the Access Seeker within five (5) Business Days of receipt of the Access Order, that it intends to conduct such Service Qualification.
- 2.4.2 The Access Seeker, may with the written consent of RBSM and upon terms to be agreed, conduct its own Service Qualification.
- 2.4.3 RBSM shall use all reasonable efforts to complete the Service Qualification with respect to an Access Order within twenty (21) Business Days of the commencement of the Service Qualification.
- 2.4.4 RBSM will inform the Access Seeker of the result of the Service Qualification within two (2) Business Days of the completion of such Service Qualification.
- 2.4.5 The Access Seeker may withdraw its Access Order within fourteen (14) Business Days after receiving the results of the Service Qualification.

2.5 *Acceptance or Rejection of an Access Order*

- 2.5.1 RBSM will notify the Access Seeker, within either fourteen (14) Business Days or if RBSM intends to carry out a Service Qualification, thirty five (35) days, (as the case may be), from the date of receipt of the Access Order by RBSM as set out in the acknowledgement issued under Section 2.2 above, whether such Access Order is accepted or rejected.
- 2.5.2 **Rejection.** RBSM may reject an Access Order on any of the following grounds :
 - a) The specific request is not technically feasible;
 - b) RBSM has insufficient capacity to provide the requested network services of facilities at the time requested by the Access Seeker;
 - c) The Access Order exceeds the forecast levels provided by the Access Seeker pursuant to Section 1 of this Access Agreement;
 - d) the Access Order or variation requested duplicates another Access Order waiting for fulfillment;
 - e) Access Seeker has not obtained the necessary related agreements from RBSM;
 - f) RBSM is of the reasonable view that the Access Seeker would materially fail to comply with Access Agreement,
 - g) RBSM has reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Access Services, to protect the integrity RBSM's Network and/or safety of individuals working on or using services supplied by RBSM's Network.
- 2.5.3 If the Access Order is rejected, then RBSM shall issue a notice of rejection which shall contain, inter alia, the following information :
 - a) the ground(s) of rejection;

- b) the time period by which RBSM will accept a modified Access Order;
 - c) the nature of such acceptable modifications to the Access Order.
- 2.5.4 The Access Seeker may within five (5) Business Days of receipt of the Notice of Rejection, request in writing to meet RBSM to discuss the reasons for rejection and alternative methods of compliance.
- 2.5.5 If RBSM refuses to meet with the Access Seeker then the Access Seeker may if it disagrees with the grounds for rejection, initiate the dispute resolution process specified in Schedule [*insert Schedule number in Access Agreement*] – Dispute Resolution Procedure.
- 2.5.6 **Acceptance.** If the Access Order is accepted, then RBSM shall issue a notice of acceptance which shall contain, *inter alia*, the following information :
- a) The specific delivery date for the Access Services, which shall be: (i) in the case of Access Order for new facilities or services, no later than eight (8) months from the date of the Access Order, or (ii) in the case of augmentation of the current capacity on existing facilities or infrastructure, no later than sixty (60) days from the date of the Access Order.
 - b) The actual or an estimate of the charges payable to RBSM by the Access Seeker, for the fulfillment of the Access Order. RBSM may initially provide an estimate of the charges, which may be subsequently varied. If a variation of charges occurs, then the Access Seeker may withdraw the Access Order if the variation of the charges exceeds the original estimate by ten per centum (10%).
 - c) That the Access Seeker must within ninety (90) days from the date of the notice of acceptance confirm in writing to RBSM of its intention to proceed with the Access Order. The charges set out shall remain valid for the period of ninety (90) days.

2.6 Confirmation & Charges

- 2.6.1 **Access Seeker's Confirmation.** If RBSM accepts an Access Order, the Access Seeker shall within the ninety (90) day period from the date of notice of acceptance, confirm in writing its agreement to proceed with such Access Order.
- 2.6.2 **Estimate Charges.** If RBSM had, in a notice of acceptance, provided an estimate of the charges to the Access Seeker, RBSM will not exceed the estimate unless the Access Seeker is provided with written notice by RBSM prior to RBSM exceeding the estimate, and such notice states that:
- (a) the estimate will likely to be exceeded;
 - (b) an explanation of the reasons for exceeding the estimate; and
 - (c) a further estimate of the charges for the work necessary to fulfill the Order.
- 2.6.3 If the revised estimate exceeds the original estimate by more than 10% of the original estimate, then the Access Seeker may within five (5) Business Days from the date of the notice specified in Section 2.7.2.1 above, withdraw the Access Order, and such withdrawal shall not expose the Access Seeker to any penalty, and RBSM shall cease to undertake the fulfillment of that Access Order, without being in breach of any of its obligations under the Access Agreement.

- 2.6.4 If RBSM exceeds the estimate of charges without informing the Access Seeker prior thereto, then unless the Access Seeker agrees in writing to the revised charges, RBSM will only be entitled to compensation from the Access Seeker on a quantum meruit basis in accordance with the provisions of the Contracts Act 1950.
- 2.6.5 If the Access Seeker does not withdraw the Access Order after being notified by RBSM in accordance with Section 2.7.2.1 above, then the Access Seeker shall be deemed to have agreed to the revised charges from RBSM, and RBSM shall continue with the work and the Access Seeker shall be liable to pay to RBSM the revised charges.

2.7 *Fulfilment of an Access Order*

Upon receipt of the confirmation specified in Section 2.7.1 above, RBSM will use all reasonable efforts to fulfil the Access Orders for the Access Services which complies to the forecast supplied by such Access Seeker, on the terms and conditions contained in the Access Agreement

2.8 *Required Extra Capacity*

- 2.8.1 RBSM may, by written notice, require the Access Seeker to purchase additional capacity on the Access Seeker's side of the Network, as RBSM reasonably estimates, may be required by the Access Seeker to meet the demand on its Network.
- 2.8.2 Should the Access Seeker fail, neglect or refuse to procure such additional capacity within seven (7) Business Days of RBSM's notice, and the actual demand exceeds the capacity on the Access Seeker's Network, RBSM will notify the Access Seeker in writing of such overload on RBSM's Network. Thereafter, the parties shall meet within five (5) Business Days of the notice, to identify alternative sources of the required capacity for the Access Seeker.
- 2.8.3 If the access capacity issue on the Access Seekers Network cannot be resolved within ten (10) Business Days of the last meeting between the parties, RBSM shall be entitled, without further notice to the Access Seeker, to bar or block services (including calls) to the Access Seeker's Network to the extent necessary to minimise congestion within RBSM's Network.

2.9 *Delivery Date for Access*

- 2.9.1 RBSM will deliver the ordered access to the Access Services on or before the date specified in the notice of acceptance sent by RBSM.
- 2.9.2 Should RBSM be able to deliver the ordered access to the Access Seeker earlier than the agreed delivery date, RBSM will advise the Access Seeker of such early delivery and if agreed to by the Access Seeker, deliver such ordered access at such earlier date.

2.10 *Delay to Delivery Dates*

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

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

2.11 *Cancellation of Access Orders*

- 2.11.1 An Access Seeker may cancel or vary an Access Order in writing provided to RBSM at any time prior to provisioning of the Access Services by RBSM, unless such cancellation was in accordance with Section 2.11.1 above. RBSM shall be entitled to charge the Access Seeker for all costs and expenses incurred by RBSM in relation to the cancelled or varied Access Order.
- 2.11.2 For the purposes of this Section a variation of an Access Order shall be an addition, modification, substitution or omission made to an Access Order.

2.12 *Testing and Provisioning by Access Seeker*

RBSM will offer all reasonable assistance and cooperation to the Access Seeker in relation to the testing and provisioning of ordered Access Services. RBSM shall be entitled to charge the Access Seeker a reasonable one-off fee for such assistance and cooperation.

2.13 *Queuing System for Access*

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

3. Network Conditioning Obligations

3.1 *Commencement of Network Conditioning*

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

- a) geographical coverage of the Access Services (where applicable);
- b) number information (where applicable) (including length and code allocation);
- c) origins from and destination to which access is required ;
- d) network routes (including which operator is responsible for the provisioning of the interconnection links) ;
- e) handover arrangements at Points of Interface.

3.2 *Number Range Activation*

- (a) RBSM will use its best endeavours to activate a code or number range in the Access Provider's Network within ten (10) days of being requested to do so by the Access Seeker to whom the code or number range has been allocated. (Where applicable); and
- (b) In all other cases, RBSM will use its best endeavours to activate a code or number range within thirty (30) days of being requested to do so by the Access Seeker.

3.3 *Costs of Network Conditioning*

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

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

4. Point Of Interface Obligations

4.1 *Available Locations*

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

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

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

4.2 *Deemed Access Providers*

- 4.2.1 If the Access Seeker obtains physical co-location at a POI from RBSM, the Access Seeker shall be, for the purposes of the MSA, a deemed access provider to other operators, and RBSM shall be considered as the principal access provider.
- 4.2.2 In such a case, the Access Seeker is a deemed access provider, shall notify RBSM of the identity of all other operators with whom it has reached co-location agreements within two (2) Business Days of reaching such agreements, and shall ensure that such other operators comply with the relevant co-location obligations contained in subsection 5.13 of the MSA, and Section 7 of this Access Agreement.
- 4.2.3 For the purposes of Section 4.2.2 above, the Access Seeker may disclose to such other operators the provisions of Section 7 of the Access Agreement.

4.3 *Change of POI by Access Seeker*

RBSM may consider a request in writing by the Access Seeker to interconnect at a point other than the POI published by RBSM on its website. RBSM may at its absolute discretion provide access at such unspecified POI to the Access Seeker. For the avoidance of doubt, this Section 4.3 does not impose an obligation on RBSM to interconnect at a non-specified POI Location.

4.4 *Third party POI*

- 4.4.1 Should the Access Seeker nominate a third party POI for the purposes of interconnection between the Access Seeker and RBSM, it shall first notify RBSM of such nomination giving sufficient details to RBSM to enable RBSM to decide if it accepts or rejects such nomination.
- 4.4.2 If RBSM accepts such nomination, RBSM shall notify the Access Seeker and notwithstanding such acceptance by RBSM, the Access Seeker shall remain responsible at all times for all costs of interconnection and access and for the third party's act or omissions at the POI.
- 4.4.3 If RBSM rejects such nomination, RBSM shall notify the Access Seeker of its decision and shall provide reasons for its rejection.
- 4.4.4 Notwithstanding the agreement of RBSM to interconnect at such third party POI, the Access Seeker shall indemnify and keep RBSM indemnified for the duration of the Term of the Access Agreement, against all and any claims, demands, expenses, losses and expenses which RBSM may incur or be exposed to, arising from such interconnection at the third party's point of interconnect.

5. *Decommissioning Obligations*

5.1 *Decommissioning Notice*

In the event RBSM is desirous of decommissioning a Point of Interface, either (a) as a result of a third party landlord's notice under a tenancy or lease agreement, or (b) for any other commercial reason, RBSM shall give a Decommissioning Notice to the Access Seekers if the Access Seeker is so affected, at least:

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

(as the case may be).

5.2 *Co-operation by RBSM*

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

5.3 *Alternative Arrangements*

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

5.4 *Compensation for Decommissioning Point of Interface*

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

5.5 *Compensation for Decommissioning Network Facilities or Network Services*

- 5.5.1 RBSM shall pay to the Access Seeker, the Access Seeker's reasonable costs, necessarily incurred in (a) moving the Access Seeker's Equipment from the decommissioned network facilities to the alternative network facilities offered in accordance with Section 5.3.2 above; or (b) re-arranging Equipment to connect to the alternative network services offered in accordance with Section 5.3.2 above, unless such decommissioning is caused by an event of Force Majeure.

5.6 *Determining Compensation.*

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

- 5.6.1 The Access Seeker must within thirty (30) days of the completion of the decommissioning and re-installation at the substitute Point of Interface, submit to RBSM details of the Access Seeker's reasonable costs identified in Sections 5.4.1 and 5.5.1 above.

- 5.6.2 If RBSM considers that the submission is insufficient for RBSM to verify the costs, RBSM may request the Access Seeker to provide further information, whereupon the Access Seeker shall within thirty (30) days submit the further information required or provide an explanation as to its unavailability.
- 5.6.3 Upon receipt of all requisite information from the Access Seeker, RBSM shall within thirty (30) days, evaluate and determine if the costs incurred is reasonable and necessary, and if RBSM determines that the costs incurred are reasonable and necessary, RBSM shall notify the Access Seeker in writing of its decision and the Access Seeker may deduct the said amount from any payments due to RBSM.
- 5.6.4 If after the period set out in Section 5.4.2.3, RBSM disagrees with the computation by the Access Seeker or that the costs claimed are reasonable and necessary, then RBSM shall notify the Access Seeker of its disagreement stating its reasons for RBSM disagreeing with the computation of the Access Seeker. Upon such notification, a dispute is deemed to have arisen, which shall be resolved in accordance with Schedule [As Stated in Access Agreement] – *Dispute Resolution Procedure*.

6. Network Change Obligations

6.1 *Scope of Network Change*

This section deals with the obligations between RBSM and the Access Seeker (including all other Operators [whether they are Access Seekers or Access providers]), with respect to the implementation of a Network Change (as set out in Section 6.2 below) which necessitates a change in the hardware or software of the other party's Network in order to ensure the continued proper operation and compatibility of the parties respective Networks. The obligations in this Section are reciprocal in nature and apply to RBSM and the Access Seeker.

6.2 *Types of Network Changes*

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

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

(Collectively referred to as the “ **Relevant Changes**”)

6.3 *Notification of Change*

- 6.3.1 If either RBSM or the Access Seeker (as “**the notifying party**”) proposes to make a Relevant Change to its Network, services and procedures, the notifying party will issue to RBSM or the Access Seeker (as the case may be) (as the “**recipient party**”) a Change Notice stating the nature, effect, technical details and potential impact on the recipient

party's Network. Upon receipt of the Change Notice, the recipient party shall immediately identify and begin planning the necessary consequential changes that it has to implement to make its Network, services or procedures compatible with the notifying party's Network.

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

6.4 *Post notification Procedure and Testing*

- 6.4.1 The notifying party will co-operate and meet with the recipient party within the time frame set out in section 6.2 above, and provide additional information reasonably requested by the recipient party so as to minimise any adverse impact of the Relevant Changes.
- 6.4.2 The notifying party will co-operate with the recipient party in relation to the development of procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the parties' respective Networks. The notifying party will jointly with the recipient party carry out such tests as developed above at least twenty (20) days prior to the notifying party implementing the Relevant Changes.
- 6.4.3 The cost of the tests shall be borne by the parties rateably taking into account the fact that other Operators may be affected.

6.5 *Testing Failures*

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

7. Network Facilities Access and Co-Location

7.1 *Applicability*

If any co-location or access is to be provided by RBSM to or at network facilities under this Access Agreement, then the provisions set out in this section shall be applicable. The availability of access to facilities and co-location will be stated in Part A Section 2 of this ARD.

7.2 *Inspection*

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

7.3 *Physical Access to RBSM's Facilities*

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

7.4 *Escorts during Access and Site Register*

- 7.4.1 RBSM may at its discretion and at its costs, for security purposes, assign escorts (who may either be its own employees or third parties) to be present when the authorised employees of the Access Seeker wish to enter onto RBSM's property for a specific stated purpose, such as maintenance or repair works.
- 7.4.2 The Access Seeker shall at all times establish and maintain a site register to record the names of all employees who visit RBSM's facility. RBSM shall be entitled to inspect such site register upon request.
- 7.4.3 RBSM shall be entitled to refuse entry to any person purporting to be the Access Seekers employee if a proper site register is not maintained by the Access Seeker.

7.5 *Space Requirements*

- 7.5.1 RBSM will allocate space at each location where RBSM has available space and wishes to allow co-location to an Access Seeker at such location. Such allocation shall be made on a non-discriminatory manner.
- 7.5.2 **Provision of Information.** The Access Seeker shall at least thirty (30) days before the anniversary of the Commencement Date provide such information about its physical space requirements for a twelve (12) month period over the duration of the Term of the Access Agreement prior to seeking such physical space to enable RBSM to submit such information regarding its physical space availability, usage and reservation to the Commission in accordance with the provisions in Section 5.13.11 of the MSA. RBSM may request the Access Seeker to provide such further information in order to enable RBSM to comply with the provisions of Section 5.13.11 of the MSA; and the Access Seeker shall provide such further information within five (5) Business Days of the request.

7.6 *Preparatory Work by the Access Seeker*

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

7.7 *Preparatory Work by RBSM*

7.7.1 If the parties agree that RBSM shall carry out the preparatory work on behalf of the Access Seeker, then RBSM shall undertake the preparatory work and the Access Seeker shall furnish all necessary co-operation to RBSM to enable RBSM to complete the preparatory work.

7.7.1 **Right to Withdraw.** If RBSM undertakes preparatory work for the Access Seeker based on an previous estimate, and in undertaking the said works, if RBSM is of the opinion that the estimated charges may be exceeded, RBSM will give a written notice to the Access Seeker providing a revision of the estimated charges. The Access Seeker may within five (5) Business Days from receipt of the revised estimate, withdraw the request that RBSM carry out the preparatory work without penalty if the revised estimate exceeds the previous estimate by more than ten percent (10 %). The Access Seeker will be liable to compensate the RBSM if it withdraws the access request in all other circumstances. In addition, if the Access Seeker does not respond within the time limited for doing so, then the revised estimate shall be deemed to be agreed by the Access Seeker and RBSM shall continue with the preparatory work.

7.8 *Delays in Preparatory Work*

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

7.9 *Utilities and Ancillary Services*

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

- (a) access to roads
- (b) access to land
- (c) power
- (d) back up power

- (e) environmental services such as ventilation, air conditioning, fire protection
- (f) security
- (g) site maintenance.

7.10 *Marking of Access Seekers Equipment*

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

7.11 *Access for Maintenance*

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

7.12 *Extensions of Network Facilities*

- 7.12.1 RBSM may, subject to technical feasibility and at the Access Seeker's own costs, reasonably permit the Access Seeker to extend RBSM's network facilities as may be reasonably required to meet the Access Seekers requirements.
- 7.12.2 If the Access Seeker intends to extend RBSM's network facilities, the Access Seeker must first submit a proposal to RBSM setting out the purpose of such extension, the design of such extension and the impact such extensions may have on RBSM's network.
- 7.12.3 Within thirty (30) days from receipt of the proposal by RBSM, RBSM will evaluate and determine whether to agree to such extension or not. The decision of RBSM is final and the Access Seeker agrees that such decision shall be binding on the Access Seeker.
- 7.12.4 If RBSM agrees with the proposal, then RBSM shall advise the Access Seeker of its decision. The Access Seeker shall be responsible for obtaining all permits and approvals required by law if it is to undertake the extension work, and indemnify and keep RBSM indemnified against all losses, costs, fines, damages, expenses and claims which may arise by virtue of the Access Seeker undertaking the extension work.

8. *Billing and Settlement*

8.1 *Deposit & Charges*

- 8.1.1 **Charges.** For the Access Services provided under this Access Agreement, the Access Seeker shall pay RBSM the charges, set out in the Mandatory Standard on Access Pricing, Commission Determination No. 1 of 2003. ("MCMC Price Determination 2003"), Commission Determination No. 1 of 2008 or any other Price Determinations issued by the MCMC from time to time.
- 8.1.2 If RBSM incurs additional costs outside those envisaged by the parties in the Access Agreement, which is payable by the Access Seeker, then the Access Seeker shall pay such additional costs to RBSM, in accordance with the terms set out herein.

- 8.1.3 **Deposits.** Within thirty (30) days of the execution of this Access Agreement, the Access Seeker shall provide to RBSM a bank guarantee from a Bank in Malaysia for an amount equal to [*amount to be specified – note: the amount would be a minimum of two(2) months charges of the relevant Access Services provided to the Access Seeker*]

8.2 Invoices

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

8.3 Billing Errors

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

8.4 Payment

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

8.5 Billing Dispute Notification

- 8.5.1 **Right to Dispute.** If the Access Seeker disputes any of the Invoices (within the time periods specified in section 8.6 below), the Access Seeker shall provide sufficient and complete information to RBSM relating to such dispute including:

- a) the nature of the dispute, supported with necessary documents;
- b) the amount disputed;
- c) detail of the Invoice stating the Access Seekers account number with RBSM, the invoice reference number, the invoice date, the invoice amount and the billing verification information
- d) such other information as the Access Seeker deems necessary to facilitate the expeditious resolution of the dispute.

8.5.2 Grounds for Disputing Invoice. An Invoice may be disputed by the Access Seeker if the Access Seeker has reasonable grounds to believe that an error has arisen from one of the following circumstances:

- (a) RBSM's billing system is, or has been, defective or inaccurate in respect of the recording of the calls which are the subject of the dispute;
- (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Access Seeker's Billing System;
- (c) RBSM has made some other error in respect of the recording of the calls or calculation of the Charges.

8.6 Billing Disputes Timeline

8.6.1 If the Access Seeker intends to dispute an Invoice, the Access Seeker must do so within the following time lines:

- a) in the case of domestic calls, the Access Seeker will notify RBSM within forty (45) days of receipt of the disputed invoice from RBSM;
- b) in the case of international calls, the Access Seeker will notify RBSM within six (6) months of receipt of the disputed invoice from RBSM.

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

8.7 Billing Dispute Resolution

The parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this section 8. If the parties are unable to resolve the Billing Dispute, then such Billing Dispute between the Access Seeker and RBSM will be resolved in accordance with Schedule [*To be inserted in Access Agreement*] – Dispute Resolution Procedure

8.8 Late Payment Interest

8.8.1 RBSM shall be entitled to charge the Access Seeker late payment interest on all amounts outstanding with respect to any overdue Invoice, at the rate of one percent (1%) per annum above Malaysian Banking Berhad's Base Lending Rate calculated daily from the due date of the Invoice until the date of full payment or eight percent (8%) per annum from the due date until full payment (whichever is the lower).

8.8.2 If any invoice is overdue by sixty (60) days or more, such invoice shall be subject to further interest at the rate of 2% per annum above the Malaysian Banking Berhad's Base

Lending Rate calculated daily from the sixtieth day following the due date until the date of full payment, or eight percent (8%) per annum from the due date until full payment (whichever is the lower).

8.9 Backbilling

- 8.9.1 If RBSM discovers that there are any errors or omissions, or miscalculations in an Invoice (“**the affected Invoice**”), RBSM shall include the difference between the revised value (taking into account the errors, omissions and miscalculations) and the value of the affected invoice (with such errors, omissions and miscalculations), and such difference shall be included into a later Invoice. This differential amount shall be identified in sufficient detail to enable the Access Seeker to undertake a reconciliation of the Invoices and payments made, PROVIDED THAT the amendment is made within two (2) months from the date of issuance of the affected invoice, or three (3) months from the latest date when the calls were made or service provided by RBSM.
- 8.9.2 Upon receipt of the Invoice containing such additions (differential amount), the Access Seeker may either request for further information within ten (10) Business Days or pay the said Invoice.

9. Right of Set-Off

- 9.1 **No right of set-off.** The Access Seeker shall not deduct, withhold or set-off any amounts stated in the Invoices against any amounts which RBSM may owe the Access Seeker or which may be due from RBSM to the Access Seeker.
- 9.2 If the Access Seeker in contravention of this section 9 withholds, set-off or deducts any amounts from the Invoice (except if a Billing dispute has been initiated under Sections 8.5 to 8.7 above), then RBSM may suspend the provision of the Access Services, until the Access Seeker pays the amount withheld.
- 9.3 The amount withheld shall be subject to interest as computed in accordance with Section 8.8 above.
- 9.4 RBSM may set-off any amount owing to it by the access seeker if the access seeker is in default of payment for 2 billing cycles, from any monies held by the access provider to the account of the access seeker including calling on any security guarantees or security deposits.

10. Operations and Maintenance Obligations

10.1 Operations & Maintenance Responsibility

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

10.2 Fault Management

- 10.2.1 **Establishing Fault Reporting Service.** Both the Access Seekers and RBSM will establish and maintain, at their own costs, a fault reporting service that allows its Customers who are connected to their respective Networks, to report such faults directly to their fault management systems.
- 10.2.2 **Fault Reporting.** Both RBSM and the Access Seeker will ensure that it advises its directly connected customers to report all faults to the fault reporting service set up by the relevant operator, and will manage its fault reporting and identification on a non-discriminatory basis.
- 10.2.3 **Major inter-working faults.** If a major fault occurs in the interconnected Network, which affects communications that crosses both RBSM;s and the Access Seekers Networks, initial identification of fault will rest with the Operator who first becomes aware of the fault. Once it is determined accurately where the fault lies, the affected Operator in whose Network the fault has occurred will promptly repair the said fault.
- 10.2.4 **Faults affecting other Networks or Equipment.** If an Operator identifies a fault occurring in its Network which may have an adverse effect on the other Operators Network or Equipment, the Operator identifying the fault shall promptly notify the other Operator of the existence of the fault, and the remedial actions being taken by the affected Operator.
- 10.2.5 **Fault Priority and Response Times.** In the event of interruption or failure of any of the facilities and/or services, the affected party will restore those services as soon as is reasonably practicable. Both RBSM and the Access Seeker will assign priority levels for each of the defect that it experiences in its Network, and will give the highest priority and service to faults that will affect a large number of customers, and to recurring faults affecting any part of the network.

10.3 Fault Rectification Response Time

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

10.4 Planned Maintenance

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

- a) provide a minimum of 10 Business days notice of the planned maintenance, where reasonably practical ;

- b) use reasonable endeavours to minimize any disruption to the interconnect and access communications between RBSM and the access Seeker ; and
- c) where reasonably practicable, and if agreed between RBSM and the Access Seeker, RBSM will provide an alternative route or carriage on terms to be agreed.

10.5 *Emergency Maintenance*

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

- a) provide at least 1 Business Day notice of the planned maintenance, where reasonably practical ;
- b) use reasonable endeavours to minimize any disruption to the Interconnect and Access communications between RBSM and the access Seeker ; and
- c) where reasonably practicable, and if agreed between RBSM and the Access Seeker, RBSM will provide an alternative route or carriage of the Access Seekers communication on terms to be agreed.

10.6 *Technical Obligations*

10.6.1 *Compliance to Commission Technical Guidelines and Standards*

Subject to the technical obligations set out in the ARD, RBSM and the Access Seeker will adhere to the relevant guidelines and all applicable technical standards adopted or issued by the Commission or the Malaysian Technical Standards Forum from time to time.

10.6.2 *Technical and Implementation Manual*

The parties shall agree to a technical and implementation manual in respect of the enablement of the access to the required Access Services as specified in Schedule [Insert Schedule Number] - (T & I Manual). Such manual shall be agreed to within 30 days from the date of execution of the Access Agreement, or such longer period as may be mutually agreed.

10.7 *Network Protection and Safety*

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

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

10.8 *Interference to the Network*

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

- a) cause radio interference to the other party's network ;

- b) materially obstruct, interrupt or impede the continuous use or operation of the network facilities, network services or equipment.

10.9 Notice of Interference

If either RBSM or the Access Seeker (“the Notifying Operator”) notifies the other party (“the Recipient Operator”) that the Recipient Operator’s network facilities, network services or equipment is causing interference to the Notifying Operator’s network facilities, network services or equipment, then the Recipient Operator shall upon receipt of the aforesaid notice from the Notifying Operator, complete all rectification and repair works so that the interference ceases do all things necessary to remove the interference UNLESS the Recipient Operator is unable to locate the source of the interference, whereupon the Recipient Operator shall notify the Notifying Operator of its inability to locate the source of the interference and the parties agree that both of them shall within twenty four (24) hours of such notice, jointly meet and inspect each others network facilities, network services or equipment to locate the source of the interference.

10.10 Quality of Service

Subject to technical capacity, the Access Services provided by RBSM to the Access Seeker shall be at the quality of service agreed between the Parties and set out in Schedule G.5 – Agreed Service Levels .

11. General Obligations of the parties

11.1 RBSM’s obligation to supply

RBSM shall supply to the Access Provider for the Term of the Access Agreement, access to the Access Services as set out in Schedule G.1.

11.2 Additional Access Requirements

- 11.2.1 If the Access Seeker requires access to other facilities or services not set out in Schedule G.1 to this Access Agreement, then the Access Seeker shall submit an Access Request in accordance with Part B of the ARD.
- 11.2.2 If RBSM accepts such Access Request, then the parties agree that RBSM may elect to either amend this Access Agreement by preparing a supplemental agreement, which adds such additional facilities or services which access is granted (which amendment shall not change the terms and conditions of access), or enter into a new access agreement for such additional facilities or services.

11.3 Term of Supply

The parties agree that, except where RBSM is unable to provide access due to any event of Force Majeure, the Access Seeker shall acquire access to individual network services and network facilities for the following minimum periods

| | Network services/Network facilities | Minimum Period |
|----|--|-----------------------|
| 1. | Access Services (for example: originating and terminating access) | No minimum period |
| 2. | Transmission services | 12 months |
| 3. | Network facilities Access | 3 years |

12. Term

12.1 Term

- 12.1.1 This Access Agreement shall be for a term of 3 years commencing from the Commencement Date until the Expiry Date ("Term").
- 12.1.2 If the Access Seeker wishes to renew the Term of this Access Agreement, then the Access Seeker must give to RBSM a notice at least one-hundred and eighty (180) days notice before expiry of the Term requesting that the Access Agreement be renewed further a further term of three (3) years on the same terms and conditions as set out in this Access Agreement ("the Renewal Notice").
- 12.1.3 If RBSM agrees to such the Renewal Notice, then the parties shall execute a new Access Agreement.

13. Termination and Suspension

13.1 Termination by RBSM

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

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

13.2 Change in law

- 13.2.1 Where the continued operation of the Access Agreement or access to any network facilities or network services provided thereunder is or will become unlawful as a result of legislative amendment(s), the Access Seeker and RBSM shall meet within five (5) Business Days of RBSM becoming aware of the legislative change, to review whether access to the relevant network facilities or network services may be provided by RBSM on terms and conditions acceptable to the Access Seeker and which would prevent such access from being unlawful under the legislative change ("Alternative Terms and Conditions").
- 13.2.2 If the parties cannot agree on the Alternative Terms and Conditions within ten (10) Business Days or such further period as may be mutually agreed, RBSM may terminate this Access Agreement if RBSM obtains the approval of the Commission as set out in Section 13.4 below.

13.3 Suspension

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

- a) the Access Seeker's network facilities materially and adversely affect the normal operation of RBSM's Network or are a material threat to the safety of any individual;
 - b) the Access Seeker's network facilities or the supply of a network service poses an imminent threat to the life or the property of RBSM, its employees or contractors;
 - c) the Access Seeker's network facilities cause material physical or technical harm to any network facilities of RBSM or any other person;
 - d) where the Access Seeker has failed to pay Invoices in accordance with its obligations under Section 8 of this Access Agreement; or
 - e) where a Force Majeure event occurs.
- 13.3.2 Subject to Section 13.4 below, RBSM shall give an Access Seeker five (5) Business Days prior written notice of its intention to suspend the Access Seeker's access to any of RBSM's network facilities or network services. Such notice shall also contain written reasons for the intended suspension.

13.4 *Prior Approval of Commission for Termination, Suspension, Variation*

- 13.4.1 RBSM shall give the Commission prior written notice of its intention to terminate, suspend or materially vary an Access Agreement. Such notice shall also state the reasons for RBSM's action and its appropriateness.
- 13.4.2 The right of RBSM to terminate or suspend or seek to materially vary the Access Agreement or access to any Access Services provided under it, as set out in this Access Agreement, may be exercised only when the Commission has agreed to such a course of action and has so notified RBSM. Such notification may contain such conditions as the Commission may specify.
- 13.4.3 Upon receipt of such notification, RBSM shall comply with the conditions and timeframes set out by the Commission, notwithstanding any provision in this Access Agreement to the contrary.

13.5 *Effect of termination*

- 13.5.1 Any termination under this Access Agreement shall be without prejudice to any accrued rights and obligations of the parties at the date of termination.
- 13.5.2 RBSM shall not be entitled to any additional charges, costs or expenses on termination of an Access Agreement or access to any network facilities or network services provided under it except:
- a) charges invoiced in arrears and not yet paid; or
 - b) charges arising during the minimum contractual period as set out in Section 11.3 above.

- 13.5.3 Upon the termination of an Access Agreement or access to any Access Services provided thereunder, RBSM shall refund to the Access Seeker all amounts paid in advance to the extent that the amount (or part thereof calculated on a pro-rata basis), relate to the period after the date of termination.
- 13.5.4 Notwithstanding the obligation in Section 13.5.3, RBSM shall:
- a) within sixty (60) days of termination of the Access Agreement refund to the Access Seeker any deposit paid less any amount owed to RBSM ; and
 - b) immediately upon termination of the Access Agreement unconditionally waive any rights under any guarantee provided by the Access Seeker.

13.6 *Effect of Suspension*

- 13.6.1 If RBSM elects to suspend the Access Agreement, then for the duration of the suspension, RBSM shall not be required to provide any access to the Access Seeker, and the rights, responsibilities and obligations of the parties pursuant to this Access Agreement will be held in abeyance until the Access Agreement is reactivated, and the Access Seeker may not exercise any such rights.
- 13.6.2 If the Access Agreement is suspended, the period of suspension shall not affect the expiry date of the Access Agreement.
- 13.6.3 RBSM shall not be held responsible to the Access Seeker for anything occurring, arising or manifesting itself during the period of suspension, nor liable for any loss, costs, damages, expenses (including consequential losses) which the Access Seeker may suffer due to the suspension.

14. Assignment

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

15. Force Majeure

Neither party will be deemed to be in default under this Access Agreement, or will be liable to the other, for failure to perform any of its non-monetary obligations under this Agreement for any period and to the extent that such failure results from any event or circumstance beyond that party's reasonable control, including acts or omissions of the other party or third parties, natural disasters, riots, war, civil disorder, court orders, acts or regulations of governmental bodies, labour disputes or failures or fluctuations in telecommunications equipment or lines, or other equipment failure, and which it could not have prevented by reasonable precautions or could not have remedied by the exercise of reasonable efforts, provided that the exercise of such reasonable precautions or reasonable efforts will not require the incurrence of any additional cost or expense (each, a **"Force Majeure Event"**).

16. Intellectual Property Rights

- 16.1 Each party shall license to the other party for the Term of the Access Agreement and on a royalty-free basis, all Intellectual Property rights necessary for the proper operation of the Access Agreement and the inter-operability of each party's networks, subject to any relevant third party licenses.
- 16.2 If either party fails to comply with its obligations under section 18.1, the party in default shall indemnify the other party from all loss suffered and liability incurred by the other party as a result of any infringement of any third party intellectual property rights used in the other party's network. This indemnification will be the only remedy and form of compensation available to the party invoking it relation to intellectual property licensed or disclosed under the Access Agreement.
- 16.3 Except as otherwise expressly provided in the Access Agreement, all intellectual property rights, including trade secrets if any, shall remain in the ownership of the person creating or commissioning the same and nothing in the Access Agreement shall confer or be deemed to confer on either party any rights or licenses in the intellectual property of the other party or of any third party.
- 16.4 Without prejudice to section 18.3, neither party shall be entitled to use any trademarks or service marks (whether registered or not) of the other party in any document or other medium, without the prior written consent of the other party.
- 16.5 The parties will negotiate arrangements (including in respect of title) concerning intellectual property jointly developed in the course of the performance of the Access Agreement or otherwise in connection with the Access Agreement.

17. Confidentiality

- 17.1 **Scope of Obligation.** Except as otherwise expressly provided in this Agreement, RBSM and the Access Seeker each agree that (i) all information communicated to it by the other and identified as confidential, (or which the other party ought reasonably have known is confidential by nature) whether before or after the Commencement Date including without limitation information relating to the business affairs of the parties, information relating to the parties' customers or employees, and service offerings, (ii) all information identified as confidential to which it has access in connection with the access, on or after the Commencement Date, and (iii) this Agreement and the parties' rights and obligations under this Agreement, will be and will be deemed to have been received in confidence and will be used only for purposes of this Agreement, and each of the parties, agree to use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of the information. No such information will be disclosed by the recipient party without the prior written consent of the other party as such information shall only be disseminated on a need-to-know basis; provided however, that each party may disclose this Agreement and the other party's confidential information to those of the recipient party's legal advisers, auditors, insurers (if applicable), such parties appointed by the Commission, the Commission, and the full time employees who have a need to have access to such information in connection with their employment (or engagement, if applicable) by the recipient party, so long as the recipient party requires, in the case of its legal advisers, auditors and insurers, that each of them execute a confidentiality agreement containing terms and conditions no less restrictive than those set out in this Section 19.

17.2 Exceptions to Disclosure. This Section 19 will not prevent either party from disclosing information that belongs to such party or (i) is already known by the recipient party without an obligation of confidentiality other than under this Agreement, (ii) is publicly known or becomes publicly known through no unauthorised act of the recipient party, (iii) is rightfully received from a third party, (iv) is independently developed without use of the other party's confidential information (v) is disclosed without similar restrictions to a third party by the party owning the confidential information or (v) is required to be disclosed pursuant to Law or a court order or governmental authority. If confidential information is required to be disclosed in connection with the conduct of any mediation or dispute resolution proceeding carried out pursuant to Section 19, such confidential information may be disclosed pursuant to and in accordance with the approval and at the direction of the mediator or other third party, as the case may be, conducting such proceeding.

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

18. Review and Amendments

18.1 Review of Access Agreement

The parties agree that the Access Agreement shall be reviewed:

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

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

18.2 Review Process

18.2.1 If a Review Event occurs, then RBSM may notify the Access Seeker that the Access Agreement will be reviewed. The review shall be undertaken and completed as soon as possible but in any event no later than thirty (30) days from the date when RBSM notifies the Access Seeker.

18.2.2 Upon completion of the review, RBSM shall submit to the Access Seeker a copy of the Access Agreement duly marked up with the amendments or modifications or variations clearly identified.

18.2.3 The Access Seeker shall revert with its comments and suggested changes (if any) within fourteen (14) days from the date of receipt of the amended access agreement.

- 18.2.4 If the parties agree to the amendments, modifications or variations to the Access Agreement, then the parties shall execute the amended Access Agreement and RBSM shall submit the same for registration with the Commission.

19.3 Security Review

- 19.3.1 RBSM may review the security provided to it by the Access Seeker if there has been a material change in circumstance in relation to the Access Seeker's creditworthiness.
- 19.3.2 For the purposes of this Section 20.3, a material change in circumstances includes, but is not limited to, failure to pay on the due date at least three (3) Invoices rendered in the preceding six (6) months as long as those amounts have not been disputed in good faith.
- 19.3.3 **Additional Security.** If section 20.3 is applicable, RBSM may request additional or substitute security from the Access Seeker in a manner consistent with that which would apply if the Access Seeker was making a new Access Request under Part B of the ARD.

2.1.1 Insurance

- 20.1 Prior to the Commencement Date, the Access Seeker will deliver to RBSM of evidence satisfactory to RBSM of the currency of the policies of insurance under this Section 21. The Access Seeker must take out and maintain the following insurances with a reputable insurer in Malaysia:
- (a) General Liability Insurance for an amount of not less than RM20 million, for any one occurrence in respect of any liability for bodily injury (including death) of any person, personal injury, or property damage arising out of or in connection with the performance of the this Access Agreement. The insurance policy must contain a "cross liabilities" clause so that each of the insured parties will be considered as a separate and distinct unit and the term "Insured" in the policy will apply to each party as if a separate policy had been issued to each of the parties in its name alone;
 - (b) Workers' Compensation Insurance in accordance with applicable awards or legislation and insurance against common law liability to any person employed by the Access Seeker;
 - (c) Such other insurance as may be specified by RBSM prior to the Commencement Date of this Access Agreement, to cover the risks that may arise in the course of providing the Access Services.
- 20.2 **Period of insurance.** The Access Seeker must take out the insurance required under Section 21.1 prior to the Commencement Date and must maintain such insurance until the expiry or termination of this Agreement.
- 20.3 **Notification of claims** The Access Seeker must notify RBSM in writing of any claim and any event associated with this Access Agreement which is likely to give rise to a claim against the insurance effected by the Access Seeker, within five (5) days after the Access Seeker becomes aware of such claim or event and provide such further information to RBSM in relation to the claim or event as RBSM may reasonably require.

21. Costs and Expenses

Each party shall bear its own costs and expenses for negotiating, preparing and executing the Access Agreement and all documents contemplated by it, except where the Access

Agreement expressly provides otherwise. Stamp duty payable in respect of the Access Agreement shall be borne by the Access Seeker.

22. Reciprocity in Obtaining Access

If RBSM requires access from the Access Seeker, then RBSM is prepared to acquire such access to the network facilities or network services of the Access Seeker on the same terms as RBSM provides to the Access Seeker.

23. Governing Law

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

24. Compliance with laws

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

25. Conditions Precedent

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

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

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

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

26. Notices

26.1 All notices, demands or other communication required or permitted to be given or made under or in connection with an Access Agreement shall be in writing and shall be sufficiently given or made if:

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

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

If to RBSM:

Reach Bandwidth Services Malaysia Sdn Bhd
Level 49, Petronas Tower 2
Kuala Lumpur City Centre
50088 Kuala Lumpur

Fax No: 03 7490 0505

Attention: Ms Jaclyn Lai

e-mail address: jaclyn.lai@reach.com

If to the Access Seeker:

[To insert Address]

Fax No: [To insert]

Attention: Mr/Ms [To insert]

E-Mail Address [To insert]

27. Dispute Resolution

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

28. Entire Agreement

- 28.1 The Access Agreement will represent the entire understanding between the parties in respect of the provision of network facilities and/or network services dealt with thereunder.
- 28.2 The following schedules are incorporated into and forms part of the Access Agreement, in the format set out in Part G of this ARD :
- (a) Schedule [] – Access Services Provided by RBSM
 - (b) Schedule [] – Dispute Resolution Procedure
 - (c) Schedule [] – Definitions and Interpretations
 - (d) Schedule [] – Fault Rectification Response Times
 - (e) Schedule [] – Quality of Service Levels
 - (f) Schedule [] – Additional Terms & Conditions of Access
 - (g) Schedule [] – Confidentiality Agreement
 - (g) Annex A – Technical Requirements
 - (h) Annex B - Specifications

- (i) Annex C – Price List from RBSM
- (j) Annex D – Access Prices as per Commission Determination published

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

- 28.3 The Access Agreement, supersedes all previous understandings, commitments, agreements or representations whatsoever, whether oral or written, in relation to the subject matter of the Access Agreement.
- 28.4 This Access Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which taken together will constitute one instrument.

29. Good Faith and Non-Exclusivity

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

30. Partial Invalidity

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

Part E **Specific Terms and Conditions**

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

Part E.1 Private Circuit Completion Service (PCCS) (up till 30 June 2010)

Wholesale Local Leased Circuit Service (WLCCS) (From 1 July 2010)

1. *General*

- 1.1 This part sets out the Specific Terms and Conditions under which RBSM (as Access Provider) agrees to provide, at the request of an Access Seeker, an access service classified as “Private Circuit Completion Service”. As from 1 July 2010 this service will be known as “Wholesale Local Leased Circuit Service”.
- 1.2 For the avoidance of doubt, a Private Circuit Completion Service (PCCS) or (WLCCS) is an Interconnection Service for the carriage of communications by way of a private circuit between a POI and an end user, which is available only at one end of a private circuit. The functionalities of the PCCS or WLCCS includes circuit or packet switching and signalling required to support the Interconnection Service, whether using ISDN, Frame Relay or any form of technology.
- 1.3 The General Terms of access as set out in the Access Agreement, supplemented by the specific terms contained in this part together with any schedules, will be incorporated in the Access Agreement for the access service called “Private Circuit Completion Service”, or “Wholesale Local Leased Circuit Service” to be signed between RBSM and the Access Seeker.
- 1.4 RBSM will only be required to provide the PCCS or WLCCS to the Access Seeker to the extent that the Access Seeker has complied with all the requirements of this ARD and the requirements of the Access Agreement for PCCS or WLCCS .
- 1.5 In the event of any inconsistencies in the Access Agreement, between these specific terms and the general terms relating to any matter, the specific terms shall prevail.

2. *Scope*

- 2.1 RBSM agrees to provide PCCS or WLCCS to the Access Seeker using RBSMs Fixed Network Service (owned or leased) as part of the Interconnection Service, for the carriage of communications by way of a private circuit between a Point of Interconnection (POI) controlled by RBSM to the end user connected to that private circuit. Unless otherwise agreed, for the avoidance of doubt, RBSM will not provide call completion or termination services for termination of calls to third party networks.

3. *Billing and Charging*

- 3.1 The Access Seeker is responsible for the customer billing and collection in respect of the provision of communication services by a private circuit to the end-users of the service using the PCCS or WLCCS service provided by RBSM.
- 3.2 The provisions of section 8 of the General Terms and Conditions will apply to Billing arrangements for the PCCS or WLCCS provided by RBSM.

4. *Technical Requirements*

- 4.1 RBSM will PCCS or WLCCS in accordance with the technical requirements set out in **Appendix A** of the Access Agreement. [This will be developed as required at the time the Access Agreement is entered into between the Access Seeker and RBSM].
- 4.2 The functionality utilised by RBSM in providing access as part of PCCS or WLCCS is circuit or packet switching and signalling required to support the Interconnection service

5. *Specifications*

- 5.1 The Access Seeker shall comply with the detail Specifications which are set out in **Appendix B** to the Access Agreement. [This will be developed as required at the time the Access Agreement is entered into between the Access Seeker and RBSM].
- 5.2 Should the Access Seeker fail, neglect or refuse to comply with the detail Specifications, then RBSM may at its option, treat such failure, neglect or refusal by the Access Seeker as a material breach of the terms of the Access Agreement and may terminate the Access Agreement in accordance with the terms of the Access Agreement.

Part F – Dispute Resolution Procedure (During Access Negotiation)

The Dispute Resolution Procedure set out in this Part E shall be applicable in respect of the following disputes only :

- (a) where RBSM issues Form B.3.3 (Access Request Rejection); or
- (b) where either RBSM or an Access Seeker initiates this process because they are unable to arrive at an Access Agreement after completing 120 days of negotiation as set out in Part C of this ARD or such further period as may have been permitted by the Commission.

Note : Disputes arising between Parties to an Access Agreement, shall be resolved in accordance with the Dispute Resolution Procedure set out in Schedule [F2] to the Access Agreement.

1. General

1.1 For the purposes of these procedures set out in this Part E, a “**Preliminary Access Dispute**” is said to have arisen when either:

- (a) RBSM issues Form B.3.3 (Access Request Rejection) rejecting an Access Request made by the Access Seeker; or
- (b) an Access Seeker has requested for negotiations of the terms and conditions of an Access Agreement, which is made pursuant to an Access Request, and RBSM and the Access Seeker are unable to arrive at an access agreement after completing 120 days of negotiation as set out in Part C of this ARD or such further period as may have been permitted by the Commission on a joint application.

2. Ad-Hoc Inter-party Working Group

2.1 In the event a Preliminary Access Dispute arises, then upon the written request of either RBSM or the Access Seeker, each of them will appoint a designated executive (who shall be the Chief Executive Officer or equivalent in their respective organisations) which will form the Ad-hoc Inter-party Working Group (“Ad-Hoc IPWG”).

2.2 The task of the Ad-Hoc IPWG is to meet for the purpose of resolving the Preliminary Access Dispute. The Ad-Hoc IPWG will meet as often as the parties reasonably deem necessary in order to gather and examine all other information with respect to the Preliminary Access Dispute, which the parties believe to be appropriate and germane in connection with its resolution. The Ad-Hoc IPWG will discuss the Preliminary Access Dispute and will negotiate in good faith in an effort to resolve the Preliminary Access Dispute without the necessity of any formal proceedings. The Ad-Hoc IPWG shall complete its tasks within thirty (30) days from the date when a written request is made in accordance with Section 2.1 above.

2.3 The specific format for such discussions will be left to the discretion of the Ad-Hoc IPWG but may include the preparation of agreed statements of fact or written statements of position to be furnished by RBSM and the Access Seeker; and in default thereof, the processes set out in Section 2.6 below shall apply.

2.4 No formal proceedings for the resolution of the Preliminary Access Dispute may be commenced until the earlier to occur of (a) a good faith mutual agreement by the designated executives that an amicable resolution through continued negotiation of the

Part F- Dispute Resolution Procedure (During Access Negotiation)

matters in issue does not appear likely or (b) the 31st day after the initial request to negotiate the Dispute.

- 2.5 The Ad-Hoc IPWG will use all reasonable endeavours to attempt to settle a Preliminary Access Dispute no later than thirty (30) days from the date when a written request is made in accordance with Section 2.1 above. The members of the Ad-Hoc IPWG may agree in writing to an extension of the time for resolution of the Preliminary Access Dispute.
- 2.6 The default process contemplated in Section 2.6, will be as follows:
- (a) the Ad-Hoc IPWG will meet as often and for as long as is necessary to resolve the Access Dispute by the time by which the dispute must be resolved subject always to the time-limit of thirty (30) days referred to in subsection 2.3;
 - (b) the Ad-Hoc IPWG will meet at a convenient and practical location. Each party will bear the costs of its participation in such meetings;
 - (c) all discussions, outcomes and decisions made at every meeting of the Ad-Hoc IPWG will be recorded and minutes of each meeting will be produced for circulation to both parties and the members of the Ad-Hoc IPWG. The representatives of the Ad-Hoc IPWG can determine among themselves who records and produces the minutes of the meetings, or whether the services of a third party be engaged as secretary to the Ad-Hoc IPWG;
- 2.7 If the Ad-Hoc IPWG is unable to resolve the Preliminary Access Dispute, then the Ad-Hoc IPWG shall prepare a report detailing the points or areas of contention and the positions of RBSM and the Access Seeker.
- 2.8 The Ad-Hoc IPWG may by mutual agreement extend once the time for resolution set out in Section 2.5 above for a period of not more than fourteen (14) days from the expiry of the thirty (30) day period.

3. Dispute Escalation Procedure

- 3.1 If the Ad-hoc Inter-party Working Group is unable to resolve the Preliminary Access Dispute within the stipulated time, or after the expiry of any extensions thereto, either RBSM or the Access Seeker may give ten (10) Business Days written notice (“ Notice Period”) to the other party stating its intention to escalate the issue and outlining the details of the issue.
- 3.2 If the issue is not resolved prior to the expiry of the Notice Period, then either party may notify the other party (“Receiving party”) in writing that it wishes to refer the Preliminary Access Dispute to the Ad-Hoc Interconnect Steering Group (“Ad-Hoc ISG”) (“Referral Notice”).
- 3.3 The Ad-Hoc ISG shall comprise of three persons, with RBSM and the Access Seeker each appointing one party and together they appoint the third person. Both RBSM and Access Seeker may make representations and submissions to the Ad-Hoc ISG who will determine the reasonableness of the Access Request or the terms which the parties are unable to agree to (hereinafter referred to as “the Issue”).
- 3.4 If the Issue is referred to an Ad-Hoc ISG under subsection 3.2, the Ad-Hoc ISG will meet within ten (10) Business Days of the receipt by the Receiving party of a Referral Notice. In default of the Ad-Hoc ISG meeting within the stipulated time of ten (10) Business Days, either party may refer the dispute to the Commission for arbitration.

Part F- Dispute Resolution Procedure (During Access Negotiation)

- 3.5 If the Ad-Hoc ISG has not resolved the Issue within twenty (20) Business Days after it first meets, then either party may refer the dispute to the Commission for final arbitration.

4. Reference to the Commission

- 4.1 If both RBSM and the Access Seeker are unable to resolve a Preliminary Access Dispute then either party may refer the Preliminary Access Dispute to the Commission for resolution pursuant to section 151 and Chapter 7 of Part V of the CMA.
- 4.2 The Commission will decide the dispute if it is satisfied that the:
- i) parties cannot reach agreement, or will not reach an agreement in a reasonable time;
 - ii) notification of the dispute is not trivial, frivolous or vexation; and
 - iii) resolution of the dispute would promote the objects in the CMA.

5. Reference to Court Proceedings

- 5.1 Until expiry of these Dispute Resolution Procedures set out herein, neither RBSM nor the Access Seeker may not commence court proceedings relating to that dispute, other than an application for urgent interlocutory relief. Nothing in this section will be construed as ousting the jurisdiction of any court.

Part G – The Schedules

Index to Part G

This part sets out the various Schedules which will be used in the Access Agreement :

| | | |
|--------------|---|--|
| Schedule G.1 | - | Access Service(s) Provided by RBSM |
| Schedule G.2 | - | Dispute Resolution Procedure (Post Access Agreement) |
| Schedule G.3 | - | Definitions and Construction |
| Schedule G.4 | - | Fault Rectification Response Times |
| Schedule G.5 | - | Quality of Service Levels |
| Schedule G.6 | - | Additional Terms & Conditions of Access |
| Schedule G.7 | - | Confidentiality Agreement |

Schedule G. 1 - Access Service(s) Provided by RBSM

1. Private Circuit Completion Service

Schedule G. 2 - Dispute Resolution Procedure

The following Schedule sets out the procedure which applies in respect of any dispute or difference between an Access Seeker and RBSM arising in relation to the Access Agreement.

1. General

- 1.1 For the purposes of the procedures set out in this Schedule and unless RBSM and the Access Seeker expressly agree otherwise, a “dispute” is any disagreement or difference relating to, arising out of or in connection with the Access Agreement.
- 1.2 Subject to subsection 1.4, RBSM and an Access Seeker will adopt and comply with this Dispute Resolution Procedure in relation to any dispute which may arise in respect of or in connection with the supply of network services, network facilities and any other facilities or Services to which the Access Agreement applies (“Access Dispute”).
- 1.3 All disputes arising between the parties under the Access Agreement will be dealt with as follows :
- a) Inter-party working group. Resolution of any dispute between the parties will first be attempted through negotiation between the parties by means of an inter-party working group as defined in and which will be set up pursuant to section 3 of this Schedule.
 - b) Interconnect Steering Group. In the event the parties cannot resolve the dispute within the time provided in section 3, or after any extension of time has expired, then either party may refer the issue to the Interconnect Steering Group (“ISG”) in accordance with section 4.
 - c) Technical Expert or Commission. If the ISG does not resolve a dispute within the time specified in section 4, either party may:
 - i) refer any technical dispute to a Technical Expert in accordance with section 5 of this Schedule; or
 - ii) refer the dispute to the Commission under section 151 of the CMA for final resolution.
 - d) Where a dispute is referred to the Commission pursuant to section 151 of the CMA, the Commission will decide the dispute if it is satisfied that the:
 - i) parties cannot reach agreement, or will not reach an agreement in a reasonable time;
 - ii) notification of the dispute is not trivial, frivolous or vexation; and
 - iii) resolution of the dispute would promote the objects in the CMA.
 - e) RBSM will not prevent the Access Seeker from referring a dispute to the Commission in accordance with the CMA.
- 1.4 Court Proceedings. Until expiry of these Dispute Resolution Procedures, an Operator may not commence court proceedings relating to that dispute, other than an application for urgent interlocutory relief. Nothing in this section will be construed as ousting the jurisdiction of any court.

Schedule G.2 – Dispute Resolution Procedure

- 1.5 Representatives Either party will ensure that its representative acting in relation to a dispute are of sufficient seniority and are authorised to settle an Access Dispute on its behalf.
- 1.5.1 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.
- 1.5.2 If in the course of the Dispute Resolution Procedure it is identified that the matters for resolution 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 with the authority to settle those matters.
- 1.6 During a dispute and any Dispute Resolution process invoked in accordance with this Schedule, RBSM and the Access Seeker must continue to fulfil their respective obligations under the Access Agreement unless the fulfilment of those obligations will affect the outcome of the dispute.
- 1.7 A party is prohibited from using all information obtained as a result of the Dispute Resolution process for any purpose other than to resolve the dispute.
- 1.8 Subject to Chapter 7 of Part V of the CMA, an arbitrator appointed under this Dispute Resolution Procedure (including a Technical Expert or the Commission) may decide not to determine the dispute if the arbitrator considers the dispute trivial, frivolous or vexatious, or if there is insufficient evidence to determine the dispute. In such a case, the arbitrator will, within five (5) Business Days of receiving the reference to arbitration inform the parties in writing, of his decision. The parties will thereafter be entitled to pursue their dispute by litigation.
- 1.9 Where the arbitrator decides to determine the dispute, the costs of the arbitration will be shared equally between the parties. If the arbitrator decides not to determine the dispute, the party that initiated the dispute must pay the other party's costs.
- 2. Inter-party Working Group**
- 2.2 RBSM and the Access Seeker will first attempt to resolve an Access Dispute among themselves by setting up a working group(s) which must consist of an equal number of representatives of each party and be headed by a person who holds a position at least equivalent to the head of RBSM's Wholesale or Interconnection Group.
- 2.3 Within sixty (60) days from the Commencement Date of the Access Agreement, RBSM shall set up the working group or working groups. In setting up the working group(s), RBSM will provide for:
- a) subject areas relating to or in which the dispute arose for the same to be dealt with by each working group;
 - b) clear terms of reference, the decision making process, timelines and manner of documenting and reporting of the discussions, negotiations and outcome or

Schedule G.2 – Dispute Resolution Procedure

decisions agreed on depending on the nature and urgency or time by which the dispute must be resolved;

- c) equal representation by RBSM and the Access Seeker in the working group(s);
- d) chairmanship and administrative functions of the working group(s) to be shared equally
- e) formal notification procedures to the working group.

2.4 RBSM and the Access Seeker will use reasonable endeavours to attempt to settle an Access Dispute within the Inter-party working group structure no later than forty five (45) days from the date the dispute is referred to the Inter-party working group, subject always to the right to injunctive relief. The parties may agree in writing to an extension of the time for resolution of the Access Dispute.

2.5 In default of RBSM providing for the process contemplated in subsection 2.2 (b), the process will be as follows:

- a) each working group will consist of an equal number of representatives from each party. Such representatives must have, or be able to expeditiously obtain the knowledge and information regarding all aspects (for example technical, financial, commercial, regulatory) necessary for resolution of the dispute;
- b) one of the representatives in the working group will be a person who holds a position at least equivalent to the head of RBSM's Wholesale or Interconnection Group;
- c) the working group will meet as often and for as long as is necessary to resolve the Access Dispute by the time by which the dispute must be resolved subject always to the time-limit of forty five (45) days referred to in subsection 2.3;
- d) the working group will meet at a convenient and practical location. Each party will bear the costs of its participation in such meetings;
- e) all discussions, outcomes and decisions made at every meeting of the working group will be recorded and minutes of each meeting will be produced for circulation to the representatives of the working group concerned. The representatives of the working group can decide among themselves who records and produces the minutes of the meetings;
- f) regardless of whether the Access Dispute is resolved by the working group, the working group will produce a report of the final outcome or decision of the working group which will be signed by each party's representative in the working group. Each party is entitled to a copy of the report.

2.6 The process in subsection 2.4 may be amended to suit the requirements of the Access Dispute.

3. Interconnect Steering Group (“ISG”)

- 3.1 If the parties cannot resolve the Access Dispute within the Inter-party working group within the stipulated time, or after the expiry of any extension of time agreed on, either party may give ten (10) Business Days written notice (“ Notice Period”) to the other party stating its intention to escalate the issue and outlining the details of the issue.
- 3.2 If the issue is not resolved prior to the expiry of the Notice Period, then either party may notify the other party (“Receiving party”) in writing, that it wishes to refer the issue to the Interconnect Steering Group (“ISG”) (“Referral Notice”)
- 3.3 If an Access Dispute is referred to an ISG under subsection 3.2, the ISG will meet within ten (10) Business Days of the receipt by the Receiving party of a Referral Notice. In default of the ISG meeting within the stipulated time of ten (10) Business Days, either party may refer the dispute to a Technical Expert in accordance with section 4 of this Schedule or to the Commission for arbitration.
- 3.4 If the ISG have not resolved an Access Dispute within twenty (20) Business Days after it first meets to review that Access Dispute under subsection 3.3, either party may:
- a) refer any technical dispute to a Technical Expert in accordance with section 4 of this Schedule; or
 - b) refer the dispute to the Commission for final arbitration.

4. Technical Expert

- 4.1 An Access Dispute can only be referred to a Technical Expert if the provisions of section 3 have been complied with.
- 4.2 Once a dispute is referred to a Technical Expert, it may not be referred back to an Inter-party working group or an ISG.
- 4.3 The Technical Expert:
- a) will be an expert appointed by agreement of the parties or, if the parties cannot agree within ten (10) Business Days, by the Commission;
 - b) will have the appropriate qualifications and experience to arbitrate the Access Dispute, including knowledge of the communications industry;
 - c) need not be a Malaysian citizen or resident; and
 - d) will not be an officer, director or employee of a communications company or otherwise have a potential for conflict of interest.
- 4.4 If the parties fail to appoint a Technical Expert within ten (10) Business Days of notice of the need to refer an Access Dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.

- 4.5 If a dispute is referred to a Technical Expert, the following dispute resolution procedure will apply and be utilised by the Technical Expert:
- a) the parties will deliver written submissions setting out their positions together with supporting evidence 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 receipt of the other party's written submission.
- 4.6 Unless otherwise agreed by the parties and either party requesting the Technical Expert or if the Technical Expert decides within five (5) Business Days of the receipt of the last written submission, that the arbitration by the Technical Expert be by documents only, the Technical Expert shall convene a hearing (where both parties may attend and witnesses produced) within fifteen (15) Business Days of the delivery of the last written submission.
- 4.7 Where a hearing by Technical Expert is held pursuant to this section, each party will have the opportunity to make an oral submission to the Technical Expert. This process will be conducted in private.
- 4.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the parties) but in any case, the hearing by the Technical Expert will last no longer than three (3) Business Days.
- 4.9 The Technical Expert will not have the power to appoint any other experts.
- 4.10 The Technical Expert will deliver his decision within fifteen (15) Business Days after the conclusion of the hearing or after receipt of the last written submission where the arbitration is by documents only.
- 4.11 Every Access Dispute referred to a Technical Expert will be considered separately so that time limits for each Access Dispute are complied with.
- 4.12 The award of the Technical Expert will be final and binding on the parties (in the absence of manifest error or fact or law), and shall be effected promptly by the parties.

5. Billing dispute resolution

- 5.1 In this section 5:
- a) "Billing Dispute" means a dispute which is made in good faith of an Invoice issued by RBSM to the Access Seeker pursuant to this Access Agreement;

Schedule G.2 – Dispute Resolution Procedure

- b) “Billing Dispute Notice” means the written notification made by the Access Seeker to RBSM in relation to a Billing Dispute in accordance with subsection 5.2;
 - c) “Billing Dispute Notification Period” means the period after the date of an Invoice described in subsection 5.2;
 - d) “Billing Representative” means a representative of the party appointed in accordance with the billing procedures set out in subsection 5.10; and
 - e) “Billing System” means a system to issue Invoices relating to charges payable by each party under the relevant Access Agreement.
- 5.2 If the parties are unable to resolve an Billing Dispute within thirty (30) days (or such longer period as the parties may agree), from the date on which the Billing Dispute Notice is received, either party may seek the consent of the other party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other party is under no obligation to agree to an extension.
- 5.3 To the extent that a Billing Dispute involves an international correspondent of RBSM, the Dispute Resolution Procedures shall be suspended for a reasonable period of time which will not exceed one hundred and twenty (120) days pending resolution of the dispute with that international correspondent. If it is anticipated that the dispute with the international correspondent is expected to exceed one hundred and twenty (120) days, then RBSM must immediately inform the Access Seeker of the likely period required for resolution.
- 5.4 If the Negotiation Period and any extension granted under subsection 5.3 has expired, the Billing Dispute may be referred by the Access Seeker to the procedure described in subsection 5.5 (“Billing Dispute Escalation Procedure”).
- 5.5 Billing Escalation Procedure
- 5.5.1 The Access Seeker may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection 5.5 by notifying RBSM’s Billing Representative.
 - 5.5.2 Each of the parties will then appoint a representative who will be authorized to settle the Billing Dispute.
 - 5.5.3 The representatives will meet as often as they deem necessary to resolve the Billing Dispute and will decide among themselves the manner, procedure and format for discussions to resolve the Billing Dispute.
- 5.6 Upon the resolution of a Billing Dispute to the satisfaction of the parties, the payment or repayment of any sum pursuant to that resolution must be made within fourteen (14) days from the date of resolution.
- 5.7 Nothing in this Schedule will prevent either party from pursuing any other legal or equitable remedy in respect of a Billing Dispute.

- 5.8 A joint investigation of Invoice discrepancies may be requested by a party after having conducted a comprehensive internal investigation, including an examination of its own Billing System. Terms of the joint investigation, must be agreed on prior to the execution of the joint investigation including :
- (a) the scope of the joint investigation;
 - (b) how the joint investigation will be conducted; and
 - (c) the date by which the joint investigation must be concluded.
- The joint investigation may include the generation of test calls to the other party's Network.
- 5.9 Enquiries relating to billing, collection and settlement arrangement or in relation to Network and operation issues may be directed to the Billing Representatives nominated by each party.
- 5.10 Either party may at anytime nominate another Billing Representative provided that ten (10) Business Days prior written notification is given to the other party.
- 5.11 If the parties are unable to resolve the Billing Dispute within thirty (30) days from any extended agreed upon under this section, or if they are unable to agree on any such extension, either party may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the CMA.

Schedule G. 3 - Definitions and Construction

DEFINITIONS & CONSTRUCTION

The following are the provisions which are to be incorporated into all Access Agreements with RBSM, as an Access Provider.

1. Definitions. The following words used in the Access Agreement shall bear the following meanings, unless the context otherwise requires:

| | |
|---------------------------------|---|
| Access Order Information or AOI | Means the information referred to in Section 2.1.1 of the Access Agreement |
| Access Seeker | Means [name of company seeking Access Services from RBSM] |
| ARD | Means the Access Reference Document published by Reach Bandwidth Services Malaysia Sdn Bhd |
| Billing Period | The 30 day period prior to the date of the Invoice for the services |
| CMA | Means the Communications and Multimedia Act 1998 (Act 588) and any amendments thereto. |
| Confidential Information | Shall have the meaning set out in the Confidentiality Agreement executed by the Parties dated [<i>Insert date when NDA was executed</i>] |
| Forecast Information | Means the information referred to in Section 1.2.1 of the Access Agreement |
| Invoice | Means the invoice to be issued to the Access Seeker in accordance with Section 8 of the Access Agreement; |
| MSA | Means the Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2003) and Commission Determination No. 2 of 2009 |
| POI | Means Point of Interface which comprises points of interconnection and/or points of presence. |
| RBSM | Means Reach Bandwidth Services Malaysia Sdn Bhd |

For the avoidance of doubt, words used in this Access Agreement shall have the same meaning as those provided in MSA, unless the context otherwise requires, and accordingly the definitions of those words set out therein are incorporated and forms part of this Access Agreement.

2. Construction Rules. The Section headings and table of contents used in this Access Agreement are for convenience of reference only and will not enter into the interpretation of this Access Agreement. As used in this Access Agreement, unless otherwise expressly provided to the contrary,

Schedule G.3 – Definitions and Construction

- (a) any reference to a **“Section”**, **“Annex”** or **“Schedule”** is a reference to a Section of this Access Agreement or a Schedule or Annex attached to this Access Agreement, and
- (b) all references to days, months or years are references to calendar days, months or years
- (c) where the day on or by which any thing is to be done is not a business day, that thing must be done on or by the preceding business day.
- (d) words importing the singular include the plural and vice versa;
- (e) words importing a gender include any gender;
- (f) other parts of speech and grammatical forms of a word or phrase defined in this Access Agreement have a corresponding meaning;
- (g) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (h) a reference to an act, statute, regulation, proclamation, ordinance, by-law, or a subsidiary instrument issued pursuant to the Communications and Multimedia Act 1998 includes all acts, statutes, regulations, proclamations, ordinances, by-laws or subsidiary instruments amending, consolidating or replacing it, and a reference to an act, or statute includes all regulations, proclamations, subsidiary instruments, ordinances and by-laws issued under that act or statute;
- (j) a reference to a party to a document includes that party's successors and permitted assigns;

Schedule G.4 - Fault Rectification Response Times

FAULT RECTIFICATION RESPONSE TIMES (Section 5.15.13 MSA)

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

| Priority Level | Fault Types (examples) | Response Time | Restoration Time |
|----------------|---|---------------|------------------|
| Level 1 | 1. Major switch outage 2. Transmission bearer total outage 3. Route blocking > 50% 4. Major signalling problem 5. Major routing issues 6. Fraudulent calls | Within 1 hr | 4 hrs |
| Level 2 | 1. Minor switch outage 2. Minor routing issue 3. Minor signalling problems 4. Route blocking 10%-50% 5. Cross line & silent calls | Within 4 hrs | 24 hrs |
| Level 3 | 1. Faults affecting single or small number of Customers 2. Route blocking <10% | Within 24 hrs | 72 hrs |
| Level 4 | 1. Remote Congestion 2. External Technical Irregularities (ETI) 3. Other performance related issues | Within 48 hrs | 14 days |

For the purposes of this Schedule, the following are the explanatory notes to the above table:

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

Schedule G.5 - Quality of Service Levels

AGREED SERVICE LEVELS (Section 5.16 MSA)

The quality of service levels that has been agreed between the Access Seeker and RBSM, *where applicable to the Access Services*, is as set out below :

[Set out the service levels for the Interconnect Link Service or Wholesale Local Leased Circuit Service that has been agreed between RBSM and the Access Seeker at the time the Access Agreement is negotiated]

Schedule G.6 – Additional Terms & Conditions for Access

[This schedule will set out any additional terms and conditions (outside the ARD) agreed with the Access Seeker during the course of negotiating the Access Agreement]

Schedule G.7 - Confidentiality Agreement

THIS agreement is made on _____ 2005

BETWEEN

REACH BANDWIDTH SERVICES MALAYSIA SDN BHD of Level 49, Petronas Tower
2, KLCC, 50088 Kuala Lumpur (“**RBSM**”)

AND

XXXX of [Address] (“**Access Seeker**”)

1. Interpretation

1.1 Definitions

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

Approved Purpose means the provision of Access Services by RBSM to the Access Seeker in accordance with the Mandatory Standard for Access (Commission Determination No 1 of 2005 and Commission Determination No. 2 of 2009) and the Access Reference Document (“ARD”) published by RBSM, and includes exchange of Information prior to the execution of the Access Agreement.

Confidential Information of a party (Disclosing Party) means all Information:

- (a) disclosed or communicated to the Recipient; or
- (b) learnt or accessed by the Recipient,
from the Disclosing Party or its Representatives for or in connection with the Approved Purpose, but excludes any such Information which the Recipient can establish:
 - (c) is or became generally available in the public domain otherwise than through a breach of this agreement or any obligation of confidence owed to the Disclosing Party; or
 - (d) is obtained from a third party entitled to disclose it; or
 - (e) is or was independently developed by the Recipient not based on the disclosed Information; or
 - (f) is or was previously in the possession of the Recipient or its Related Company, or
 - (g) is publicly disclosed with the written approval of the Disclosing Party.

Disclosing Party means a party which discloses, communicates or gives access to its Information to the other party under this agreement.

Holding Company for a party means any company wherever incorporated which directly or indirectly (through a number of intermediate subsidiaries) holds the controlling shares in or controls that party.

Information of a Disclosing Party means all information and know how, regardless of Material Form, relating to or developed in connection with:

- (a) the Approved Purpose;
- (b) any businesses, affairs, finances, markets, promotions, strategies, plans, customers, suppliers, employees, industrial relations or industries of the Disclosing Party or a Related Company; or
- (c) any systems, technology (including without limitation, computer software, manufacturing processes or other information embodied in drawings or specifications) or intellectual property owned or used by the Disclosing Party or a Related Company or licensed to the Disclosing Party or a Related Company.

Material Form, in relation to Information, includes any form (whether visible or not) of storage from which the Information can be reproduced, and any form in which the Information is embodied or encoded.

Recipient means the party which receives from, or is given access to information by, the Disclosing Party under this agreement.

Related Company, in relation to a party, means:

- (a) that party's subsidiaries;
- (b) that party's Holding Companies and any other subsidiaries of that party's Holding Companies;
- (c) a company or joint venture in which a party has an equity interest, and which is or may be involved in providing a telecommunications or internet access service; and

Representative means, in respect of a party or its Related Company, any person acting for or on behalf of the party and includes any director, officer, employee, contractor or professional (legal, engineering and financial) adviser of the party.

2. Obligation of Confidence

2.1 Confidentiality Obligations

In consideration of the mutual disclosure of Confidential Information for the Approved Purpose, REACH and the Company each acknowledge and agree that each of them must, as a Recipient:

- (a) take all action reasonably necessary to maintain the confidentiality of the other party's Confidential Information;
- (b) not disclose the other party's Confidential Information to any person except as permitted under **clause 2.2**;
- (c) use or reproduce the other party's Confidential Information only in connection with the Approved Purpose;
- (d) not make, assist or permit any person (including its Representatives) to make any unauthorised use, disclosure or reproduction of the Confidential Information of the other party;
- (e) take all steps reasonably necessary to secure the other party's Confidential Information against theft, loss or unauthorised disclosure;
- (f) take reasonable steps to ensure that any person who has access to Confidential Information of the other party through it or on its behalf does not use, reproduce or disclose that Confidential Information other than in accordance with this agreement;
- (g) must take reasonable steps to enforce the confidentiality obligations imposed or required to be imposed by this agreement including, diligently prosecuting, at its own cost, any breach or threatened breach of such confidentiality obligations by a person to whom it has disclosed Confidential Information of the other party.

2.2 Permitted Disclosures

This agreement does not prohibit the disclosure by a Recipient of Confidential Information of the Disclosing Party:

- (a) to a Representative of the Recipient or a Related Company of the Recipient who needs to know the Confidential Information in connection with the Approved Purpose and subject to the Recipient taking all reasonable steps to ensure that any such Representative is fully aware of the confidential nature of the Confidential Information of the Disclosing Party before the disclosure is made and complies with the obligations in this agreement as though it was a party;
- (b) which is required to be disclosed by law, regulation, court, tribunal, authority, regulatory body or the listing rules of any stock exchange where the securities of the Receiving Party or of any Related Company of the Receiving Party are listed or quoted, provided that the Recipient has:
 - (i) where practicable and legally permissible, given the Disclosing Party sufficient notice to enable the Disclosing Party to seek a protective order or other relief from disclosure; and
 - (ii) provided all legally permissible assistance and co-operation which the Disclosing Party reasonably considers necessary for that purpose; or
- (c) in respect of which the Disclosing Party has given its consent to disclosure or use, which consent may be given or withheld in its absolute discretion.

2.3 Survival of Obligations of Confidentiality

The obligations of confidentiality imposed by this agreement survive the expiration or termination of this agreement for a period of two (2) years from (i) the last date Confidential Information was disclosed to the Recipient or (ii) the completion of the Approved Purpose, whichever is the later.

3. Return of Confidential Information

3.1 Return of Confidential Information

Each party agrees to deliver to the other party all documents and other materials in any medium in the possession or under the power or control of the party or any of its Representatives which contain or refer to any Confidential Information of the other party on the earlier of:

- (a) demand by the other party; or
- (b) the time the documents and other materials are no longer required in connection with the Approved Purpose, if required by the Disclosing Party.

3.2 Right to Retain

Notwithstanding **clause 3.1**, each party may retain any of the Confidential Information it is required by law to retain, for legal or regulatory purposes.

3.3 No Release

Return of the documents and other materials referred to in **clause 3.1** does not release any party from its obligations under this agreement.

4. Disclaimer

4.1 Disclaimer

Each party, as a Recipient:

- (a) acknowledges that neither the Disclosing Party nor any of its Representatives has made nor makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information of the Disclosing Party; and
- (b) agrees that it must make its own assessment of the Confidential Information of the Disclosing Party and satisfy itself as to the accuracy and completeness of that Confidential Information.

4.2 No Licence

Nothing contained in this agreement may be construed as granting or conferring on a Recipient any proprietary rights, licences or other rights in any Confidential Information of the Disclosing Party.

4.3 Scope of obligations

Nothing contained in this agreement may be construed as:

- (a) obliging either party to enter into any further negotiations or agreement with the other party;
- (b) obliging a party to disclose any particular or further information to the other party;
- (c) restricting either party from entering into negotiations or agreement with any third party regarding the same subject matter as the Approved Purpose; or
- (d) restricting either party from conducting its business in the manner it elects, including independently competing with the other party provided that the Confidential Information may not be independently used for a competitive advantage.

5. Notices

5.1 Form of Notices

A notice, approval or consent required by this agreement must be in writing and sent to the address of the party as set out on the first page of this agreement.

6. Miscellaneous

6.1 Exercise of Rights

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

6.2 Injunctive Relief

Each party acknowledges that damages may not be a sufficient remedy for any breach of this agreement and each party is entitled to seek specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the other party, in addition to any other remedies available at law or in equity.

6.3 Waiver and Variation

A provision of or a right created under this agreement may not be:

- (a) waived, except in writing signed by the party granting the waiver; or
- (b) varied, except in writing signed by the parties.

6.4 Severability

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

6.5 Authority

Each party warrants that it is a corporation and has full corporate power and authority to enter into and do all things necessary for the performance of this agreement. Each signatory to this agreement warrants that he or she is authorised to sign on behalf of the corporation for whom he or she acts.

6.6 Warranty

The Disclosing Party warrants that it has all necessary rights to lawfully disclose the Confidential Information and the Confidential Information has not been provided in breach of any other agreement or arrangement with third parties. The Disclosing Party indemnifies the Recipient against liability for third party claims on that basis.

7. GOVERNING LAW AND JURISDICTION

7.1 Governing Law

This agreement and the transactions contemplated by this agreement are governed by the laws of the Malaysia.

7.2 Submission to Jurisdiction

Each party irrevocably submits to the exclusive jurisdiction of the courts of Malaysia for determining any dispute concerning this agreement or the transactions contemplated by this agreement.

Executed as an agreement

SIGNED for and on behalf of [Access
Seeker]

SIGNED for and on behalf of **REACH
BANDWIDTH SERVICES
MALAYSIA SDN BHD**

Name:

Name:

Title:

Title:

Date:

Date:

Appendix A – Technical Requirements

[To be provided to the Access Seeker during negotiations of the Access Agreement]

Appendix B – Specifications

[To be provided to the Access Seeker during negotiations of the Access Agreement]

Part H **List of Forms**

The following are the list of forms referred to in this ARD:

1. Form B.2.1 – Preliminary Access Request
2. Form B.3.1 – Access Request Form
3. Form B.5.1 – Access Request Acceptance – ARD Response Form
4. Form B.6.1 – Access Request Acceptance – Negotiation Response Form
5. Form B.7.1 – Access Request Rejection Form
6. Form B.9.1 – Request for Further Information

Form B.2.1 – Preliminary Request for Access

Notes to Form B.2.1 :

1. An Access Seeker who wishes to obtain access to the Access Services offered by RBSM must first complete and submit this form with all relevant data and supporting documents. This form is a prelude to the submitting a Formal Request Form.
2. The footnotes contain instructions on how to complete the form. Incomplete or inaccurate Forms may be rejection by RBSM.

To:

Reach Bandwidth Services Malaysia Sdn Bhd
Level 49, Petronas Tower 2
Kuala Lumpur City Centre
50888 Kuala Lumpur
MALAYSIA

ATTENTION: The Technical Manager

Preliminary Request for Access

We, <name of requesting party> (Co. No. _____), the holder of [specify licence types] which are valid and subsisting and issued by the Malaysian Communications and Multimedia Commission, do hereby make this preliminary Request for Access :

Section A Contact Details

Our Contact Details are:

| Description | Contact Details |
|---------------------------------------|-----------------|
| 1. Address | |
| 2. Telephone Number (General) | |
| 3. Fax Number | |
| 4. Contact person's name ¹ | |
| 5. Designation | |
| 6. Telephone Number (DID) | |
| 7. Mobile Number | |
| 8. E-mail address | |

¹ If the designated person has an alternate please specify the alternate's details (items 4 to 8).

Section B Preliminary Access Request

- (e) the nature of the Access Services sought from RBSM ;
- (f) the forecasts of the capacity the Access Seeker may reasonably require for an initial 12 month period;
- (g) execute the Confidentiality Agreement attached to this ARD (Schedule G.7).

We hereby make a preliminary request for access to the following Access Services :

1. Access To²:

- ☐ **Private Circuit Completion Services (Until 30 June 2010)**
- ☐ **Wholesale Local Leased Circuit Services**

| Nature of Interconnect Link Service | Detail Description of the Nature of Access ³ | RFS Date |
|--|---|---|
| Private Circuit Completion Services or Wholesale Local Leased Circuit Services | | [Instruction: Specify the RFS date for each service which you require from RBSM |

3. Forecast for 12 Months

[Provide the forecast for the Access Services for 12 months]

4. Confidentiality Agreement

I confirm that a duly executed Confidentiality Agreement (Part G Schedule G.7) is attached with this request from.⁴

² Please tick whether you seek access to RBSM's Access Services.

³ Once you have so selected, please provide detail description of the nature of the access you require.

⁴ Non-compliance with this requirement may result in rejection of the Preliminary Request for Access

Form B.3.1 – Formal Request for Access**Notes to Form B.3.1:**

5. An Access Seeker who wishes to obtain access to the Access Services offered by RBSM must complete and submit this form with all relevant data and supporting documents. This form is a prelude to the execution of an Access Agreement between the Access Seeker and RBSM.
6. The footnotes contain instructions on how to complete the form. Incomplete or inaccurate Forms may be rejection by RBSM.
7. Deviations to the form is not permitted, except if the Access Seeker requires more space to supply the requisite information, it may do so on a separate piece of paper and clearly labelled

To:

Reach Bandwidth Services Malaysia Sdn Bhd
 Level 49, Petronas Tower 2
 Kuala Lumpur City Centre
 50888 Kuala Lumpur
 MALAYSIA

ATTENTION: The Technical Manager

Formal Request for Access

We, <name of requesting party> (Co. No. _____), the holder of [specify licence types] which are valid and subsisting and issued by the Malaysian Communications and Multimedia Commission, do hereby make this request for access. In accordance with the terms of the Mandatory Standard on Access (Commission Determination No. 2 of 2003 & Commission Determination No. 2 of 2009) and RBSM's Access Reference Document (Reference: RBSM/ARD/2009), we provide the following information:

Section A Contact Details

Our Contact Details are:

| Description | Contact Details |
|-------------------------------|-----------------|
| 1. Address | |
| 2. Telephone Number (General) | |
| 3. Fax Number | |
| 4. Contact person's name | |
| 5. Designation | |
| 6. Telephone Number (DID) | |
| 7. Mobile Number | |
| 8. E-mail address | |

If the designated person has an alternate please specify the alternate's details (items 4 to 8).

Section B Access Request

We hereby make the following request for access by the following Ready for Service ("RFS") dates:-

1. Access To⁵:

☐ Private Circuit Completion Services (or Wholesale Local Leased Circuit Service)

| Nature of Interconnect Link Service | Detail Description of the Nature of Access ⁶ | RFS Date |
|---|---|--|
| Private Circuit Completion Services or Wholesale Local Leased Circuit Service | | [Instruction: Specify the RFS date for each service which you require RBSM to grant access to. |

2. Acceptance or Rejection of ARD terms

Instruction: Please select one or the other of the statements below:

- ☐ We accept that access will be provided to us by RBSM in accordance with the terms and conditions set out in the Access Reference Document (Ref. No:), specifically.
- ☐ We wish to negotiate a separate Access Agreement.

Section C Access Seeker Details

1. General

The Access Seeker has elected to negotiate an Access Agreement. In furtherance of such election, we provide the following additional details of our personnel:

| Names | Employee 1 | Employee 2 | Employee 3 |
|---|------------|------------|------------|
| Details | | | |
| Name | | | |
| Status of person ⁷ | | | |
| Designation | | | |
| Telephone (DID) No. or Telephone No. with (extension) | | | |
| Fax | | | |

⁵ Please tick whether you seek access to RBSM's Access Services.

⁶ Once you have so selected, please provide detail description of the nature of the access you require.

⁷ Please specify whether the person is an employee or independent consultant engaged by you.

| | | | |
|---|--|--|--|
| Mobile Phone No. | | | |
| E-mail address | | | |
| Dates available for negotiations ⁸ | | | |

2. Negotiation Team Leader

Our negotiation team leader is [please specify name] who is [designation] of the Access Seeker, and we hereby confirm that the team leader is able to make binding representations, concessions and accept proposals made during the course of negotiations.

3. Request for Information from RBSM

The Access Seeker makes the following request for the provision of specified information by RBSM for the purposes of negotiation⁹:

| Nature of Information Required from RBSM | Reason for Request |
|--|--|
| Instruction: Please identify the nature of information or documents required from RBSM . | Please give your reasons for requesting such information |
| | |

4. Confidentiality Agreement

We enclose with this Form, the duly executed Confidentiality Agreement (As per Schedule G.7), for your further action.

Section D Technical Requirements

The following technical requirements are being provided:

1. Capacity forecasts

We will require the following capacity:

| Identify type of Network Service ¹⁰ | Description | Forecast capacity requirement |
|--|-------------|-------------------------------|
| | | |

⁸ Please specify at least 4 sets of dates. The dates must at least be sufficiently close to be continuous, yet reasonably practical in the circumstances.

⁹ If there is no information needed DO NOT COMPLETE Section C/Item 3.

¹⁰ The type of service or facility which access will be given must correspond to those items set out in Section B of this form.

2. Quality of Service

RBSM will adhere to timelines set out in Sections 5.7.14, 5.11.3 & 5.15.13 and comply with quality of service level as specified in Section 5.16.9 of the MSA, where applicable and to the service levels agreed in the Access Agreement with respect to the Access Services provided by RBSM to the Access Seeker.

3. Interface Standards

The following are the Interface Standards of the equipment, software and hardware which we will interconnect with the equipment, hardware and software of RBSM.

| Identify nature of equipment, hardware or software | Applicable Standard or Interface requirements | Specify if there has been any deviation from the Applicable Standard. |
|--|---|---|
| | | |

4. Access Seeker's Network Information

We provide the following information about our network to you:

[Instruction: Please specify all necessary information relating to your network which may affect RBSM's network or facility in the course of providing the Access Services]

Section E Creditworthiness

Prior to providing the requested Access Services, RBSM requires verification of your creditworthiness to ensure that you have the necessary financial resources to pay for the Access Services. In that regard you are required to provide a certified financial statement by auditors of your current financial position.

In addition to the auditors statement, the Access Seeker is required to warrant as follows :

“[Name of Access Seeker] hereby warrants and represents that the creditworthiness information supplied to RBSM by us is true and accurate and we acknowledge that RBSM enters into the Access Agreement in reliance of such warranty and representation.”

Section F Insurance

We confirm that we have effected the following insurance policies as at [date of request]:

| Insurance type | e.g. Employer's All Risk | Workmen's Compensation | Social Security | Employer's Liability | General Liability |
|-----------------|-------------------------------------|------------------------|-----------------|----------------------|-------------------|
| Risks Insured | e.g Public Liability | | | | |
| Persons Covered | e.g.[Access Seeker], [contractors], | | | | |

Form B.3.1 – Formal Request for Access

| | | | | | |
|----------------------|---------------------------------|--|--|--|--|
| Amount insured | e.g. RM10 Million | | | | |
| Period of validity | e.g 3 years from 1 January 2003 | | | | |
| Name of Insurer | e.g. MAA Assurance | | | | |
| Insurance Policy No. | | | | | |

Section G Security Requirements

RBSM requires that you provide a financial security in the form of a Irrevocable On Demand Bank Guarantee issued by a reputable bank in Malaysia covering the total value of Access Services provided by RBSM over a period of 90 days. The terms of the Bank Guarantee shall be agreed by the parties prior to the provision of the Access Services.

Dated : [insert date]

Signed by the authorised
the authorised representative
of the Access Seeker

Witnessed by

Name:
Designation:
Date:
Company Stamp:

Name:
Designation:
Date:

Form B.5.1 – Access Request Acceptance – ARD Response

Notes to Form B.5.1:

1. RBSM will use this Form if it accepts the Access Request (Form B.3.1) issued by an Access Seeker and the Access Seeker has indicated that it will take the Access services in accordance with the ARD.

To:

[Name of Access Seeker]

[Address]

ATTENTION: [The name of the contact person]

Access Request Acceptance

ARD RESPONSE

We, [RBSM] (Co. No. _____), as the Access Provider, wish to inform you, [*name of Access Seeker*], that in respect of your Access Request dated [*insert date*] which was received by us on [*insert date of receipt*], as follows:

1. Pursuant to your statement in the Access Request to take the Access Services in accordance with the terms and conditions of RBSM's ARD, we shall be forwarding to you an Access Agreement based on the terms and conditions of the ARD within ten (10) Business Days from the date of this Response.
2. You are required to execute the Access Agreement and return the same within 10 days to RBSM.

Dated: [*insert date of document*]

Signed by the authorised the authorised representative of RBSM

.....
Name:

Designation:

Date:

Company Stamp:

Form B.6.1 – Access Request Acceptance – Negotiation Response**Notes to Form B.6.1 :**

2. RBSM will issue this form if it accepts the Access Request (Form B.3.1) issued by an Access Seeker and the Access Seeker has intimated that it wishes to negotiate the terms of the access agreement.

To:

[Name of Access Seeker]

[Address]

ATTENTION: [The name of the contact person]

Access Request Acceptance**NEGOTIATION RESPONSE**

We, [RBSM] (Co. No. _____), as the Access Provider, wish to inform you, [*name of Access Seeker*], that in respect of your Access Request dated [*insert date*] which was received by us on [*insert date of receipt*], as follows:

1. As you have indicated that you wish to negotiate the terms and conditions of the Access Agreement, we hereby advise that we are willing to enter into such negotiations with you to reach agreement on the definitive terms. In that regard, Part C of this ARD (Negotiation Process) shall apply.
2. Pursuant to and in accordance with the Mandatory Standard on Access, the following information is provided to you:

(a) RBSM's Nominated Personnel

Pursuant to your request to negotiate an access agreement, we provide the following details:

| Names | Employee 1 | Employee 2 | Employee 3 |
|---|-------------------|-------------------|-------------------|
| Details | | | |
| Name | | | |
| Status of person ¹¹ | | | |
| Designation | | | |
| Telephone (DID) No. or Telephone No. with (extension) | | | |
| Fax | | | |
| Mobile Phone No. | | | |
| E-mail address | | | |
| Dates available for negotiations ¹² | | | |

¹¹ Please specify whether the person is an employee or independent consultant engaged by you.

(b) Negotiation Team Leader

Our negotiation team leader is [please specify name] who is [designation] of RBSM, and we hereby confirm that the team leader is able to make binding representations, concessions and accept proposals made during the course of negotiations, subject to the final approval being given by the Board of Directors of RBSM.

(c) Request for Information from Access Seeker

RBSM request for the provision of the following information by the Access Seeker, which RBSM reasonably requires for the purposes of the negotiation:

| Nature of Information Required from Access Seeker |
|--|
| [Set out the information RBSM requires] |
| |

(d) Confidentiality Agreement

We enclose with this Form, a duly executed Confidentiality Agreements (as per Schedule G.7) for your records.

(e) Date, Time and Venue

The first meeting to commence negotiations shall be at [specify venue] on [specify date] at [specify time].

Dated: [insert date of document]

Signed by the authorised the authorised representative of RBSM

.....

Name:

Designation:

Date:

Company Stamp:

- (h) the name and contact details of the Access Seeker;
- (i) the nature of the Access Services sought from RBSM ;
- (j) the forecasts of the capacity the Access Seeker may reasonably require for an initial 12 month period;
- (k) execute the Confidentiality Agreement attached to this ARD (Schedule G7).

¹² Please specify at least 4 sets of dates. The dates must at least be sufficiently close to be continuous, yet reasonably practical in the circumstances.

Form B.7.1 – Rejection of Access Request

Notes to Form B.7.1:

3. RBSM will issue this Form if it rejects the Access Request (Form B.3.1) issued by an Access Seeker.

To:

[Name of Access Seeker]
[Address]

ATTENTION: [The name of the contact person]

Rejection Access Request

We, [RBSM] (Co. No. _____), as the Access Provider, wish to inform you, [*name of Access Seeker*], that your Access Request dated [*insert date*] which was received by us on [*insert date of receipt*] is hereby **REJECTED**.

- A. The grounds of our rejection of your Access Request are set out below:

[*the grounds must be in accordance with Section 5.4.11 of the MSA*]

- B. The basis of our decision is set out below:

[*set out basis in numbered paragraphs*]

[*if additional documents are being referred to, please attach them to this Form*]

- C. Should you so desire, as provided in the MSA you are entitled to meet with our representatives [*provide the names and designation of RBSM's representatives*] at [*specify venue*] on [*specify date*] at [*specify time*] to discuss this rejection of your Access Request.

Dated: [*insert date of document*]

Signed by the authorised the authorised representative of RBSM

.....

Name:

Designation:

Date:

Company Stamp:

Form B.9.1 – Request for Further Information

Notes to Form B.9.1:

RBSM will issue this Form to acknowledge receipt of the Access Request (Form B.3.1) issued by an Access Seeker, but requires additional information from the Access Seeker before deciding whether it is able to provide access or not.

To:

[Name of Access Seeker]

[Address]

ATTENTION: [The name of the contact person]

Request for Further Information

We, [RBSM] (Co. No. _____), as the Access Provider, having considered the Access Request by [*name of Access Seeker*], dated [*insert date*] which was received by us on [*insert date of receipt*], we require the following additional information in order for us to decide whether to accept or reject your Access Request:

- [*specify the additional information RBSM may require*]

Dated: [*insert date*]

Signed by the authorised the authorised representative of RBSM

.....

Name:

Designation:

Date:

Company Stamp: